



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
v.
CHARLES GHANKAY TAYLOR

FRI DAY, 11 MARCH 2011
9.00 A.M.
HEARI NG

TRI AL CHAMBER 11

Before the Judges:

Justice Teresa Doherty, Presidi ng
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Al ternate

For Chambers:

Mr Simon Meisenberg
Ms Erica Bussey

For the Registry:

Ms Fidelma Donlon
Ms Rachel Irura
Mr Al hassan Fornah

For the Prosecution:

Ms Brenda J Hollis
Mr Nicholas Koumjian
Mr Mohamed A Bangura
Ms Ruth Mary Hackler
Ms Ula Nathai-Lutchman
Mr Nathan Quick
Ms Maja Dimic trova

For the Accused Charles Ghankay Taylor:

Mr Courtenay Griffiths, QC
Mr Terry Munyard
Mr Morris Anyah
Mr Silas Chekera
Ms Logan Hambrock
Ms Sallia Moilanen

1 Your Honours, I'd like to begin this morning predicting the
2 future, and it's not because I have any special powers and I'm
3 not very smart, but I've listened to the evidence in this case
4 over three years.

09:04:12 5 And what I want to predict to you is that yesterday,
6 Justice Sebutinde asked a question that goes to the very heart of
7 this case. And that question was: Where are the documents that
8 show Charles Taylor met with Sam Bockarie in 1998?

9 Because one thing both sides agree on, Charles Taylor was
09:04:45 10 meeting with Sam Bockarie in 1998, and the Defence correctly
11 stated that this time period goes to the heart of this case, it
12 goes to the heart of the crime base and to the time leading up to
13 the horrendous December 1998 offensive and the offensives on
14 Freetown, the attacks in January and February of 1999.

09:05:17 15 The reason I can predict the future on this is because I've
16 listened to all the evidence, and we've seen in three years of
17 evidence that's been - what has been presented in 16 months,
18 we've seen the Defence case. For seven months, Charles Taylor
19 testified and the Defence, as Defence counsel pointed out had
09:05:41 20 access to a great number of documents and they presented a great
21 number of documents, but what they will not be able to tell you
22 this afternoon, what they will not be able to point to, is a
23 single document that shows Charles Taylor met with Sam Bockarie
24 in 1998. They may throw some other document, exhibit numbers, at
09:06:08 25 you that talk about the Lome negotiations, they may talk about
26 the fact that documents that show that the international
27 community was begging Taylor to stop the RUF attacks in January
28 and February 1999. There is no question and there never has
29 been, people in the international community and even in the

1 Government of Sierra Leone went to Charles Taylor in order to
2 influence the RUF, because they knew he was the one behind the
3 RUF, he controlled the RUF. When the peacekeepers were held
4 hostage, of course the United Nations and others went to
09:06:53 5 Charles Taylor to get them released. They knew he was the one
6 that could get the peacekeepers released.

7 But, your Honours, look at whatever answer, if any, the
8 Defence gives you to Justice Sebutinde's question. They will not
9 show you a document about Charles Taylor meeting with
09:07:16 10 Sam Bockarie in 1998. And then you must ask: Why not? And the
11 answer is obvious: Because as shown in the Prosecution evidence,
12 Charles Taylor was meeting with Sam Bockarie to plan the war, to
13 plan the offensives, to receive diamonds, to use some of those
14 diamonds to finance the RUF, to obtain ammunition for them from
09:07:43 15 his own stocks and from - Liberia clearly does not produce
16 ammunition but from other countries, including through
17 Burkina Faso, which also does not produce ammunition but which
18 the evidence shows and the Defence brief seems to concede was
19 where this huge amount of ammunition from 1998, late 1998, came
09:08:08 20 to the RUF, from Burkina Faso through Roberts International
21 Airport, to Buedu. This was the ammunition Issa Sesay said the
22 RUF was out of ammunition, it was the ammunition from Liberia
23 that made that December 1998 offensive possible.

24 Now, this is particularly significant, the lack of such a
09:08:40 25 documents, because of what Charles Taylor testified to. He told
26 you that all of his meetings with Sam Bockarie were transparent
27 and were open, that it was done with the consent of everyone.
28 Even though Sam Bockarie was on the United Nations travel ban, he
29 said the UN knew about it, ECOWAS knew about it, Kabbah knew

1 about it. According to Charles Taylor, he was playing a
2 mediating role, so one would certainly expect that there would be
3 documents about this noble role played by Charles Taylor, there
4 would be correspondence where Taylor would explain, as a
09:09:23 5 mediator, what was the position of the RUF, what had transpired
6 during those meetings. If he says he had the consent of the
7 United Nations, where is the documents showing the exemption from
8 the travel ban? Where are the reports from the United Nations
9 office in Sierra Leone or especially Liberia showing that, oh,
09:09:45 10 President Taylor informed us about his meetings with the
11 notoriously as the Defence says, Defence says sometimes wicked,
12 Sam Bockarie.

13 Your Honour, I've read the Defence brief, the 800 or now
14 600 page brief. There is no mention of such a document, and I've
09:10:11 15 listened to six hours so far of Defence oral arguments. There is
16 no mention of such a document, despite the fact that we pointed
17 this out in our final brief and in our oral arguments given on
18 8 February. Also, yesterday evening we received the Defence
19 response to our final brief. There is no mention of any document
09:10:33 20 proving that Charles Taylor - or showing that Charles Taylor met
21 with Sam Bockarie. There is no doubt he did meet with him. In
22 fact our evidence shows clearly he met with him more often than
23 he said and he met with him much earlier than Charles Taylor's
24 latest version. You recall Charles Taylor's meetings with
09:10:55 25 Sam Bockarie evolved during his testimony to - end up being
26 September, October and late November 1998 while on the first day
27 of his testimony, after preparing for weeks, really preparing for
28 years, for this case, he told us that the first time he met with
29 Sam Bockarie was in late 1997 or early 1998. He gave you details

1 about that and he even gave you the name of the general he sent,
2 Christopher Varmoh, Liberian Mosquito. Later, the story changed
3 to Dopoe Menkarzon in September 1998.

4 Now, this is also significant because the Defence has shown
09:11:43 5 in their oral argument placed so much emphasis on the documents
6 that they say abundant documents that show Charles Taylor's role
7 as a peacemaker. But what do these documents actually show?
8 Again, they show that publicly, he was denying his link to the
9 RUF. We knew that and we presented evidence of it. In fact, the
09:12:08 10 evidence shows when people threatened or were in a position to
11 expose his links, they were arrested and thrown out of the
12 country like Sorious Samura or some journalists arrested and
13 tortured or the less fortunate, like Sam Bockarie, killed. And
14 like Sam Bockarie, Charles Taylor didn't take any chances, and
09:12:34 15 his limitations were not limited by any moral considerations.
16 Not only was Sam Bockarie killed, he killed his mother, he killed
17 his wife and he killed his children.

18 Now, the Defence exhibits, of course, are going to show
19 attempts to involve Taylor in negotiations, just as
09:13:09 20 Slobodan Milosevic, for example, was invited to Dayton. When you
21 know an individual is controlling forces, despite the fact that
22 he may deny it or may deny any de jure title that's the person
23 you need to involve in the negotiations because that's the person
24 who can make the decision.

09:13:26 25 It would be exactly the same, just to use a current
26 example, with negotiating with the Government of Libya today,
27 Colonel - Charles Taylor's comrade, the person he trained under
28 in Libya, Muammar Gaddafi, claims he has no title and no
29 authority, but of course if one wanted to negotiate with the

1 Government of Libya or obtain a result, one would have to go
2 through Muammar Gaddafi .

3 None of these Defence documents that were presented helped
4 the Defence, and in fact, when viewed in totality they show just
09:14:08 5 the opposite. Charles Taylor always tried to publicly portray
6 himself as something he wasn't, and he knew, and he's correct,
7 he's an intelligent man, he can be very charismatic, and
8 intelligent and charismatic people can fool some of the people
9 some of the time, or even if they are very intelligent and very
09:14:33 10 charismatic, many people many times, but he can't fool all the
11 people all the time and he's counting on the fact that he can
12 fool you, and I don't believe that he can.

13 The Defence talked a lot about, and placed great reliance
14 in, some cables by the special representative to Liberia, I
09:14:57 15 believe appointed sometime in 1997, but at least through - was
16 there at least after the Freetown invasion, we saw cables from
17 1999 yesterday that were presented. And that is
18 Felix Downes-Thomas. Now, the Defence has said that
19 Felix Downes-Thomas was much maligned by the Prosecution but, in
09:15:21 20 fact, Felix Downes-Thomas's objectivity is maligned by the
21 Defence's own documents. And I'd like to particularly draw your
22 attention to three of those that show this.

23 The first, and I don't think it's necessary to put it on
24 the screen in the interests of time, is D-192, which your Honours
09:15:46 25 may remember was a cable that Downes-Thomas sent to New York,
26 it's dated the 30th of March 1999, and in that cable,
27 Downes-Thomas complains bitterly about another report that he had
28 received of a visit from a UN political officer assigned to
29 Sierra Leone who had come to Liberia and had written a report

1 talking about the links of Charles Taylor to the RUF,
2 specifically discussing links between Taylor and a Mr Ratcliffe
3 [phon], the diamond dealer, the fact that Sam Bockarie had been
4 in Monrovia, the fact that Johnny Paul Koroma's wife was in
09:16:35 5 Monrovia, and that arms and ammunition were being stockpiled
6 there, reportedly to be used for an attack, again, on
7 Sierra Leone, remember the date of this is March - the date of
8 this document is the 30th of March, 1999. We've received
9 evidence in this trial, both from the UN panel of experts, I
09:17:01 10 believe that's P-18, about that March 1999 shipment, which was
11 Ukrainian arms routed through Burkina Faso. We even had the
12 testimony of a witness who was present on that delivery of arms
13 from Burkina Faso to Liberia, and then onwards, most of them, or
14 at least a truckload of them, onwards to Sierra Leone with
09:17:31 15 Sam Bockarie.

16 Now, it's interesting that, when you read this cable,
17 Downes-Thomas is very much annoyed with the fact that another
18 report from the UN is showing Charles Taylor's links to the RUF
19 rebels. His reaction is not to investigate it or try - but of
09:17:59 20 course, he's not an investigator, he's simply a diplomat. His
21 reaction is simply to complain that this is his turf and the
22 others should stay out of it. It's interesting, though, that we
23 don't have that other cable which was apparently copied to
24 Felix Downes-Thomas, because you will recall that Charles Taylor
09:18:18 25 told us he had a special agreement with Felix Downes-Thomas to
26 give him all the cables related to Liberia. Why don't we have
27 that cable? Well, as counsel pointed out in his argument, you
28 will recall before the start of the case, it was revealed that
29 the Defence had, I think a number that was said at the time was

1 50,000 pages or somewhere in the testimony was dozens of boxes,
2 of documents from Charles Taylor's personal archive, and the
3 documents that we've seen in court is obviously a very small
4 portion of those. Now, the Defence does not have a rule 68
09:19:03 5 obligation, that's absolutely clear, and they don't have to give
6 us or allow us to look through those documents and find those
7 that are incriminating but what your Honours have to consider in
8 weighing these documentary evidence from the Defence is that it
9 was cherry-picked. This is not the entire personal archive of
09:19:28 10 Charles Taylor. These are the documents that the Defence picked
11 out that they thought would help him.

12 And so, for example, this cable from the Sierra Leone
13 officer is not going to be included.

14 There's two other documents in weighing Downes-Thomas' -
09:19:51 15 what weight to give to his cables that the Court should consider,
16 two other Defence documents and one of them was a document
17 D-402B. If you look at that document, your Honours, on page -
18 the page has the stamp number 203, it says, that logging money in
19 Liberia was being paid to the head of the UN in Liberia, and also
09:20:21 20 to another UN official in New York. This is a Defence document.
21 Which apparently shows that at least there was the perception, at
22 least, the perception that this diplomat was on the payroll of
23 Charles Taylor.

24 Now, thirdly, the third factor that your Honours have to
09:20:46 25 consider in weighing these cables by Mr Downes-Thomas is that we
26 saw confidential United Nations documents, some of them marked
27 "eyes only" that Charles Taylor said, "Oh, Downes-Thomas agreed
28 to give me confidential UN documents marked eyes only." And that
29 certainly should raise questions about whether Mr Downes-Thomas

1 was playing an appropriate role. It's common for diplomats to
2 become close to the governments in the places that they are
3 posted. That's one reason diplomats are rotated, despite the
4 lack of knowledge you lose by rotating diplomats, you want to
09:21:32 5 avoid the fact that people tend to have a - what they sometimes
6 call a home bias. And certainly it's our position that
7 Charles Taylor is not going to tell any UN official the truth
8 about his role with the RUF, but there is absolutely nothing in
9 the Defence documents that proves that Charles Taylor was what he
09:21:58 10 has testified to, playing a peacemaking role in 1998. Not only
11 is there a complete lack of documents showing the meetings with
12 Sam Bockarie, but we haven't seen any document about any actions
13 taken by the Liberian government against RUF or Liberian citizens
14 with the RUF, any criminal actions, any arrests, any attempts to
09:22:26 15 deter them and we have abundant evidence that the RUF was
16 travelling freely to Monrovia during Charles Taylor's presidency.

17 In one of the letters that Taylor wrote Kabbah, he talked
18 about the obligation of each of the members of the Mano River
19 Union to take action against any dissidents against the others.

09:22:49 20 We also know that Charles Taylor talked about the mercenary laws
21 of Liberia which require that any Liberian that is serving as a
22 mercenary is subject to criminal prosecution, but we have
23 evidence of people like John Vincent, for example, travelling not
24 only travelling back to Liberia freely but then being put
09:23:09 25 immediately into Charles Taylor's SSS. We have Issa Sesay
26 talking about how he travelled freely to Liberia. He was
27 absolutely had no worries about going and staying in a hotel for
28 a week in April 1999. Isatu Kalion, Liberian, a person who lived
29 years and years in Liberia, Daniel Kalion, were travelling to

1 Liberia, according to the Defence's own evidence. Daniel Tamba
2 was travelling back and forth to the RUF, Issa Sesay said
3 bringing rice, I think. But of course, John Vincent let the cat
4 out of the bag on that and said he was bringing ammunition. And
09:23:50 5 then as the Defence took another U-turn late in the case, DCT-008
6 said yes, Jungle, Daniel Tamba was bringing ammunition to the
7 RUF, exactly as the Prosecution witnesses had been testifying
8 throughout 2008. Not only Daniel Tamba, he said Sampson and
9 Zigzag Marzah were carrying ammunition to the RUF.

09:24:13 10 Were any of these people, any of these RUFs, Sam Bockarie,
11 or Issa Sesay, Isatu Kallon, Daniel Tamba, John Vincent, remember
12 Superman went for medical treatment in Liberia, was anyone ever
13 arrested? No. When this report came out, after this report came
14 out from the Sierra Leone political officer about possible links
09:24:35 15 between Taylor and Ratcliffe, a diamond dealer with the RUF, you
16 recall that Charles Taylor testified he expelled this man
17 Ratcliffe and an Australian, I think he tried to claim Ratcliffe
18 must have been a British secret agent and the RUF people that
19 they were associating with. Well, what happened to them? Why
09:24:59 20 weren't they arrested? There is not one bit of evidence, and I
21 believe I asked Issa Sesay or one witness about this, there is no
22 evidence, perhaps it was Charles Taylor, no RUF, no RUF, were
23 ever arrested in Liberia. Charles Taylor never did anything to
24 stop their actions because, actually, the evidence shows exactly
09:25:19 25 the opposite, he was continually facilitating, he was the main
26 facilitator of the RUF and he was the one arranging the arms.
27 He's not going to arrest Daniel Tamba, Zigzag Marzah, Sampson,
28 for taking arms and ammunition, excuse me, to Sierra Leone
29 because they are doing it under his orders.

1 Another very interesting piece of evidence, and
2 understandably the Defence tried to make the most of, is the fact
3 that the - when the United Nations suffered the huge indignity,
4 the embarrassment, the shame, of having 500 peacekeepers captured
09:26:10 5 by the RUF in May 2000, you recall the testimony is that they
6 were held for several weeks, Issa Sesay told us that. And there
7 is no doubt, there is an agreement, that Charles Taylor talked to
8 Issa Sesay and the peacekeepers were released. Well, I mean,
9 it's a good thing, we are certainly all glad, everyone was glad
09:26:34 10 that the peacekeepers were released, but what does this show?
11 Why did Issa Sesay only release the peacekeepers when he talked
12 to Charles Taylor? And let me make our position clear. I think
13 I've said it before, but at this time, there is no doubt
14 Issa Sesay was a puppet of Charles Taylor. Issa Sesay did what
09:26:55 15 Charles Taylor told him to do, because Charles Taylor, as all the
16 RUF knew, was the sponsor of that organisation.

17 Issa Sesay could not explain why it was only when Taylor
18 asked him to release the peacekeepers that he did so and there
19 are several contradictions between Sesay's account of the release
09:27:18 20 and Taylor's. First of all, Charles Taylor testified that he
21 called Issa Sesay on a satellite phone, which is consistent with
22 the Prosecution evidence, and this was on 18th of August, page
23 27062 and 63, that he said that. Issa Sesay denied it, said he
24 never spoke to Charles Taylor on the phone. No, he had no phone
09:27:48 25 to talk to Charles Taylor, never spoke - he got a message from
26 someone by radio, I believe it was Dennis Lansana, Monkey Brown,
27 that oh, you have to go to see Taylor and what does he do? He
28 goes to see Charles Taylor. The whole world is waiting for those
29 peacekeepers to be released. According to Issa Sesay, well, no

1 one asked me to release them. Although he says he knew that
2 General Garba wanted the peacekeepers released.

