

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T  
TRIAL CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
V.  
ISSA SESAY  
MORRIS KALLON  
AUGUSTINE GBAO

WEDNESDAY, 19 JANUARY 2005  
9.48 A.M.  
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding  
Bankole Thompson  
Pierre Boutet

For Chambers:

Ms Candice Welsch  
Mr Matteo Crippa

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Peter Harrison  
Mr Alain Werner  
Mr Christopher Dunn (intern)  
Mr Mark Wallbridge (Case Manager)

For the accused Issa Sesay:

Mr Wayne Jordash  
Ms Chloe Smythe

For the accused Morris Kallon:

Mr Shekou Touray  
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr Andreas O'Shea  
Mr John Cammegh

1 Wednesday 19th January 2005  
2 [Open session]  
3 [No accused present]  
4 [Upon commencing at 9.48 a.m.]  
5 PRESIDING JUDGE: Good morning learned counsel. Good morning  
6 witness. How are you? You slept well?  
7 THE WITNESS: Yes, sir.  
8 PRESIDING JUDGE: Good. Mr Harrison, yesterday the witness  
9 arrived Freetown with one Major Rocky and that is where  
10 we will start. May we proceed, please?  
11 MR HARRISON: I have been informed by the audio visual people  
12 that the radio broadcast that was attempted to be played  
13 yesterday can be played this morning. And my suggestion  
14 would be that, if it is of the Court's view to hear it,  
15 that this might be the best time, then we could continue  
16 on with the remainder of the evidence.  
17 PRESIDING JUDGE: That's all right, I see no objection to  
18 that. I don't imagine there is any objection.  
19 MR HARRISON: My suggestion then would be if the audio visual  
20 people could provide us with the audio of that broadcast,  
21 and I believe everyone does have a copy of the transcript  
22 that was prepared. Ultimately, the Prosecution's  
23 suggestion would be that if we are playing the tape it  
24 should become an exhibit, and the transcript could also  
25 become an exhibit if that assists with the court --  
26 PRESIDING JUDGE: It would not be the Prosecutor's suggestion,  
27 it be the Prosecutor's application that it becomes an  
28 exhibit. Yes. Yes, let's listen to the broadcast.  
29 MR HARRISON: If I can just indicate, it is roughly 15 minutes

1 in length.

2 PRESIDING JUDGE: 15?

3 MR HARRISON: Approximately.

4 PRESIDING JUDGE: Well, that is all right. Are you hearing it  
5 already.

6 MR HARRISON: I am hearing nothing.

7 PRESIDING JUDGE: Pardon.

8 MR HARRISON: I am hearing nothing.

9 PRESIDING JUDGE: You are on what channel? Is it English?

10

11 SLBS Radio, 28 May 1997 10.00 GMT

12 "To all RUF combatants, a message to all RUF  
13 combatants, People's War Council, the High Command and  
14 all combatants of the RUF through the gallant field  
15 commanders of the RUF, your leader, Corporal Foday Sankoh  
16 of the RUF, I am now instructing you to disregard all  
17 previous instructions and orders, and stop all attacks  
18 and keep defensive. Do not go on the defensive  
19 [indecipherable]. Do not go on the offensive, I repeat.  
20 Do not go on the offensive, but be on the defensive. All  
21 instructions - former instructions - or operations should  
22 be cancelled. All commanders should be on the defensive.

23 "At this moment, you have to work with the brothers  
24 in Freetown, in the provinces. The entire Army of the  
25 Sierra Leone military forces will allow working together  
26 to bring peace in Sierra Leone. They ask me to work with  
27 them so that peace will prevail in our beloved  
28 motherland. So I will like you all to work with them as  
29 brothers; we are no more enemies. The enemies are the

1 politicians, not the soldiers, presently.

2 "The field commanders and all commanders, you will  
3 always get instructions from me through Major Koromah.  
4 They are our brothers. Let no one fool you. You have to  
5 work with them to put the situation under control,  
6 especially in the western area. Umm, you the field  
7 commanders instruct your brother Commander Bingo to  
8 stand-by for any reinforcement needed by Major Koromah  
9 for any eventualities. We have to defend our  
10 sovereignty. You are to act on these orders immediately.  
11 Do not delay and you will hear me over the media - BBC  
12 and VOA - in support to the present operation in  
13 Freetown.

14 "Thank you all. My absence in Sierra Leone is the  
15 presence of God, RUF, and to the people. Power to the  
16 people, and the wealth of our people should be in the  
17 hands of the people. RUF be strong, intelligent. Bai  
18 Bureh, [indecipherable] Kailondo. You are the children,  
19 great, great grandchildren. Let's make a revolution with  
20 ur brothers. Peace be with you. I will join you very  
21 soon. I say again: This is your leader and Commander in  
22 Chief of the RUF, Corporal Foday Sankoh. Thank you all.

23

24 "Me brother dem, na dat for tell una. Una take great  
25 care; una wok wit di others dem. Ar hope say dem nor go  
26 disappoint una, dem or go disappoint di other ranks wey  
27 stand behind dem tiday en always stand for peace. Peace  
28 can only be achieved. Thank you.

29

1 "NEW SPEAKER: That was the RUF leader, Corporal  
2 Foday Sankoh, in a speech he made this morning to his  
3 fighting men."

4 WITNESS: TF1-071 [Continued]

5 EXAMINED BY MR HARRISON: [Continued]

6 MR HARRISON:

7 Q. Witness, you were you able to hear in the courtroom this  
8 morning, through your headset, those words that were  
9 uttered on that broadcast.

10 A. Yes, this was the media I heard when I was in ^XXXXXX,  
11 Liberia.

12 Q. And as a consequence of hearing that, can you just tell  
13 the Court again what you did?

14 A. After we heard this media, the entire RUF base in XXXXXXXX  
15 organised [inaudible] comprising myself, Major Rocky,  
16 Mike Lamin, to go to Freetown -- to go to Kenema and meet  
17 Sam Bockarie and other authorities [Inaudible]  
18 information. They did -- I did travel to Freetown -- I  
19 did travel to Kenema and with met Sam Bockarie and  
20 confirm it was Corporal Sankoh that gave the instruction  
21 and he gave the green light for every one of us from  
22 Liberia to come over to Sierra Leone.

23 Q. The Prosecution does apply at this point to have the  
24 audio cassette - it is actually a CD, I should say -  
25 become an exhibit and we suggest that it would also be  
26 appropriate for the transcript to be an exhibit and we so  
27 apply that they both be exhibits. I wonder if the staff  
28 in the audio visual room would be kind enough to bring  
29 that CD into the courtroom so that it can be tendered as

k

1 an exhibit.

2 JUDGE THOMPSON: Mr Jordash, what is your response? Yes,

3 learned counsel for the Prosecution is applying for the

4 cassette and the transcript to be received in evidence.

5 What is your response?

6 MR JORDASH: No objections.

7 JUDGE THOMPSON: Mr Shekou Touray?

8 MR TOURAY: We are comfortable, Your Honour. No objection.

9 JUDGE THOMPSON: I just wanted that translated. And

10 Mr O'Shea, what is your position?

11 MR O'SHEA: We have no problem with these two items becoming

12 exhibits.

13 JUDGE THOMPSON: Thank you. Yes, well they will be

14 received -- one will be marked -- the cassette will be

15 marked Exhibit 16 and the transcript, Exhibit 17.

16 MR HARRISON: Can I just indicate for the record, I misspoke I

17 think when I said cassette. It is actually a CD that has

18 been recorded.

19 JUDGE THOMPSON: Right, well we will make the necessary

20 amendment. Let the amendment be reflected in the record.

21 Exhibit 16 and 17.

22 [Exhibit no. 16 and 17 was admitted]

23 MR HARRISON: A house keeping matter was just brought to my

24 attention. It may be the case that the voice distortion

25 is not operating for this witness and I would just ask if

26 that could be confirmed.

27 PRESIDING JUDGE: The CD is Exhibit 16?

28 JUDGE THOMPSON: 16.

29 MR WALKER: It appears that the voice distortion is working I

1 need to move the microphone a little bit closer to the  
2 witness.

3 JUDGE THOMPSON: Yes. You confirm that it is working? With  
4 that confirmation, let us proceed now.

5 MR HARRISON:

6 Q. Witness, you have indicated a trip to Kenema and later to  
7 Freetown. Can you first tell us if you can recall any  
8 incidents that took place in Kenema?

9 A. Yes. After we arrived from Liberia and got in Kenema -  
10 and that was somewhere around October - I came across  
11 one --

12 PRESIDING JUDGE:

13 Q. Let us be clear on the record. This is during the first  
14 trip?

15 A. That was my last trip when I experienced the order issued  
16 in Kenema.

17 Q. Kenema?

18 A. Yes.

19 MR HARRISON:

20 Q. Just to clarify, witness, you have told us yesterday  
21 about making two trips to Kenema. Do you recall that?

22 A. Yes, I recall it, yes.

23 Q. This incident that seems to have come to your mind, did  
24 you learn of this on the first trip to Kenema or the  
25 second trip to Kenema.

26 A. This occurred during the second trip to Kenema.

27 Q. Please proceed.

28 A. As we arrived -- I arrived in Kenema together with Major  
29 Rocky, it was somewhere around October to November. One

1 B S Massaquoi was alleged to have arms and ammunitions  
2 and supporting the pro-Kamajors attacking the positions  
3 of the juntas.

4 Q. Let me just pause you there?

5 A. Okay.

6 JUDGE THOMPSON: What was the allegation?

7 THE WITNESS: B S Massaquoi was alleged to have arms and  
8 ammunitions and even supporting the pro-Kamajors  
9 attacking the positions of the juntas.

10 PRESIDING JUDGE:

11 Q. Is it B S or P S Massaquoi?

12 A. B S Massaquoi.

13 Q. B S.

14 A. And one other doctor, Momodu Kpaka; a doctor of the  
15 government hospital in Kenema.

16 Q. Momodu Kpaka?

17 A. Yes.

18 MR HARRISON:

19 Q. The court reporter might be indebted to you if you could  
20 spell the name of the doctor?

21 A. Can I spell the name?

22 Q. Yes.

23 A. Capital M-O-M-O-D-U, K-P-A-K-A; Momodu Kpaka. He was a  
24 doctor at Kenema government hospital.

25 JUDGE THOMPSON:

26 Q. What about him? Was there an allegation [inaudible]?

27 A. Sir?

28 Q. Was he also alleged to have been --

29 A. Yes, he also alleged together with B S Massaquoi.

1 Q. Thank you.

2 MR HARRISON:

3 Q. Who is B S Massaquoi?

4 A. I learned that B S Massaquoi was one of the elders of  
5 Kenema Township and former minister, as I heard.

6 Q. What happened?

7 JUDGE THOMPSON:

8 Q. Just a minute, let's get that. We need to know who he  
9 was. He was one of the elders of Kenema Township. And  
10 you say a former what?

11 A. A former minister of Kenema.

12 Q. A minister of government?

13 A. Can I go further?

14 Q. Yes.

15 PRESIDING JUDGE: A former minister of government?

16 A. Yes.

17 JUDGE THOMPSON:

18 Q. If you can just pace your answers a little for us since  
19 we are trying to get your evidence?

20 A. What.

21 Q. I said if you pace your answers out a little, I am trying  
22 to get your evidence as accurately as we possibly can.

23 MR HARRISON:

24 Q. Please proceed. Tell the Court what happened.

25 A. So B S Massaquoi and --

26 MR HARRISON: I apologise for interrupting the witness. I  
27 have just been given another notice that there is no  
28 voice distortion for people outside the courtroom or  
29 almost no voice distortion. Is it simply a question of

1           advising the witness to be closer to the microphone or  
2           further away from the microphone?

3 JUDGE THOMPSON: Well, we to need investigate, we don't know  
4           why we are in this position and we should answer that.

5 MR O'SHEA: Your Honours, can I just draw the attention of the  
6           Court to the fact that I attended one of the experiments  
7           on this voice distortion and I remember thinking when I  
8           was sitting in the public gallery that there was no voice  
9           distortion at certain stages when in fact there was. So  
10          may not be the case here, but I am just drawing that to  
11          the attention of people so they can consider that as a  
12          possibility.

13 JUDGE THOMPSON: Perhaps we should not speculate, we should  
14          just let them investigate what has happened now. If the  
15          observation is valid, let's just find out -- the experts  
16          try and find out what the situation is for us?

17 MR WALKER: Your Honour, there appears to be a technician in  
18          the public gallery now.

19 JUDGE THOMPSON: Could we summon one to --

20 MR WALKER: Well, I think possibly we just need the witness to  
21          talk through the microphone to see if there is anything.

22 JUDGE THOMPSON: Well, these are the difficulties, I was going  
23          to say that we should not begin to try possibilities if  
24          we are not the experts.

25 MR HARRISON: Could I just go to the microphone and speak into  
26          it --

27 JUDGE THOMPSON: Yes.

28 MR HARRISON: -- so that my voice is distorted or not?

29 JUDGE THOMPSON: Yes, perhaps that's one way of proceeding. I

1 just want to make sure that we don't go wrong.

2 JUDGE BOUTET: Don't speak too close to the mike.

3 MR HARRISON: We are wishing to determine if there is voice  
4 distortion operating at this time. Is there any  
5 distortion of my voice at the present time?

6 JUDGE BOUTET: Mr Harrison, to my knowledge of the system that  
7 is in place, we should hear your voice distorted to the  
8 same extent that we should be hearing my voice distorted.  
9 At least the people in gallery should.

10 JUDGE THOMPSON: It is the gallery that hears it.

11 PRESIDING JUDGE: It is the gallery that hears the distortion.

12 JUDGE THOMPSON: We do not. That is the whole idea behind the  
13 new system.

14 MR WALKER: Your Honour, if I can just say --

15 MR HARRISON: I am asking if the audio technician can  
16 determine if my voice is being distorted as I am speaking  
17 presently. If it is not being distorted, if you could  
18 make some sort of indication to the Court whether or not  
19 the distortion is operating.

20 MR WALKER: Your Honour, if i can assist.

21 PRESIDING JUDGE: It's operating.

22 MR WALKER: It is working.

23 PRESIDING JUDGE: It is working, that's what he says.

24 JUDGE THOMPSON: Yes.

25 MR HARRISON:

26 Q. I apologise for interrupting you, witness, and I will ask  
27 you again if you can continue with the information that  
28 you were going to provide to the Court.

29 A. Can I continue?

1 JUDGE BOUTET: Mr Harrison, I am informed that to maximise the  
2 distortion for the witness, he has got to be closer to  
3 the mike. In other words, he should not be -- the more  
4 distance he would put between himself and the mike the  
5 less distortion there will be in this case.

6 JUDGE THOMPSON: Yes, in his case he needs to have it closer.

7 MR HARRISON:

8 Q. Mr Witness, I wonder if you would be kind enough to  
9 perhaps move your chair closer to the microphone.  
10 Perhaps if we could try again, Mr Witness. Could you  
11 please indicate or provide the Court with the information  
12 that I believe you are about to commence with?

13 A. When Dr Momodu Kpaka and B S Massaquoi are alleged to  
14 have arms and ammunitions in their possessions for  
15 attacking the position of the juntas in Kenema, at that  
16 point Sam Bockarie sent his securities to have arrested  
17 B S Massaquoi and Dr Momodu Kpaka.

18 Q. Just pause there for a moment. Please continue.

19 A. B S Massaquoi was indeed arrested and together with  
20 Dr Momodu Kpaka. And then during the arrest the  
21 securities brought along with them one carton of single  
22 barrel rounds and with some other documents, which I saw  
23 myself in person at the secretariat headquarter in  
24 Kenema.

25 Q. Again, just pause for a moment.

26 PRESIDING JUDGE: A box of what?

27 A. Single barrel rounds and some other documents.

28 Q. And when was this?

29 A. This was --

- 1 PRESIDING JUDGE:
- 2 Q. And they brought them to headquarters?
- 3 A. Yes, it was brought to the Kenema secretariat head  
4 office.
- 5 Q. The head office of the RUF?
- 6 A. I think it was the headquarters -- it was the secretariat  
7 office of the junta at that time.
- 8 Q. Of the junta?
- 9 A. Yes, sir. These were called secretariat.
- 10 MR CAMMEGH: Were these items taken from that office or to  
11 that office?
- 12 JUDGE BOUTET: To.
- 13 PRESIDING JUDGE: To.
- 14 THE WITNESS: To the office.
- 15 PRESIDING JUDGE: They were taken to the office.
- 16 JUDGE BOUTET: From the doctor and Massaquoi.
- 17 PRESIDING JUDGE:
- 18 Q. That is where we are not clear where they were brought  
19 from. They were taken to the office, but we do not know  
20 where they were brought from. We know that --
- 21 A. As I said, they were brought from their various houses  
22 where they were arrested and brought to the office of the  
23 secretariat.
- 24 Q. But we only know of one box of single rounds?
- 25 A. Yes, one box of single barrel rounds were also with them  
26 with the securities who went to arrest B S Massaquoi and  
27 Dr Momodu.
- 28 JUDGE THOMPSON:
- 29 Q. You are saying they were brought from their homes?