3 And the other thing that remains unexplained: Why would
4 the peacekeepers be taken to Monrovia to be released? If you
09:28:23 5 recall, it came out in the testimony of Issa Sesay, before the
6 Zambians and Kenyans and this large group of about 500 were
7 captured on about, was it the 5th of May, early May, I think it
8 was around the 1st of May, just before that, a company of 200
9 Nigerians were held, were captured, and Foday Sankoh ordered
09:28:50 10 their release and they were released in Sierra Leone. Why did
11 these troops have to be released through Monrovia? They could
12 have been flown to Bo, they could have been flown to Freetown,
13 they could have simply driven to any of those locations. Why did
14 they have to go to Monrovia? Well, it's because it's absolutely
09:29:12 15 consistent with the Prosecution evidence. Charles Taylor, no
16 fool, very aware of the negative public image he had and trying
17 again to portray himself as a peacekeeper, wanted to get
18 publicity, that, oh, he arranged for the release of the
19 peacekeepers. Come, have them come to Monrovia, have his picture
09:29:35 20 be taken, have it shown that he is the one that released the
21 peacekeepers but in truth what this evidence shows clearly,
22 especially when you hear Issa Sesay's explanation, Charles Taylor
23 held the keys to the prison for those peacekeepers and when he
24 decided to turn the lock, they were released.

09:29:55 25 According to one of the documents that the Defence
26 presented, and according to Charles Taylor's own testimony, and
27 this is D-244, Charles Taylor held intense negotiations with the
28 RUF about the release of the peacekeepers. Intense negotiations.
29 And then we have a document which is - I believe it's D-243.

1 Could that be put on the screen, please? We have a document
2 D-243 which was put into evidence during the direct examination
3 of Charles Taylor. Charles Taylor testified it came from his
4 personal archive, that he had received this letter from
09:30:55 Issa Sesay. And if you read the letter, I'm not going to take
6 the time to read it all, it's extremely well-written, and if we
7 look at the second page of that letter, please, we see that there
8 is a list of eight demands being made regarding the release of
9 the peacekeepers. This letter is dated 11 May, so this is before
09:31:26 the peacekeepers are captured, just, excuse me, before they were
11 released about a week or so after they are captured and just
12 three days after the capture of Foday Sankoh at Spur Road.
13 Foday Sankoh is in prison. Now, what's very interesting about
14 this, Issa Sesay denies it. First of all, when he's asked, what
09:31:50 did you demand to get the peacekeepers released, what were your
16 negotiations? He said he made no demands. Why did you release
17 them? Well, because Charles Taylor told me to. Well, why? Well
18 he was the first one, Issa Sesay claimed, to ask me to release
19 them. That's why Issa Sesay tried to claim as why he released
09:32:14 them. He released them because his boss told him to.
21 Charles Taylor held the keys until it was politically
22 advantageous for him to play the role of a peacekeeper and have
23 them released. But there's another -- please don't leave this
24 document. If we can go to that second page again, there is
09:32:29 something else very interesting, and if we go down to the
26 signature or lack of it.

27 First of all, there is no signature. Charles Taylor says
28 he has a letter from Issa Sesay that's not signed. Now,
29 your Honours, the Prosecution has presented letters that were

1 seized, for example, from RUF offices that are not signed. And
2 it does make sense that the person sending a letter, especially
3 if you don't have a copy machine, especially if they are type
4 written, would have a copy for their own files, the sender, not
09:33:07 5 signed. You sign the letter you send and the unsigned letter
6 remains in your files. But how can the receiver have an unsigned
7 letter? Who gets a letter in the mail, an important letter like
8 this, addressed to the President of a country, that's not signed?
9 And what else do we notice about this extremely well-written
09:33:30 10 letter, perfect with -- the spelling is perfect throughout the
11 letter, until we get to the name of Issa Sesay. Issa Sesay told
12 us repeatedly, everyone in the RUF knows I spell my name I-S-S-A.
13 Everyone in the RUF. No one in the RUF would spell my name
14 E-S-S-A. We know that's like a spelling used in some other
09:33:56 15 countries, like the Gambia, for instance. And what's also very
16 interesting about that E-S-S-A spelling, that's exactly the
17 spelling on the document P-28 that was prepared, clearly by
18 Benjamin Yeaten's adjutant, that's a document with the final
19 signature of Benjamin Yeaten, but signed above it Issa Sesay
09:34:20 20 spelled exactly the same way. E-S-S-A. And even the last name
21 is misspelled. It's got two Ss, E-S-S-A. So what - who wrote
22 this letter? Issa Sesay says he made no demands. Issa Sesay
23 says he didn't sign it. It's not even his name spelled
24 correctly. What it shows is Charles Taylor, through his
09:34:51 25 government offices, was manipulating this entire crisis. He was
26 directing the RUF not just militarily, he directed them
27 politically, as he did at the time of the Abidjan Accord.
28 Defence counsel pointed out it's absolutely clear, and we
29 certainly agree with this, Foday Sankoh used the Abidjan Accord

1 with absolutely no intention to abide by it. We agree on that,
2 but what the Defence doesn't mention is he got that instruction
3 from Charles Taylor. Two witnesses talked about that, TF1-516
4 and Augustine Mallah, they both heard it. TF1-516 remember
09:35:33 5 Charles Taylor tried to rebut that testimony by saying, ah, but
6 he said I was in Gbarnga, this is 30 October or late October,
7 excuse me, this was just before the signing of the Abidjan Accord
8 so this was November 1996, I was in Gbarnga. Well, unfortunately
9 for him, his next witness, Yanks Smythe, happened to mention,
09:35:59 10 yeah, there was an assassination attempt against Charles Taylor
11 on 30 October 1996. He had been on the Council of State
12 Monrovia. After that attempt he moved back to Gbarnga. So
13 exactly as 516 said, he was in Gbarnga in November 1996.

14 Of course, Charles Taylor would try to distance himself
09:36:24 15 from Foday Sankoh at that time, because this is after, by now,
16 the RUF is notorious as Defence, I believe, has admitted in their
17 closing arguments. This is after Operation Stop Elections. So
18 Charles Taylor's ties to the RUF are going to be like his
19 meetings with Sam Bockarie, clandestine. Unfortunately, little
09:36:47 20 bits of the evidence of those ties was also revealed in the
21 Defence case. So, for example, we had evidence from a Defence
22 witness, the RUF spokesperson, that he was invited in, I believe
23 it was, 1996, in the middle of 1996, to Gbarnga, Charles Taylor
24 invited him to his headquarters, and he was there for weeks. It
09:37:14 25 may have been 1995. He was there for weeks with Charles Taylor
26 in Gbarnga and then he went along with Charles Taylor to where?
27 To Accra, Ghana. What's the significance of that? Well, first
28 he said he wanted to show me peace talks, but then it turned out,
29 well, there were no peace talks. In fact there is absolutely no

1 evidence of any peace talks in Accra, Ghana, at that time.

2 But what was in Accra, Ghana? What could Charles Taylor or
3 show the RUF in Accra, Ghana, we know that Accra, Ghana, was the
4 headquarters, was the base of Muammar Gaddafi's representative

09:38:01 5 for the region. Mr Talibi, he was based in Accra, Ghana.

6 Another bit of interesting evidence slipped out. Defence notes
7 at the same time Foday Sankoh is signing the accord, he's sending
8 one of his officials to go, excuse me, to Monrovia to buy
9 ammunition from an ECOMOG. Well, as counsel pointed out,

09:38:30 10 Foday Sankoh was cut off in Sierra Leone when the border was
11 closed by ULIMO. We may disagree within months about when that
12 was but sometimes in 1993, Foday Sankoh was cut off and he was in
13 Sierra Leone. He wasn't travelling to Liberia and certainly
14 Charles Taylor, trying then to win the presidency, we agree on
09:38:52 15 that, we would say lying low, lying low on his violent tendencies
16 at that time, wouldn't want to have Foday Sankoh seen in Liberia.
17 But they are in contact, that's our evidence, there's regular
18 contact.

19 And what is it that Foday Sankoh tells this official that
09:39:09 20 he sends? He says he's there with one of Charles Taylor's
21 commanders, Saye Boayou. This witness didn't know it, DCT-292,
22 but two of the Defence earlier witnesses had identified
23 Saye Boayou as one of Charles Taylor's generals. So the person
24 who was to arrange the purchase of ammunition in Monrovia was one
09:39:32 25 of Charles Taylor's generals.

26 And another little piece of evidence that I found
27 interesting listening to Issa Sesay, there is also an agreement
28 that Foday Sankoh gave about \$7,000 to Sam Bockarie to buy
29 ammunition from ULIMO. Now, the Defence keeps talking about

1 ULIMO as the enemy of Charles Taylor, but remember there were two
2 factions, and ULIMO-K had reached certain agreements with
3 Charles Taylor, including in April 1996, together they had
4 wreaked carnage on Monrovia and attacks on Roosevelt Johnson.

09:40:11 5 Together ULIMO-K and the NPFL allied and they also had agreements
6 about the free movement that's in evidence at some point.

7 But what was interesting is Sam Bockarie, Issa Sesay said
8 he said he didn't want to go buy. It would be too dangerous.
9 How can I go to my former enemies, ULIMO, to buy ammunition and
09:40:34 10 Foday Sankoh said, don't worry, it's going to be all right. How
11 did Foday Sankoh know that? It would make sense he knew that
12 because it was arranged by the NPFL by Charles Taylor, they are
13 the ones with the contacts with ULIMO.

14 Now, I'd like to go back to the one document that the
09:41:00 15 Defence seems to pin all their hopes on, they raised it again the
16 other day, that's D-7, if we could have that on the screen
17 because, remember, in Charles Taylor's corrected version, the
18 first day of his testimony, of course he said he met Sam Bockarie
19 in late 1997, and/or the beginning of 1998, but then it became
09:41:24 20 September, October, November. And the Defence counsel says this
21 document somehow the Defence - it seems to have changed in the
22 closing argument, closing argument seems to be that this document
23 shows Eddie Kanneh had to go all the way to Conakry to travel to
24 Monrovia, but if you remember Charles Taylor's testimony,
09:41:46 25 supposedly their interpretation of this letter at that time is,
26 oh, this is a letter that says that Sam Bockarie wants to meet
27 Charles Taylor. So this is why I invited Sam Bockarie, this is
28 why I sent Dopoe Menkarzon to get Sam Bockarie. I don't have to
29 read it word for word, but if someone was carrying a message

1 Sam Bockarie wants to meet Charles Taylor, it would say that and
2 it doesn't say that at all. What's clear from the letter - it's
3 not clear where Eddie Kanneh's travels originated - at the time
4 he's writing the letter he's in Conakry. How he got there, when
09:42:22 5 he got there, we don't know. What we do know, though, is that
6 some SLA officers at various times, after the intervention in
7 particular, had run away and some of them were in Guinea, some of
8 them went to Monrovia. Going to Monrovia could be dangerous if
9 you were seen as someone who was on the wrong side of the SLA
09:42:42 10 divide. Remember, there were some SLAs that were loyal to
11 Kabbah.

12 We have evidence that Charles Taylor had, through
13 Foday Kallon, sent others, SLA officers back to the RUF. We also
14 have evidence that some were threatened with death like 539
09:43:02 15 unless they could prove their loyalty to the RUF. We have
16 evidence that Moses Kabi a or AFRC Rambo was killed in Monrovia.
17 That came from 539 and another witness whose name I can't -
18 number I cannot recall at the moment, I believe it may be
19 Samuel Kargbo. But Moses Kabi a was killed in Monrovia. So what
09:43:26 20 does Eddie Kanneh - if we could have the letter back on the
21 screen, what - the point he wants to make first of all is, hey,
22 to the - to the Charles Taylor government, I'm loyal to the
23 junta. That's part of his bona fides with the Charles Taylor
24 government. Of course, the junta is illegal, the world is
09:43:44 25 against it, especially ECOWAS, they've tried to overthrow a
26 legitimately elected government, but this person, Eddie Kanneh is
27 saying to Charles Taylor's government, hey, I'm okay, I'm with
28 you, I'm with the junta.

29 And then most importantly, if we go to the last paragraph,

1 what's absolutely clear and counsel simply avoided answering
2 because the Defence cannot logically answer it, but they have two
3 more hours this afternoon to try if they would like to, it lists
4 Sam Bockarie as a contact person in the country. He's not one of
09:44:19 5 the six people that are travelling. Well our evidence is clear:
6 Sam Bockarie had already been to Monrovia, in fact he'd been
7 there, originally with Varmuyan Sherif. And it's quite apparent
8 that Eddie Kanneh knew that. That's why he put down the contact
9 persons, the ones that can prove my bona fides with your
09:44:45 10 government, Charles Taylor's government, are Varmuyan Sherif,
11 Si di ki Janneh, which we think is the same person that, in
12 Varmuyan Sherif's testimony, he said was Si di ki Kanneh one of his
13 men working under him, and Sam Bockarie. Sam Bockarie's a
14 contact person with the Liberian government. According to
09:45:03 15 Charles Taylor he had never met Sam Bockarie before September, he
16 had no contact. Why would Eddie Kanneh put his name down as a
17 contact person? It's absolutely clear, this letter that the
18 Defence places so much reliance on, proves the lie of
19 Charles Taylor's testimony. At least the corrected version about
09:45:22 20 when he met Sam Bockarie, that he didn't meet him until
21 September. It's consistent with what he said the first day of
22 his testimony, which was that he met Sam Bockarie in late 1997 or
23 early 1998.

24 Now, let's contrast just for a moment these complete lack
09:45:44 25 of proof of anything of significance from the Defence documents.
26 In fact, what we say is that when I looked at objectively and with
27 analysis, the Defence documents absolutely prove that
28 Charles Taylor is lying and that he was supporting the RUF. They
29 clearly show he was lying in trying to say that he was openly

1 meeting with Sam Bockarie.

2 Let's just look at one Prosecution document to see the
3 difference in proof, P -- well, it doesn't have to be put on the
4 screen. I'm just going talk about it, P-67. This is a report
09:46:19 5 from the Black Revolutionary Guard, you remember we heard about
6 the Black Guard and there was testimony that came out in the
7 cross-examination of Issa Sesay that this Guard was originally
8 known as the Revolutionary Guards and that's in document P-561B,
9 which is confidential. This is a document, that we have evidence
09:46:42 10 from Tariq Malik, was seized from Sankoh's house, and further,
11 this is a document that two witnesses talked about and that is
12 TF1-567 who said that the document was written by a group
13 including himself and was given by Junior Vandi to Foday Sankoh,
14 and another protected witness in January said the same thing,
09:47:09 15 that this letter was given in early 1999 during the Lome
16 negotiations by Junior Vandi, the same name, to Foday Sankoh, and
17 what does this document say? I hope I have it with me.

18 If your Honours would, when you're reviewing the case, go
19 to the third page, what the document says is:

09:47:44 20 "Immediately Freetown and the provincial headquarters fell
21 in the hands of ECOMOG. The high command was called to report by
22 the President of Liberia, Mr Charles Taylor, wherein the
23 President seriously briefed the high command and gave him the
24 confidence that he should not give up but to keep up the struggle
09:48:05 25 and uphold the revolution until the leader returns.

26 "The President gave full assurance to the high command and
27 promised to give the maximum support to the RUF. The President
28 also took an oath that he will never betray his brother,
29 Foday Sankoh. From that point, the President gave huge quantity

1 of logistics, ammunition, to the high command."

2 That's what it says. Then it goes on on page 4 to talk
3 about diamonds being given by General Ibrahim and Sister Memuna,
4 diamonds to Charles Taylor. And I'm not going to go through them
09:48:45 5 again because I'm not getting even close to finishing what I had
6 hoped to today. I only have ten more minutes but in documents
7 D-8, P-63, they also talk about these same diamonds taken from
8 Johnny Paul Koroma, 1832 diamonds being taken by Jungle and
9 Ibrahim to the father across, to Charles Taylor.

09:49:05 10 Now, in the short time that I have remaining, I just want
11 to mention a little bit about the star defence witness,
12 Issa Sesay. Your Honours, we think it is perfectly - it was very
13 appropriate for Issa Sesay to be the witness who testified the
14 longest for the accused, and for the Defence to place so much
09:49:30 15 reliance upon him. In our rough count by one of the members of
16 our office of one of the versions of the Defence brief,
17 Issa Sesay was cited 417 times in the footnotes and my question
18 for the Defence is: Do you want the Court to believe Issa Sesay?
19 Because what is the evidence from the Defence case? Issa Sesay
09:49:55 20 is a mass murderer, he's a killer, he's a ruthless killer, he's a
21 rapist. We know from the Prosecution evidence, and even from his
22 own evidence, he's a child abuser in the sense of child soldiers.
23 And he's a child abuser, from the Prosecution evidence, in the
24 sexual sense also, from private testimony of a protected witness.

09:50:19 25 Issa Sesay, according to Faya Musa, was the person who
26 ordered him beaten with a belt buckle till blood ran down his
27 shirt. According to DCT-292, he talked about the evil
28 Sam Bockarie, and the Defence concedes how evil Sam Bockarie -
29 they mention a few of his acts. They don't even bother to

1 mention that Sam Bockarie is the kind of man that can bury a
2 one-year-old child alive, or that Sam Bockarie as TF1-303, one of
3 the last witnesses, said gave a toward to her captor that said,
4 Stop killing people, start amputating. Start putting locks on
09:50:59 5 their jaws. Why? Because it will create more fear. As
6 Issa Sesay said Sam Bockarie was a man who was evil and proud of
7 it and made him feel proud of himself, made him feel powerful.
8 Issa Sesay, according to DCT-292 another Defence witness,
9 not one of those held in the goat pen and tortured by Issa Sesay
09:51:18 10 and Sam Bockarie, but DCT-292 said, I said, who was more ruthless
11 Sam Bockarie or Issa Sesay? He said, well, I'd have to say
12 Issa Sesay was more ruthless. And Issa Sesay came and was caught
13 in so many lies, unfortunately, I don't have time to go through
14 them, but one of them was his claims, many Prosecution witnesses
09:51:41 15 put him at the scene, one of the principal killers at
16 Luawa Geihun massacre. And Issa Sesay claimed, no, I couldn't
17 have been there, I was wounded in the buttock, I was in the
18 hospital. Although he didn't tell that lie very well because he
19 said he saw when the incident began when Jande was brought, tied
09:52:02 20 up on a vehicle. But the Defence's own witnesses contradict
21 that. Musa Fayia talks about Issa Sesay, along with
22 Sam Bockarie, being one of the principal perpetrators of the
23 infamous Geihun massacre where people were killed in ways such as
24 having boiling oil poured on their bodies. Where Issa Sesay's
09:52:21 25 friend from the Ivory Coast, Kaifa Wai, not only was killed but
26 had his head put on a stick. It wasn't just Fayia Musa that says
27 Issa Sesay was involved. Fayia Musa, by the way, says Issa Sesay
28 and Sam Bockarie beat Rashid Mansaray to death. That's in his
29 testimony.

1 Even the very last Defence witness, and I believe it's also
2 DCT-292, said Issa Sesay was one of the principal architects,
3 killers, of the Luawa Geihun massacre. And even the very last
4 witness, Sam Kolleh, as much of a liar as he was, he let it slip
09:53:01 5 out of the bag that it was Issa Sesay was the one that Rashid
6 Mansaray was turned over to at Luawa Geihun. He wasn't in the
7 hospital nursing a wound to his buttock, he was lying about that,
8 just as he lied when he came to court trying to protect
9 Charles Taylor. Fayia Musa said Issa Sesay was a heartless blind
09:53:20 10 loyalist, and I think he got that a little wrong. Loyalist is
11 not the right word. He's certainly heartless, but Issa Sesay was
12 an opportunist and we saw that in his testimony, we saw that with
13 his actions when he was a leader of the RUF. He was loyal, as
14 long as he thought it would do him good and get him promoted.
09:53:44 15 He'd kill for Foday Sankoh at Luawa Geihun when it got him
16 promoted. That's how he got prominent in the RUF. He turned
17 over peacekeepers to Charles Taylor, because Charles Taylor was
18 the powerful one and he'd do what he would say. But at one
19 point, after that peacekeeper incident, as the years went on,
09:54:01 20 2001, you recall Issa Sesay -- remember Abujai was a complete
21 failure, the RUF went there and nothing happened. But how did
22 they go there? They went through Monrovia. They went through
23 Monrovia, why? To get instructions from Charles Taylor. That's
24 clear.

09:54:17 25 But the second time, when they had to go for Abujai, the
26 Kenyan general, whose name is slipping my mind right now, at the
27 time the Kenyan general for the UN force, in charge of the UN
28 force in Sierra Leone, Issa Sesay said he took him aside, and he
29 asked him not to go to Monrovia and for Abujai he flew directly

1 to Abuja, didn't go through Monrovia and what had changed at that
2 time, that's in a clever opportunist like Issa Sesay could see is
3 the balance of forces had changed. By this time, the UN forces
4 are beefed up. There is a much larger, more powerful UN force,
09:54:59 5 the humiliation of the United Nations was not going to go
6 unresponded to and Britain had sent in a small, but powerful,
7 well-trained group of forces.

8 So Johnny Paul Koroma had gone over to the government side
9 and Charles Taylor was starting to come under attack himself.

09:55:19 10 The RUF was being used by Taylor in Guinea and getting pounded.
11 They were getting pounded by the Guinean army, the balance of
12 forces had changed. And Issa Sesay saw this, he knew
13 Charles Taylor and he knew what had happened to people like
14 Superman, who got killed when it was convenient for
09:55:39 15 Charles Taylor, when it was thought that he might go, have gone
16 to an embassy and disclosed some of Taylor's secrets. So
17 Issa Sesay, being the opportunist that he was, decided, okay,
18 Opande, General Opande, I'm with you, and at that time, Issa
19 Sesay started playing a different role. Okay, he would start to
09:56:03 20 try to cooperate. I'm sure he tried to keep one foot on both
21 sides for as long as possible, but it was at that point that
22 Issa said Charles Taylor's plans that the RUF not disarm started
23 to go astray because the opportunist Issa Sesay wanted to
24 survive.

09:56:19 25 Who in the RUF had the radio code name Survival ?
26 Issa Sesay. And that's how he acted throughout, including in his
27 testimony in this case, as counsel pointed out, he basically has
28 a life sentence, he has nothing to lose, his hope now is
29 Charles Taylor, so he came to court and he lied. He changed his

1 testimony on key things. For example, he tried to say here
2 Superman went on his own, after Fitti-Fatta, to the north, but he
3 testified in his own trial that Sam Bockarie sent Superman to the
4 north. Most importantly, he came and he testified and counsel
09:57:01 5 went through the testimony of key Prosecution witnesses like
6 Isaac Mongor, like Karmoh Kanneh, and there were many others, who
7 talked about the shipment that Sam Bockarie brought back from
8 Burkina Faso. And it's also documented in Prosecution exhibits
9 that that shipment that huge amount of arms that came - made the
09:57:23 10 December 1998 offensive possible, that that was brought back from
11 Burkina Faso through Roberts International Airport, through
12 Charles Taylor's airport, and we know, even Charles Taylor let it
13 slip, the person he sent with Sam Bockarie on that trip was his
14 own principal arms dealer, Musa Cisse. He tried to say, oh,
09:57:46 15 I sent Musa Cisse because he spoke French but Blaise Compaore has
16 translators, and two of the delegation spoke French, Eddie Kanneh
17 and Lawrence Womandia.

18 So Issa Sesay came up and was supposed to rebut all these
19 Prosecution witnesses, he was going to prove that they were lying
09:58:05 20 and he said, no, absolutely, he said, they are lying, they are
21 lying. Sam Bockarie got the ammunition from Benjamin Yeaten.
22 11th hour, the Defence tried to pin everything that was happening
23 in Liberia and Sierra Leone on Benjamin Yeaten. But it turns
24 out, four times in his own trial, four times in his own trial,
09:58:24 25 Issa Sesay had said the ammunition came from Burkina Faso. And
26 if you read the Defence brief, they seem to have abandoned
27 Issa Sesay on that line. They recognise the ammunition came from
28 Burkina Faso. And how could it get there? It had to go through
29 Roberts International Airport. That's what all the testimony

1 is -- Zigzag Marzah, among others -- about the plane landing at
2 Roberts International Airport and being -- Abu Keita -- and being
3 trucked across the country. All that without the knowledge of
4 Charles Taylor? The 11th hour or 11.59, suddenly the Defence
09:59:04 5 team, at least, is trying to abandon Benjamin Yeaten, in the
6 case, everything that was going on in Liberia. Charles Taylor,
7 not only are they trying to say didn't control the RUF, he didn't
8 control the NPFL and his own government. He didn't know what was
9 going on in his own government. But when he was asked about
09:59:21 10 Benjamin Yeaten, Charles Taylor said he would appoint him again.
11 Even though Benjamin Yeaten had told him he killed John Yormie
12 and Isaac Vaye, and even though the evidence is, from
13 Annie Yeney, a great Defence witness, Annie Yeney says she told
14 Charles Taylor himself, Zigzag Marzah and Benjamin Yeaten
09:59:41 15 arrested Sam Doki.

16 This is supposedly the Zigzag Marzah that Charles Taylor
17 has never heard of, never seen before, according to his testimony
18 until he slipped up when he was asked how he knew he was an
19 orderly, and he said, oh, I recognised his face. This is the
09:59:57 20 same Zigzag Marzah Charles Taylor said shined shoes, but another
21 Defence witness comes into court and says was a battalion
22 commander who led the attack on Voinjama. There were so many
23 lies that Sesay and Taylor were caught in. I'm afraid my time is
24 up, but if I can just hopefully in about 30 seconds, just thank
10:00:15 25 your Honours, thank everyone involved in the case, excuse me --

26 PRESIDING JUDGE: Before you get to that point,
27 Mr Koumjian, can I clarify, you said until 11, but according to
28 the - excuse me, you said one hour, but the status conference
29 allowed the Prosecution to 11. Would there be another speaker?

1 MR KOUMJIAN: Yes.

2 PRESIDING JUDGE: I see. Can I just clarify, please
3 refresh my memory, the evidence may well be adduced, the document
4 you referred to P-067, appears to be a copy.

10:00:46 5 MR KOUMJIAN: Yes.

6 PRESIDING JUDGE: When the evidence was adduced relating to
7 this was there an original that was not underlined? I do not
8 recall.

9 MR KOUMJIAN: I don't believe so. This was in the
10 testimony of Tariq Malik about the provenance of this document,
11 that it seized from Foday Sankoh's house by the CDS, I believe.

12 JUDGE SEBUTI NDE: And, ancillary to that, Mr Koumjian.
13 Again on this document, was there an explanation given as to why
14 certain parts of this document, particularly relating to
15 Mr Taylor, were underlined and by whom?

16 MR KOUMJIAN: I don't recall that being given, but I have
17 not recently reviewed the testimony of Mr Malik.

18 JUDGE SEBUTI NDE: This would be very helpful to the judges,
19 if we could have some kind of indication. Because this is a
20 Prosecution exhibit, we would like some kind of indication as to
21 why we have a copy, and why this copy is underlined in certain
22 aspects.

23 MR KOUMJIAN: The document was discussed and the provenance
24 of the document, just for your Honour's benefit, in the testimony
25 of Tariq Malik, and as I mentioned two witnesses confirmed seeing
26 the original, that is TF1-567 and another witness who testified
27 at the end of January of 2008. It was seized by the Sierra Leone
28 Police, I believe.

29 JUDGE SEBUTI NDE: And the underlining?

1 MR KOUMJIAN: As I say, I can't give you an answer, because
2 I don't recall that testimony. If that was asked. Well, my time
3 is up.

4 PRESIDING JUDGE: And you were addressing us and we have
10:02:17 5 interrupted, please take the few minutes.

6 MR KOUMJIAN: I'll try to do this in 30 seconds. I just
7 want to thank your Honours. I want to thank your staff. I want
8 to thank everyone involved in the case on all sides for the
9 privilege to participate, and particularly we want to thank the
10 witnesses who testified in this case, people like Reverend Tamba
11 Teh, Komba Sumana, Mustapha Mansaray, Alusine Conteh, all of
12 those brave people who came to court and talked to you and your
13 Honours. It's our belief and I think I speak for the whole team,
14 they don't sign our pay cheques but we work for those people. We
10:03:04 15 have enormous respect for them, and we seek what Mr Patrick told
16 your Honours in the prayer that he gave in the midst of his
17 testimony, in talking - Patrick Sheriff - talking about the death
18 of his brother, when he said it was his prayer that God would
19 bring justice for those who promoted this war. That's all we
10:03:32 20 ask. Thank you.

21 PRESIDING JUDGE: Thank you, Mr Koumjian. You have
22 indicated there will be another - Ms Hollis, you will be
23 addressing us?

24 MS HOLLIS: Madam President, your Honours, before I begin,
10:03:49 25 do you have any other questions of Mr Koumjian?

26 PRESIDING JUDGE: I do not. I will consult with my
27 colleagues. No, Ms Hollis, please proceed.

28 MS HOLLIS: And we are at this point going back to the
29 testimony of Mr Malik in relation to the document that

1 Justice Sebutinde had the question about.

2 Madam President, the Defence posed many questions to your
3 Honours that they said needed to be answered. Now, Mr Koumjian
4 has answered some of those questions, but we suggest to you that
10:04:25 5 the evidence of record and the Prosecution final trial brief
6 answer those questions for you. We agree completely with Lead
7 Defence counsel's comment to you on 9 March, that no theory can
8 be a substitute for the reality of events. And the reality of
9 events in this case show that the Prosecution's evidence is
10:04:46 10 consistent across the events, very often corroborated by Defence
11 evidence, and the reality of events in this case prove that this
12 accused is guilty beyond a reasonable doubt.

13 One last point about Issa Sesay: Mr Koumjian noted that
14 Issa Sesay, an opportunist and realist, came to realise that the
10:05:10 15 circumstances were changing away from Charles Taylor and in
16 favour of a more conciliatory approach in Sierra Leone. However,
17 even after that realisation, it was not until the end of 2001
18 that Issa Sesay's fighters in Kailahun District disarmed. And in
19 fact, the evidence was that there wasn't a declaration of an end
10:05:33 20 to disarmament in Kailahun District until around the 11th of
21 January 2002. It was not until September of 2001 that Issa Sesay
22 allowed United Nations to come into Kono in any meaningful way
23 and to disarm that area. Issa Sesay continued to travel to meet
24 with Charles Taylor throughout 2001, continued to provide
10:05:59 25 diamonds to Charles Taylor throughout 2001, continued to do his
26 bidding, by sending fighters to fight for Charles Taylor in
27 Liberia and Guinea throughout 2001. So that realisation was slow
28 in coming, and his being a puppet and certainly a subordinate,
29 subject to the instruction of Charles Taylor, continued

1 throughout 2001.

2 During the Defence case and oral argument, you have heard
3 Prosecution evidence characterised as nonsense on many occasions,
4 on one occasion on the 9th of March, in relation to evidence
10:06:41 5 referred to as garbage. Well, apply those terms as you see fit.

6 We would suggest that you do have before you a true example of
7 nonsense, a totally implausible theory that does not withstand
8 the reality of events, and that is a theme and argument that you
9 heard on 9 March when lead Defence counsel told you, well, let's
10:07:06 10 look at the recruitment and the training of RUF trainees at
11 Camp Naama and the planning of the attack on Sierra Leone. And
12 what did the Defence tell you about that? That was all done
13 without the knowledge of Charles Taylor.

14 Let's look at the reality of events. This occurred in his
10:07:25 15 backyard, very close to his headquarters in Gbarnga, where his
16 NPFL were training on the very same base, Camp Naama, his NPFL
17 were training there. The trainers at the RUF training included
18 Momoh Diba whom you have seen many pictures of, behind
19 Mr Taylor, protecting his back. Momoh Diba was involved. The
10:07:54 20 reality of events shows you that Foday Sankoh took prisoners to
21 train from Charles Taylor's jails, that were controlled by
22 Charles Taylor's NPFL. And that he took these prisoners on roads
23 controlled by Charles Taylor, through checkpoints controlled by
24 Charles Taylor, including through Gbarnga, to this camp, that
10:08:22 25 there were checkpoints near the camp and these were NPFL
26 checkpoints. So he drove these prisoners through these
27 checkpoints. And also the evidence shows you that Foday Sankoh
28 and these trainers, trainees travelled by convoy after the
29 training to Voinjama to kick off the invasion of Sierra Leone.

1 And that Charles Taylor's NPFL commanders and fighters led and
2 directed that initial invasion.

3 And all of this happening while there was a very hot war
4 going on, involving Mr Taylor's attempt to take control of
10:08:59 5 Liberia. And yet you are to believe, as a plausible reality of
6 events, that Mr Taylor knew nothing of this drain on his
7 resources, of these people being taken from his jails and being
8 sent into another country to fight.

9 That is not plausible. But all of that happened because it
10 happened at the direction of, with the support of, and with the
11 guidance of Charles Taylor, to achieve the overall objectives in
12 Sierra Leone.

13 Now, the Defence would want you to accept that
14 Charles Taylor had no knowledge of the RUF trainees at Camp Naama
10:09:41 15 because he never visited them there. Well, he had his own NPFL
16 trainees there and there is no evidence he ever visited them
17 there. That simply is not a persuasive argument.

18 You're also asked to believe, well, he can't have been the
19 head or known about these trainees because why wasn't anybody
10:10:02 20 reporting to him? Well, we suggest to you he was being reported
21 to. Foday Sankoh was keeping him well advised of what was
22 happening with their venture at Camp Naama.

23 Defence counsel also asked you, well, if it's true that he
24 was training the RUF at Naama, why didn't he give them arms for
10:10:22 25 that training? Well, think about this. These are trainees, they
26 don't need real weapons, they don't need new weapons, except for
27 one purpose, and that is a limited number of weapons so that they
28 can familiarise themselves with the weapons. So that they can
29 learn to assemble and disassemble the weapons. And indeed, who

1 told you about how NPFL trainees were trained and what kind of
2 weapons they used? Charles Taylor told you about that on the
3 15th of September. And what did he tell you? He said the
4 training of his NPFL, and he was referring to training at
10:11:04 5 Camp Naama, was not done with good weapons, the training was done
6 with demonstration weapons. They would take the weapons for the
7 purpose of disassembling and assembly. And he went on to tell
8 you, "Trainees, to the best of my knowledge and unless my
9 commanders misinformed me, were not given weapons on that
10:11:26 10 training base." And he told you this at page 28929, on the 15th
11 of September. These arguments do not, in any way, detract from
12 the evidence of Charles Taylor's critical involvement in the
13 events at Naama.

14 Now, the Defence also talked to you about Foday Sankoh and
10:11:46 15 my colleague has made mention of Foday Sankoh. Duplicious, they
16 said, capable of great deceit. And they noted that Foday Sankoh,
17 in his letter in December of 1996, noted that he had signed the
18 peace agreement because of enormous international pressure. The
19 evidence in this case shows you that this conduct is conduct of a
10:12:13 20 type that he shared with his brother, Charles Taylor. Indeed,
21 Foday Sankoh was duplicitous, capable of great deceit, and he
22 certainly has that in common with Charles Taylor, although
23 Charles Taylor prefers to characterise it as using deceit as a
24 tool of diplomacy.

10:12:34 25 The Defence talked about these two letters that
26 Foday Sankoh sent to Mr Talib and those were exhibits D-15 for
27 the June letter and P-272 for the December 1996 letter.

28 What the Defence seems to go on to tell you that, somehow,
29 there is evidence in these letters to show that Mr Sankoh had an

1 independent connection with Burkina Faso and so the Magburaka
2 shipment was through an independent connection, as evidenced in
3 these letters. We suggest to you, look at these letters very
4 carefully and you will find just the opposite. Because what is
10:13:15 5 Foday Sankoh doing in these letters? He is complaining that
6 Burkina Faso is giving him no assistance, that they will not
7 assist him, and he mentions by name a gentleman, Diendere. Well,
8 you've heard that name before and you've seen that name in P-18
9 because indeed it was this gentleman, Blaise Compaore's
10:13:40 10 subordinate, who signed the end user certificates by which
11 Burkina Faso got the materiel that was sent on to Charles Taylor
12 in March of 1999.

13 What these letters show you is that, unless Charles Taylor or
14 endorsed the efforts of the RUF and later the AFRC/RUF to get
10:14:03 15 assistance from Burkina Faso and also Libya, that assistance
16 didn't come. It was Charles Taylor's connections with these
17 individuals that made possible the assistance that was given.
18 For example, the assistance that was given in late 1998 with the
19 huge amount of materiel that was brought from Burkina Faso, may
10:14:26 20 well have originated in Libya, but was brought from Burkina Faso
21 to Monrovia, to Charles Taylor's RIA airport, and from there was
22 taken through Charles Taylor's territory to Sierra Leone.