- 1 A. From their various houses.
- 2 Q. Do you know that, because I think what you have said is  
3 that security people brought along with them?
- 4 A. Yes.
- 5 Q. During --
- 6 A. During the arrest.
- 7 Q. Yes. But you didn't say, I mean, it is only now you are  
8 saying they were brought from the houses.
- 9 A. I said that they were ordered to go and arrest  
10 B S Massaquoi and Dr Momodu Kpaka.
- 11 Q. Yes, we heard that.
- 12 A. And during the arrest they came along with one box of  
13 single barrel rounds together with Dr Momodu Kpaka and  
14 B S Massaquoi.
- 15 Q. You said that, you did not say where they got the barrels  
16 from at that point in time. I mean these were security  
17 personnel, you didn't say where they got the --
- 18 PRESIDING JUDGE: Exactly.
- 19 JUDGE THOMPSON:
- 20 Q. -- from the house, they came along with them?
- 21 A. Yes, they went for the arrest, so they weren't -- they  
22 did the arrest at their houses and --
- 23 Q. You are saying that now. Okay?
- 24 A. Okay.
- 25 Q. The carton of single barrel rounds and documents were  
26 brought from the houses of --
- 27 A. B S Massaquoi's house.
- 28 PRESIDING JUDGE: From B S Massaquoi's house?
- 29 THE WITNESS: Yes, sir.

1 JUDGE THOMPSON: B S Massaquoi's house?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE:

4 Q. A carton?

5 A. The carton of single barrel rounds.

6 Q. And some documents.

7 A. And some documents.

8 MR HARRISON:

9 Q. When was this?

10 A. Sir?

11 Q. When was this?

12 A. Yes, this was in somewhere around in November 1997.

13 Q. What happened next?

14 A. So Sam Bockarie set up a board of investigations.

15 Q. Please continue?

16 A. To investigate B S Massaquoi and Dr Momodu Kpaka.

17 Q. And what happened?

18 A. During the investigations I saw Sam Bockarie angrily  
19 arguing with B S Massaquoi.

20 Q. Please continue.

21 A. For B S Massaquoi to have had single barrel rounds and  
22 supporting the pro-Kamajors to attack his positions, he  
23 grew angry with Dr -- and we grew angry with  
24 B S Massaquoi for that.

25 Q. What happened next?

26 A. The argument extended by B S Massaquoi saying that he has  
27 no knowledge of the arm and ammunition issue.

28 Q. What happened next?

29 A. Both Momodu Kpaka and -- Dr Momodu Kpaka and

1 B S Massaquoi were flogged, tortured, by the securities  
2 of Sam Bockarie and Sam Bockarie himself.

3 Q. Did you see this?  
4 A. I saw it myself.  
5 Q. Describe, please.

6 PRESIDING JUDGE:  
7 Q. Witness, can you go slowly, please? You say they were  
8 tortured and flogged?  
9 A. Yes, sir.

10 Q. By Sam Bockaries' securities and by Sam Bockarie himself?  
11 A. Exactly, sir.  
12 Q. Yes.  
13 A. So B S Massaquoi's still continued to deny the  
14 allegations. This grew Sam Bockarie more annoyed and he  
15 intends the torturing either by taking out his pistol --

16 MR HARRISON:  
17 Q. Please continue.  
18 A. -- the nozzle of the pistol was struck by Sam Bockarie  
19 on the head of B S Massaquoi several times I saw that.  
20 Q. Please continue.  
21 A. Still B S Massaquoi denied the allegations.  
22 Q. What happened next?  
23 A. So B S Massaquoi was flogged nearly over one hour or 30  
24 minutes in time, and then later Sam Bockarie ordered the  
25 securities to put B S Massaquoi and Dr Momodu back to  
26 prison.

27 PRESIDING JUDGE: You say he was flogged for?  
28 THE WITNESS: Nearly over one hour 30 minutes.  
29 MR HARRISON:

1 Q. What happened next?

2 A. So that day we went home and after one or two days I  
3 visited the same.

4 PRESIDING JUDGE:

5 Q. Let's get it, let's get it?

6 A. Yes, sir.

7 Q. He ordered the two to be put to prison?

8 A. Yes. Sir?

9 Q. Was it only Massaquoi or Massaquoi and Dr Momodu who were  
10 [inaudible]

11 A. Both of them were sent back to prison.

12 MR HARRISON:

13 Q. What happened next?

14 A. During my second visit of the investigation, Sam Bockarie  
15 asked the securities to come with Dr Momodu and  
16 B S Massaquoi out for further investigations.

17 Q. Please continue.

18 A. While questioned he always replied negative to the  
19 allegations.

20 JUDGE THOMPSON: Who was that?

21 THE WITNESS: Sam Bockarie questioned Mr B S Massaquoi for the  
22 allegations.

23 JUDGE THOMPSON: Yes.

24 MR HARRISON:

25 Q. Please continue.

26 A. So for the second time again the more B S Massaquoi was  
27 denying, the more he was still continuing to flog  
28 B S Massaquoi together with the securities.

29 Q. I think you said he; who are you referring to?

1 A. I am referring to Sam Bockarie.  
2 PRESIDING JUDGE: The more Massaquoi denied --  
3 THE WITNESS: Deny, the more Sam Bockarie continued to torture  
4 him and flog him.  
5 JUDGE BOUTET: You have said tortured him. Did he do anything  
6 in addition to flogging?  
7 THE WITNESS: Yeah, I saw him beating B S Massaquoi with a  
8 tied rubber and a pistol struck him on his head and then  
9 during that I saw blood all over his head and all over  
10 his body.  
11 JUDGE THOMPSON:  
12 Q. This was the second time?  
13 A. The second time, second time.  
14 Q. [Inaudible] that you said this time --  
15 PRESIDING JUDGE: This time, yes.  
16 JUDGE THOMPSON: He did what? Could you enumerate it for us  
17 this time? What -- go ahead.  
18 A. Bockarie continued to torture Mr B S Massaquoi.  
19 Q. [Inaudible]  
20 A. And then if he flog -- continued to struck him a pistol,  
21 the nozzle of the pistol, on his head. Then I saw blood  
22 all over his head and the body.  
23 MR HARRISON:  
24 Q. This second time, can you tell the Court the location  
25 where this took place?  
26 A. This was at the same place, at the secretariat office in  
27 Kenema.  
28 Q. What happened next?  
29 A. B S Massaquoi was tied up and sent back to jail together

1 with Dr Momodu Kpaka.

2 Q. Please continue.

3 A. For the third time I witnessed the investigations.

4 B S Massaquoi, along with Dr Momodu Kpaka, were brought

5 before the investigation board wherein I was present, one

6 Morris Massaquoi was also present.

7 PRESIDING JUDGE: That is Massaquoi and Kpaka were brought.

8 THE WITNESS: Brought back for the third time that I witnessed

9 the investigations.

10 JUDGE THOMPSON: This time you say they were brought before an

11 investigating board.

12 THE WITNESS: Yes.

13 MR HARRISON:

14 Q. What happened?

15 A. So I heard Sam Bockarie saying if B S Massaquoi didn't

16 tell him the truth, he will lay down in cold blood.

17 Q. Please continue.

18 PRESIDING JUDGE: You'll pay that in cold blood.

19 A. Yes, his cold blood.

20 MR HARRISON:

21 Q. Please continue?

22 A. So B S Massaquoi still continued to deny as he has been

23 previously doing.

24 Q. Continue.

25 A. Sam Bockarie, his securities, and more specially he, he,

26 Sam Bockarie, grew more annoyed with B S Massaquoi and he

27 was mercilessly flogged and he became unconscious.

28 B S Massaquoi became unconscious.

29 Q. You said mercilessly flogged, but can you describe what

1           you saw?

2    A.    Yes, what I mean --

3    PRESIDING JUDGE:  Did he say mercilessly or ruthlessly?

4    THE WITNESS:  Mercilessly, that is he continued flogging him  
5           up to the time when B S Massaquoi can no more talk.  
6           That's what I mean.

7    MR JORDASH:  I don't know if it assists in expediting things,  
8           but there is no challenge to what happened during this  
9           incident, and I, for one, would be happy if Mr Harrison  
10           were to lead on the details.

11   PRESIDING JUDGE:  No, we do not want you to disrupt matters.  
12           Let him continue the way he is continuing.

13   JUDGE THOMPSON:  Yes.

14   PRESIDING JUDGE:  Because you may get to a point where you say  
15           "Oh he is..." where you object and --

16   MR HARRISON:  But, with respect, we are really concerned about  
17           the efficiency of the trial and the time that is lost.  I  
18           welcome the --

19   PRESIDING JUDGE:  Mr Harrison, please, please, can you go on?  
20           We are on the job, please.  Please, just go on, you know,  
21           the way we have been going on, please.

22   THE WITNESS:  So B S Massaquoi remained in this tied one, they  
23           call it a ^tabi and they were sent back to a prison.  And  
24           then after B S Massaquoi was sent to prison the  
25           investigation board started his interrogating Dr B S --  
26           Dr Momodu Kpaka.

27   MR HARRISON:

28   Q.    Please continue.

29   A.    What I heard from -- sorry, what I heard from

1 Dr Momodou Kpaka saying was that he was a poor doctor,  
2 his concern was only medical so he has no knowledge of  
3 that.

4 PRESIDING JUDGE:

5 Q. He was -- what adjective did you use?

6 A. That he was just a poor doctor, you know, a poor --

7 Q. A poor doctor?

8 A. Yes, sir. He has no knowledge of arms and ammunition  
9 issue.

10 MR HARRISON:

11 Q. What happened next?

12 A. Dr Kpaka was also sent back to prison and went home for  
13 the other time.

14 Q. What happened next?

15 A. They told the investigation when I visited the  
16 secretariat, there I learned that --

17 PRESIDING JUDGE:

18 Q. We were on the third already, weren't we?

19 A. [Inaudible].

20 Q. We were on the third point of the investigation already?

21 A. Yes.

22 JUDGE THOMPSON: The third one.

23 THE WITNESS: That is the third day when I visited the  
24 investigation headquarter.

25 PRESIDING JUDGE: The third day after -- Okay.

26 MR HARRISON:

27 Q. On how many days did you see B S Massaquoi at the  
28 secretariat?

29 A. Two times I saw him alive. The third one I saw him he

1 was already proclaimed dead. I saw him, the corpse.

2 PRESIDING JUDGE:

3 Q. Can we start from the third day, the third day afterwards  
4 when you visited the investigation?

5 A. Yes.

6 Q. Yes, what happened?

7 A. Then the other day was a time I came to learn that  
8 B S Massaquoi is dead.

9 MR HARRISON:

10 Q. How did you learn that?

11 A. I saw the corpse myself.

12 Q. Describe what you saw.

13 A. I saw the corpse in a -- tied one, his hands were tied up  
14 at his back.

15 Q. Describe the body.

16 A. The body the way I saw it, it was covered up with blood.

17 Q. What happened next?

18 A. So later, I don't know, but Sam Bockarie may have given  
19 the order to the securities who buried him, but I know  
20 B S Massaquoi was buried. And Dr Momodu Kpaka was, to my  
21 understanding, later he was free.

22 Q. Did you remain in Kenema?

23 A. I spent very few times in Kenema and then later I was  
24 sent together with Major Rocky to Freetown by  
25 Sam Bockarie.

26 Q. Is Major Rocky known by another name?

27 A. His name is --

28 PRESIDING JUDGE: Mr Harrison, can you -- Mr Harrison, please.

29 MR HARRISON:

- 1 Q. Is Major Rocky known by another name?
- 2 A. Yes, his other name was Emmanuel Johnson.
- 3 PRESIDING JUDGE: Mohammed?
- 4 THE WITNESS: Emmanuel Johnson.
- 5 MR HARRISON:
- 6 Q. When was this?
- 7 A. This was in 1997.
- 8 Q. Can you assist with the time of year?
- 9 A. I think this was in November 1997.
- 10 [HS190105B 10.45 a.m.]
- 11 JUDGE THOMPSON: Continue, counsel.
- 12 MR HARRISON:
- 13 Q. How long did you remain in Freetown?
- 14 A. We got in Freetown, that was in November -- I think
- 15 roughly I can say a month and a half.
- 16 Q. What did you do in Freetown?
- 17 A. While I was in Freetown, we are sent by Sam Bockarie to
- 18 meet with Issa Sesay, Mike Lamin and other commanders.
- 19 Q. Why were you sent to meet them?
- 20 A. We are sent to meet the commanders like Issa Sesay, Mike
- 21 Lamin and the others for the RUF fighters to start to
- 22 withdraw from Freetown.
- 23 Q. Did you do that?
- 24 A. The instruction and the order was sent to Issa Sesay and
- 25 the other commanders, so it was their responsibilities.
- 26 Q. Why was the order sent to Issa Sesay and the other
- 27 commanders?
- 28 A. The order was sent to Issa Sesay and the others according
- 29 to Sam Bockarie who he made us to understand that the

1 AFRC was not the legitimate government of Sierra Leone  
2 and Johnny Paul Koroma was not the President or legal  
3 President of Sierra Leone, instead of the President His  
4 Excellency Ahmed Tejan Kabbah was the President. So he  
5 felt very necessary that the RUF should withdraw and come  
6 back to their positions and so stand by in case of  
7 anything like withdraw or whatever can be done.

8 PRESIDING JUDGE: Mr Harrison, may he proceed more neatly. We  
9 want to get him on record very sequentially.

10 MR HARRISON: Okay.

11 Q. I'm sorry, witness, it is my fault for not interjecting  
12 as I should have done. I apologise to you. Perhaps you  
13 would be kind enough to repeat the answer you have given  
14 but if you could pause after, perhaps, two or three  
15 sentences and then resume after the pause?

16 PRESIDING JUDGE: You were trying to give the reasons why the  
17 message was sent through you to Issa Sesay and other  
18 commanders. What were these reasons?

19 THE WITNESS: Well, the reason number one was that according  
20 to Sam Bockarie he told us that AFRC was not a legal  
21 government for Sierra Leone.

22 MR HARRISON: If you could just pause there.

23 THE WITNESS: Yes.

24 MR HARRISON:

25 Q. Please continue?

26 A. So he was instructing Issa Sesay as his second in command  
27 to allow the RUF fighters to tactically withdraw from  
28 Freetown.

29 Q. When you use the term second in command, what do you mean

1 by that?

2 A. Issa Sesay was next to Issa -- sorry, to Sam Bockarie in  
3 command at that time. He was a battlefield commander.

4 Q. Commander of what?

5 A. Of the RUF.

6 PRESIDING JUDGE: And the instructions were that they should  
7 tactically --

8 THE WITNESS: Tactically withdraw from Freetown.

9 PRESIDING JUDGE: From Freetown, yes.

10 THE WITNESS: Well, as a commander, I knew he was working  
11 under instructions, so I didn't check very much on him  
12 for that.

13 MR HARRISON:

14 Q. What happened next?

15 A. We're in Freetown up to February. On the 12th of  
16 February finally we -- the RUF, the junta and the bulk of  
17 civilians fled away from Freetown.

18 PRESIDING JUDGE: February 19 --

19 THE WITNESS: February 1998. The 12th of February.

20 PRESIDING JUDGE: The 12th of February 1998?

21 THE WITNESS: Yes, sir.

22 PRESIDING JUDGE: The bulk of RUF soldiers --

23 THE WITNESS: Soldiers, the junta, the civilians. We all fled  
24 away from Freetown.

25 PRESIDING JUDGE: Just the RUF?

26 THE WITNESS: Just the RUF.

27 PRESIDING JUDGE: [Inaudible].

28 THE WITNESS: What I mean, the AFRC soldiers, including the  
29 RUF itself, together with the civilians. So for the few

1 time we are in Freetown, pressure were mounted against  
2 the juntas in Freetown up to February the 12th when  
3 finally we are disarrayed from Freetown.

4 MR HARRISON:

5 Q. What do you mean by the term "junta"?

6 A. What I mean, it was combined forces of the former loyal  
7 soldiers to Johnny Paul Koroma and the former fighters of  
8 the RUF loyal to Corporal Sankoh.