23 And you recall also this name Diendere. This March 1999
24 shipment, the Defence counsel talked about large shipments to the
10:14:53 25 RUF or AFRC/RUF. Well, in fact, the evidence shows you four
26 large shipments. We have, of course, the Magburaka shipment,
27 which was a very large shipment, the only one that came in to
28 Sierra Leone by aircraft. But then what else do we have? After
29 Magburaka, we have of course the very large shipment that came in

1 for the Fitti -Fatta mission. And you recall the evidence that
2 there was a lot of ammunition that came in for that, because
3 originally that was to be the kickoff for the offensive that
4 would put the AFRC and RUF back in power. That offensive was
10:15:32 5 delayed until later in the year, because the Fitti -Fatta mission
6 failed in Kono.

7 Another large shipment of course was the late 1998
8 shipment. And then the fourth large shipment was the March 1999
9 shipment. But in between these shipments, the evidence is very
10:15:52 10 clear in this case, that Charles Taylor continually supplied his
11 proxy forces in Sierra Leone with smaller shipments, and these
12 were arranged in part by Sam Bockarie travelling very frequently
13 in 1998 to Monrovia, both to get instructions and also to
14 facilitate the movement of materiels.

10:16:16 15 Now, Defence counsel posed some questions about
16 Foday Sankoh's time in Ivory Coast, insofar as how it related to
17 his relationship with the RUF, and he asked you why didn't
18 Foday Sankoh just go over the border and ask Charles Taylor for
19 assistance? He was in Ivory Coast, he could go over the border.
10:16:44 20 Well, he didn't have to go over and tell him of the problems he
21 was having and ask for assistance, because he and Charles Taylor
22 had been in constant communication during the time access to the
23 border was so restricted. Charles Taylor knew the problems he
24 was having, getting materiel, and when it was very difficult, if
10:17:02 25 not impossible, for Charles Taylor to supply him directly, he
26 told Mr Sankoh, "Move out of the towns and revert to guerilla
27 warfare," a tactic that Mr Taylor had used very successfully in
28 Liberia. And he told Foday Sankoh, "Go to Abidjan, participate
29 in the peace talks, because that will give you a front to be able

1 to arrange to get materials."

2 So he knew the situation and he also knew the situation
3 from the contacts he had with members of the external delegation,
4 and don't forget, Charles Taylor himself went to Abidjan for the
10:17:44 5 launching of Footpaths to Democracy. And we suggest to you it is
6 very reasonable and very likely that during that trip, he had
7 direct contact with Foday Sankoh. So he didn't need to go across
8 the border. He already had fully apprised Mr Taylor of his
9 situation and was getting direction from Mr Taylor.

10:18:08 10 Now, the Defence also ask you, well, why didn't he include
11 Charles Taylor's name in these letters? Well, my colleague has
12 alluded to one reason, and that is by this time the RUF is very
13 notorious for its horrific crimes against civilians. And so
14 Mr Taylor, as he did with Sam Bockarie in D-9 was not about to
10:18:30 15 have his connection mentioned directly. But we suggest that
16 there is another reason. There is another reason based on
17 evidence before you, and that is that what was happening with
18 these letters is that, in effect, Foday Sankoh was scamming
19 Mr Talib. You have evidence to show that there was no known
10:18:52 20 business partners for deals, for weapons, that there was no known
21 deal for weapons, and also that Foday Sankoh was using the money,
22 quite large sums of money, he was given for his own personal
23 pleasures and purposes, not to advance the cause. And so
24 Mr Sankoh knows that without Mr Taylor's endorsement, he's not
10:19:20 25 going to get anything, but he's trying to pull a scam. He's not
26 going to tell them to contact Charles Taylor. Charles Taylor
27 knows how greedy Foday Sankoh is, and he's going to demand some
28 proof that these are bona fide deals before he gives the
29 go-ahead. That didn't happen.

1 And the other thing that you have in the evidence is that
2 despite all of these requests for assistance and all of these
3 comments about deals for weapons, there is no evidence to
4 indicate that this huge sum of money was ever given to
10:19:53 5 Foday Sankoh or that any weapons deals derived from this exchange
6 with Mr Talibbi. The letters support the Prosecution case, they
7 don't support the Defence argument of an independent connection
8 with either Libya or with Burkina Faso. In each instance, it
9 took Mr Taylor's involvement and endorsement to get assistance
10:20:18 10 from those countries for his proxy forces.

11 Now, yesterday, you had a discussion from the Defence about
12 credibility of evidence, and of course that is key to your
13 consideration in this case. We suggest to you that there were
14 some assertions made by the Defence that are not correct. For
10:20:41 15 example, we suggest to you that hearsay evidence of one witness
16 can be used to support hearsay evidence of another witness. For
17 example, if you have, as we do in this case, many witnesses
18 telling you that Sam Bockarie and Issa Sesay, in their roles as
19 on-the-ground commanders in Sierra Leone, came back and reported
10:21:10 20 to their subordinates about their meetings with Charles Taylor,
21 about the plans Charles Taylor devised, about the assistance
22 Charles Taylor was giving, about the instructions Charles Taylor
23 was giving, we suggest to you that all of this evidence can be
24 considered for the consistency of those reports, and as credible
10:21:35 25 evidence and very important evidence in this case.

26 We also suggest to you that it is very common that judges
27 accept one part of a witness's testimony and do not accept other
28 parts. That is very common.

29 In relation to insider or accomplice testimony, we have

1 discussed this in our final trial brief at paragraph 42. But you
2 recall the law on insider or accomplice evidence, you are
3 certainly supposed to view it with caution, but you may rely on
4 it when you determine that it is credible, and in fact you may
10:22:13 5 rely on it even when it is not corroborated.

6 The Defence has invited you to look very carefully at the
7 evidence, and of course you must do that. But you must look
8 carefully also at assertions about the evidence that are made by
9 either party. And you may want to recall, when you are looking
10:22:37 10 at the evidence and judging inconsistencies, you may want to
11 recall the argument made by Lead Defence counsel in this Court on
12 16 July of 2009, and this was when Mr Taylor had told
13 your Honours that the initial invasion of Liberia took place on
14 29 December, and then Lead Defence counsel, after an objection,
10:23:03 15 argued at page 24649, "Obviously, he," meaning Charles Taylor,
16 "misspoke this morning. Not everyone, the Defence said,
17 particularly in the pressurised position of sitting in the chair
18 being cross-examined, can recollect every date and every
19 occasion."

10:23:26 20 Of course Mr Taylor was not being cross-examined at that
21 time. He made this mistake during direct examination. But the
22 point is one worth considering.

23 The question, as I mentioned, in relation to allegations of
24 inconsistencies, is: Are these truly inconsistencies or are the
10:23:48 25 allegations based on misstatements, mischaracterisations of the
26 evidence, or a misunderstanding of the evidence. And we suggest
27 when you look at the Defence final trial brief and oral argument,
28 that they have many instances where they make allegations of
29 inconsistencies that are, in fact, based on incorrect statements

1 of the evidence, mischaracterisations of the evidence or
2 misunderstandings of the evidence. Now, in that regard, given
3 the time that we have, I would simply like to look at a few
4 instances that we suggest that the Defence oral argument and
10:24:29 5 brief is replete with these examples.

6 If you recall on 9 March, the Defence told you that there
7 were many, many inconsistencies in the evidence regarding the
8 Magburaka shipment. And as one instance of that, they asked the
9 question, well, how was the shipment paid for? Defence counsel
10:24:51 10 told you one witness, TF1-597, said it was paid for with
11 diamonds. Note the plural, he told you. Diamonds. Because
12 another witness, TF1-371 said that it was paid for with a
13 90-carat diamond and \$90,000 from the Bank of Sierra Leone.

14 We invite to you closely examine the transcript of
10:25:22 15 28 January 2008, at pages 2309, 2311, 2313 and 14 and also to
16 look at the transcript of 31 January, 2703, at page 2703. We
17 suggest when you do that, you will find this witness spoke of
18 90-carat diamonds, some quantity of diamonds, about 90-carat
19 diamonds, the required quantity, diamonds. Note the plural.

20 And also, you will find that the witness says very clearly
21 that the \$90,000 was for the flight. It was for the transport.
22 It was on 31 January, when the Defence counsel put to the witness
23 in a question, a 90-carat diamond. But on the same page, and
24 this was at page 2704, on the same page, the Defence counsel went
10:26:27 25 on later to ask, "So, just so that we can get the sequence clear,
26 payment for the shipment is made by diamonds." Defence counsel
27 inserts a 90-carat diamond, not the witness.

28 Now, the same witness is misquoted as to a significant
29 point at paragraph 890 of the Defence final trial brief. And

1 your Honours, when I refer to the Defence final trial brief, I'm
2 referring to the corrected brief, not the latest filing. We
3 simply did not have the time to do a correlation between those.
4 So it's 890 of the corrected final trial brief, where the Defence
10:27:08 5 tells you that this same witness testified that the attack on
6 Freetown was entirely Sam Bockarie's idea. Well, we invite your
7 attention to the testimony of 30 January 2008, at page 2641 and
8 2642, where the witness told your Honours that the instruction to
9 go to Freetown originated in Monrovia from Charles Taylor.

10:27:40 10 That's the evidence of record.

11 So, inconsistency or mischaracterisation, missstatement, of
12 the evidence?

13 Yet another instance with this same witness, at paragraph
14 1079 in the Defence final trial brief, wherein the Defence assert
10:28:04 15 that this witness and another witness, Karmoh Kanneh, TF1-571,
16 give no account of Sam Bockarie meeting with Charles Taylor
17 regarding a shortage of arms and ammunition prior to
18 Sam Bockarie's travel to Burkina Faso. Now, maybe we have a
19 little wordplay there, but we invite your attention to the
10:28:27 20 testimony of the 28th of January 2008 at page 2403, where the
21 protected witness testified that according to him, meaning
22 Sam Bockarie, they were going to meet Musa Cisse in Monrovia and
23 meet Mr Taylor. Ibrahim Bah was to escort them to Ouagadougou,
24 but they were going to stop at Monrovia first, and meet Mr Cisse
10:28:57 25 and Mr Taylor before they took the trip to Ouagadougou.

26 And as for Karmoh Kanneh, on 13 May, we invite your
27 attention to that transcript, 13 May, page 9639, where Karmoh
28 Kanneh told you, "Well, he," meaning Sam Bockarie, "did not
29 explain to me how he," meaning Sam Bockarie, "travelled to

1 Liberia but before he," Sam Bockarie, "left, he told us that the
2 arrangements had gone through Mr Taylor."

3 Inconsistency, misstatement or mischaracterisation? You
4 decide.

10:29:41 5 Now, TF1-274, DAF, was a witness you were told you had to
6 pay particular attention to. At paragraph 1285 of the Defence
7 final trial brief, the Defence asserted to you that it was quite
8 clear that DAF, TF1-274, had a tendency to give accounts on
9 issues that were beyond his knowledge. And they cite as an
10 example his testimony that Superman and SAJ Musa worked together
11 to capture Eddie Town. And they said that this testimony was
12 oblivious of their well-known fallout well before, and that
13 Superman, in fact, never went to Eddie Town. Well, we would
14 invite your attention to the testimony of TF1-334, the 21st of
10:30:41 15 April of 2008, at pages 8166 to 67, and also the 22nd of April at
16 pages 8193 to 94 and, in particular, page 8223. And we would
17 suggest that when you look at that evidence, you will find that
18 334 tells you that SAJ Musa and Superman were working together,
19 and, in fact, they tell - he tells you that SAJ Musa addressed
10:31:11 20 the troop and said that there was something that had been
21 prepared and he and Superman should come to Colonel Eddie Town to
22 advance. And he talks about infighting, but he said that they
23 should continue.

24 "He said that the infighting should not stop the programme
10:31:29 25 that had been organised whereby they had released reinforcement,
26 that is SAJ and Superman, to come and join us so as to advance on
27 Freetown."

28 Inconsistency, mischaracterisation? You decide.

29 TF1-338 was also the subject of attention by the Defence,

1 and of course, he would be because he gave very credible, mostly
2 direct evidence that was of great significance to this case and
3 very harmful to Mr Taylor. Now, this witness was referred to in
4 the Defence final trial brief at paragraph 1336. And in this
10:32:11 5 paragraph, and because of the content, I will not go into the
6 details but we will suggest to you this:

7 First, the Defence misstate why this witness said that he
8 engaged in the event that he's talking about in paragraph 1336.
9 They misstate why he did that.

10:32:34 10 Secondly, they erroneously claim that this witness is the
11 only one who will speak to this issue, to this event. Well, we
12 suggest to you that you look very carefully at the testimony of
13 this witness at 2 September 2008 at pages 15233 to 15235, and it
14 is very clearly laid out, the circumstances of that event, and
10:33:02 15 there is no inconsistency. It is the Defence who is misstating
16 what the witness said and it is not incredible in any way. We
17 also invite you to look at evidence of 29 January 2008 at page
18 2459 to 2460, and the 31 January 2008 at page 2787. And we
19 suggest that when you look at this evidence, you will find that
10:33:30 20 this evidence corroborates the account of TF1-338.

21 Isaac Mongor, TF1-532, was another witness that
22 your Honours were told you should look at very carefully, and of
23 course you should look at all the evidence in this case very
24 carefully, but you also have to ask yourself, true inconsistency
10:33:56 25 that is being asserted or misstatement or mischaracterisation of
26 evidence? And in relation to Isaac Mongor, on 10 March the
27 Defence told you, as they have asserted in the past, that
28 Isaac Mongor told this Court that he was sent to Camp Naama to be
29 the training commander there, training commander there. And

1 there was a great deal made of that. How could this man be the
2 training commander? Well, I look very carefully at his evidence.
3 Nowhere does this witness tell you he was sent to Camp Naama to
4 be the training commander. He tells you he was sent there to
10:34:34 5 train and others have told you that he did, he was a PI
6 instructor. And he names many other instructors who were at
7 Camp Naama and the point was made, well, Special Forces could
8 train them. Well there were Special Forces there training them,
9 and that is in evidence as well. But nowhere, nowhere, does
10:34:52 10 Isaac Mongor tell you that he was sent to Naama to be the
11 training commander.

12 Now, the Defence have also attacked and challenged
13 Mr Mongor's evidence about the operation culminating in the
14 attack on Freetown in January of 1999. And in that regard, we
10:35:17 15 would refer your Honours to the paragraphs in the Defence final
16 trial brief 884, 885, 886. And in paragraph 884, first of all,
17 when the Defence is talking about this idea that it was a joint
18 operation, and by the way, when we think about this being a joint
19 operation, don't forget the agreed fact that the Defence has
10:35:43 20 never withdrawn from, that it was the AFRC/RUF who attacked
21 Freetown in January of 1999. But, anyway, when we are talking
22 about Isaac Mongor, when they are telling you about his evidence
23 of commanders who took part in this attack, in paragraph 884,
24 they omit someone. They omit Akim Turay from their discussion.
10:36:12 25 And why do they do that? Because it doesn't fit their theory
26 because as we know Akim Turay was what? He was an ex-SLA. He
27 was an AFRC member. He was one of the commanders that took part
28 in this attack.

29 And you know that from the evidence of Mr Mongor on

1 11 March at page 5797.

2 In that same paragraph they present a very skewed view of
3 Mr Mongor's evidence as regards the relationship between
4 Sam Bockarie and SAJ Musa. They omit from that account that
10:36:49 5 Mr Mongor also testified about the presence of RUF radio
6 operators with SAJ Musa's group, radio operators such as
7 King Perry and Alfred Brown, thus demonstrating the link between
8 the RUF, Sam Bockarie and SAJ Musa and he talks about that on
9 11 March again, at page 5800.

10:37:13 10 And at paragraphs 885 and 886, the Defence artificially
11 describe the fighters involved in this operation in different
12 aspects as being part of either the AFRC or the RUF groups, when
13 in truth if you look at Mr Mongor's evidence he makes it very
14 clear, and unwavering is he, in his description that this late
10:37:38 15 December offensive and January invasion was perpetuated by
16 combined forces. And he does that in various locations, again if
17 we look at 11 March, page 5823, 5824. 11 March, 5810, when he
18 talks about the People's Army and you recall there was evidence
19 that the People's Army is the AFRC and RUF. And you recall that
10:38:10 20 that is evidence that you received on 23 January at page 1972 and
21 on 17 April at page 7873.

22 So inconsistencies, showing implausible theories or
23 evidence from the witness? Or mischaracterisations of the
24 evidence? We suggest mischaracterisation of the evidence.

10:38:40 25 Now I would like to move on to some other points that the
26 Defence has made in oral argument and their final trial brief
27 that might benefit from closer consideration and I will do this
28 as time permits.

29 Let's look, first of all, at the Defence arguments to you

1 in relation to the AFRC as part of the joint criminal enterprise.
2 Now, on 9 March, the Defence told you that think about this in
3 logical and psychological terms. It is not logical that the AFRC
4 would accept Charles Taylor as leader because their comrades had
10:39:20 5 been killed by Liberians. Well, not only is it logical, it is
6 reality. But think of it in this way: It is beyond dispute that
7 the AFRC accepted the RUF as their equals. They accepted them
8 into the government. And the RUF, over the years, killed many
9 more of their colleagues than Mr Taylor's Liberian forces did,
10:39:43 10 and yet they welcomed the RUF with open arms and immediately
11 after taking power. So to reach the greater good in your mind
12 can you deal with people that once were your enemy? Well,
13 Charles Taylor has shown you that you certainly can, when you are
14 driven to achieve your objectives and that's what happened here.

10:40:03 15 And why were they so eager to embrace the RUF? Well, the
16 evidence shows you why. They wanted to be able to immediately
17 join with the RUF and Charles Taylor in their joint criminal
18 enterprise so they could get the benefits of it. And, indeed,
19 they did join with them and they did get the benefits of it.
10:40:23 20 They got Mr Taylor's efforts to get them recognised, they got his
21 efforts that, in fact, we suggest to you, prolonged the life of
22 this unlawful regime, and they got the benefit of arms and
23 ammunition. And Mr Taylor got benefits immediately as well,
24 because he got diamonds.

10:40:46 25 So were they a part of the JCE? You bet they were. That's
26 what the evidence tells you, and they did it because they wanted
27 to achieve the ultimate objectives of the JCE, control of the
28 people and territory, and exploitation of its resources, and
29 there is ample evidence about how they exploited those diamond

1 resources during the junta. And they participated in the
2 criminal means by which that joint criminal enterprise was to be
3 effected.

4 And you also recall the evidence that it was
10:41:21 5 Gi bri l Massaquoi who actually brought Charles Taylor's number to
6 Johnny Paul Koroma.