9 Q. So we're at February of 1998. What did you, yourself, do  
10 in February 1998?

11 A. In February 1998, as I have told you, everybody was  
12 disarrayed. I try to escape for survival and I got in  
13 route from -- I use the peninsula route to Tombo.

14 PRESIDING JUDGE: Used the peninsula route to?

15 THE WITNESS: Tombo, Tombo Village.

16 MR HARRISON:

17 Q. What did you do at Tombo?

18 A. Upon my arrival at Tombo, that was at night, I saw JPK  
19 Koroma, I saw Mike Lamin, I saw Denis Mingo who was  
20 called Superman, I saw CO Isaac. So many other  
21 commanders were at Tombo, even including Rambo, known as  
22 Buster Flomo. They use the speedboat at Tombo and cross  
23 over the river.

24 Q. What did you, yourself, do at that time?

25 A. Well, at the same time I also was still continuing my  
26 surviving for escaping. I continue my journey alongside  
27 with group of civilians with the same peninsula road  
28 alongside the riverbank or the peninsula and I cross over  
29 to Four Mile and I use the highway for Masiaka.

1 Q. Please continue?

2 A. I got to Masiaka almost in the evening hours.

3 Q. What happened at Masiaka?

4 A. Met with so many commanders, fighters of the juntas and,  
5 in fact, there I saw the ECOMOG; the Guinea ECOMOG were  
6 assigned at Masiaka.

7 Q. Did anything happen at Masiaka?

8 A. During the time I spent at Masiaka, the space of at least  
9 a week, the Guinean ECOMOG never bother us. We too would  
10 never bother them. We are just there looking at one  
11 another.

12 Q. What happened next?

13 A. Then, during that time, one morning there was a meeting  
14 called by Superman. There at that time I saw Issa Sesay,  
15 Mike Lamin and with General Bropleh.

16 Q. Where did you see this?

17 A. I saw that at Masiaka, in the meeting.

18 Q. Who was General Bropleh?

19 A. General Bropleh was the former commander of the ULIMO  
20 forces in Sierra Leone.

21 PRESIDING JUDGE: Former commander of the?

22 THE WITNESS: ULIMO forces.

23 MR HARRISON:

24 Q. What happened?

25 A. In that meeting I came to understand that some other  
26 junta commanders were also present whose name were like  
27 Five-Five, Code 8, 05, Bakar, Brigadier Mani and so many  
28 others, but some of these guys were not physically known  
29 to me in person, only their name I also hear in that

- 1 meeting, because the crowd was so many, you know.
- 2 Q. What happened next?
- 3 A. Most people I recognised in the meeting -- I saw there  
4 was Superman who spoke to us in general saying that we  
5 are going to Makeni and from there he say that,  
6 "Gentlemen, we have no pay for you the fighters but as  
7 from now it is Operation Pay Yourself." I heard that  
8 from Superman saying that.
- 9 Q. What did you understand that term to mean?
- 10 A. What I understood by Operation Pay Yourself is nothing  
11 more or less but looting, false possession of properties.
- 12 Q. What happened next?
- 13 A. While we are at Masiaka one time we started experiencing  
14 air raiding by the Alpha Jet.
- 15 Q. Continue?
- 16 A. We are later informed by Superman that the Guinean  
17 contingent and the other forces of the ECOMOG have  
18 planned to attack us, but we are instructed to go  
19 straight to Makeni as our second point.
- 20 Q. Who gave that instruction?
- 21 A. I heard it from Superman.
- 22 Q. What happened next?
- 23 A. Some group of fighters start to regroup direct from  
24 Makeni but this was usually done at night, we usually do  
25 grouping at night to travel for Makeni.
- 26 Q. Continue?
- 27 A. I personally travelled from Masiaka from that point,  
28 mostly at night, and I spent almost five days walking by  
29 foot.

1 Q. Continue?

2 A. When I arrive in Makeni, it was almost in the same  
3 evening hours, I ask for Teko Barracks because there I  
4 learned that most of our colleagues were deployed.

5 Q. What happened next?

6 A. When I reached Teko Barracks the next day there was  
7 muster parade back again called by Superman, Issa Sesay,  
8 Rambo Buster Flomo and so many other commanders even  
9 including the securities of JPK and others who I have  
10 been naming but I do not know them in persons. So in  
11 that meeting Superman told us that we are now here in  
12 Makeni, but he has received an instruction that we should  
13 travel to Kailahun by Sam Bockarie's order.

14 PRESIDING JUDGE: Travel to?

15 THE WITNESS: We are to travel for Kailahun.

16 MR HARRISON:

17 Q. I may be wrong but I think I heard in that brief  
18 answer "muster parade" and then "meeting". Were you  
19 using those to indicate the same incident?

20 A. Yes, when I say muster parade it is a military term for a  
21 meeting for soldiers.

22 Q. Did anything else take place at that meeting for  
23 soldiers?

24 A. Yeah, in the meeting there we are told that we're going  
25 to Kailahun but our route should be Kono.

26 Q. Why was that?

27 A. Because according to what we are seeing or what I saw, it  
28 was much safer for us to travel through Kono into  
29 Kailahun.

- 1 Q. Did anyone appear to be chairing that meeting or leading  
2 the meeting?
- 3 A. Yes, other people were there who spoke in the meeting,  
4 but I recognise Superman more and I recognise Buster  
5 Flomo who was Rambo, the Liberian Rambo, and I recognise  
6 Issa Sesay.
- 7 Q. What happened next?
- 8 A. Right after the order was read over to us, Superman  
9 arranged his first advance team for Kono route.
- 10 Q. Please continue.
- 11 A. They went as far as Matotaka --
- 12 Q. And then what happened?
- 13 A. And Makali and in between Matotaka, Makali there was  
14 obstacle of ambush by the Kamajors where they fought  
15 almost -- I can say almost for the whole day.
- 16 Q. Please continue.
- 17 A. And then when that happen Superman came back to us in  
18 Makeni requesting for more reinforcement soldiers. They  
19 went and they clear the distance from Matotaka, Makali or  
20 to Masingbi.
- 21 Q. What happened next?
- 22 A. As they were advancing more reinforcement was following  
23 up, and they went and there was a bit of fight, according  
24 to the sources, between Masingbi and Sewafe, like towns  
25 like Futaneh Junction, Coal Town and other villages  
26 alongside of the road to Sewafe.
- 27 Q. What did you do next?
- 28 A. I was staying in Makeni while the advance team was still  
29 leading for Koidu.

- 1 Q. Please continue with your actions.
- 2 A. As the fighting was still getting tense, the troop went  
3 and cleared as far as from between the towns I've just  
4 named, Coal Town up to Sewafe, and between Sewafe again  
5 to Koidu there was another serious battle, as we learned,  
6 which was at the point between Yengema and Bumpe there  
7 was a place called the Friendship Road, which is leading  
8 to the airport of Yengema. As Superman later informed us  
9 while we are in Makeni that they have captured one of our  
10 AAs, that is an anti-aircraft weapon.
- 11 Q. Just for the sake of the record, did you use the term  
12 Friendship Road?
- 13 A. Yes, I use the word Friendship Road. That is the  
14 junction we call personally in Koidu Friendship Road or  
15 normally that was the not the same.
- 16 Q. Continue with what you did next?
- 17 A. So I was staying in Makeni. So the team came back for  
18 more reinforcement and then fought very hard and cleared  
19 the area and even recaptured the weapon from the enemy  
20 forces and advanced into Koidu.
- 21 Q. So what did you personally do then?
- 22 A. I've just been saying I was still in Makeni. While we  
23 are still there waiting to get a response from the  
24 battle --
- 25 Q. Please continue.
- 26 A. After we heard that Koidu have fell into the hands of the  
27 juntas, we arranged to travel to Koidu.
- 28 Q. Did you do that?
- 29 A. Yes, indeed, I was in the group. Almost so I can say the

1 second to the last group, I was among the group together  
2 with civilians.

3 Q. What did you see upon leaving Makeni?

4 A. Well, upon leaving Makeni I saw JPK and his securities on  
5 board of a vehicle, a pick-up, also heading for Kono.

6 Q. Perhaps I better be clear for the record, when you say  
7 JPK what do you mean?

8 A. That was just the initial, Johnny Paul Koroma. That was  
9 a short name that we used to call him and I think  
10 everybody knew that.

11 Q. What happened next?

12 A. So I told you the group were organised -- both military  
13 and civil were organised to travel en route for Kono and  
14 during the time we are travelling on the side of the road  
15 or en route for Kono, I saw some villages burnt but which  
16 I cannot recall their name -- the name of the villages on  
17 the side of the road -- with even corpse, lot of corpse  
18 were found, were seen.

19 Q. I understood you to say that you cannot recall the names  
20 of the village, but are you able to say what districts  
21 those villages were in?

22 A. They were both in the Tonkoli District and Kono District.

23 Q. Can you tell the Court, even if it is approximate, when  
24 it was that you saw these villages that had been burned?

25 A. Well, this were the time during 1998. I saw these in  
26 1998, roughly, if I'm not just mistaken the month of  
27 March to April, something like that.

28 Q. You said that you saw a lot of corpses. Can you assist  
29 the Court as to where you saw the corpses?

- 1 A. Well, most of the corpses were seen in burnt villages  
2 alongside of the road en route for Kono.
- 3 Q. Can you say, even if it's an approximation, how many  
4 corpses you saw?
- 5 A. Well, I cannot tell you because I don't have time at that  
6 time to check. I only saw corpses.
- 7 Q. With respect to the villages, even if it is an  
8 approximation, can you say how many villages you saw  
9 burned?
- 10 A. Well, you know, it's the same. I can't say I was able to  
11 check the villages name. The only village that I kept in  
12 mind and which later I knew was like Coal Town, Sewafe.
- 13 PRESIDING JUDGE: Counsel is asking about how many --  
14 approximately about how many of these villages.
- 15 THE WITNESS: The villages?
- 16 PRESIDING JUDGE: About how many. Not necessarily the names.  
17 You've mentioned two names, Coal Town and Sewafe, you've  
18 mentioned them, but about how many?
- 19 THE WITNESS: Sewafe. Like Sewafe, Bumpe, Ngaya, Mortema,  
20 Simbakoro, you know.
- 21 MR HARRISON:
- 22 Q. With respect to the corpses, I am not going to ask you  
23 about villages, but can you say which districts you saw  
24 the corpses in?
- 25 A. Many corpses that I saw were in the Kono District.
- 26 Q. You saw corpses. Did anything else happen?
- 27 A. Yes, even though when the road was cleared and we were  
28 travelling there were some other pocket of ambushes by  
29 the pro-Kamajors and then there was another fight between

1 the groups, you know, who were travelling along with them  
2 for Kono.

3 Q. And what happened?

4 A. You know, during the fight the weapons I saw using were  
5 -- the rocket propelled grenade launcher was used and  
6 AK47. And then during the fighting you can obviously see  
7 that there were casualties on both sides. This cease  
8 happening on the road and we are travelling again.  
9 Normally we used to travel at night because we are afraid  
10 of the air raid by the Alpha Jet and each village  
11 sometimes we might have a night there. You know,  
12 sometimes our fighters go into nearby villages, capture  
13 civilians and taking their properties, you know.  
14 Children were also abducted on the way and women and they  
15 also made a follow-up with us to Koidu.

16 JUDGE BOUTET: The abduction of women and children and so on,  
17 you did that on your way to Kono?

18 THE WITNESS: On the way to Kono, yes.

19 JUDGE BOUTET: All the troops were moving with you, they were  
20 doing at that in villages --

21 THE WITNESS: Yes, as I've said, the troops that were  
22 travelling to Kono, after the road had been cleared, even  
23 though there were pockets of ambushes, you know, by the  
24 pro-Kamajors -- and then each village that we might have  
25 a night there, you know, there must have been attack  
26 around by our fighters against the Kamajors and children,  
27 women and properties were also taken and even some other  
28 villages in addition were later set on fire.

29 PRESIDING JUDGE: The properties were taken by who?

- 1 THE WITNESS: By the fighters of the RUF juntas.
- 2 MR HARRISON:
- 3 Q. Let me just try to take you through this evidence in a  
4 fairly systematic fashion if the Court will indulge me  
5 for a moment. You mentioned first of all taking of  
6 property. Where did that happen?
- 7 A. Yes. As I told you, when we approaching Kono, closer to  
8 Kono from Sewafe, all the way to area, how you call it --  
9 to Bumpe, all the villages in between Bumpe out towards  
10 Kono from Sewafe.
- 11 Q. What property did you see taken?
- 12 A. Things like food. I saw rice, palm oil, tape recorders.
- 13 Q. And you've used the word "taken". Do you mean by that  
14 taken forcibly without permission?
- 15 A. It was not permission. Force, forced possession.
- 16 Q. In which districts did you see property taken?
- 17 A. It was in the Kono District.
- 18 Q. You said children were taken. Where did that happen?
- 19 A. Well, this used to happen in the villages wherein there  
20 was a fight and wherein these soldiers used to go out for  
21 food-finding.
- 22 Q. Who did the taking?
- 23 A. The fighters of the RUF and the junta.
- 24 Q. When did this happen?
- 25 A. This was '98. 1998.
- 26 Q. Are you able to indicate any more specific time frame?
- 27 A. Well, at the time -- this was only happening mostly in  
28 the time of fighting. That was 1998.
- 29 Q. Where did this taking take place -- and if it is only

- 1 districts that you can refer to, that's fine?
- 2 A. In the same Kono District.
- 3 Q. How many children are you aware of being taken?
- 4 A. I cannot give any figure, because the children were many.
- 5 Q. Why were children taken?
- 6 A. Well, some children were taken because of some were left  
7 alone, they were separated children, some. And I can say  
8 more or less when the children were captured alongside  
9 with their parents they were all in the addition.
- 10 Q. What happened to those children?
- 11 A. Later, these children, some of them became child  
12 soldiers. Some of them were still as caretakers of  
13 commanders.
- 14 Q. What do you mean by the term "child soldiers"?
- 15 A. I mean by the term "child soldier" the child that is  
16 underage, carrying weapon for fighting is a child  
17 soldier.
- 18 Q. How common were child soldiers?
- 19 A. How common? It was very often. On any food-finding  
20 mission or any attack many of them were captured as I  
21 told you. Some of them were separated children from  
22 their parents.
- 23 Q. How old would the child soldiers be?
- 24 A. I don't know their age, but they were children.
- 25 Q. Can you estimate a range?
- 26 A. The range? I told you, I cannot estimate the range,  
27 neither the age.
- 28 Q. That's fine. What were the child soldiers used for?
- 29 A. I told you some of them were used for fighting, some were

1 used for home caretaking by commanders.

2 Q. You have used --

3 PRESIDING JUDGE: Mr Harrison, just a minute. You are  
4 prepared to say that children were taken, but you cannot  
5 estimate their ages. How then do you -- can you help us,  
6 how then do you conclude that they are children?

7 THE WITNESS: Yes, as a mature man you have to know the  
8 difference between a child and a mature person. So even  
9 the age I could not determine, because I have not been  
10 living with these children, neither to determine their  
11 age.

12 PRESIDING JUDGE: But counsel is not asking you to say the  
13 exact age.

14 THE WITNESS: To be very rough in estimate exactly?

15 PRESIDING JUDGE: Yes because --

16 THE WITNESS: Well, when we say a child, something less than  
17 10, 11, 15 years.

18 MR HARRISON:

19 Q. The term "child soldiers" has been used. Were these  
20 child soldiers only -- or were they of one sex?

21 A. They were not only one sex of children. They were both  
22 female children and male children.

23 Q. Were they organised in any particular way?

24 A. Well, at times when the base was organised in Kono at  
25 Yengema we had these children in categories named SBU,  
26 that is a Small Boys Unit and then we had the female  
27 children unit we called the Small Girls Unit.