7 And that is found at the Prosecution's final trial brief at
8 paragraph 186 and the reference is to the evidence of TF1-597.

9 Now, in trying to tell you that the AFRC did not and could
10:41:45 10 not have been part of this JCE, the Defence pointed your
11 attention to this coup plot that was transmitted by who?
12 Gi bri l Massaquoi, they say. And Steve Bio, to actually overthrow
13 Johnny Paul Koroma. Now, remember, Gi bri l Massaquoi, this man
14 who brought the phone number for Charles Taylor to

10:42:10 15 Johnny Paul Koroma was the one who was very close to Foday Sankoh
16 at the end, was the one who actually went to Nigeria with him.
17 We suggest to you that he brought that number from Foday Sankoh.

18 Now, dupl i ci tous, deceiptful? Foday Sankoh? Maybe yes, maybe no.
19 Because what did Issa Sesay tell you? That they, he, found out
10:42:40 20 about this plot, he was approached, and what did he do? He went
21 to Sam Bockarie and told him about it, and they decided, because
22 Foday Sankoh said work with the junta, they decided to actual l y
23 turn this information about a coup plot over to
24 Johnny Paul Koroma, and as a consequence, Gi bri l Massaquoi was
10:43:01 25 put in jail. So Foday Sankoh send them? Someone else behind it?
26 Who knows? But that's the evidence before you. In fact, these
27 people that supposedly were never in league with the AFRC, that
28 never worked in concert with them, those two leaders turned that
29 information over to Johnny Paul Koroma, and Gi bri l Massaquoi was

1 arrested.

2 Now, one point that the Defence made during their argument
3 was to, in effect, complain about protective measures that had
4 been provided in this case, and also to overstate the reality of
10:43:44 5 these protective measures. And on 9 March, you were told that
6 much of the Prosecution's case, the crucial part of its case,
7 that is been, in large measure, shrouded in secrecy. Well, of
8 the 94 Prosecution witnesses who testified live, 21 testified
9 using protective measures. Only four of those testified in
10:44:07 10 closed session. The others testified largely in open session,
11 with some private sessions. So about 26 and a half per cent of
12 our witnesses had protective measures. The Defence, of course,
13 called far fewer witnesses, 21 witnesses. Six of them had
14 protective measures so about 28 and a half per cent of their
10:44:31 15 witnesses had protective measures.

16 Now, on the 9th and the 10th of March, you were told that
17 Moses Blah supports the Defence position that the border between
18 Sierra Leone and Liberia was closed until the elections in 1997.
19 Now, we would invite you to look at Moses Blah's evidence and see
10:45:03 20 if that's what he said and we would invite you to look at his
21 evidence on the 19 May 2008, at page 10193. This is in
22 cross-examination, and, in fact, it is the Defence counsel who
23 puts the dates to this witness, not Moses Blah independently
24 recalling the dates, and indeed, when the Defence counsel puts
10:45:28 25 the dates to him, the Defence counsel puts to him the border was
26 closed until the elections in June 1997, and Moses Blah agrees
27 with that. But, of course, the elections were in July of 1997.
28 This witness throughout his testimony showed to you that he has a
29 great problem independently recollecting dates. This was the

1 Defence putting a date to him and him agreeing, even though even
2 the Defence got it wrong. It wasn't June when the elections took
3 place, it was July.

4 And if we look on 20 May, testimony of this witness, at
10:46:07 5 page 10361, he explained to the Court what he knew about this
6 border between Sierra Leone and Liberia and at that time, he told
7 you that the border he was concerned about was the one he knew
8 of, that he can say something about, was the border between
9 Liberia and Cote d'Ivoire. Because it wasn't far from his home.
10:46:29 10 But where you're talking about the border of Sierra Leone, he
11 told you, "It's very, very far away from me, and I did not know
12 the real different towns and the marketing systems on that
13 border, but I knew at a point in time that the border was
14 closed."

10:46:47 15 The Defence also addressed diamonds a bit in oral argument
16 and to a greater degree in their final trial brief. And at page
17 760 of that final trial brief they tell you that, "The evidence
18 fails to establish a joint criminal enterprise involving the
19 taking over of political and physical control of Sierra Leone in
10:47:17 20 order to exploit its abundant natural resources."

21 It says, "What diamonds did was to underwrite that war
22 almost midway into the conflict. And it says that really the
23 conflict in Sierra Leone had its roots in the genuine
24 socioeconomics and political grievances."

10:47:37 25 Now, that last part of course is something that no one is
26 unfamiliar with. That is what we may term rhetoric over reality.
27 Because the rhetoric that makes you look good to the
28 internationals, and helps to bring some people to you, is that we
29 are here to help the people, but you've been told about that

1 reality throughout the trial, even by Defence witnesses. Did
2 those crimes happen in Sierra Leone? Charles Ngebeh was asked.
3 "Yes, all of them happened. That's why those people are in
4 jail."

10:48:09 5 Rhetoric versus reality. It's the same thing in Liberia,
6 rhetoric versus reality. That wasn't the reason for the war, but
7 it did make a good show. And if you look at the evidence, the
8 evidence is overwhelming to show that one of the ultimate
9 objectives of this conflict in the JCE was the exploitation, the
10 pillage, of natural resources because what does the evidence show
11 you about that? Every time, every time the RUF, and then the
12 AFRC/RUF, had access to diamonds, whether they were taking
13 diamonds that had already been mined or whether they were mining
14 themselves, every time they had access they took those diamonds.

10:48:52 15 It happened in Zimmi, you were told, at the beginning of the war.
16 It happened in Kono, you were told, in late 1992, early 1993.
17 And, of course, we know it happened big time in the junta. And
18 as soon as they were pushed out of Freetown in 1998, diamond
19 mining began, the exploitation, the pillage of those resources
20 continued and when did it reach its full flower? When Issa Sesay
21 was in charge and when Charles Taylor sent equipment to him. And
22 during Issa Sesay's time you were told Charles Taylor got the
23 benefits of 5,000 pieces, at least, of Sierra Leone gem-quality
24 diamonds.

10:49:33 25 And if we look at exhibit D-366, Footpaths to democracy and
26 if we look at what is said under the RUF SL anthem title at page
27 00009705 of that Footpaths to Democracy, what do they ask? Where
28 are our diamonds, Mr President? Where is our gold, NRPC? And of
29 course, we have it from a very good source that diamonds were one

1 of the ultimate objectives of the war in Sierra Leone. And that
2 is we have it from Charles Taylor himself. In a November 2000
3 interview with Stephen Smith, what did he tell Stephen Smith?
4 "Yes, I think," Charles Taylor said, "I think the war in
10:50:25 5 Sierra Leone is a war for diamonds." Of course, he said it's the
6 British who want diamonds, but in fact he said it was a war for
7 diamonds, and we know from the evidence he was the one benefiting
8 from that war for diamonds. Now, it's also in that same article
9 that Mr Taylor tells you the RUF committed terrible atrocities
10:50:46 10 and that someone will have to answer for that.

11 Now, what were some other Defence questions? Well, on
12 9 March your attention was drawn to D-481, the US state
13 department cables. And Defence counsel referred to a comment in
14 that cable about no weapons caches having been found following
10:51:12 15 the CPA. And then the Defence counsel asked you, well, you know,
16 you're told that he never truly disarmed, that he lied when he
17 spoke in court about it, that this was a disarmament that did not
18 happen. Now, we look at what the US ambassador is saying,
19 disarmament of the factions following the CPA has been extremely
10:51:34 20 successful. And then Defence counsel asked you which of these
21 two are we to believe? Well, you should believe both. Because
22 what Defence counsel has done, intentionally or unintentionally,
23 has confused time periods because what is the cable referring to?
24 After the CPA. The Comprehensive Peace Agreement in 2003. So
10:51:57 25 after Charles Taylor left the country, there were no weapons
26 caches found.

27 But what is our evidence talking about? We are talking
28 about the disarmament that precedes the July 1997 election, the
29 disarmament that Charles Taylor's own former Minister of Defence

1 told you simply did not happen. That's what we are talking
2 about.

3 Now, your Honour, I am running out of time here. I'd like
4 to move on to two final topics.

10:52:36 5 The Defence has talked to you about diversions in this case
6 and we suggest there have been diversions and we suggest to you
7 that from the very beginning the Defence has tried to transform
8 this criminal proceeding into a political and propaganda platform
9 for Charles Taylor. That is a platform that he feels very
10 comfortable with. And these efforts have continued in oral
11 argument, on 9 March you were told that this trial was a 21st
12 century form of neocolonialism. In making this statement to you
13 perhaps the Defence forgot how this Court came into being, it was
14 the Government of Sierra Leone, a government of a West African
15 country that sought a means by which some, some measure of
16 accountability could be determined for the crimes in that
17 country. And they did that by reaching out to the United
18 Nations. And they had to do that by reaching out to the United
19 Nations because the Lome Agreement that Mr Taylor and his people
20 were so instrumental in shaping and pushing through, that Lome
21 Agreement gave blanket amnesty. So he benefited from it, his
22 proxy forces benefited from it, but the victims in Sierra Leone
23 didn't benefit from it, and so the Government of Sierra Leone
24 asked that a court be created and that's how this Court came into
25 existence.

26 And there is also a perverse sort of logic in this argument
27 and the logic seems to be that unless the heads of African states
28 will create courts or can create courts to punish crimes within
29 their country, even crimes that offend everyone of us as members

1 of the global community, unless they do that, the rest of the
2 world should simply butt out. Because if they don't do it, then
3 these victims should be left without justice. Somehow they
4 deserve lesser justice. We suggest to you that is not the case.

10:54:41 5 Now, the Defence went further. They went much further in
6 the argument here, and he basically said that this was not a
7 trial at all, but an abuse of legal forms to achieve a
8 predetermined end. Predetermined end. And he said that the
9 tribunals and that means any tribunal, which are but an
10 instrument of diplomacy in the hands of states are, in fact, not
11 administering law at all but instead providing a spurious cover
12 for their paymasters, thereby prostituting the legal process.

13 Are your Honours providing spurious cover for your
14 paymasters, prostituting the legal process? Of course, you are
10:55:22 15 not. This is a criminal trial, with an accused who is here
16 because of the evidence showing the crimes he committed. And of
17 course, the Defence in their accusation conveniently forgot that
18 since all of the cost of the tribunals are paid for by these
19 so-called paymasters, the Defence too, being paid by them, must
10:55:42 20 then be providing cover for the paymasters and prostituting the
21 legal process. That would be the logical outcome of their
22 argument, wouldn't it? Is that the case? Of course, it is not.

23 Now, the Defence have talked to you about selective
24 prosecution and they have rightfully relied on the Delalic
10:56:04 25 Appeals Chamber judgment in talking about selective prosecution.
26 And that was an Appeals Chamber judgment delivered on 20 February
27 2001. And when we look at that Appeals Chamber judgment, as the
28 Defence has, we see that in that case, the Appeals Chamber held
29 that there is very broad discussion or discretion on the part of

1 the Prosecutor to make decisions about the crimes that will be
2 charged and the offenders that will be prosecuted. And that it's
3 a very high burden that must be met, that it must be shown that
4 indeed the intent of the Prosecution was to discriminate on
10:56:40 5 improper motive and that similarly situated persons were not
6 prosecuted.

7 Well, the Defence haven't shown you either of those. There
8 is no intent to prosecute for improper motives. This accused is
9 before you because he earned the right to be here through his
10 choices, through his actions, through his failures to act. The
11 evidence is overwhelming of his involvement in all of this.
12 That's why he's before you.

13 Secondly, similarly situated accused? In trying to show
14 you about similarly situated accused, one of the things that the
10:57:15 15 Defence told you was, well, let's look at ECOMOG. Well, look at
16 ECOMOG, both in Sierra Leone and Liberia. ECOMOG was the group
17 that the people fled to, these foreigners in their land, they
18 fled to them. How much worse must have been their own countrymen
19 who were committing these crimes against them that they fled to
10:57:33 20 ECOMOG? And in addition, no one in this case is similarly
21 situated to this accused. He was at the very centre of the web
22 of the crimes in Sierra Leone. Gaddafi, Compaore, they helped
23 build that web and they helped maintain that web through
24 Charles Taylor. The international community did not go to
10:57:57 25 Gaddafi, did not go to Blaise Compaore; they went to
26 Charles Taylor, because he's the one who had control over the
27 leaders of these groups that were perpetuating such horrific
28 crimes.

29 Now, the Defence at paragraph 21 of their brief cite you to

1 the Delalic case, and they tell you that the Delalic judgment, in
2 that judgment, the Appeals Chamber noted that, and here is their
3 quote: "Unless all potential indictees who are similarly
4 situated are brought to justice, there should be no justice done
10:58:33 5 in relation to a person who had been indicted and brought to
6 trial."

7 Pretty strong language. What does that tell you? If you
8 can't get them all, you can't get any of them. Is that really
9 what that judgment said? Take a look at that. The judgment said
10:58:51 10 this, there were a few words omitted but very critical words.

11 Here is what Delalic actually said and they were talk about,
12 let's assume a hypothetical case, where not all similarly
13 situated people were prosecuted. "Even in that it cannot be
14 accepted," those were the words omitted, "it cannot be accepted
10:59:12 15 that unless all potential indictees who are similarly situated
16 are brought to justice, there should be no justice done in
17 relation to a person who had been indicted and brought to trial."
18 That's what they told you. That's what they told you. And I am
19 informed that this is now paragraph 16 of the new Defence brief.

10:59:36 20 Your Honour, they misstated the law there, because it fit
21 into their argument. They have misstated the evidence to make it
22 fit into their argument. The evidence in this case, credible
23 evidence in this case, proves this accused guilty beyond a
24 reasonable doubt of each and every count of this indictment and
10:59:53 25 we ask your Honours, acting not as puppets but acting in your
26 capacity, people of integrity, people of independence and
27 impartiality, when you look at the evidence you will conclude
28 proof beyond a reasonable doubt has been met and we ask you to
29 enter convictions on all of the counts in the indictment. Thank

1 you.

2 PRESIDING JUDGE: Thank you, Ms Hollis, we do not have
3 questions arising from your address. We will therefore adjourn
4 the court to 11.30 and resume at that time. Please adjourn court
11:00:34 5 to 11.30.

6 [Recess taken at 11.02 a.m.]

7 [Upon resuming at 11.31 a.m.]

8 PRESIDING JUDGE: We will now hear the Defence's address
9 and rebuttal and I understand, Mr Anyah, you will be addressing
11:32:09 10 us?

11 MR ANYAH: Yes, Madam President, thank you. Good morning,
12 your Honours. May it please the Court.

13 MR BANGURA: May I interrupt briefly, your Honour?

14 PRESIDING JUDGE: Mr Bangura, I failed to note a change of
11:32:23 15 appearance.

16 MR BANGURA: That is what I intend to inform the Court
17 about, indeed. Ms Hollis asked me to convey her apologies. She
18 is at the moment attending to a prior engagement which is very
19 pressing.

20 PRESIDING JUDGE: We will note that, Mr Bangura. Please be
21 seated, Mr Bangura.

22 MR ANYAH: Yes, Madam President. I should also indicate
23 the same. There is a change of appearance for the Defence. We
24 have been joined by an intern on our case, Mr Isaac Ip.

11:32:51 25 PRESIDING JUDGE: I recognise Mr Ip, thank you.

26 MR ANYAH: I'd also make another preliminary remark, which
27 is that I will reserve about 15 minutes of my time for
28 Mr Griffiths to address the court at the end of the two hours,
29 and lastly to echo the sentiments expressed by Mr Koumjian,

1 I wish to thank the many people who have assisted us in the
2 course of this trial both from the Special Court, from the ICC,
3 and now that we are housed at the Special Tribunal for Lebanon.
4 Thank you.

11:33:26 5 A lot has been said this morning by counsel opposite. When
6 I listened to Mr Koumjian this morning, a lot of points were
7 made, but there was also a lot of emotion and I don't intend to
8 be overly emotional. I will stick with the points of evidence as
9 I speak.

11:33:48 10 When you consider some of what was said by both Mr Koumjian
11 and the chief Prosecutor, Ms Hollis, and you listen to it
12 carefully, implicit in it was a suggestion of sorts that the
13 Defence has some kind of burden. You heard them speak this
14 morning in terms of the Defence should answer such and such
11:34:13 15 questions. They challenged the Defence to produce such and such
16 document. They want us to comment on particular documents,
17 exhibit D-7. There are other exhibits they propose are very
18 damaging to us. We have arrived at the point of the case where
19 so much is now in evidence, your Honours have heard from a total
11:34:39 20 of 115 witnesses. 94 for the Prosecution, 21 for the Defence,
21 including the accused.

22 You have in evidence approximately 1097 exhibits, 615 from
23 the Prosecution, and I believe the Defence introduced about 482.

24 There are also evidence to consider in the nature of
11:35:08 25 rule 92 bis statements. And then you've had our written
26 submissions, detailed, including the response filing from the
27 Defence. You have also had oral submissions, 8 and 9 February
28 and this week, 9 March, yesterday, 10 March and now today. There
29 is not a whole lot left to cover.

1 But what is important to consider at this stage is context.
2 There is an overall context in which the evidence in this case
3 must be viewed. The Prosecution would have you at this stage
4 look at the case vis-a-vis events that are discrete and isolated,
11:35:56 5 that we lawyers can quibble about before the Court. Well, this
6 document says this and I look at this signature and I look at that
7 spelling. Yes, those things matter, but there is an overall
8 context that is a common thread that runs throughout this case.
9 The Prosecution cannot hide from it at this point. And what is
11:36:18 10 that common thread? That common thread is a mode of liability
11 called joint criminal enterprise. That is what holds this case
12 together. This case stands or falls on that mode of liability.
13 I will address that mode of liability in some detail during the
14 two hours I have, indeed an hour and 45 minutes. There are also
11:36:43 15 other issues of course to deal with. The Prosecution has raised
16 specific concerns, some of which I will address. I also
17 understand from the transcript and from my colleagues that
18 yesterday in court Her Honour Justice Sebutinde raised some
19 questions. I will seek to revisit some of those issues today.
11:37:02 20 And then there are other additional issues that in a case like
21 this it's hard to overlook. But let me begin with the primary
22 focus of my submission, which is the notion of joint criminal
23 enterprise.

24 Incidentally I should say about this JCE issue, in the
11:37:20 25 introductory section of our brief we have made submissions
26 regarding the procedural history of the JCE, regarding the issues
27 of what we submitted was the irregular pleading of JCE by the
28 Prosecution. We have made submissions to the effect that we were
29 prejudiced by a delay of about 13 months that it took the Court

1 to resolve that issue.

2 Madam Presiding Judge, I think you're trying to find the
3 portion of our brief. It is at paragraphs 47 through 71.

4 PRESIDING JUDGE: Thank you.

11:38:01 5 MR ANYAH: Page 25 through 34. This is the version of the
6 brief filed by us on 9 March.

7 Now, we've raised the irregularity issue, the Appeals
8 Chamber resolved that issue on 1 May 2009. Your Honours also
9 issued a decision which led to the appeal in February 2009, but
11:38:26 10 there are ancillary issues that flow out of that decision by the
11 Appeals Chamber and we have raised those issues. What was the
12 legal effect, vis-a-vis the ambiguity in the indictment and the -
13 what we call secondary accusatory instruments, the case summary,
14 the Prosecution's opening statement, the Prosecution's pre-trial
11:38:51 15 brief and the like. Did the decision have a curative effect to
16 operate nunc pro tunc to the beginning of the case to put the
17 Defence on notice? All of that we have briefed. I will revisit
18 it in a very limited nature, only to the degree that there was
19 still ambiguity about what the common purpose of the JCE was
11:39:15 20 through the currency of the entire Prosecution case. And,
21 indeed, if one is to believe that questions from the bench have
22 in part a basis of seeking clarification about some of these
23 issues, there were questions posed to Ms Hollis, the lead
24 Prosecutor on both 8 and 9 February by Her Honour
11:39:43 25 Justice Sebutinde seeking clarification on what appears to be
26 changes now in the Prosecution's final brief and in its oral
27 submissions vis-a-vis what the common purpose of the JCE was.
28 So there are some ambiguities and they have consequences
29 for the Defence. They have prejudiced the Defence, in my

1 submission. We have made that argument in our brief.

2 But the bulk of my focus is now on JCE, in particular the
3 evidence or the lack thereof, to sustain that mode of liability.

4 We all know the elements of the JCE, the actus reus
11:40:26 5 elements, they are the same for the two types of JCE that are
6 featured in this case, plurality of persons, that's not in
7 dispute, a common purpose, that constitutes or amounts to a crime
8 within the jurisdiction of the Court. And then you have to have
9 participation by the accused. Not just participation. The law
11:40:49 10 requires significant or substantial assistance, significant
11 participation, more specifically substantial assistance.

12 Counsel opposite, Mr Koumjian, said on Wednesday that there
13 is a lawyer's adage of sorts that you tend to focus on the law
14 when the facts are against you. In Chicago, where I started my
11:41:16 15 legal career, we say it slightly differently, the same adage and
16 we saw that when the law is against you, you hammer the facts,
17 when the facts are against you, you hammer the law, and when both
18 the facts and the law are against you, you hammer the table.
19 I don't intend to hammer the table today because both the law and
11:41:38 20 the facts are in favour of us on this issue of joint criminal
21 enterprise.

22 Now, the JCE. First, what common purpose has been alleged?
23 And what evidence has been presented to sustain that common
24 purpose? Second, has that common purpose been fluid and
11:42:04 25 continuous from the beginning of the case? By that, I mean has
26 that common purpose been fluid and continuous from when it was
27 said to be agreed in Libya, in the late 1980s through the
28 cessation of hostility in Sierra Leone in January 1992. Has
29 there been one common purpose? Has there been any change to it?

1 These are questions that your Honours have to address.

2 Three, who are the members of this criminal enterprise?

3 Has the membership been continuous? Have there been changes
4 along the way? The Prosecution has acknowledged in oral

11:42:52 5 submissions that sometime in 2000, Johnny Paul Koroma was not a
6 part of the joint criminal enterprise. He had left. The other
7 part of the transcript that confirmed the Prosecution's position
8 that leaders of the joint criminal enterprise and members were
9 moving in and out. So apparently the Prosecution at the end of
11:43:19 10 the case tells us that the criminal enterprise had fluidity
11 vis-a-vis its membership. That is an issue to consider as you
12 view the evidence in the case.

13 There is also context. What else was obtaining in the
14 theatre of this conflict? And by theatre, I should speak in the
11:43:42 15 plural, Liberia and Sierra Leone. What else was happening in
16 these two countries? Were there others in these countries that
17 took part in the conflicts but whom the Prosecution does not
18 allege were members of the joint criminal enterprise? Yes. In
19 Sierra Leone, several groups come to mind. You've heard evidence
11:44:13 20 of somebody or some group called the Special Task Force, STF,
21 David Livingston Bropleh; you have heard evidence of the
22 Kamajors, some refer to them as CDF; ECOMOG was present in during
23 the relevant period of time; there were also irregular groups
24 present, a mercenary group from the UK called Sandline. There is
11:44:45 25 evidence of their presence in Sierra Leone. There is evidence of
26 their involvement in the importation of arms and ammunition into
27 Sierra Leone during the relevant period. You also have the
28 Executive Outcomes, a South African group that was in the theatre
29 of this conflict at the time they say Charles Taylor was

1 spearheading a joint criminal enterprise.

2 What was obtaining in Liberia at the time? Several other
3 armed groups involved in the fighting in Liberia from when the
4 civil war broke out in 1989 through Mr Taylor's election as
11:45:24 5 President. You've heard of ULIMO, both strand of ULIMO, ULIMO-K,
6 ULIMO-J. ECOMOG was also in Liberia. Indeed, as early as August
7 1990 ECOMOG was in Liberia. We've heard of the INPFL. We have
8 heard of LURD. We have heard of MODEL. We have heard of the
9 LPC, Liberian Peace Council. All of these groups featured in the
11:45:59 10 theatre that was Liberia during periods the Prosecution says are
11 relevant to this case.

12 We will have to figure out what roles or of what
13 significance these groups are, vis-a-vis the analysis of the
14 joint criminal enterprise mode of liability.

11:46:17 15 Other things were happening in Liberia and Sierra Leone
16 that are of significance. There were arms embargoes, both by the
17 UN and by ECOWAS. At different periods of time against both
18 Liberia and Sierra Leone. In the context of Sierra Leone against
19 the junta, the government of Johnny Paul Koroma. You had in
11:46:43 20 Liberia DDRR, disarmament, demobilisation, reintegration and
21 rehabilitation. Members of the warring factions were disarmed.
22 Weapons were gathered. Evidence has been presented confirming
23 that the weapons were at some point destroyed. Those are matters
24 your Honours should consider when viewing the context. Was the
11:47:12 25 Liberian-Sierra Leonean border always open? There has been some
26 dispute today about Moses Blah's testimony and whether or not it
27 was us on the Defence bar that spoon fed him the years that he
28 agreed to vis-a-vis the closure of the border. I will come to
29 that later on.

1 And now, we start with Libya. The Chief Prosecutor then in
2 his opening statement, Mr Steven Rapp, told the Court that in
3 Libya in the late 1980s, the accused met Foday Sankoh and there
4 was there formulated a plan, a plan which had as its goal to take
11:48:02 5 forcible control over the population and territory of
6 Sierra Leone, the words he used were political and physical
7 control, and to establish a friendly or subordinate government
8 there in order to exploit the natural resources of Sierra Leone.

9 Now, that common purpose is, in our view, obviously
11:48:29 10 different from what Ms Hollis now says the common purpose is, but
11 let's not quibble about that, let's assume for the sake of
12 argument that both Mr Rapp and Ms Hollis have it right when they
13 say the common purpose is one of two things, Mr Rapp says
14 political and physical control, Ms Hollis told Her Honour
11:48:55 15 Justice Sebutinde and elsewhere in their brief it is stated that
16 you have the objectives and you have the means. And vis-a-vis
17 the objectives, Ms Hollis says there were two objectives, one was
18 to forcibly control the population and territory of Sierra Leone.
19 That was one objective of this criminal enterprise. The second
11:49:17 20 objective was to pillage the resources of Sierra Leone, in
21 particular the diamonds.

22 Separate and apart from the ultimate objectives, Ms Hollis
23 spoke of the means that was contemplated to achieve those
24 objectives and the means in this case, the primary means, was a
11:49:39 25 campaign of terror against the civilians of Sierra Leone. This
26 was said by Ms Hollis on 8 February, page 49149 of the
27 transcript, it also appears in paragraph 574 and 575 of the
28 Prosecution's brief.

29 Now, so we have ultimate objectives and we have the means.

1 Our Appeals Chamber has ruled both in our case and in the AFRC
2 case that the common purpose of the JCE is a combination of both,
3 that the common purpose is both the objective, whatever the
4 ultimate objective was, as well as the means. Curiously, the
11:50:32 5 Prosecution suggest the law is in our favour, but in this
6 instance, in a very significant way, the law is in their favour
7 because our Appeals Chamber has also ruled that someone need not
8 plead, the Prosecution specifically, need not plead both the
9 common purpose - sorry, both the objective and the means
11:50:50 10 separately. They can plead one or the other. They don't have to
11 plead both. So an accused can stay in the dark as far as the
12 pleading is concerned regarding, for example, the means.

13 Up until recently, and by recently I mean the filing of the
14 Prosecution's amended case summary in August of 2007, the word
11:51:18 15 "terror" had not featured as a common purpose of the JCE. And it
16 was really with the case summary that the Prosecution began to
17 expand on that. They had mentioned it in passing in their
18 pre-trial brief in April of 2007, but this notion of a criminal
19 means to terrorise the civilians of Sierra Leone began to emerge
11:51:43 20 and evolve after the Prosecution's opening statement. So the law
21 favours them in that respect. But let's set that aside for the
22 moment.

23 Now, I said Libya. What is the evidence that there was a
24 common purpose agreed in Libya, that Mr Taylor and Foday Sankoh
11:52:04 25 contemplated these ultimate objectives, forcibly control the
26 population and territory of Sierra Leone, pillage the resources
27 using a campaign of terror as the means? You heard TF1-548,
28 Suwandi Camara, testify before this Court. Mr Camara said, and
29 he is not protected, I have checked, Mr Camara said to this Court

1 that he heard from his boss, who was a fellow called Dr Manneh,
2 that Charles Taylor - rather, he heard that Foday Sankoh was the
3 acting leader of the RUF group and that the actual leader was
4 Ali Kabbah. That's one of the aspects of his evidence. He then
11:53:11 5 says that he saw Charles Taylor at the Mataba on two occasions,
6 and he also saw Foday Sankoh at the Mataba. Nothing wrong with
7 that. No testimony of an agreement or meeting of the minds
8 between the two of them in Libya. No testimony of a common
9 purpose regarding terrorising the civilians of Sierra Leone. And
11:53:38 10 then we have Isaac Mongor, TF1-532, Isaac Mongor comes and says
11 he heard from Foday Sankoh that Sankoh met Taylor in Ghana when
12 Sankoh was in custody. Charles Taylor facilitated the release of
13 Sankoh from custody, and then the two of them went on to Libya.

14 No evidence from Isaac Mongor about a common plan being
11:54:07 15 conceptualised, none. Incidentally, Issa Sesay disputed that
16 evidence, in the sense that Issa Sesay testified on the 4 August,
17 at page 45369, that Foday Sankoh, in all the time he spent with
18 him, never said that Charles Taylor facilitated his release from
19 jail in Ghana.

11:54:33 20 Prosecution also called Moses Blah. Moses Blah was in
21 Libya. At the time he was an adjutant, he was also inspector
22 general of the NPFL later on, Liberian ambassador to Libya and
23 Tunisia later on, Vice-President of the Republic of Liberia, and
24 upon Mr Taylor's departure, President of the Republic of Liberia.
11:55:03 25 The chief Prosecutor led Moses Blah in evidence and he asked
26 Moses Blah a question about Libya. Indeed, I would request that
27 we pull up this transcript, and this is a transcript from 14 May
28 2008.

29 MS IRURA: Could counsel please give a page reference?

1 MR ANYAH: Yes, my apologies. Page 9812 through 9813.

2 Thank you. Shall we go to line 19 on that first page? Yes.

3 Question by chief Prosecutor Rapp.

4 "Q. Did you have contact with Mr Sankoh yourself?

11:56:18 5 A. Yes, as I said, we were all training. At the training
6 we will all meet and talk and joke, talk about your government,
7 and he would talk about his government. So we would meet from
8 time to time.

9 Q. What was your impression of him?

11:56:35 10 A. We didn't take him seriously, no, because he was in the
11 tea shack making tea for me at the time. Because I was adjutant
12 so I didn't take him serious. I didn't take him serious.

13 Q. You say you talked about each other's countries. What
14 did he tell you about his country?"

11:56:56 15 Answer, on the next page, page 9813:

16 "A. Well, he said he has come to train and overthrow his
17 government, because the head of the Sierra Leone government - he
18 had come to overthrow his government, become the head of the
19 Sierra Leone government. But I saw him with 15 men.

11:57:19 20 Q. Did you individuals talk about doing anything together
21 in the future?

22 Answer, by Mr Blah: "No, we didn't discuss that. We
23 didn't discuss that."

24 That's what you have. That's the Prosecution's evidence.

11:57:37 25 Their witness, called by them. He could not confirm a common
26 plan. It may be suggested that Charles Taylor and Foday Sankoh
27 had discussions outside the presence of Moses Blah. Mr Taylor
28 refuted that allegation. Moses Blah, in his capacity there as
29 one of Charles Taylor's senior people, would have known about

1 that plan. Moreover, why did the Prosecution call a witness who
2 could not sustain the plan? It is not for the Defence to prove
3 any other theory in the realm of possibilities. The Prosecution
4 called this witness and he could not confirm a common purpose as
11:58:25 5 having been agreed to by Sankoh and Taylor in Libya.

6 Another person called to testify on this issue, a witness
7 who testified late, in January 2008 into February 2008.
8 Your Honours probably know this witness who has been some issues.
9 And all this witness said in relation to this was that

11:58:53 10 Foday Sankoh told him that he had met Mr Taylor in Libya. How
11 does that advance the notion of a common plan? Especially one as
12 detailed as the Prosecution now has it? No evidence of a common
13 plan. And then the Defence called its own witnesses. Now,
14 remember who the Prosecution's key source of information is,
11:59:22 15 TF1-548, Suwandi Camara. We called DCT-125. DCT-125 denied
16 there being a plan in Libya. DCT-179 was called as a Defence
17 witness. He was in Libya, he denied even the interaction between
18 Sankoh and Taylor. Taylor was among the leaders of various
19 revolutionary groups and those leaders stayed at the Mataba.
11:59:56 20 Their fighters and men in training stayed at Camp Tajura. There
21 was a geographical physical distance between the two.

22 And our witnesses certainly do not support any notion of a
23 common plan and they specifically dispute the notion that Taylor
24 and Sankoh even interacted to any significant degree. Other
12:00:24 25 witnesses your Honours should consider in relation to this issue,
26 DCT-226, DCT-131, and of course Mr Taylor, the accused.

27 Now, one thing that was consistent among the Defence
28 witnesses, and indeed with Suwandi Camara, was that the leader of
29 the Sierra Leonean group was Ali Kabbah. There is a document in

1 evidence about the Mataba that has a picture of Ali Kabbah,
2 identified by DCT-125. There is no dispute between the parties
3 to that extent, in the sense that TF1-548, albeit hearsay
4 evidence, says that his boss, Dr Manneh told him that Ali Kabbah
12:01:15 5 was indeed the leader of the Sierra Leonean group. That's the
6 evidence of record. This is not conjecture, this is not
7 allegations. You juxtapose the allegations vis-a-vis the
8 evidence and you come up with nothing. We are still looking for
9 the common purpose and the evidence that supports it.

12:01:33 10 The law is important in this respect, because they have
11 charged Mr Taylor with JCE 1. The mens rea for the different
12 permutations of JCE are different. For JCE 1, you require a
13 shared intent. Now, the Prosecution has said the law right in
14 admitting that Mr Taylor and other members of the JCE must share
12:02:06 15 the same intent. At the Prosecution's brief, page - sorry,
16 paragraph 572, pages 258 to 259, and also in paragraph 560, there
17 is there expressed something to this effect, that Charles Taylor
18 and the other members of the JCE shared the intent to commit all
19 the charged crimes. So there is a shared intent element there.
12:02:41 20 It doesn't end there. There is something else that is of
21 importance. You have in this case the charge of terrorism.
22 Terrorism is a specific intent crime. In civil law systems they
23 refer to it as special intent, dolus specialis. Dolus eventualis
24 will not suffice, recklessness or advertent recklessness will not
12:03:14 25 suffice. So in addition to this notion of a shared intent, it
26 has to be of a special nature, dolus specialis. That means that
27 Mr Taylor must have, as his specific intent and as his purpose,
28 to cause terror in Sierra Leone. The other members of the JCE
29 must have the same intent. We will come to that because the

1 Prosecution's case begins to crumble as you begin to look into
2 this issue. When you look at the issue of the continuity or lack
3 thereof of the alleged JCE and you ask the question whether the
4 various members of the JCE, in its various manifestations through
12:03:54 5 the years, a long period of time, 1988 through 2002, whether they
6 all shared the same intent, I submit to you that there is no such
7 evidence. The Prosecution's brief does not address that issue in
8 any depth whatsoever. They don't address the issue of the
9 specific intent vis-a-vis the other members of the JCE.

12:04:20 10 Now, question: When SAJ Musa was advancing towards
11 Freetown before he died in Bengema Barracks, what was his
12 intent? Legal sense of intent. Was it an intent to terrorise
13 the civilian population of Sierra Leone? Was it an intent to
14 forcibly control the population and the territory of
12:04:48 15 Sierra Leone? Was it an intent to pillage the natural resources,
16 in particular diamonds, of Sierra Leone? Or was it to reinstate
17 the Sierra Leone Army? This is a snapshot of one event at a
18 particular time during this entire period, and a key participant
19 in the event. They haven't even addressed the question of
12:05:14 20 whether he was a member of the joint criminal enterprise.
21 Moreover, what is his intent? Issa Sesay told us that the RUF
22 had a different intent in trying to get to Freetown. Can members
23 of the same enterprise have different mens rea? Different
24 intent? We will come to that.