28 Q. Are you able to approximate the number of people in the  
29 Small Boy Unit that you just referred to?

- 1 A. No, because they were not for one direction.
- 2 Q. And the same question for the Small Girl Unit?
- 3 A. The same, no. They are not from the same direction,  
4 place.
- 5 Q. What is the origin of the Small Boy Units and Small Girl  
6 Units?
- 7 A. Well, what we mean the Small Girls Unit -- they were also  
8 -- the unit were trained, as well as the small boys and  
9 small girls, trained mostly in the fight for purpose of  
10 recce. That is, they used to use them in the war for  
11 spying enemy positions and as media of information.
- 12 Q. For how long were the Small Boys Units and Small Girls  
13 Units used?
- 14 A. They were used almost throughout the life of the war.
- 15 Q. And what is the life of the war? What is the time frame?
- 16 A. Well, so far as I experienced, that was from '97 up to  
17 the time of disarmament in 2001.
- 18 Q. Going back to where we started with the taking of  
19 children, can you assist the Court in who was involved in  
20 the taking of the children?
- 21 A. The fighters. Fighters were mostly involved.
- 22 Q. What do you mean by the term "fighters"?
- 23 A. The men who are carrying weapons, fighting, you know,  
24 against the enemies of the Kamajors or the government  
25 soldiers or even with the ECOMOG.
- 26 Q. Did these fighters belong to any group?
- 27 A. Yes, they were belonging to the RUF and the former SLA.
- 28 Q. The third item you gave in the list of things taken was  
29 the taking of women. Can you tell the Court where that

- 1 happened?
- 2 A. This was most effective in the Kono District, from Sewafe  
3 Town up to Koidu nearly most villages visited or for  
4 food-finding -- you know anywhere you find in this war  
5 you must see women.
- 6 Q. What do you mean by the taking of women?
- 7 A. They were adopted. They were taken away from their  
8 husbands, from their parents, their husbands and their  
9 home villages.
- 10 Q. What do you mean by "abducted"?
- 11 A. What do I mean by "adoption"?
- 12 Q. Abducted?
- 13 A. Abducted.
- 14 PRESIDING JUDGE: Do we need to go that far, Mr Harrison?
- 15 MR HARRISON: Well, I simply ask the Court for this one  
16 indulgence. I think it would be much quicker if you  
17 would just allow it.
- 18 PRESIDING JUDGE: Go ahead, Mr Harrison.
- 19 MR HARRISON:
- 20 Q. Can you just tell the Court what you mean by "abducted"?
- 21 A. Well, to what I know it is that taking -- it not an  
22 arrangement between myself and a lady whose I'm carrying  
23 -- that is commonly known as abduction, it is not  
24 arrangement, it is not by force.
- 25 Q. I'm sorry, are you saying it is not by force?
- 26 A. It is force. It is force. That is forced arrangement.  
27 Whether you agree or you don't agree, you have to go.
- 28 Q. When was it that you saw these abductions?
- 29 A. I told you from '97 -- sorry, '98 in Kono.

1 Q. Can you estimate for the Court an approximate number of  
2 abductions that you're aware of?

3 A. The number of times the abduction were caught?

4 Q. An approximation if possible?

5 A. Well, as I told you, every village that have been  
6 occupied by the fighters during the war and even for  
7 food-finding -- I cannot give you that much time or  
8 estimate for that, I don't know.

9 Q. What happened to these women who were abducted?

10 A. Some of these women were used for cooking, some of them  
11 were used for forced marriage, some were claimed to have  
12 been raped.

13 Q. If you could, could you just indicate which districts  
14 these abductions took place at?

15 A. That I knew?

16 Q. Yes.

17 A. I think I've been saying this over and over.

18 PRESIDING JUDGE: He's said that, Mr Harrison.

19 MR HARRISON: He has?

20 THE WITNESS: Kono District.

21 PRESIDING JUDGE: We would break for you to -- to allow you  
22 time to plan the next stage, the next couple of minutes  
23 of your examination-in-chief.

24 MR HARRISON: At this point can I ask the Court for some  
25 guidance on whether the Court has any inclination to sit  
26 for a somewhat longer session today? The Prosecution is  
27 available to do so if it's the Court's wish.

28 PRESIDING JUDGE: The Court has decided that it would rise at  
29 1.00 in respect of the tradition.

1 MR HARRISON: Thank you.

2 PRESIDING JUDGE: Because we have other things on our tables  
3 which we have to take care of and which concern you and  
4 the Tribunal as well, concerns everybody here. So we  
5 have a lot of unfinished business to wrap up. We shall  
6 rise please and we shall come back in the next couple of  
7 minutes.

8 [Break taken at 11.40 a.m.]

9 [HS190105C]

10 [On resuming at 11.56 a.m.]

11 PRESIDING JUDGE: We are resuming the session.

12 Mr Harrison, you may proceed, please.

13 MR HARRISON:

14 Q. Did you go to Koidu?

15 A. [Microphone not activated]

16 MR HARRISON: I may be wrong, but I do not think the  
17 microphone is on.

18 THE WITNESS: Sorry, I went to Koidu.

19 Q. When did you arrive there?

20 A. I went to Koidu around March.

21 Q. For the sake of completeness, would you be kind enough to  
22 refer to which year you're referring to?

23 A. That was 1998.

24 PRESIDING JUDGE: Witness, it's good to tell us always March,  
25 the year.

26 THE WITNESS: Yes, March 1998.

27 PRESIDING JUDGE: For the sense of the process, please.

28 THE WITNESS: Okay.

29 MR HARRISON:

1 Q. Who was in Koidu when you were there?  
2 A. The juntas were in Koidu.  
3 Q. Were any commanders there?  
4 A. Commanders were there.  
5 Q. Can you recall which ones?  
6 A. Yes. Like I saw Superman, Rambo, Buster Flomo.  
7 PRESIDING JUDGE: Buster is?  
8 THE WITNESS: Buster is B-U-S-T-E-R.  
9 PRESIDING JUDGE: Flomo?  
10 THE WITNESS: Flomo. F-l-o-m-o.  
11 MR HARRISON: I don't want to cause any confusion, when the  
12 witness has been saying Rambo, he`s been following it  
13 with Buster Flomo. They are one and the same. That`s a  
14 nickname.  
15 THE WITNESS: Yes, that was his nickname.  
16 PRESIDING JUDGE: His AKA.  
17 JUDGE BOUTET: Buster Flomo is the same as --  
18 THE WITNESS: Is the same as Rambo.  
19 MR CAMMEGH: Can I just confirm we're dealing with Liberian  
20 Rambo.  
21 THE WITNESS: Yes, yes. You are correct. Yes, Liberian  
22 Rambo.  
23 MR CAMMEGH: There are two Rambos, one was Liberina and one  
24 was Sierra Leonean. I`m just confirming that this is the  
25 Liberian RUF Rambo that we`re talking about.  
26 THE WITNESS: Yes, that was the one. Buster Flomo, Liberian  
27 Rambo.  
28 MR CAMMEGH: So this is Liberian RUF Rambo.  
29 THE WITNESS: Yes.

1 MR HARRISON:

2 Q. Does it help anyone with spelling, or are we quite  
3 content with where we are?

4 PRESIDING JUDGE: So there was Superman, Rambo, AKA Buster  
5 Flomo?

6 THE WITNESS: Yes. And other commanders. I saw Issa Sesay,  
7 that was now in Kono; I saw Morris Kallon.

8 PRESIDING JUDGE: No, I mean in Koidu.

9 THE WITNESS: Koidu, yes.

10 PRESIDING JUDGE: But you are now in Kono.

11 THE WITNESS: Koidu is just a town name, Koidu, but it is  
12 Kono.

13 PRESIDING JUDGE: Are they -- are they the same towns?

14 THE WITNESS: Yes, that's the same township, Kono.

15 PRESIDING JUDGE: I see.

16 MR HARRISON: Maybe I can just clarify with the witness,  
17 because I know what the difficulty is.

18 Q. Witness, when you use the word "Kono," are you often  
19 referring to the city of Koidu?

20 A. Yes.

21 Q. You also acknowledge, though, that Kono is a district?

22 A. Yes.

23 Q. Just for the sake of us all in Court, if at all possible  
24 if you mean to refer to the city of Koidu, could you  
25 please make efforts to use "Koidu" and not use the word  
26 "Kono."

27 A. Yes. Koidu is a city of Kono.

28 JUDGE THOMPSON: Yes, Koidu is a district.

29 THE WITNESS: The district is Kono.

1 JUDGE THOMPSON: Koidu is not a district.  
2 PRESIDING JUDGE: It`s the district headquarter of Kono.  
3 THE WITNESS: Where we call Koidu.  
4 JUDGE THOMPSON: But it is a city.  
5 THE WITNESS: Yes.  
6 JUDGE THOMPSON: So you cannot say that --  
7 THE WITNESS: It is a district, Kono.  
8 JUDGE THOMPSON: Yes.  
9 THE WITNESS: Is Koidu.  
10 MR HARRISON: I apologise --  
11 PRESIDING JUDGE: Up to now, I have been regarding them as two  
12 separate towns. I thank you for the clarification.  
13 JUDGE BOUTET: There is no town of Kono. There's a district,  
14 but there's no town.  
15 JUDGE THOMPSON: No.  
16 MR HARRISON: I think for the sake of clarity, I'll just put  
17 the question to the witness so he can tell you.  
18 JUDGE THOMPSON: [Microphone not activated]  
19 MR HARRISON:  
20 Q. Witness, are you aware of a town named Kono, officially  
21 called Kono?  
22 A. Yes, there's a district called Kono, and the township is  
23 Koidu.  
24 JUDGE THOMPSON: That's it, yeah. We were taking judicial  
25 notice anyway there's no Kono town in this country.  
26 MR HARRISON: I apologise for that digression.  
27 PRESIDING JUDGE: It was a useful digression. Very useful  
28 digression.  
29 JUDGE BOUTET: I have been trying to find Kono on the map, but

1 I couldn't find it.

2 MR HARRISON:

3 Q. What we were discussing was whether other commanders were  
4 in Koidu when you arrived.

5 A. Yes.

6 Q. And just let me say you indicated the names of Superman,  
7 Issa Sessay, Buster Flomo, otherwise known as Liberian  
8 Rambo, and Morris Kallon. I just wanted to ask you, are  
9 there any other names that you were intending to include?

10 A. Yes, there are so many other commanders like Rocky CO  
11 himself was now in Kono. CO Isaac was in Kono. So many  
12 other commanders were also there. And on the side of the  
13 SLA whom I did not see them in real persons, I just be  
14 hearing their names, like 55, Gullit, 05, and the others,  
15 they were all in Kono, in Koidu.

16 Q. Thank you for that correction.

17 JUDGE THOMPSON: [Microphone not activated]

18 THE WITNESS: Those were the names -- they were the names I  
19 was hearing in Koidu township.

20 JUDGE THOMPSON: [Microphone not activated]

21 THE WITNESS: Yes, sir.

22 JUDGE THOMPSON: [Microphone not activated]

23 THE WITNESS: I heard it.

24 JUDGE THOMPSON: [Microphone not activated]

25 PRESIDING JUDGE: 55, Gullit and?

26 THE WITNESS: 05.

27 MR HARRISON:

28 Q. Where was JPK at this time?

29 A. At this time when I arrived in Koidu, I saw JPK in the

1 outcasts of Koidu in the village called Sokogbeh. It's  
2 just about half kilometre from Koidu township. Sokogbeh.

3 Q. And could you perhaps for the benefit of the court  
4 reporter try to spell the name of that village.

5 A. It's S-O-K-O-G-B-E-H. That was Sokogbeh in the Tankoro  
6 chiefdom, Kono District.

7 Q. Was anything with JPK?

8 A. I saw him with his bodyguards, but I could not know their  
9 names. Up to now, I don't know their names.

10 Q. Tell the Court what happened in Koidu.

11 A. After I arrived in Koidu, after we stayed a bit while,  
12 three weeks, serious reports come from all angles saying  
13 that people were killed, houses were burned in the  
14 surrounding villages. Peoples` hands were cut off and so  
15 on in the villages. This news was the one that was the  
16 news of the town at that time.

17 Q. When you talk about people killed, did you see -- sorry,  
18 please proceed.

19 A. I saw corpses in the town of Koidu at the time I arrived  
20 there.

21 JUDGE THOMPSON: [Microphone not activated] First of all, now  
22 his evidence is that reports, serious reports came, so if  
23 we can deal with that, and then let him be more specific,  
24 because now we`re talking about reports that he got about  
25 people being killed, houses being burnt too.

26 PRESIDING JUDGE: And amputations as well.

27 JUDGE THOMPSON: And amputation, reports of amputations.

28 Let's get the reports side dealt and then you can now put  
29 your specific question.

1 MR HARRISON: I take your point.

2 JUDGE THOMPSON: What else did you have reports about?

3 THE WITNESS: When we stayed a bit while in Koidu after three  
4 weeks, then reports came from surrounding saying that  
5 people, houses, were burned, saying civilians were killed  
6 around in their hiding places. And even people`s hands  
7 were cut off in some other surrounding villages, like in  
8 Tombodu. That was the most intensive area of that  
9 hand-cutting. So that report was the most serious that  
10 reached to Superman and the other commanders in Koidu.

11 MR HARRISON:

12 Q. I just want you to focus on the reports for a moment.

13 Was there any indication in the reports of the number of  
14 civilians who were killed?

15 A. There was no specific number given, but they said people  
16 were just killed at random around the villages, and their  
17 houses burned.

18 Q. Did the reports indicate who carried out the killings?

19 A. We got that mostly in the report. We had a muster  
20 parade, I call it a meeting when it was held at Tankoro  
21 police station. That was the first time we called the  
22 meeting together with the former juntas and the former  
23 RUF, including many commanders. That was disclosed in  
24 the meeting that in the surrounding villages, most  
25 special like Tombodu, civilians have informed us that one  
26 Savage was there cutting people's hands off, cutting  
27 people's private off, you know, and even that he has  
28 completely burnt down Tombodu and the surrounding  
29 villages. That was the main topic of the meeting at that

- 1 time.
- 2 Q. Did the reports indicate when these killings took place  
3 or the burnings or the cutting of the hands?
- 4 A. Yeah. According to what I saw and I view was during the  
5 time we arrived in Koidu, that was around March.
- 6 Q. And again, the year?
- 7 A. 1998. March 1998.
- 8 Q. You've mentioned Tombodu. Did the reports indicate any  
9 other locations?
- 10 A. Repeat your question, please.
- 11 Q. You mentioned Tombodu. Did the reports mention any other  
12 locations?
- 13 A. Yeah. At that time, that was the only report that we  
14 had. And as I've just been saying, that was the first  
15 meeting that we had at Tankoro police station. And  
16 there, Superman, in fact, Morris Kallon, Issa Sesay, and  
17 some other SLA commanders were also invited to the  
18 meeting. And a warning was given. And through that  
19 meeting, we know the handicappings became minimised.
- 20 PRESIDING JUDGE: The Tankoro police station. Where was this?
- 21 THE WITNESS: In the township of Koidu, in the Tankoro  
22 Chiefdom.
- 23 JUDGE BOUTET: So that muster parade that you attended is, has  
24 been called by?
- 25 THE WITNESS: Superman called it.
- 26 JUDGE BOUTET: So he's in charge in Koidu at that time.
- 27 THE WITNESS: He was a commander, I can say, so-called  
28 commander.
- 29 JUDGE BOUTET: But he was the commander in Koidu.

1 THE WITNESS: Yes.

2 JUDGE THOMPSON: This was the parade which took place --

3 THE WITNESS: We call it muster parade in the military  
4 language.

5 JUDGE THOMPSON: At which they also met, that's what you're  
6 saying?

7 THE WITNESS: Yes, sir.

8 JUDGE THOMPSON: In the case of burning of houses and killings  
9 and alleged amputations, you're saying that the reports  
10 indicated that one Savage was responsible for that.

11 THE WITNESS: Yes, sir.

12 JUDGE THOMPSON: [Microphone not activated].

13 THE WITNESS: At Tombodu. That is in Kamara Chiefdom.

14 JUDGE THOMPSON: Thank you.

15 MR HARRISON:

16 Q. When you arrived at Koidu, were any instructions given?

17 A. Yes. I can say Superman was commander. But specifically  
18 to that attitude, there was no more instruction given by  
19 Superman because as he called a meeting, he angrily  
20 addressed the meeting that on no account such attitude  
21 should be taken of wherein there was not a command given,  
22 because that is what he told us in the meeting. So he,  
23 in fact, reinforced his order by organising a task force  
24 to check out for those who are still in the habit of  
25 burning of houses, going into hiding places of the  
26 civilians, and burning the towns or killing all the  
27 civilians. And that task force was led by Peleto, alias  
28 Amara Salia.

29 PRESIDING JUDGE: Alias?

1 THE WITNESS: Amara Salia, alias Peleto.

2 MR HARRISON:

3 Q. This meeting that you've referred to as taking place at  
4 the Tankoro Police Station, can you assist the Court as  
5 to how long you had been in Koidu before the meeting took  
6 place?

7 A. Yeah, as I said, we arrived in Koidu roughly in March.  
8 That was 1998. And then a couple weeks later, a week  
9 -- let me just say three weeks, these reports came in  
10 intensively. So that was the time the meeting was held.  
11 That was the first stage of the meeting.

12 Q. When you first arrived at Koidu, though, were any  
13 instructions given?

14 A. I don't think if further instructions were given. What  
15 only I heard was the first day when we are called in the  
16 muster parade, that was at Tankoro Police Station. That  
17 was the time I saw Superman, Issa Sesay, Morris Kallon,  
18 CO Isaac, Rambo, and I heard of 55, Gullit, 05, and so  
19 many other commanders of the former SLA. And even  
20 including the security of JPK who said they were also  
21 present at that meeting.

22 Q. And you remained at Koidu?

23 A. I remained in Koidu, yes.

24 Q. Why did people remain in Koidu?

25 A. Who people?

26 Q. The people you were with.

27 A. Why we remained in Koidu? Yes, we remained in Koidu  
28 because we are there as a -- as one of our route points  
29 to Kailahun. So we are in Koidu waiting for instruction

1 from Sam Bockarie.

2 Q. Does the district of Kono have any significance?

3 A. Yes, yes. Kono, as you know, is very important, not only  
4 during the time of war as economical focal point, even  
5 know in Sierra Leone, it's a diamondiferous area, so  
6 economically Kono is very important, and it was very  
7 important to the RUF.

8 Q. Explain why it was important.

9 A. Yes. Later when we were in Koidu and we were asked to go  
10 to Kailahun, but very unfortunately we did not make our  
11 way up to Kailahun because of roadblocks of Kamajors and  
12 other forces, and then later we retreated back to Kono,  
13 to Koidu township, where we were again informed by  
14 superman that we are not going to Kailahun any longer  
15 because Sam Bockarie have given him instructions and to  
16 all other commanders that Kono should be retained even as  
17 far as Tongo Field as our defensive points and also for  
18 reasons which they gave us was that Kono should be  
19 retained for one reason, for mining, because you cannot  
20 fight a war without economy. So we use Kono as another  
21 point for economical resources, for mining.

22 Q. You've told us about reports, but what I'm asking you now  
23 is what you saw, you personally saw, in Koidu. Tell the  
24 Court what you saw in the town.

25 A. When I arrived in Koidu in March, I saw corpses. I saw  
26 houses who were burnt. Nearly there was no -- very  
27 little houses --

28 JUDGE THOMPSON: Slow, slow.

29 THE WITNESS: Nearly all the houses Koidu were burnt down,

1 almost left as a ghost town.

2 JUDGE THOMPSON: You said leaving Koidu as a ghost town.

3 THE WITNESS: Almost. Because very few houses were left with  
4 a roof.

5 JUDGE THOMPSON: Almost as a ghost town. What else?

6 THE WITNESS: Shall I continue?

7 JUDGE THOMPSON: Yes, please.

8 THE WITNESS: I said Koidu was left almost like a ghost town,  
9 and while we were there, I saw corpses around. And in  
10 the streets of Koidu, at one time when they -- we have  
11 retreated from Ngandor and came we came back Koidu, we  
12 received a massive attack from the ECOMOG.  
13 Continue?

14 JUDGE THOMPSON: Yes, please.

15 THE WITNESS: The bombing ranges of the air raiding, as well  
16 as the ground forces of the ECOMOG was getting very  
17 closer to in our positions at Koidu. We couldn't bear  
18 the tensions, you know, so we fled into bush, into hiding  
19 places around Koidu. One of the main places we later  
20 assembled was a village called Meyior. That was another  
21 name given to Superman's Ground.

22 MR HARRISON:

23 Q. Again, for the benefit of court reporter, are you able to  
24 spell Meyior?

25 A. M-E-Y-I-O-R. That is in the Gbenseh Chiefdom, Kono  
26 district. G-B-E-N-S-E-H.

27 PRESIDING JUDGE: What did you say about Superman?

28 THE WITNESS: That was -- he assembled or he resettled that  
29 place and it was named Superman's Ground. That was how

1           it was organised or settled.

2   PRESIDING JUDGE: They renamed it what? Superman`s Ground?

3   THE WITNESS: Yes, sir.

4   MR HARRISON:

5   Q. Now, this meeting that you referred to at Tankoro Police

6       Station, can you explain to the Court the purpose of the

7       meeting?

8   A. Yes. We had another meeting, meetings in Tankoro Police

9       Station after we had made final retreat from Ngandor.

10       That is in the Gbaneh Chiefdom.

11   Q. Let me just stop you there. How many meetings were there

12       at this Tankoro Police Station?

13   A. We had about three meetings in Tankoro Police Station.

14   Q. Let's start with the first one.

15   A. Yes.

16   Q. What was the purpose of that first meeting?

17   A. The first meeting was that we had received complaints or

18       reports from the sources that civilians, towns, and

19       people hands were amputated around Kono District, mostly

20       like Tombodu and other areas. That was the first

21       meeting.

22           In the second meeting --

23   Q. Let's just stop for a moment. Who organised that first

24       meeting?

25   A. Superman was the commander.

26   JUDGE THOMPSON: That the meeting which was referred to --

27   THE WITNESS: That was the same meeting.

28   JUDGE THOMPSON: -- as the muster parade?

29   THE WITNESS: Yes, that was it.

1 MR HARRISON:

2 Q. And again, can you estimate when this first meeting at  
3 Tankoro Police Station took place.

4 A. Yes, in the same month of -- month of April now. The  
5 second meeting was held --

6 Q. All right. Just for one second. Maybe you can just  
7 indicate the year.

8 A. 1998.

9 Q. Thank you.

10 A. April. The second meeting was held at the same Tankoro  
11 where it was chaired again by Superman. Morris Kallon  
12 was also there. Issa Sesay was there. Isaac was there.  
13 Rambo was present. And so many other SLA commanders as  
14 I've previously called their names. In that meeting,  
15 there we were told by Superman that he has heard of that  
16 men have not taken his order, and as of now whoever don't  
17 take his order should either leave Kono or go elsewhere.  
18 That, he was referring to the SLAs, former SLA.

19 JUDGE THOMPSON: Who was that talking?

20 THE WITNESS: Superman.

21 MR HARRISON:

22 Q. And this second meeting, are you able to estimate how  
23 much time passed between the first and the second  
24 meeting?

25 A. Yes, from the first meeting, I think just about  
26 two -- let me just say two weeks. And then the second  
27 meeting was called again in the space. And then as I  
28 continue with the statement, there was the very first  
29 time when the RUF and the former SLA came into a clash.

- 1 So some of them fled to the district of Koinadugu, which  
2 was in Kabala. And very few of them remained in the  
3 Koidu township with the RUF. After that, announcement  
4 was made by Superman.
- 5 Q. Now, at that point in time, was there any kind of command  
6 structure in place in Koidu?
- 7 A. Yes, I think command structure was not to one commander,  
8 as you say like a structure commander, to say everybody  
9 listen to one command. It was not like that in Koidu.  
10 SLAs were having their own command, which they say their  
11 command structure was leadership with JPK, as we say  
12 Johnny Paul Koroma. And then the RUF command structure  
13 was leadership with Corporal Sankoh represented by Sam  
14 Bockarie, and with commanders like Superman, Morris  
15 Kallon, Issa Sesay, Colonel Isaac, and so many others.
- 16 Q. At this time that we're talking about that you're in  
17 Koidu, where was JPK?
- 18 A. At the very first time of the first meeting, JPK was  
19 within the axis of Sokogbeh. He was in Sokogbeh  
20 Township.
- 21 Q. Did he remain there?
- 22 A. Not at all. When we got the information that we are to  
23 go to Kailahun, we all went together together to Ngandor,  
24 and it was very difficult because of roadblocks of the  
25 Kamajors. It was not possible for us to go. And then  
26 later, Sam Bockarie sent an immediate order that on no  
27 account the other troops should go to Kailahun, as he  
28 said, because Kailahun is already overcrowded with  
29 civilians and there was no food and medicines. And so

1 that Kono should be retained as our defending point, and  
2 also for our economical purposes, for mining. So we  
3 returned to Koidu because there was no way, and again,  
4 the instruction came that we should no longer go to  
5 Kailahun. But anyhow, the instruction further stated  
6 that JPK -- and let me just say Issa Sesay, he was the  
7 battlefield commander at that time, he was only  
8 instructed to go along with JPK to Kailahun. And beside  
9 that, no one else was allowed to go to Kailahun but  
10 everybody was to return to Koidu and retain Koidu. We  
11 retreated to Koidu. Upon our arrival in Koidu Township,  
12 massive attack was launched against the junta forces by  
13 the ECOMOG, and it was very impossible for us to repair  
14 the attack and even to have gain on the ground. So we  
15 fled into the bush, you know, hiding places. And we  
16 wait.

17 Q. Let me just pause you there.

18 A. Yes.

19 Q. For 1998, did you give information to the Office of the  
20 Prosecution so that a chart could be prepared?

21 A. Repeat your question, please.

22 Q. Did you assist the Prosecution in having a command  
23 structure chart prepared?

24 A. Yes, indeed, I did that.

25 Q. Was all of the information in that chart provided by you?

26 A. Yes.

27 Q. And it was recorded by members of the Office of the  
28 Prosecution?

29 A. Yes.

1 Q. And it was accurately recorded?  
2 A. Exactly so.  
3 Q. And all of the information that is in that chart is  
4 accurate?  
5 A. Yes.  
6 Q. And you have seen that chart?  
7 A. I have seen it.  
8 Q. I'm asking if the chart, which is "command structure  
9 1998" could be put before the witness.  
10 MR JORDASH: Your Honours, there is an objection.  
11 PRESIDING JUDGE: But he has not even shown him the chart.  
12 Has he shown him the chart?  
13 MR JORDASH: But I object to him showing the chart.  
14 JUDGE THOMPSON: I see, okay.  
15 MR JORDASH: But in order to properly put my --  
16 JUDGE THOMPSON: Just a minute. Were you about to show him  
17 the chart?  
18 MR HARRISON: Yes, I had asked court management to prepare and  
19 present the chart to the witness.  
20 JUDGE THOMPSON: I see.  
21 MR HARRISON: I think I had actually uttered the words, and I  
22 saw court management get up, so I'm assuming they were  
23 acting on my request.  
24 JUDGE THOMPSON: Continue, Mr Jordash.  
25 MR JORDASH: In order to put my objections properly, I would  
26 ask that the witness be withdrawn from the Court. I  
27 think these objections are going to be shared by all the  
28 Defence, and I think they could be in the region of at  
29 least half an hour worth of argument. And during that

1 argument, I will need to explain certain aspects of my  
2 case which I would rather the witness didn't hear.

3 JUDGE THOMPSON: Yes, we do have a procedure which we now will  
4 adopt in such cases. We indicated that. And unless the  
5 Prosecution has any objection to the request, the Chamber  
6 is minded to have the witness excused temporarily.

7 MR JORDASH: Thank you.

8 JUDGE THOMPSON: Would the court management --

9 MR HARRISON: In view of the guidance that's been given,  
10 should the witness just be excused for the rest of the  
11 day?

12 PRESIDING JUDGE: Not quite.

13 JUDGE THOMPSON: But he says 30 minutes.

14 PRESIDING JUDGE: Not quite. He should stay around. The  
15 witness should stay around. We never know.

16 JUDGE THOMPSON: Gentlemen, would the victims and witness unit  
17 kindly escort the witness.

18 PRESIDING JUDGE: Mr Harrison, there are people to do this  
19 job. Please, sit down.

20 [The witness stands down]

21 JUDGE THOMPSON: Mr Jordash, we'll hear you now.

22 MR JORDASH: Thank you. The objection we have in relation to  
23 this, the use of this chart, is that it isn't the best  
24 evidence which this Court could receive. The best  
25 evidence should come, I would respectfully submit, from  
26 the witness's mouth in court.

27 JUDGE THOMPSON: Slowly, Mr Jordash. You said it is not the  
28 best evidence. Yes, go ahead, what is the best evidence,  
29 you say?

1 MR JORDASH: And the best evidence would be that which would  
2 come directly from the witness's mouth in court. And  
3 it's not a technical rule; it's a rule which provides  
4 ample scope for a proper assessment of the veracity and  
5 reliability of the evidence. And that's my concern here.  
6 It's -- the provision of evidence --

7 JUDGE THOMPSON: Did you say it's not a technical rule?

8 MR JORDASH: It's not just a technical rule, a technical rule  
9 which in some way has no real purpose. The purpose of it  
10 is to enable evidence to be adduced by the Prosecution  
11 which is able to be verified by cross-examination and  
12 through the court process. And my concern is that it  
13 arises through a process which doesn't lend itself to  
14 that type of independent verification.

15 And as part of that objection, it enables the  
16 Prosecution to bypass the prohibition on leading  
17 questions which again, I would submit, is a prohibition  
18 which is not simply technical. It's a prohibition which  
19 is designed to allow evidence to come from the witness's  
20 mouth, which again is able to be independently verified.  
21 Or in short, if it's not led by the Prosecution but comes  
22 from the witness's mouth without prompt, it is more  
23 likely to be reliable. If it's led through a process  
24 either in court or, as I would submit in relation to  
25 these graphs is possible, it may not represent what the  
26 witness actually wants to say, but it represents the  
27 fruits of the process outside of court.

28 JUDGE THOMPSON: So you're saying that if the particular  
29 procedure is adopted and the -- this document is admitted

1 in evidence, there is some difficulty in trying to assess  
2 its reliability, not having come through the oral or viva  
3 voce testimony of the witness.

4 MR JORDASH: Yes.

5 JUDGE THOMPSON: In other words, it's not -- it's an inferior  
6 type of evidence in a sense that we're still -- the Court  
7 is not able to access the best evidence available in the  
8 circumstances.

9 MR JORDASH: Indeed. What the Prosecution may say in response  
10 is, well, the witness has said it came from him, with the  
11 assistance of the Prosecution, which itself opens up  
12 various questions. What was the assistance given by the  
13 Prosecution? What was the nature of the discussions  
14 which led to the drawing of the graph? Were notes taken  
15 during that -- those discussions?

16 JUDGE THOMPSON: Yes. In other words, you're saying that the  
17 acknowledgment, if there is an acknowledgment, of  
18 co-authorship does not itself dispose of the difficulty  
19 that your objection seems to be raising.

20 MR JORDASH: Even if the witness has said, as he has said,  
21 "it's my" --

22 JUDGE THOMPSON: I had inputs into it or I am co-author.

23 MR JORDASH: My understanding is he was effectively led by the  
24 --

25 JUDGE THOMPSON: I think the word used was "assist," which may  
26 well be problematic in terms of interpretation. But I'm  
27 saying that suppose the witness, in fact, acknowledges  
28 co-authorship of the document, would that still be a  
29 problematic issue from your perspective -- as the

1 best-evidence rule?

2 MR JORDASH: Co-authorship would be the biggest problem.

3 JUDGE THOMPSON: I'm trying to understand your argument.

4 MR JORDASH: Even if the witness said, "it is my document. I

5 was sat at the side of the Prosecution. There was

6 conversation, but it is still my document," that is a

7 process which necessarily requires some type of

8 assessment, analysis, cross-examination, in order to see

9 if -- what role the Prosecutor who was with the witness

10 played.

11 JUDGE THOMPSON: Yes.

12 MR JORDASH: Even if the witness is saying, "well, it's my

13 document," the Defence still needs to be able to test

14 that.

15 JUDGE BOUTET: Why isn't it possible in this scenario for you

16 to do that in your cross-examination at the time and

17 attack the mode of construction, to put forward exactly

18 this argument?

19 MR JORDASH: Because we would only have --

20 PRESIDING JUDGE: You question the veracity of the facts which

21 have been adduced here.

22 JUDGE BOUTET: And you said that there's a prohibition against

23 leading questions. Is there limitation other than

24 prohibition, matters which are not disputed is perfectly

25 admissible even though it's a leading question. So it

26 goes to weight rather than to the prohibition. But I

27 take it from your argument that you are disputing some of

28 the facts contained in these charts presumably.

29 MR JORDASH: The --

1 JUDGE THOMPSON: Perhaps I was the one who caused the problem.  
2 I think perhaps we should let you complete this, because  
3 the first limb of your objection seems to rest on the  
4 accessibility to this part of the issue of best evidence.  
5 In other words, do we have the best evidence? Right,  
6 that's one aspect. I take it you argue some of the  
7 aspects of this.

8 MR JORDASH: Yes.

9 JUDGE THOMPSON: Perhaps I should wait.

10 MR JORDASH: Well, the --

11 JUDGE THOMPSON: Because so far, I've got the best-evidence  
12 limb or portion of your objection. I was trying to get  
13 this other aspect where you talk about verification being  
14 difficult.