12:05:36 25 Bear in mind also this notion of intent, vis-a-vis the
26 evidence you heard about RUF ideology. The TF1-168 testified
27 that the RUF ideology was to win over the civilians. They needed
28 the civilians in order to succeed. That ideology was at the
29 outset of the formation of the RUF. It was communicated to those

1 who were the founding members by Mr Sankoh. Another Prosecution
2 witness, TF1-371 testified also about ideology and how at
3 Camp Naama, Mr Sankoh had something that was similar to the
4 Geneva Conventions that had to be taught to the trainees at
12:06:35 5 Camp Naama. Camp Naama, in Liberia, 1990, Prosecution tells you
6 that two years before criminal means was contemplated to achieve
7 criminal objectives, at least they say one of the objectives was
8 criminal, pillage - we will come to that, because they have a
9 problem there as well - and yet in Camp Naama documents whose
12:07:07 10 contents are similar to the Geneva Conventions are being handed
11 out or considered and used for training of RUF members. This is
12 where you apply the law to the facts, and we are no longer
13 speaking about allegations and theories; we are looking at what
14 the evidence shows.

12:07:25 15 Now, we leave Libya and the next place of interest is
16 Burkina Faso. Following Suwandi Camara's evidence,
17 Suwandi Camara says that in Burkina Faso, that there was a
18 meeting in Burkina Faso. He starts out by telling us that the
19 Liberian delegation to Libya and the Sierra Leonean delegation
12:07:55 20 all ended up in Burkina Faso after training in Libya and that in
21 Burkina Faso they also met the Gambians. And he says in
22 Burkina Faso there was a meeting between Charles Taylor,
23 Foday Sankoh, and Dr Manneh, where they each agreed to help each
24 other take over power in their respective countries. That's his
12:08:18 25 evidence. Take over power in their respective countries. I
26 don't recall him saying anything about pillage the resources of
27 their countries. The fact of taking over political power, is
28 that a crime that this Court has the authority to consider? That
29 issue arose in your Honour's AFRC trial judgment.

1 Who else spoke about Ouagadougou? Moses Blah spoke about
2 Ouagadougou. Moses Blah told the Court that there were no
3 Sierra Leoneans to be found in Ouagadougou, following the NPFL's
4 training in Libya and when Taylor went to Burkina Faso. Indeed,
12:09:11 5 the evidence of TF1-371 was that Taylor did not frequent Libya.
6 He was actually more likely to be found in Burkina Faso. You
7 notice how this is evolving. I have not even mentioned the
8 Defence witness, this is Prosecution evidence. Moses Blah, there
9 were no Sierra Leoneans in Burkina Faso. Moses Blah says there
12:09:40 10 were no Sierra Leoneans in Burkina Faso, how did this meeting
11 take place that Suwandi Camara is referring to, a meeting between
12 Dr Manneh, Foday Sankoh and Charles Taylor? Conflict between
13 their witnesses.

14 Now, Suwandi Camara is also impeached by the absence of
12:10:01 15 evidence. What am I referring to? If there is a meeting of the
16 minds between these three persons to assist each other and his
17 evidence was that after Charles Taylor was assisted in taking
18 over power in Liberia, Taylor would then, in turn, assist the
19 Gambian leader, Dr Manneh and also Foday Sankoh for each of the
12:10:26 20 others to take over powers in their respective countries. Well,
21 there is no evidence before this Court that the Gami ans played a
22 role in the invasion of Liberia by Charles Taylor. The Gami ans
23 did not play a role in December 1989 when Taylor entered Liberia
24 through Ni mba County with his forces. How about the Sierra
12:10:54 25 Leonean delegation? What substantial or significant contribution
26 did Foday Sankoh provide to Charles Taylor in Charles Taylor's
27 revolution at its outset? There is no evidence on record. What
28 is the support? If there was a quid pro quo, a meeting of the
29 minds in Burkina Faso, an agreement or the extension of an

1 agreement originally arrived at in Libya, what did the
2 Sierra Leoneans do for Taylor, when he started his revolution?
3 Nothing. No evidence on record.

4 We come to the Liberian revolution, December 1989. Taylor
12:11:42 5 is now in Liberia. On Wednesday, the 9th, Mr Griffiths spoke
6 about our position vis-a-vis Camp Naama. The issue of separate
7 training. The lack of knowledge and consent by Mr Taylor. And
8 you remember the evidence of DCT-299. Isatu Kalion, Mamie I.
9 She told you of the role played by her and her husband Daniel
12:12:16 10 Kalion, as far as providing supplies and provisions for those at
11 Camp Naama. She told you of Isaac Mongor and how insignificant a
12 fellow he was. From her evidence he went to Camp Naama much,
13 much later than he told this Court. And so we stand by our brief
14 and what Mr Griffiths said on Wednesday vis-a-vis Camp Naama.

12:12:46 15 Ms Hollis addressed it a little bit this morning. It is not an
16 issue we need to go into further depth about. The point is why
17 would Sankoh's people train separately, if Taylor and Sankoh had
18 this common purpose in mind? Why would they need provisions from
19 the likes of Mamie I and others if Taylor had abundant materials
12:13:18 20 that he could provide to them? Why did no recruit or trainee at
21 Camp Naama tell you they saw Charles Taylor there? These
22 questions have been raised by Mr Griffiths. From Camp Naama, the
23 next significant event is an allegation of a meeting in Voinjama,
24 Lofa County, Liberia, whereby Charles Taylor oversaw the planning
12:13:47 25 of the invasion of Sierra Leone. Two primary witnesses for the
26 Prosecution in this regard: The same Isaac Mongor, TF1-532 and
27 the other witness I spoke about who testified in January 2008.

28 Now, we called several witnesses about this issue, persons
29 who may appropriately be called vanguards, trained at Naama,

1 participated in the invasion, entered Sierra Leone. Bear in
2 mind, we do not have a burden of proof. We did not have to call
3 a single witness. Our client did not have to take the stand.
4 You see the Prosecution frantically trying to challenge us this
12:14:34 5 morning to prove or disprove such and such. They forgot this
6 little basic tenet of criminal proceedings. We did not come up
7 with the rules. The rules were in place since Runnymede, the
8 Magna Carta, long ago, even before then. We had no burden of
9 proof, yet we called several vanguards, DCT-025 testified, there
12:15:02 10 was no such meeting. John Vincent, DCT-215 testified, there was
11 no such meeting. DCT-125, who some people said was at the
12 meeting, denied that there was such a meeting. And I will say
13 that pseudonym slower, DCT-125, not the same as 025 who also had
14 a pseudonym, but 125 said he was not at the meeting. Mr Taylor
12:15:41 15 denied it. DCT-172, Issa Sesay, testified. DCT-062, a vanguard,
16 Martin George, testified about this.

17 And so we take snapshot at this point on the eve of the
18 invasion of Sierra Leone and we ask what is the evidence to
19 support the common purpose, vis-a-vis the two ultimate objectives
12:16:07 20 or the means, the campaign of terror? Where is the evidence?
21 Still no common purpose in the evidence.

22 Sierra Leone is invaded in March 1991. We have Mr Taylor
23 acknowledging the presence of ULIMO and the need to combine with
24 Foday Sankoh to a limited extent in a mutual alliance of
12:16:36 25 self-defence against ULIMO. We have not disputed that. It
26 started in late 1991, August, ended in May of 1992. What is
27 significant is that ending point, May of 1992, because the
28 Prosecution and the Defence are in agreement that there was
29 something called Top Final. Prosecution witnesses starting with

1 TF1-275, I believe, I cross-examined that witness, mentioned the
2 Top Final. Several other witnesses paraded before the Court said
3 there was something called Top Final. This is the event when
4 Liberian forces in Sierra Leone were pulled back and recalled by
12:17:25 5 Mr Taylor into Liberia. And if we pause there, what is the state
6 of the elements of a JCE? Who are the members of a JCE at this
7 point? What is Mr Taylor's contribution to the JCE at this
8 point? The law requires significant assistance. What is the
9 mens rea of the members of the JCE? Do all of them have the same
12:17:57 10 mens rea? Who are the members, if we know? The onus is on the
11 Prosecution to prove all of that. There is not really much
12 evidence on the record addressing those points.

13 Now, Top Final. Top Final finishes or ends towards
14 May/June 1992, and then a question arises regarding what contacts
12:18:29 15 there were with the RUF and Taylor in this period, 1992 through
16 the 25th of May 1997, when the AFRC undertakes a coup d'etat in
17 Sierra Leone, and Johnny Paul Koroma takes over the leadership of
18 Sierra Leone. This morning, Ms Hollis, I think it was
19 Mr Koumjian, spoke about Musa Fayia's evidence. DCT-306, I
12:19:03 20 believe. And Musa Fayia testified that in 1995, they were
21 invited to Gbarnga by Mr Taylor, that from there they went to
22 Ghana, and that they were given some money to launch the book,
23 Footpaths to Democracy. That's what Musa Fayia testified. The
24 Prosecution addresses this issue, contacts between the RUF and
12:19:32 25 Taylor, they address it at paragraph 1195 on page 499 of their
26 brief. It's a very, very short paragraph. And the only evidence
27 it relies on is Musa Fayia's evidence.

28 One contact in a period of what, five years?

29 Should we forget the law that requires substantial

1 assistance? You give somebody money to launch a book, is that
2 substantial assistance to terrorise the entire population of a
3 country? You give money to somebody to launch a book, is that
4 the same thing as having the specific intent to terrorise
12:20:19 5 Sierra Leoneans? Is that the same thing as having the specific -
6 is that the same thing as having the intent to pillage the
7 resources, in particular the diamonds, of Sierra Leone? I do not
8 concede that this meeting happened. People's memories fade. A
9 long time has passed. Maybe Musa Fayia was mistaken. We do not
12:20:44 10 concede it necessarily, but it is on the record. But the point
11 is when you consider that five-year period, and this is what is
12 used to sustain a joint criminal enterprise that was never there,
13 what was the common purpose?
14 And what else was happening at this time in the theatre of
12:21:08 15 Liberia and Sierra Leone? ECOMOG was still present in Liberia.
16 ULIMO had closed the border between Liberia and Sierra Leone. By
17 "closed", I mean ULIMO controlled the border. There has been
18 some dispute about Moses Blah's evidence. We stand by that
19 evidence that on 19 May 2008, Moses Blah testified that ULIMO
12:21:36 20 controlled that border between 1992 until June 1997. Ms Hollis
21 cited the relevant page, page 10193. It is not for us to negate
22 the evidence of a witness the Prosecution called when he
23 responded to a question by counsel and didn't say he
24 misunderstood it. Other witnesses testified about ULIMO's
12:22:04 25 control of the border. Karmoh Kanneh testified about it.
26 Karmoh Kanneh on 9 May 2008 said ULIMO controlled the border from
27 1992 through 1996. This is at page 9445 through 9446 of that
28 transcript of 9 May 2008. Varmuyan Sheriff, TF1-406, testified
29 about ULIMO's control of the border. He said ULIMO controlled

1 the border from 1992 through 1996. The transcript of the 10th of
2 January 2008, page 976 through page 977. You remember we had
3 Sheriff draw on a map, our first Defence exhibit, exhibit D-1, the
4 area controlled by ULIMO along the Liberian-Sierra Leonean
12:23:13 border. What else was happening in this period, 1992 through
5 2000, through 1997? On Wednesday, Mr Griffiths spoke about the
6 letters to Talibai, Defence exhibit 15 and Prosecution exhibit
7 272. Ms Hollis addressed them today as well. We also know that
8 Foday Sankoh is in Abidjan. He is no longer in Sierra Leone.
12:23:40 10 And in that respect as well, Mr Griffiths spoke on Wednesday.
11 Why couldn't Sankoh cross over the border to Liberia to meet
12 Taylor rather than seek assistance from Talibai in Ghana? What
13 else was going on in Liberia at this time? I've spoken of
14 disarmament. Based on exhibit we introduced, Defence exhibit 25,
12:24:06 15 which is a map by the UN's World Food Programme, and it shows
16 Liberia and the various locations where arms were collected from
17 the warring factions in Liberia. There is also the little
18 distraction that Taylor had in 1997 called an election for
19 president. Mr Taylor was engaged at this time with the Council
12:24:39 20 of State from 1995 through his election as President in August
21 1997.

22 Takes common sense to know that he will be engaged in
23 campaigning, trying to secure the votes of Liberians. And then
24 we have exhibit D-4, a letter from Johnny Paul Koroma to
12:25:09 25 Mr Taylor dated 3 October 1997. So we are now in the junta
26 period. The junta takes over on 25 May 1997. A few months
27 later, in October, Johnny Paul Koroma writes Mr Taylor asking for
28 assistance. Assistance of what form? Ammunition, arms and the
29 like.

1 Which raises a question: The Prosecution's brief would
2 have your Honours believe that there was this alliance between
3 the RUF and the AFRC. The RUF having been part of the criminal
4 enterprise with Mr Taylor from the very beginning, in the late
12:25:56 5 1980s, and then the AFRC joining in as members. Why would
6 Johnny Paul Koroma write such a letter to Mr Taylor? A letter
7 that belies any familiarity between the two of them. Why did he
8 not ask the RUF to simply obtain the requested arms and
9 ammunition from Mr Taylor? That letter was in the nature of an
12:26:25 10 introductory letter seeking to procure Mr Taylor's assistance
11 into his cause. Now, it was written in October 1997. By this
12 time the RUF had joined the AFRC at the seat of power in
13 Freetown, and they were now in the junta. It wasn't written
14 during the one-week period before the RUF joined the junta. RUF
12:26:53 15 members were already part of the junta. So what is the state of
16 the criminal enterprise at this time? We have a new group
17 joining the criminal enterprise. What is their intent? Is it
18 just to hold on to power? Is it to pillage the resources of
19 Sierra Leone? Is it to terrorise the population of Sierra Leone?
12:27:18 20 Is it to forcibly control the population and the territory of
21 Sierra Leone? Is their intent shared by other members of the
22 JCE? The common purpose in question, has it been continuous from
23 pre the junta period, as it manifested itself during the junta
24 period? We know from the evidence that the RUF and the AFRC were
12:27:48 25 not a unified group. Far from that. Yesterday, Mr Munyard
26 referred to an uneven and unequal partnership. This is to be
27 found in Defence exhibit 9, page number 2, ERN 00009659.
28 Prosecution exhibit P-63, page 1, says that the merger between
29 the AFRC and RUF was unsuccessful. ERN 00015487. We also have

1 Defence exhibit 84, at page 5, ERN 00007760, which has
2 Sam Bockarie saying, "We were not trusted or respected by the
3 AFRC. The AFRC high command rejected our plans and strategies."
4 Let's pause there.

12:28:58 5 I've quoted Defence exhibits as well as a Prosecution
6 exhibit. Your Honours should look at these documents closely.
7 We did not come up with these documents. They were disclosed to
8 us by the Prosecution. When you look at D-84 and D-9, they are
9 not our documents. They don't come from some defence archive.

12:29:21 10 The Prosecution disclosed these documents to us. So it is their
11 evidence. Their evidence that shows that, if anything, there was
12 total disagreement between the RUF and AFRC during the junta
13 period. I'm referring now the period from 25 May 1997 through
14 February 1998.

12:29:47 15 How can you have a shared intent when core members or
16 participants of a criminal enterprise are in complete
17 disagreement? How can you have a shared intent when Mr Taylor is
18 all the way in Liberia starting out his presidency and
19 Johnny Paul Koroma is seeking an introduction to Taylor? If he's

12:30:15 20 already a member of the joint criminal enterprise, why would he
21 seek such an introduction to Taylor? All of these questions beg
22 for answers. The answers are not to be found in the evidence,
23 unfortunately. So we submit that these documents, as well as
24 other evidence, refutes the part of the Prosecution's brief that
12:30:42 25 suggests that during the junta period there was an alliance and
26 concerted action between the AFRC and RUF. The relevant part of
27 the Prosecution's brief is section 5, page 215, et sec and
28 paragraph 43 et sec.

29 We come to the post junta period February 1998 and I would

1 consider the period from then until the January invasion of
2 Freetown. What do we have during this time? The junta is kicked
3 out of Freetown, there is total chaos, no organisation as they
4 fled from Freetown, they ran with their families in complete
12:31:39 5 disarray. They go back and ultimately end up in Kailahun. And
6 now we begin to consider the members of the JCE. We hear of
7 infighting between the two groups. And now, this is not the
8 point to quibble about what one witness said and what another
9 witness said and so on and so forth. They are adjudicated facts
12:32:06 10 by this Court about this issue. Some of them I will read to the
11 Court, because it is important.

12 Your Honours will recall that you rendered a decision
13 adjudicating certain facts, CMS 769, the date is 23 March 2009,
14 and in relation to this particular period, we consider
12:32:37 15 adjudicated facts 6 and 7. Adjudicated fact 6 reads. First,
16 I should say adjudicated fact 5 confirms what I said a few
17 minutes ago, the retreat from Freetown was uncoordinated and
18 without any semblance of military discipline.

19 We go to adjudicated fact 6:
12:33:06 20 "When SAJ Musa learned about Koroma's decision, that the
21 AFRC soldiers should be subordinate to RUF command as part of the
22 plan to recapture Kono District, he was furious. He would not
23 accept the notion that untrained RUF fighters could be in charge
24 of former soldiers and insisted that the purpose of his group was
12:33:33 25 to reinstate the army and that the RUF could not lead such a
26 mission."

27 Let's pause there.

28 SAJ Musa is saying the purpose of my group is to reinstate
29 the Sierra Leone Army. This is a fact this Court has

1 adjudicated. Where does that fit in with the common purpose of
2 the criminal enterprise? SAJ Musa is a leading figure in the
3 AFRC and he has his own group. Is the intent of his group shared
4 by other members of the criminal enterprise? Is his purpose the
12:34:18 5 same as the common purpose of the criminal enterprise? This
6 believes the Prosecution's theory. Continuing, the fact reads, "In
7 addition, before the operation to recapture Kono took place, a
8 dispute erupted over command and control issues resulting in
9 hostilities between the two factions and the deaths of several
12:34:48 10 fighters. As a result, SAJ Musa and a significant number of AFRC
11 troops loyal to him opted not to participate in or support the
12 operation."

13 So we have now reached the stage where members of the
14 alleged enterprise are killing each other. No mention in all of
12:35:12 15 this of what Charles Taylor's role was. This was between other
16 members of the criminal enterprise. Yet the Prosecution says
17 Taylor was the godfather. He was the chief. He could snap his
18 fingers and everything would be straightened out.