15 MR JORDASH: The reason why it doesn't matter, I would submit,  
16 whether the witness says it's his document or a  
17 co-authored document is because nevertheless even if the  
18 Prosecution were to call the Prosecutor who assisted or  
19 was with the witness at the time he made the document, it  
20 would still involve the Defence cross-examining on  
21 matters which they have not been privy to. Whereas here,  
22 if the witness were asked to produce the --

23 JUDGE THOMPSON: That's why I didn't want you to go that far.  
24 I want you to be a little more concise, and probably here  
25 adopt a consolidated approach because, you see, if I  
26 focus judicially my mind on your best-evidence rule part  
27 of your objection, I'm focussing on that. And when you  
28 shift ground to the second one without having completed  
29 thoroughly the first one, I tend to get a little

1 confused.

2 So I would think that the best way we should proceed  
3 now is if you have a consolidated objection in the sense  
4 of different grounds for this particular objection, why  
5 not articulate them singly so that we examine the merits  
6 of each ground rather than saying even if so and so and  
7 so.

8 MR JORDASH: The overall --

9 JUDGE THOMPSON: I get confused when you move me away from the  
10 best-evidence ground to the verification one. I thought  
11 you were linking them. It would seem to me that you  
12 should keep them separate.

13 MR JORDASH: The best-evidence objection is my generic  
14 objection.

15 JUDGE THOMPSON: Thank you very much. And I think I'm now  
16 with you.

17 MR JORDASH: And there are a number of limbs.

18 JUDGE THOMPSON: Right.

19 MR JORDASH: The first limb was that the process which gave  
20 rise to the document is not a process which lends itself  
21 to the best type of verification.

22 JUDGE THOMPSON: Okay.

23 MR JORDASH: A verification which this Court could be content  
24 with and which would allow the Defence to explore the  
25 reliability of this document. And I will come back and  
26 give a very, I think, stark example of how that has  
27 manifested itself in this instance.

28 JUDGE THOMPSON: Yes.

29 MR JORDASH: The second limb of that is that the Prosecution

1 have not proposed calling the Prosecutor who was with the  
2 witness. So even if the process was considered by  
3 Your Honours to be one which could be independently  
4 explored by the Defence and subject to the verification  
5 which I'm saying is absent, we don't have the other side  
6 of the coin, if you like, the Prosecutor who was there  
7 when the witness made the table.

8 And thirdly, it's about disclosure, disclosure of  
9 the case to the Defence which I put under the generic  
10 heading of best evidence, but it might be considered to  
11 be separate.

12 JUDGE THOMPSON: Yes, quite.

13 MR JORDASH: But, the best way to summarise my objection --

14 JUDGE THOMPSON: So there's a disclosure aspect here.

15 MR JORDASH: There is, because --

16 JUDGE THOMPSON: Formally, what is your objection?

17 MR JORDASH: If this graph or these graphs that the  
18 Prosecution wants to rely upon were simply a reflection  
19 of what was said in his witness statement, I'm not sure I  
20 would object because it would be just simply another way  
21 of expressing what he had expressed in his witness  
22 statement.

23 JUDGE THOMPSON: I take your point, but then why not formulate  
24 the submission for this one, the disclosure one, so that  
25 we can follow you. So what is your submission --

26 MR JORDASH: These graphs were served last week.

27 JUDGE THOMPSON: These graphs were served last week. Yes.

28 MR JORDASH: Now, if one turns to -- just excuse me. I beg  
29 your pardon.

1 JUDGE THOMPSON: That's okay. Could we for the sake of  
2 precision call them charts.

3 MR JORDASH: Charts, I beg your pardon.

4 JUDGE THOMPSON: Rather than graphs.

5 MR JORDASH: For example, what the witness has just said, what  
6 the witness just said about the command structure in Kono  
7 was: "The command structure was not a structured  
8 command. It was not listening to one. The SLA had their  
9 own leadership. The RUF were represented by, I think,  
10 various commanders, so many commanders."

11 Now, that evidence should then, if you would just  
12 bear with me, be seen in the light of disclosure,  
13 firstly, on the 17th of November 2002, page 9740, where  
14 the witness is discussing --

15 JUDGE THOMPSON: The date again?

16 MR JORDASH: The 17th of November 2002.

17 JUDGE THOMPSON: Yes.

18 MR JORDASH: "The chain of command flowed from Mosquito to the  
19 battalion commanders." That's what the witness says in  
20 this statement. So what we have a chain of command from  
21 Mosquito, Sam Bockarie, at the top flowing out towards  
22 various battalion commanders, not a hierarchical  
23 structure, as the Prosecution seek to demonstrate through  
24 these tables.

25 MR HARRISON: Could I just have the benefit of knowing what  
26 paragraph we're talking about on that page.

27 MR JORDASH: Yes, the first paragraph, the last sentence.

28 "The chain of command flowed from Mosquito to the  
29 battalion commanders." And then we have across the page

1 to 9741, second paragraph, we have: "In Makeni," the  
2 last sentence there, "at this meeting Superman was the  
3 boss over Issa Sesay." This is the disclosure we're  
4 receiving on the 12th of November 2002.

5 MR HARRISON: Is there any prospect that we've got different  
6 page numbers?

7 MR JORDASH: It's 974 -- actually, there is a prospect because  
8 I got these page numbers off the court management, and  
9 they were different to the page numbers which I had on my  
10 pages.

11 JUDGE THOMPSON: Let's stick by the Court one.

12 MR JORDASH: If it helps Mr Harrison, though, I think if he  
13 looks on the bottom of the page, page, well the first  
14 reference to the chain of command flowing from Mosquito  
15 to the battalion commanders, the bottom of the page, page  
16 3.

17 JUDGE THOMPSON: Your pages were synchronised with the Bench?

18 MR JORDASH: I think so, yes.

19 JUDGE THOMPSON: And what pages are you referring to now?

20 MR JORDASH: 9740 was the chain of command flowing from  
21 Mosuito to the battalion commanders, with page 3 on the  
22 bottom right-hand side of that. If we go over the page  
23 to page 4 at the bottom, but 9741, which is our, I think  
24 -- "at the meeting," this is second paragraph, last line,  
25 "at this meeting, Superman was the boss over Issa Sesay,"  
26 that's the disclosure in relation to Makeni.

27 JUDGE BOUTET: That's 9741.

28 MR JORDASH: 9741, Your Honour, yes.

29 JUDGE BOUTET: What's the previous page?

1 MR JORDASH: 9740. 9740

2 JUDGE BOUTET: Which?

3 MR JORDASH: First paragraph, last sentence, "chain of command  
4 flowed from Mosquito to the battalion commanders."

5 JUDGE THOMPSON: Yes.

6 MR JORDASH: Then, if we move to -- if we move to -- the  
7 general thrust, I would say, of this witness's evidence  
8 on page 9743 which suggests a leading and superior role  
9 for Superman in relation to Mr Sesay with Superman being  
10 the commander of the advance team to Kono, with Superman  
11 calling -- which Your Honours would find at the -- on the  
12 third paragraph of 9743. "However, when we entered Kono,  
13 Superman was the only commander in the advance team."  
14 Moving down the page, we have the paragraph which starts  
15 off: "These matters were reported to Superman and  
16 Colonel Isaac." Issa Sesay being present, but not as  
17 such playing a role. And this evidence, of course,  
18 should be seen in light of what this witness has just  
19 said about Superman being the commander in Koidu.

20 Now, that is the thrust of his evidence in relation  
21 to the command of Superman being over Mr Sesay. My  
22 objection is really this, that what the Prosecution want  
23 is Mr Sesay to be the commander. They want him to be  
24 above everybody else, second only to Sam Bockarie.

25 JUDGE THOMPSON: Well, I don't think -- we certainly are on  
26 your third limb, which is the disclosure aspect. And  
27 what I asked you to do was to formulate your submissions  
28 as succinctly as you can as to enable us to see why, in  
29 fact, the Prosecution should not be allowed to tender

1 this document because of some breach of some disclosure  
2 obligation. And I'd like you to stick to that. Because  
3 unless we get into a kind of entangled analysis which  
4 makes us lose the essence of your submissions.

5 MR JORDASH: I can summarise it quite simply.

6 JUDGE THOMPSON: Yes, quite right, because it's so important  
7 that we get it. We would like to rule as conscientiously  
8 on this matter.

9 JUDGE BOUTET: I would like to observe that what you have  
10 referred to in those statements as such, I haven't read  
11 those statements, except I tried to follow what you were  
12 saying. But at page 9740 where you have, "the chain of  
13 command flowed from mosquito to the battalion  
14 commanders," we are in a totally different time frame.  
15 We are in May 1997, and we are explaining at that time  
16 - from what I can read, I haven't read the whole  
17 statement, I'm just going with that there - it was a time  
18 when the witness was in Liberia, and he was explaining  
19 how things have been unfolding. So his evidence now,  
20 we're talking 1998 in Kono, is presumably discussed later  
21 in that statement. So I'm just referring to the  
22 reference that you made. You said third paragraph on  
23 page 9740, "the chain of command flowed from Mosquito to  
24 the battalion commanders." But it says at the top of the  
25 paragraph, "on 25 May 1997," and so on. And it explains  
26 what was happening at that time.

27 So his evidence -- what you're charging now is a  
28 chart that was proposed to be admitted for what was  
29 happening in Koidu be and the structure in Koidu, not in

1 May 1997.

2 MR JORDASH: But the point, Your Honour, I'm trying to make is  
3 nowhere in the statement is there a suggestion that in  
4 some way Mr Sesay was giving orders to Superman.

5 JUDGE BOUTET: I don't know. It may be so. I don't know. I  
6 haven't read that.

7 JUDGE THOMPSON: Even at that point in time.

8 MR JORDASH: At any point in time.

9 JUDGE THOMPSON: Right, okay. If that is the thrust of your  
10 position on this, then perhaps you should assist the  
11 Bench in completing your submission on that. You cited  
12 these passages to support or strengthen your objection in  
13 respect of the third limb. So if we can have some clear  
14 formulation as to what you're complaining about here in  
15 -- as I say, in summary form, that will assist the Bench  
16 to understand what your position is.

17 MR JORDASH: I'm trying to reach you.

18 JUDGE THOMPSON: I know you are.

19 MR JORDASH: But the point is, put very simply, that all of  
20 the tables in -- provided by the Prosecution --

21 JUDGE THOMPSON: All the tables, yes, or charts.

22 MR JORDASH: Charts. I beg your pardon.

23 JUDGE THOMPSON: Yes.

24 MR JORDASH: Suggest that Superman has never been subordinated  
25 -- I beg your pardon, that Sesay was never subordinated  
26 to Superman, and that at all times the suggestion comes  
27 from these tables Superman was below Sesay. And the  
28 evidence disclosed to us in the statement suggests  
29 otherwise. The evidence the witness has just given

1 suggests otherwise. And this, I would suggest, is the  
2 way in which the Prosecution rectify that problem, by  
3 putting in front of the Chamber tables which have been  
4 prepared in our absence to suggest otherwise.

5 PRESIDING JUDGE: In fact, Mr Jordash, I'm following your  
6 arguments very well. And I think you're very effectively  
7 through your arguments contesting the authenticity of  
8 this structure as has been put across by the Prosecution.  
9 Don't you think, you know, for the economy of time, do  
10 not imagine at any one time that we would swallow this  
11 hook, line, and sinker as evidence that is true and  
12 uncontradicted. No, I do not think that by admitting  
13 this document we are sort of saying, yes, all what is in  
14 it is truthful.

15 MR JORDASH: My concern isn't --

16 PRESIDING JUDGE: And if this document has been prepared by  
17 the Prosecution under the instructions of this witness, I  
18 think, you know, that even if this document went or were  
19 admitted in evidence, you have all the right to challenge  
20 it the way you're challenging it here now even in the  
21 absence of the witness. You have already. Because I  
22 mean, the fact that it is admitted in evidence does not  
23 show. In fact, it would even buttress your case if you  
24 could by some other means, or the Defence teams could by  
25 some other means contradict this document and render it  
26 incredible the way it is presented the way you are  
27 effectively doing. You see, because this is -- I think  
28 we are investing time on something which is not really,  
29 really necessary.

1 MR JORDASH: Your Honour --

2 PRESIDING JUDGE: We could well proceed. And during your  
3 cross-examination, the Defence teams could take this  
4 witness and the Prosecution on facts which are contained  
5 in these documents. We do not share -- we don't want to  
6 -- I can say that the Tribunal does not say that by  
7 admitting this -- we have already earlier on referred to  
8 this. We started, you know, earlier on, yesterday or so,  
9 when the Prosecution referred to them, and we were at  
10 that time referring to the blocks and the positioning of  
11 this witness.

12 And right now, if we at this stage where the chart  
13 has to be put in evidence, I thought that you could still  
14 -- you still have the latitude to contradict this witness  
15 on what is said here because it is just, perhaps, the  
16 oral testimony which he would have given because he has  
17 admitted that he gave instructions on the preparations of  
18 this chart. He participated in the preparation of this  
19 chart. He confirms that the information in it is true,  
20 according to him. But what you are saying is that the  
21 information in it is not true. And that, you can  
22 effectively handle during cross-examination.

23 MR JORDASH: Well, Your Honour --

24 JUDGE THOMPSON: Let me follow -- before you respond, so you  
25 can respond to both of us together, following my Learned  
26 Brother's line of thinking, what I think he's saying, and  
27 I seem to think that that is an option, that you can, in  
28 fact, once this document is admitted, if we decide to  
29 admit it, attack the probative value of this document

1 almost to the point of saying it's worthless because of  
2 so and so and so. But because I reckon that what you're  
3 trying to do, which I think you're entitled to do, you're  
4 having your first bite of the chain. If we rule in your  
5 favour, there would be no need for a second bite. Of  
6 course, if we rule against you, there is also always the  
7 possibility to say, Look, notwithstanding your doctrine  
8 of the flexible admission of documents or evidence which  
9 under the Rules you're allowed to do, yet this chart is  
10 worthless in terms of its probative value in light of  
11 so and so and so. I think that's the option he's  
12 presenting. But of course, I'm not foreclosing you from  
13 exercising your first option, which is to object, as you  
14 say, on the best-evidence ground and also on the ground  
15 of breach of disclosure obligations.

16 MR JORDASH: Well, the difficulty is this: That --

17 PRESIDING JUDGE: In fact, I'm following your arguments, you  
18 know, very well on the discredit that you're throwing on  
19 this document. I'm following you very, very well.

20 MR JORDASH: But these documents do not --

21 PRESIDING JUDGE: But it does not itself render the document,  
22 in my opinion, inadmissible as such.

23 MR JORDASH: They don't reflect what's in his witness  
24 statement. Through these tables, the Prosecution wish to  
25 assert that Mr Sesay, for example - and I've made the  
26 point about Superman and I won't repeat myself - but in  
27 terms of mining, they have a camp which they want to  
28 adduce which suggests that through 1999 to 2000, Mr Sesay  
29 was the mining commander for Tombodu.

1 JUDGE THOMPSON: Yes.

2 MR HARRISON: I apologise for interrupting.

3 JUDGE THOMPSON: Before you go on, do you agree with statement  
4 of the law, and this is what I think this Tribunal is  
5 guided by, the admission of a document into evidence does  
6 not in itself signify that the statements contained  
7 therein will necessarily reflect an accurate portrayal of  
8 the facts? Do you agree with that statement of the law,  
9 which seems to be guiding us here? We're actually saying  
10 that judicially, even if we admit a document, our hands  
11 are not tied in terms of saying, Oh, once we've admitted  
12 the document, the matters of fact contained therein are  
13 necessarily accurate or true in the light of the  
14 evidence.

15 MR JORDASH: Your Honour, my concern isn't that Your Honours  
16 will give it undue weight.

17 JUDGE THOMPSON: No, no, no, no. I'm not putting that weight.  
18 Let's get back to my -- do you agree with my statement of  
19 the law as an accurate statement that will guide this  
20 Tribunal, that this Tribunal, from the jurisprudence that  
21 we know, is saying that there's a principle of law which  
22 says that the admission of a document does not of itself  
23 automatically mean that the document contains matters  
24 that are completely accurate?

25 MR JORDASH: No, but --

26 JUDGE THOMPSON: You do not agree with that statement?

27 MR JORDASH: I agree with that.

28 JUDGE THOMPSON: Good. Then you can go on now to caution us  
29 as to what are your fears of admitting the document.

1 MR JORDASH: But admitted for Your Honours' consideration is  
2 one thing.

3 JUDGE THOMPSON: Yes.

4 MR JORDASH: Placed in front of a witness to bolster his  
5 evidence is another.

6 JUDGE THOMPSON: I can see that. Just as I'm saying --

7 PRESIDING JUDGE: Don't you think that you have the  
8 opportunity, now that you have this document and you have  
9 an extensive latitude to cross-examine this witness, do  
10 you not think that you go a long way to contradict  
11 whatever evidence he might be giving viva voce here and  
12 coupled with what he has given in this document to the  
13 Prosecution?

14 JUDGE THOMPSON: And assist us to say that even though we have  
15 admitted this document, we have serious doubts about what  
16 is contained in it.

17 MR JORDASH: But why should I have to, when the witness hasn't  
18 said it in this court? Why should I have to  
19 cross-examine to get back to the position I'm in now,  
20 simply because the Prosecution, behind everybody's backs,  
21 produced charts which make my client's position worse?  
22 If I cross-examine this witness now, I will take maybe  
23 three hours. He hasn't said much against me. If I  
24 cross-examine him after these tables, I will take two to  
25 three days because I will need to destroy this theory.

26 JUDGE THOMPSON: That's no problem. That's what we're saying.  
27 We're saying that your options are not closed,  
28 Mr Jordash. I'm not depriving you of your option to  
29 object to admissibility. What I'm saying is there is

1 also -- if we rule against you, you've not lost your  
2 second option.

3 MR JORDASH: What it does is it opens the door to this  
4 process. This is the thin end of a wedge. What the  
5 Prosecution could do is simply place a witness on to the  
6 witness box, ask him questions for half an hour, produce  
7 graphs which contain two days of evidence which is  
8 incriminating against the accused. How could that be  
9 fair? Why should it happen with one table when it  
10 couldn't happen with a number of tables? It's a way of  
11 shortcutting the Prosecution's case.

12 So far, he has said very little against Mr Sesay  
13 that concerns me. By the time these tables go in,  
14 Mr Sesay is now number two to Sam Bockarie; moreover, he  
15 is in charge of Superman and the whole of Kono.

16 JUDGE THOMPSON: I hope we're not speaking at crosspurposes  
17 legally. I'm just telling you what the options are in  
18 terms of the Tribunal's own mandate and the rules that  
19 govern us. The admissibility question, we're saying to  
20 you, you have a right to object to admissibility. But  
21 we're also saying, being seasoned persons in the law, we  
22 know that, and admissibility does not - does not - end  
23 the matter. We just want to say, as a matter of law, we  
24 can admit documents; but at the same time, at the end of  
25 the day, taking the totality of the evidence, say that  
26 the document is not an accurate portrayal of the fact and  
27 it has no probative value at all.

28 MR JORDASH: I know Your Honours will do that.

29 JUDGE THOMPSON: That's what I'm saying. I'm saying we have

1           that right. Our hands are not tied. But of course, I'm  
2           saying that you have a right to object so that you see  
3           how our minds are working.

4 MR JORDASH: Your Honours, I, of course, place my client's  
5           trust in Your Honours' ability to do that, but I do not  
6           place it in the hands of the witness producing tables  
7           behind the Defence's back.

8 PRESIDING JUDGE: Never mind the witness. Those tables will  
9           be placed, and indeed have already been placed, under  
10          scrutiny the way you're raising your objection.

11 MR JORDASH: Those are my submissions.

12 JUDGE THOMPSON: I can assure you that we're eminently aware  
13          of the position you're taking. But we're just saying  
14          legally, these are the options available to us. I am not  
15          overruling your right to object because you do have a  
16          right to object to admissibility. I'll determine the  
17          merit of your arguments; but at the same time, I'll also  
18          note that well, if I think this thing is more  
19          appropriately -- would be better handled as a matter of  
20          weight, I may go that way.

21 MR JORDASH: What would be the difference between a -- this  
22          witness -- the Prosecution coming into Court with a  
23          description of what the witness has said to them outside  
24          and saying, "There you go; you must cross-examine on  
25          that; we're not going to call the witness"? What would  
26          be the difference? There wouldn't be the difference.

27 PRESIDING JUDGE: We would not allow that.

28 MR JORDASH: The only difference is that this is in table  
29          form. That's the only difference.

1 PRESIDING JUDGE: Mr Jordash, we would not allow that.

2 MR JORDASH: Then the table represents what the witness has  
3 said to the Prosecution according to the Prosecution.  
4 The only difference is that what he has said, rather than  
5 being written down on a piece of paper, has been put into  
6 table form. That's the only distinction.

7 JUDGE THOMPSON: Let me assure you that we'll strain every  
8 judicial nerve to protect the rights of your client.

9 MR JORDASH: Your Honour, I know.

10 JUDGE THOMPSON: Yes, learned counsel.

11 MR NICOL-WILSON: Your Honour, my colleague's last point is  
12 actually my first point. And the Defence for Kallon  
13 would submit that this document is part of the  
14 investigation process.

15 JUDGE THOMPSON: This document...

16 MR NICOL-WILSON: This document is part of the investigation  
17 process of the Office of the Prosecutor. The document, I  
18 will submit, has the same value as that of a statement  
19 made by a witness.

20 JUDGE THOMPSON: Yes.

21 MR NICOL-WILSON: It is like saying to the witness "Did you  
22 make a statement to the Prosecution?" And then the  
23 witness says "yes." And then you seek to have that  
24 statement shown to the witness and then exhibited. So we  
25 are basically saying that that procedure ought not to be  
26 allowed. Shortcuts of that nature ought not to be  
27 encouraged. The only difference between a statement and  
28 this chart is that one is in written form and the other  
29 is in the form of a diagram. So we're saying that the

1 proper procedure has not been followed.

2 Additionally, I would like to submit that --

3 JUDGE THOMPSON: In other words, what we have here is a  
4 disguised statement.

5 MR NICOL-WILSON: Yes.

6 JUDGE THOMPSON: Yes.

7 MR NICOL-WILSON: Additionally, I want to submit that the  
8 document about to be shown to the witness has certain  
9 contentious issues which we think could best be elicited  
10 through viva voce evidence rather than by exhibiting the  
11 document.

12 JUDGE THOMPSON: So for the purpose of your client, they're  
13 contentious issues.

14 MR NICOL-WILSON: Yes, for the purpose of my client. And  
15 supporting my colleague, Mr Jordash, I will say  
16 throughout the witness's oral testimony in court this  
17 morning, he has affirmed that Superman was in charge when  
18 they went to Kono. And in this chart, what he has done  
19 is place my client, Morris Kallon, as being superior to  
20 Superman. In other words, Superman now appears to be a  
21 subordinate of Morris Kallon during the same time frame.

22 JUDGE THOMPSON: Which you're contending.

23 MR NICOL-WILSON: Yes, and which is very clear in his oral  
24 testimony. He said in court that Superman was in charge  
25 of Kono, and then he said that there was a command  
26 structure in place. And then in this command structure  
27 chart, he's basically putting Kallon as being Superman's  
28 boss. In other words, Superman now becomes a subordinate  
29 to Kallon, which is not what he has said throughout his

1 testimony this morning.

2 JUDGE THOMPSON: Right. Learned counsel for the -- are  
3 you --

4 MR NICOL-WILSON: Finally, I would like to say that this  
5 chart, like I said earlier on, is a statement in the form  
6 of a diagram and has not been disclosed pursuant to the  
7 42-day rule. We only got copies of this chart about a  
8 week ago. And so the Prosecution has not complied with  
9 the provisions of the Rules as far as disclosure is  
10 concerned.

11 JUDGE THOMPSON: All right. So you object to disclosure.

12 MR NICOL-WILSON: Yes, Your Honour. Those are my humble  
13 submissions.

14 JUDGE THOMPSON: Failure to comply with disclosure obligation.

15 MR NICOL-WILSON: Yes, Your Honour. Those are my humble  
16 submissions.

17 JUDGE THOMPSON: So you object to this document?

18 MR NICOL-WILSON: Yes, I do object. Vehemently.

19 JUDGE THOMPSON: Did I hear you say vehemently?

20 MR NICOL-WILSON: Yes, Your Honour.

21 JUDGE THOMPSON: I thought you were going to say strenuously.

22 Actually, let's hear learned counsel for the third  
23 accused.

24 MR O'SHEA: Your Honours, thank you.

25 I would like to say at the outset that to us, this  
26 is a highly significant matter, both factually and  
27 legally. These charts are essentially indistinguishable  
28 from the document for legal purposes which Your Honours  
29 did not admit yesterday with one difference, that these

1 are in the form of flow charts which are, I will say,  
2 more prejudicial to us, in fact, than the document  
3 Your Honours did not admit yesterday.

4 JUDGE THOMPSON: Let me get that down. This document... And  
5 it is highly prejudicial to your client.

6 MR O'SHEA: These are documents which are produced outside  
7 court, behind closed doors, with no transparency; not  
8 allowing us or the Judges to see, when these documents  
9 are being produced, the extent to which this witness is  
10 recalling these facts easily or not; and most  
11 importantly, are self-serving because of the assistance  
12 of the Prosecution.

13 There are, in fact, four separate legal grounds why  
14 these documents should not be admitted in evidence.

15 JUDGE THOMPSON: In your submission.

16 MR O'SHEA: In my submission, Your Honour, yes.

17 JUDGE THOMPSON: Let's begin. One.

18 MR O'SHEA: One, Rule 89, when it refers to probacy [sic] and  
19 relevance - we don't dispute relevance; we dispute  
20 probative value - Rule 89 does make a distinction, as  
21 Your Honour rightly suggests, between probative value for  
22 the purpose of admission and probative value for the  
23 purpose of weight; yes, conceded. However, this Tribunal  
24 still, in my submission, under the law has to be  
25 satisfied that there are sufficient indicia of probative  
26 value here to make this document not useful not to save  
27 time, but useful for the purposes of proof. It is not,  
28 in my submission, of any significant probative value,  
29 first, because it is a self-serving document and because

1 of the lack of transparency in the process of its  
2 production and because we can't see how much time the  
3 witness took over it, the demeanour of the witness when  
4 the witness was speaking to the Prosecution, and so  
5 forth. We can't see any of that. That's the first  
6 ground. The first ground is that it doesn't come under  
7 Rule 89 because it does not have sufficient indicia of  
8 probative value.

9 The second legal ground is that even if Your Honours  
10 were to find that these documents had some probative  
11 value, not negligible probative value, but some probative  
12 value of useful proof, even if Your Honours were to make  
13 that finding, in my respectful submission, this is one  
14 very clear case where the prejudicial effect of this  
15 evidence outweighs its probative value. These are highly  
16 contentious documents. The Prosecution in the indictment  
17 rely heavily on the doctrine of command responsibility.  
18 Superior-subordinate relation is an essential element of  
19 command responsibility, as is de jure or de facto  
20 control. And the reason why the Prosecution wants these  
21 documents in is because they help or, if they had  
22 probative value, they would help to establish  
23 superior-subordinate relationship and de jure control.

24 PRESIDING JUDGE: And that determination will be made by the  
25 Court, as to whether they have probative value. Do you  
26 accept that?

27 MR O'SHEA: I do. But Your Honours, what I'm saying is that  
28 this is highly contentious, it is highly prejudicial.  
29 But not just that, it is unfairly prejudicial.

1 PRESIDING JUDGE: But the Tribunal is not blind to the fact  
2 that these documents and the facts contained in it are  
3 contentious, highly contentious.

4 MR O'SHEA: Yes.

5 PRESIDING JUDGE: We are not blind to the submission you're  
6 making to this effect. And I just wanted to remind you  
7 about this.

8 MR O'SHEA: I'm very glad to hear that, Your Honour.

9 PRESIDING JUDGE: It is a question of whether the document  
10 should be admitted; and if it is admitted, what weight  
11 will the Tribunal at the end of the process, of the  
12 testimony of this witness and including, of course, the  
13 cross-examination, what weight the Court will place on  
14 this document.

15 MR O'SHEA: Well, respectfully, Your Honour, I say that --

16 JUDGE THOMPSON: Or whether we are sufficiently satisfied  
17 that, in fact, we must exclude it at this stage.

18 MR O'SHEA: Yes. That is the question indeed, Your Honour.

19 That is the question. And I haven't finished with  
20 unfairly prejudicial, that the reason why I emphasised  
21 the highly contentious nature of this document is because  
22 it's relevant to the question of whether it's unfairly  
23 prejudicial, because if the matters -- the factual  
24 matters contained in the documents are highly  
25 contentious, then one has to exercise the greatest of  
26 caution in terms of how the evidence comes before the  
27 Court. And here we say there is no transparency in how  
28 this evidence is coming before this Court.

29 JUDGE BOUTET: But you can cross-examine on this issue and

1 explore that for a week if you want to. I mean, there's  
2 no limit on your cross-examination, as you should know.

3 What precludes you from doing that in court?

4 MR O'SHEA: Well, we cannot, Your Honour, see the demeanour of  
5 this witness when --

6 JUDGE BOUTET: You can see the demeanour in court here.

7 MR O'SHEA: Yes, but not when he produced these documents.

8 These documents make the witness's job much easier. He  
9 doesn't have to work on his own memory. He just has to  
10 look at the documents and then tailor his evidence  
11 according to the documents. Cross-examination is not  
12 going to help cure that.

13 PRESIDING JUDGE: But the witness makes statements which are  
14 before you and which have been disclosed to you. I mean,  
15 were you there to watch his demeanour when he was making  
16 those statements? And yet, you know, you have the right  
17 to cross-examine him on those statements whilst he is  
18 here.

19 MR O'SHEA: Well, if the issues contained, Your Honour, in  
20 these documents are contentious, as we say they are, it's  
21 not a question of his general demeanour; it's a question  
22 of his demeanour while he is addressing his mind to these  
23 specific questions. And the witness is unfairly assisted  
24 with these documents.

25 JUDGE BOUTET: You're suggesting that there's no evidence of  
26 that?

27 MR O'SHEA: Well, Your Honours, I hope that Your Honour can  
28 take judicial note of the fact that when a person is  
29 recording -- sorry, recalling his knowledge of facts, it

1 is easier for that person to look at a document which he  
2 has prepared in his own time for when he comes into court  
3 than in the witness box. I hope Your Honours can take  
4 judicial notice of that.

5 JUDGE BOUTET: [Microphone not activated]

6 MR O'SHEA: Yes. So we say that the prejudicial effect of  
7 these documents outweighs their probative value.

8 JUDGE THOMPSON: So, in fact -- before you move on and finish  
9 up this second point, your last point before my learned  
10 brother's relevant interjection was that you were making  
11 a connection between the allegedly highly contentious  
12 nature of the issues contained in the document and the  
13 concept of prejudicial effect.

14 MR O'SHEA: Yes, what I'm saying is --

15 JUDGE THOMPSON: Do you want to develop that or --

16 MR O'SHEA: I can explain it simply and say that the more  
17 contentious an issue, the more important it is that the  
18 Court receives the best evidence on it.

19 JUDGE THOMPSON: Otherwise, prejudice might result.

20 MR O'SHEA: Exactly. The third legal ground is the one  
21 expounded by Mr Nicol-Wilson, and I won't expand further  
22 on that, suffice to say that Your Honours have yourselves  
23 defined the meaning of a witness statement in Your  
24 Honours' decision in the Norman case, and  
25 Mr Nicol-Wilson's submission is consistent with  
26 Your Honours' own ruling on that, in my submission. And  
27 I adopt that.

28 JUDGE THOMPSON: And you adopt that.

29 MR O'SHEA: And in the Blaskic case, a witness statement was

1 described as a statement of facts with respect to a  
2 crime, and I submit that that's what this is, albeit in  
3 diagram form.

4 JUDGE THOMPSON: Yes. Number 4.

5 MR O'SHEA: And the fourth ground is, of course, the  
6 best-evidence rule. And I referred Your Honours  
7 yesterday to the Rajic decision and the separate opinion  
8 of Judge Sidhwa where that doctrine was relied upon.  
9 It's true that in common-law jurisdictions, that doctrine  
10 has lost use. But that's because hearsay is the -- the  
11 hearsay rule is still firmly there. We don't --

12 JUDGE THOMPSON: It has been whittled away.

13 MR O'SHEA: The rule has been whittled away because the  
14 hearsay rule is there. Whereas here, the hearsay rule  
15 has been whittled away; thus, the importance of the  
16 best-evidence rule. So unless Your Honours have any  
17 further questions.

18 JUDGE THOMPSON: I don't have any further questions.

19 PRESIDING JUDGE: I don't have any questions.

20 JUDGE THOMPSON: Then we'll ask the Prosecution to reply.

21 Learned counsel for the Prosecution, do you want to  
22 do a consolidated reply, or you want to take them  
23 separately?

24 MR HARRISON: I'll try to do it consolidated.

25 JUDGE THOMPSON: Right, thanks. Okay.

26 MR HARRISON: I should indicate, and I realise it's just  
27 inadvertent errors on the spur of the moment, but  
28 disclosure was made on the 31st of December. It wasn't a  
29 week ago, I suggest.

1 [HS190105D 1.35 p.m.]

2 MR HARRISON: I think there was a couple of inadvertent  
3 misrepresentations just from the spur of the moment.

4 JUDGE THOMPSON: Well, let us have you highlight them.

5 MR HARRISON: One of them was that there had been no evidence  
6 today with respect to Mr Sesay being second in command.

7 JUDGE THOMPSON: Just a minute, slowly. You submit that there  
8 are inadvertent misrepresentations and the other side's  
9 arguments. One?

10 MR HARRISON: That Mr Sesay was second in command to  
11 Mr Bockarie, and I think you will remember that early on  
12 in the evidence the witness did say that. I actually  
13 asked him the question what do you mean by second in  
14 command, and of he went and gave his explanation of that  
15 relationship.

16 PRESIDING JUDGE: What they are saying, Mr Harrison, that in  
17 Koidu during these famous meetings at that police station  
18 - I forget the name - Mr Sesay was there or the person  
19 who was virtually in command was Superman.

20 MR HARRISON: Yes.

21 PRESIDING JUDGE: This what they are saying.

22 MR HARRISON: That's correct.

23 PRESIDING JUDGE: So it looks a misrepresentation.

24 MR HARRISON: It may look like it, but --

25 PRESIDING JUDGE: -- [Overlapping speaker] notwithstanding  
26 that particular circumstance in Koidu over and ahead  
27 Superman. That is their contention.

28 MR HARRISON: This particular chart -- and I don't mean to be  
29 giving evidence. I'm just going to tell you --

1 JUDGE THOMPSON: No.

2 MR HARRISON: -- what my very general understanding is. If  
3 you look at this chart it is actually in two sections.  
4 The top sections says "Headquarters Kailahun" on left,  
5 the bottom sections says "Battalion". If you look at the  
6 battalion, the second battalion commander says Kono in  
7 brackets; it then has Superman. That would mean, I am  
8 guessing, that Superman --

9 PRESIDING JUDGE: You're guessing?

10 MR HARRISON: -- is a guy who's charging.

11 PRESIDING JUDGE: Are you guessing?

12 MR HARRISON: I am certainly not giving evidence.

13 PRESIDING JUDGE: Well, you are guessing.

14 MR HARRISON: Well, I am not giving evidence either. I'm  
15 telling you what --

16 JUDGE THOMPSON: Yes, but you are not --

17 MR HARRISON: The chart speaks for itself.

18 PRESIDING JUDGE: Yes.

19 JUDGE THOMPSON: But, counsel, I think you are entitled to  
20 refer to it. They referred to the chart, when they were  
21 making the submissions, for the factual aspects of the  
22 objection. I think you are entitled to refer to the chart  
23 for the factual aspects of your reply.

24 PRESIDING JUDGE: Oh, yes.

25 JUDGE THOMPSON: I don't see any difficulty; it's not giving  
26 evidence.

27 MR HARRISON: At any rate, if the chart does --

28 JUDGE THOMPSON: If you guess, it might lend support to their  
29 point of view that we are here equivocating.

1 MR HARRISON: What I wish to say is that if it was put to the  
2 witness I cannot tell you --

3 JUDGE THOMPSON: No, I agree with that.

4 MR HARRISON: -- with certainty with his answer would be. It  
5 would be a misrepresentation for any of us to do so.

6 JUDGE THOMPSON: I take your point.

7 MR HARRISON: But the chart does speak for itself, that in  
8 Kono Superman is the commander.

9 JUDGE THOMPSON: Right. Next point?

10 MR HARRISON: I would just simply like to respond to the legal  
11 issues or those of significance that the Prosecution  
12 thinks requires some response.

13 JUDGE THOMPSON: Yes.

14 MR HARRISON: The first has to do with the best evidence rule,  
15 simply because two of the counsel seem to think that that  
16 rule is of some use.

17 JUDGE THOMPSON: What would be your submission in reply to  
18 that? Excuse me. What would be your short submission in  
19 respect of the two of them grounded their objection on  
20 the ability of the best evidence rule?

21 MR HARRISON: It is a dead rule. Everywhere in the world  
22 except apparently England, and thank goodness for it.

23 JUDGE THOMPSON: Best evidence rule is dead and cannot be  
24 resurrected you think.

25 MR HARRISON: I hope not. The purpose of the rule is to make  
26 sure that the original copy of a document was submitted  
27 in court. That's the origins of the rule.

28 JUDGE THOMPSON: Common law jurisdiction.

29 PRESIDING JUDGE: Is it also dead in international criminal

1 justice?

2 MR HARRISON: I'll tell you what Judge May says, if you like.

3 JUDGE THOMPSON: Yes, why not, help us.

4 MR HARRISON: Judge May says, "This rule required the  
5 production" --

6 JUDGE THOMPSON: Page?

7 MR HARRISON: I am sorry.

8 JUDGE THOMPSON: It's International Criminal Evidence?

9 MR HARRISON: It is indeed. 242 and 243.

10 JUDGE THOMPSON: International Criminal Evidence.

11 MR HARRISON: Under the heading "Best Evidence Rule Not  
12 Formally Applicable." It says, As previously mentioned  
13 traditional common law rules do not formally apply to  
14 exclude evidence in international criminal trials.

15 JUDGE THOMPSON: Thank you, right. Let's move on to the next.  
16 They complain also -- Mr Jordash, I recall, complained  
17 about --

18 PRESIDING JUDGE: Disclosure.

19 JUDGE THOMPSON: Yes, disclosure.

20 MR HARRISON: Yes, I have tried to indicate that the  
21 disclosure did take place on an earlier date than  
22 indicated. This is not a new allegation. There is  
23 nothing in here that is anything other than further  
24 information which amplifies that which has all ready been  
25 produced. There is nothing. I regret that my colleagues  
26 have referred to charts in plural. There is only one  
27 before you and I did want to try to collar my colleagues  
28 before this started, because I would like to have a  
29 conversation with them about others.

1 JUDGE THOMPSON: Yes, I thought it was inadvertance on the  
2 part of Mr O'Shea too. We are talking about one chart.

3 JUDGE BOUTET: But, if I may, Mr Harrison, on this last issue,  
4 certainly Mr Jordash, as I understood his position to  
5 have been, was it does contain information that is not  
6 disclosed - and I use not disclosed - in statements that  
7 have been disclosed to them. In other words, it is not  
8 an explanation but it is new evidence in that respect.  
9 That is essentially his position.

10 MR HARRISON: I disagree completely.

11 JUDGE THOMPSON: And to add to what my learned brother has  
12 said, Mr Wilson too said that in fact there has been a  
13 clear violation of the 42 day rule. He said, in fact --  
14 and I think you need to check this together, because he  
15 virtually said what you have here is a statement in  
16 diagrammatic form. I mean, what we are calling a chart  
17 here he says could be appropriately called or  
18 characterised as a statement in diagrammatic form, hence  
19 the disclosure obligation within the prescribed time. So  
20 if you can give us your response to that.

21 MR HARRISON: The disclosure obligation is one of continuous  
22 disclosure.

23 JUDGE THOMPSON: Yes.

24 MR HARRISON: It is only if it is a new statement that the  
25 Prosecution is prevented from relying upon that  
26 information without first obtaining good cause. There is  
27 no new allegations within this chart whatsoever.

28 JUDGE THOMPSON: So you don't need to show good cause?

29 MR HARRISON: No.

1 JUDGE BOUTET: Would you run that by me again so I follow your  
2 last reasoning on this issue?

3 MR HARRISON: My understanding is because of the disclosure  
4 obligation, the Prosecution is always required to  
5 disclose information as it obtains it.

6 JUDGE THOMPSON: Yes, 66.

7 JUDGE BOUTET: This is a continuous disclosure obligation on  
8 the Prosecution, but you added to that the Prosecution is  
9 only obliged to comply with new -- you made reference to  
10 new statement or new allegations.

11 MR HARRISON: I think it is a new -- if there's a brand new  
12 statement --

13 JUDGE THOMPSON: Yes, then, of course.

14 MR HARRISON: -- which is from a new witness or it may be this  
15 Court's view that if there is an allegation out of the  
16 blue --

17 JUDGE THOMPSON: Unrelated.

18 MR HARRISON: -- supporting a charge out of the blue, then  
19 there may be some obligation on the Prosecution to first  
20 obtain good cause before that evidence could be relied  
21 upon in court.

22 PRESIDING JUDGE: Well, they are talking of the crime base and  
23 the command responsibility.

24 MR HARRISON: But all of that has been disclosed since day  
25 one. That's always been part of the disclosure.

26 JUDGE THOMPSON: So, in other words, you are saying that you  
27 have acted here with utmost of faith in this matter.

28 MR HARRISON: I don't raise the Prosecution's conduct to that.

29 JUDGE THOMPSON: And it is only if it is a new statement that

1 -- yes, quite right. Anything to add to wind that up,  
2 that part of it, the disclosure?

3 MR HARRISON: I don't think that there is anything further  
4 that I can usefully add.

5 JUDGE THOMPSON: There is one aspect that -- Mr O'Shea did  
6 make one point. He sought to link the concept of the  
7 highly contentious nature, as they allege, of the matters  
8 allegedly contained in the -- [Overlapping speakers]

9 PRESIDING JUDGE: Highly contentious and prejudicial.

10 JUDGE THOMPSON: So they said they are connected. In other  
11 words, the Court should be more vigilant where, in terms  
12 of admitting the kind of evidence now sought to be  
13 admitted, where the issues in the document are such a  
14 highly contentious nature. In other words, he is saying  
15 to us we need to just nip it in the bud, not leave it to  
16 a question of probative value at the end of the day. He  
17 complains that - so how do you respond to that?

18 MR HARRISON: I'm just not sure what is so highly contentious  
19 about it.

20 JUDGE THOMPSON: Well, that he -- he, for his time --

21 MR HARRISON: I listened to Mr O'Shea and regrettably  
22 Mr O'Shea travels at a --

23 PRESIDING JUDGE: Mr O'Shea was very specific on the  
24 prejudicial effect. Prejudicial effect of this --

25 MR HARRISON: I don't recall him articulating how the prejudice  
26 was triggered by this particular chart. At any rate, I  
27 don't wish to belabour this. I'm looking at the clock  
28 because I know Your Lordships are.

29 PRESIDING JUDGE: No, don't look at the clock. We want to

1 wrap this matter up properly before we leave.

2 MR HARRISON: Yes, certainly.

3 JUDGE THOMPSON: And I remember it was your wish that we have  
4 some extended time.

5 PRESIDING JUDGE: Yes. We, too, have the clock --

6 [Overlapping speakers]

7 JUDGE THOMPSON: Well, let's have a short submission in that.  
8 I mean, I can hear you, whatever you say, that you don't  
9 think that does apply to this.

10 MR HARRISON: The only information in the chart is that  
11 Mr Kallon is a battlefield commander. There is no  
12 allegation that he has done any wrongdoing here or  
13 anywhere.

14 JUDGE THOMPSON: Except at one stage the witness says he is  
15 down there, but your chart puts him up there. Am I  
16 right?

17 PRESIDING JUDGE: Promotes him, yeah.

18 JUDGE THOMPSON: Mr O'Shea, am I representing your position?

19 MR NICOL-WILSON: Yes, Your Honour.

20 JUDGE THOMPSON: Is that you?

21 MR NICOL-WILSON: Yes, that is our position, and [inaudible]  
22 diagram.

23 JUDGE THOMPSON: The witness puts the second accused down  
24 there.

25 MR NICOL-WILSON: Yes.

26 JUDGE THOMPSON: Probably like almost a foot soldier, and the  
27 chart elevates him to a commander.

28 MR NICOL-WILSON: Exactly, and there is a diagram showing  
29 exactly that.

1 PRESIDING JUDGE: The chart demotes Sesay as well.

2 MR HARRISON: At any rate, if I can just suggest that the  
3 principles of admissibility you've already reflected upon  
4 I think is where the answer to whatever concerns a court  
5 may have would be located. The Prosecution is not today  
6 and may not ever be saying that this chart is of  
7 importance or significance in the final deliberations. I  
8 don't know right now.

9 JUDGE THOMPSON: Yes.

10 MR HARRISON: All we are saying is that it has some probative  
11 value. And we are saying that on that basis it ought to  
12 be admitted and this witness can be cross-examined on it  
13 as thoroughly as the Court and Defence counsel deem  
14 appropriate.

15 JUDGE THOMPSON: Well, thank you, Mr Harrison. You are  
16 seeking leave for a response here?

17 MR JORDASH: A 30 second one if your Honour's would.

18 JUDGE THOMPSON: Good, I will hold you to your promise.

19 PRESIDING JUDGE: Very, very strictly to your promise.

20 MR JORDASH: Nowhere in this witness's statement is it  
21 disclosed what the command structure was in Kailahun  
22 above and beyond Sam Bockarie being based there and Sesay  
23 at some point going there. The idea that this table does  
24 not contain incriminating evidence is frankly hard to  
25 believe. Command structures. If Sesay is where they  
26 claim on this table and the structure operates as they  
27 say on this table, he falls potentially to be liable for  
28 all offences committed by those underneath him on this  
29 table. Simply because it does not say that any of them

1 did commit offences at this stage does not mean to say  
2 that it is not setting the Prosecution on a nice little  
3 springboard so when they call their next few witnesses  
4 they can attribute offences to the various people who  
5 they establish are underneath Mr Sesay in Kailahun. It is  
6 as simple as that, I would submit. That evidence hasn't  
7 been disclosed. If it was disclosed in December, it is  
8 far too late, I would respectfully submit.

9 JUDGE THOMPSON: Thank you. Short response.

10 MR NICOL-WILSON: Your Honour, the same position. Nowhere in  
11 the statement of the witness is it stated that Mr Kallon  
12 is a superior to Superman.

13 JUDGE THOMPSON: Right, okay.

14 MR NICOL-WILSON: And this is new information, new statement,  
15 which does not fall within the 42 day rule.

16 JUDGE THOMPSON: Yes.

17 MR O'SHEA: Mr Harrison indicates that I did not articulate  
18 prejudice. I think I did very fully and I think Your  
19 Honours will see that.

20 MR HARRISON: Well, he is not allowed to say it twice if he  
21 did.

22 MR O'SHEA: That is not fair with respect to Mr Harrison, that  
23 is not fair.

24 JUDGE THOMPSON: I'll arbitrate.

25 MR O'SHEA: You are normally a very fair man, but that's not  
26 fair.

27 JUDGE THOMPSON: It's okay, it's all right.

28 MR O'SHEA: One needs to see the wood from the trees here. The  
29 prejudice does not arise from this document sitting in

1 front of your Honours. I have full faith in your Honours.

2 That is not where the problem is. The problem is that --

3 PRESIDING JUDGE: Thank you.

4 JUDGE THOMPSON: We appreciate that.

5 PRESIDING JUDGE: Thank you.

6 MR O'SHEA: Yes. The problem here is that what this document  
7 does is it takes the witness 50 steps forward in his  
8 examination-in-chief with the Prosecution alone in a room  
9 that we cannot see. That is the real problem.

10 JUDGE THOMPSON: And the question is is this fair?

11 MR O'SHEA: Yes.

12 JUDGE THOMPSON: All right.

13 PRESIDING JUDGE: We have been informed that tomorrow is an  
14 official public holiday in this country and we of course  
15 will not be sitting tomorrow. Nor are we sitting this  
16 afternoon. So we would be adjourning our proceedings for  
17 today and we will resume sitting on Friday at 9.30 a.m.  
18 So for those of us who are Muslims, we wish them a very  
19 happy feast of the Ram. And of course I do same to  
20 Christians who are very closely associated, like myself  
21 and many of us, to Muslim friends to also enjoy the feast  
22 So, learned counsel, we will adjourn and resume sitting  
23 on Friday at 9.30.

24 [Whereupon the hearing adjourned at 1.53 p.m., to be  
25 reconvened on Friday, the 21st day of January 2005 at  
26 9.30 a.m.]

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EXHIBITS:

Exhibit no. 16 and 17 5

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-071 4

EXAMINED BY MR HARRISON: 4