19 Chaos among the leadership of the two groups. Adjudicated
12:35:39 20 fact 7 speaks of Johnny Paul Koroma in particular. When Johnny
21 Paul Koroma departed for Kailahun District, in 1998, he was given
22 to believe that he would be welcomed there by the RUF. However,
23 when he arrived in Kailahun, he encountered a hostile RUF
24 leadership. He was arrested by Sam Bockarie, Issa Sesay and
12:36:06 25 other RUF fighters. He was then stripped and searched for
26 diamonds and his wife was sexually assaulted. Bockarie placed
27 Koroma under house arrest in Kangama village near Buedu where he
28 remained until mid-1999.

29 The former head of the junta in Sierra Leone,

1 Johnny Paul Koroma, is placed under house arrest by the commander
2 of the RUF, Sam Bockarie, for a period that appears to be over a
3 year. And the Prosecution suggest to this Court that the
4 alliance between the two was continuous. Prosecution suggest
12:36:51 5 that the criminal enterprise, if we know what it is, was fluid -
6 sorry, that it was continuous. And so your Honours have to look
7 at this evidence and you have to look at facts. Let's not
8 quibble over what one witness said versus another witness. Let's
9 look at the facts, and if we do consider witness evidence, let's
12:37:14 10 consider the evidence of both sides. The Defence has presented
11 enough evidence, we submit, to rebut the Prosecution's case in
12 its entirety. We are grateful nonetheless to receive the
13 assistance of the Prosecution's witnesses. In almost every
14 instance, theories that we propose are sustained by the very
12:37:41 15 witnesses called by this Prosecution. So that's the period after
16 the intervention.

17 And then there's the invasion of Freetown.

18 In addition to SAJ Musa being disgruntled, in addition to
19 Johnny Paul Koroma being jailed, the evidence shows that Gullit,
12:38:06 20 in Kailahun, was also put in custody by Sam Bockarie. Gullit
21 left Kailahun and went north towards Koinadugu District to join
22 SAJ Musa. He was disgruntled as he went. Now Gullit is
23 significant because as we know, after the death of SAJ Musa on
24 23 December at the Bengema barracks 1998, Gullit spearheaded the
12:38:36 25 invasion of Freetown. So what was Gullit's state of mind at this
26 point? Was he still a member of the criminal enterprise as he
27 left Bockarie going towards Koinadugu? After the death of
28 SAJ Musa, what was his state of mind? As they advanced towards
29 Freetown, Prosecution witnesses, I believe Perry Kamara, TF1-360,

1 confirmed that SAJ Musa announced a communications ban with the
2 RUF, that is, no member of his forces were to communicate with
3 Sam Bockarie and the RUF as they were moving towards Freetown.
4 The adjudicated facts also speak of that, if I can find it. I
12:39:38 5 will find it in a minute, but it is here in one sentence that the
6 Court found that - when I find it I will tell your Honours. But
7 this is not an issue in dispute, because SAJ Musa told his troops
8 that they should cease communication with the RUF. In any event,
9 this is the state of play as they moved towards Freetown. What
12:40:16 10 is happening in Liberia?

11 Taylor is engaged in the peace process, as well as other
12 matters, that he has to attend to during the year 1998. You
13 remember the presidential papers illustrate the various
14 activities that Charles Taylor was engaged in. Foday Sankoh at
12:40:44 15 this time, where is he? We know in March 1998, actually I think
16 it was March 1997, there is an agreed fact to this effect.
17 Foday Sankoh is arrested in Nigeria. In October 1998, he is put
18 on trial for treason, having been handed over by the Nigerian
19 government to the Sierra Leonean government. He is convicted of
12:41:10 20 treason. He is sentenced to death. So Foday Sankoh is in
21 custody at this time, the other founding member of the alleged
22 criminal enterprise. Sam Bockarie is in charge of the RUF but
23 he's in charge of a disunited RUF. Sam Bockarie, having had a
24 fallout with Dennis Mingo, also known as Superman. So within the
12:41:39 25 RUF family you have chaos. Foday Sankoh is in jail, Sam Bockarie
26 and Superman have fallen out. In fact, there is evidence to the
27 effect that Sam Bockarie had sent people to try and kill
28 Superman. The AFRC, or the SLA as you would call it at this
29 point, is in disarray. Johnny Paul Koroma is in jail, caused by

1 Sam Bockarie. Gullit has fallen out with the RUF. SAJ Musa has
2 ceased communication with the RUF. And they are advancing
3 towards Freetown.

4 And then there are the obvious facts, most important of
12:42:24 5 which are, as I've read previously, the objective or purpose of
6 the SLA was to reinstate the Sierra Leonean Army. That was their
7 purpose in going to Freetown. It wasn't to pillage any of the
8 country's resources, it wasn't to forcibly control the territory
9 and the population of Sierra Leone. It was to reinstate the
12:42:50 10 Sierra Leone Army. We say the purpose of the RUF in going to
11 Freetown was to take over political power. Issa Sesay testified
12 to this. Issa Sesay told the Court that from the very beginning
13 in 1991, the RUF wanted to go to Freetown because it was the seat
14 of power and they wanted to take political power. Sesay
12:43:17 15 testified about this on the 19th of August 2010, page 46698,
16 lines 16 through 21. He also made reference to it on the 4th of
17 August 2010, page 45432, lines 11 through 25.

18 Adjudicated fact 12. On one occasion during the advance,
19 SAJ Musa and the AFRC troops heard the BBC interview Sam Bockarie
12:44:07 20 over the radio. Bockarie revealed the position of the AFRC
21 fighting forces and explained that it was RUF troops who were
22 approaching Freetown. Soon after, ECOMOG bombarded the area.
23 Musa immediately contacted Sam Bockarie, insulted him and told
24 him that he had no right to claim that the troops approaching
12:44:31 25 Freetown were RUF troops.

26 Now, what does that tell you? They hadn't even gotten to
27 Freetown and they were fighting amongst themselves. Sam Bockarie
28 is on the BBC, and it appears he revealed the position of where
29 the AFRC - the SLAs were and ECOMOG bombarded the place. So

1 these are all alleged members of the JCE, a criminal enterprise.
2 Yet, as disjointed as can be.

3 Now, and then there is Freetown itself. Despite all
4 attempts made by the Prosecution to place the RUF inside
12:45:17 5 Freetown, we know that the RUF stopped at Waterloo. Issa Sesay
6 testified to that. There is also other evidence on record
7 suggesting that the RUF troops did not make it into Freetown
8 proper. Yes, there was someone like Perry Kamara that was with
9 the AFRC group, TF-360, and I believe there was another radio
12:45:48 10 operator, Alfred Brown, but so what? You had groups that
11 formerly were together during the junta period and yet were
12 squabbling over two RUF members being present with the AFRC. The
13 fact of the matter is the overwhelming evidence in this case
14 confirms that the invasion of Freetown was an AFRC affair, it was
12:46:10 15 undertaken with a common purpose or ultimate objective or goal
16 that is fundamentally different from what the Prosecution has
17 alleged in this case. These are the facts where we've passed the
18 stage of allegations, and the Prosecution cannot rewrite the
19 history of this case, it is far too late for that.

12:46:30 20 Now, post-Freetown, what is the state of the common purpose
21 and the JCE?

22 There is an exhibit confirming that in April 1999,
23 Foday Sankoh is moved to Lome ahead of the Lome peace talks in
24 July. We know from the record, I believe Moses Blah testified to
12:46:58 25 it, that Dorothy Musuleng-Cooper was an emissary of
26 Charles Taylor sent to Lome to facilitate the talks. This is at
27 page 10314 of 20 2008, Moses Blah's evidence. So Charles Taylor
28 is still playing the role as the point President for peace within
29 ECOWAS, to facilitate resolution of the Sierra Leonean crisis.

1 I understand there was an issue yesterday about this notion of
2 whether Mr Taylor was in fact the point President and what
3 evidence we have to support it. I will address that later on in
4 my presentation, given the little time I have, but I will say
12:47:56 5 this now: We have put in our brief, we have made reference, to
6 documents that show that the leadership of ECOWAS and the UN were
7 aware of Mr Taylor's role vis-a-vis the peace process in
8 Sierra Leone.

9 I will give references to these. Your Honours, I would
12:48:26 10 refer you to Defence exhibits 237, 248, and 252. All of these
11 support Mr Taylor's evidence. You remember Mr Taylor testified
12 on 14 July 2009 and he said something to this effect.

13 "Let me just add for the judges, this is contained in
14 resolutions of ECOWAS that will be presented to this Court,
12:49:01 15 communiques on the approval of ECOWAS stating exactly what I am
16 saying, asking me to get personally involved on the front line in
17 helping to resolve the issue in Sierra Leone."

18 And if you look at paragraph 93 of our brief, through 94,
19 your Honours will find citations to the relevant exhibit.

12:49:27 20 JUDGE SEBUTINDE: Mr Anyah, sorry to interrupt you but I lest
21 I be misunderstood in the question that I put yesterday, I did
22 not, by any means, seek to shift the burden of proof to the
23 Defence. That burden remains with the Prosecution. I was merely
24 seeking a clarification.

12:49:46 25 MR ANYAH: Thank you, Justice Sebutinde. We did not
26 ascribe that implication to your question. And it was a fair
27 question. And we are happy to respond.

28 Now, we have post-January 6, 1999, the Lome peace talks.
29 You remember several exhibits dealing with Taylor's role in

1 facilitating the movement of RUF delegates to Lome. Nothing was
2 hidden. Everything was transparent. There was an exhibit that
3 confirmed Omrie Golley and Ibrahim Bah coming to the
4 Sierra Leone/Liberian border. We know that they travelled
12:50:40 5 through Roberts International Airport to go to Lome. Relevant
6 exhibits, exhibit D-193D, D-193G, D-193H. All of these are UN
7 documents, documents by the special representative of the
8 Secretary-General, Felix Downes-Thomas.

9 Now, we are in a court that has a connection to the UN.
12:51:13 10 Your Honours will recall that when we had these documents, the
11 United Nations itself sought to intervene in these proceedings to
12 prevent the Defence from using these documents. We remember one
13 morning how we came to court and there had been all these filings
14 about these documents, and one wonders why that is the case, when
12:51:44 15 the accused is supposed to have the benefit of the bargain, he's
16 supposed to be presumed innocent until proven guilty, the rules
17 allow him to defend himself, to obtain documents and call
18 witnesses, why would the United Nations seek to introduce itself
19 into this proceedings after a two-and-a-half year trial prevent
12:52:03 20 us from presenting these documents? One reason is obvious: The
21 documents destroy the Prosecution's case. The documents
22 completely undercut significant parts of the theories of the
23 Prosecution's case. And it was rather unfortunate that such an
24 intervention was made.

12:52:31 25 Now, Taylor plays a significant role in getting the
26 delegates to Lome. We pointed out in our brief the fact that the
27 only picture showing Taylor and Sankoh together was presented by
28 the Defence. Not by the Prosecution. You have members of a
29 criminal enterprise going as far back as the late 1980s and the

1 Prosecution could not come up with a single photograph of the two
2 men together. We presented those photographs. And the
3 photographs never showed the two of them alone. The photographs
4 showed Taylor with Sankoh always in the presence of others, and
12:53:16 5 this was during the negotiations leading up to Lome. The
6 photographs also showed Taylor and Sankoh in the presence of
7 several other African Presidents, Gnassingbe Eyadema of Togo,
8 Tejan Kabbah of Sierra Leone, Olusegun Obasanjo of Nigeria, all
9 pictured in this photograph. I believe Alpha Konaré was there as
12:53:45 10 well. Where is the evidence of these two men being so close that
11 one was essentially the surrogate of the other? Sankoh being the
12 surrogate of Taylor. No evidence.

13 Still in 1999, after Lome, Taylor again plays a role in
14 bringing peace to Sierra Leone. Johnny Paul Koroma is released,
12:54:20 15 Taylor convenes a summit, late September-early October 1999 in
16 Monrovia between Sankoh and Johnny Paul Koroma to resolve their
17 differences. What was the main difference at this point between
18 the two men? Well, Lome had accord - and, your Honours, if you
19 look in the evidence you will find proof of the fact that the
12:54:46 20 AFRC felt marginalised after Lome. They were not a signatory to
21 the agreement, while Sankoh received the position of
22 Vice-President, and other significant RUF member received
23 ministerial positions, the AFRC was left out of the government.
24 And Taylor's role in October 1999 was to facilitate the peace
12:55:20 25 again.

26 What was the state of the JCE at this point? What was the
27 common purpose at that point? Johnny Paul Koroma is no longer
28 part of the government. Is he still part of the JCE? Does he
29 have a specific intent to commit terror, to terrorise the

1 civilian population of Sierra Leone, or is he seeking to gain a
2 position in the Government of Sierra Leone? What was
3 Foday Sankoh's mens rea at that point? Was he a genuine member
4 of the Government of Sierra Leone, as Vice-President? Did he
12:56:00 5 still harbour intentions as the Prosecution alleges to forcibly
6 control the territory and population of Sierra Leone and also to
7 pillage its resources? When you look at the record, you find
8 little answers to these questions. We are still in the realm of
9 allegations. Even when we make closing submissions, we are still
12:56:27 10 speaking of allegations not facts.

11 What else has been happening in these countries, Liberia
12 and Sierra Leone during this period of time leading up through
13 1999 into 2000? We have Defence exhibit D-26. It is the
14 statement of President Tejan Kabbah to the Sierra Leonean Truth
12:56:51 15 and Reconciliation Commission. And there is something
16 interesting there. Kabbah mentions, President Kabbah mentions
17 the Special Task Force, and he mentions how this Special Task
18 Force, consisting of ex-ULIMO and -- ex-ULIMO J and ULIMO-K
19 fighters, how they had been in Sierra Leone since the time of
12:57:17 20 Valentine Strasser, from about 1992 onwards. These are
21 Liberians. These are trained fighters that had some sort of
22 connection to the SLA. They were still distinct, as far as their
23 membership, but there was some connection to the SLA. Kabbah
24 said he found out about it when he assumed the presidency. He
12:57:48 25 didn't know it had been in existence since 1992. He only knew in
26 1996. There are allegations in this case of Liberian fighters
27 being involved in the conflict in Sierra Leone. Several
28 witnesses came and testified about members of rebel groups who
29 spoke quote unquote, "Liberian English".

1 There was an armed force within Sierra Leone made up of
2 mostly Liberians called the Special Task Force, engaged in the
3 fighting during the conflict, and the Prosecution doesn't shed
4 any light on their mens rea, doesn't shed any light on the
12:58:32 5 purpose behind their fighting, doesn't shed any light on the
6 state of mind of David Livingstone Bropleh, their leader. Yet
7 Charles Taylor is supposed to be responsible for that. The
8 allegation is made in a blanket fashion. Liberian fighters
9 subordinated to Taylor. This is what the indictment suggests.

12:58:58 10 What else is happening? Defence exhibit 62. I can't
11 remember if the witness through whom it was introduced testified
12 openly or not, but I recall Ms Hollis mentioning the name today
13 and I will just check to be sure. If I may have a moment.

14 Open session, TF1-588, Stephen Smith. This document was
12:59:51 15 introduced to the Court. What does it say? Page 3 of 9 of the
16 document says to the Court that Valentine Strasser, yes, if we
17 could scroll up I see it is up, if we could scroll up to where it
18 says March 1995. Yes. Thank you.

19 Says: "Strasser then invited the South African private
13:00:21 20 security force Executive Outcomes. By that stage, the RUF rebels
21 were less than 20 miles from the capital although their hold on
22 the rest of the country outside the main diamond mining areas was
23 intermittent." I will skip some lines because I've just looked
24 at the time and I have quite a bit left to cover.

13:00:44 25 If we go below where it says December 1995, we will see
26 that, "The EO," which stands for Executive Outcomes, "expanded
27 their operations into rural Sierra Leone, retaking the diamond
28 mining areas by the end of 1995. I will invite your Honours to
29 examine the document in more detail but I have to leave it.

1 The point is there is another fighting force in the theatre
2 of Sierra Leone called Executive Outcomes from South Africa. The
3 exhibit confirms that they are retaking the diamond mining areas
4 of Kono. What does the Prosecution's evidence say about what
13:01:25 5 they - about where they fit in the overall scheme of things?

6 There is another group called Sandline, referred to in
7 Defence exhibit 27, a British mercenary group. When you look at
8 that exhibit, it's a New York Times article, says that Sandline
9 brought in plane loads of assault rifles, mortars, ammunition,
13:01:54 10 more than 100 tonnes altogether, into Sierra Leone during this
11 period of time that's of relevance to the Court. 100 tonnes of
12 weapons. They were paid \$10 million by the US and the British
13 governments to help restore President Kabbah to power.

14 We've heard testimony of RUF members struggling to find
13:02:27 15 ammunition. We hear testimony of Daniel Tamba, supposedly
16 carrying five boxes of AK round. What does that compare to 100
17 tonnes of arms and ammunition brought in by Sandline into
18 Sierra Leone? Where does this fit in with the notion of the
19 criminal enterprise? If Mr Taylor's contribution, as the law
13:02:56 20 requires, is supposed to be substantial, how does that compare
21 with this amount of weaponry? Even, for the sake of argument,
22 that he sent two boxes or ten boxes of AK rounds, through how
23 many years, and how does that constitute significant or
24 substantial assistance? There are no responses to these
13:03:23 25 questions.

26 We have, in our brief, cited evidence to the fact that
27 ULIMO ended up trading in arms and ammunition with the RUF,
28 several witnesses testified to that. So the RUF had alternative
29 sources of arms and ammunition, ULIMO being one. ECOMOG was in

1 the theatre at the time. The Prosecution concedes that the RUF
2 captured arms and ammunition from ULIMO. This is at page 122,
3 paragraph 238, of the Prosecution's brief. They cite only one
4 witness's evidence in that regard, but there are other witnesses
13:04:09 5 who testified to the RUF capturing arms and ammunition from
6 ULIMO. We know that - sorry, I said ULIMO. From ECOMOG.

7 We know that ECOMOG also committed atrocities during the
8 conflict. On Wednesday, Mr Griffiths showed you Defence exhibit
9 5A, a video. Your Honours have in your possession, Defence
13:04:37 10 exhibit 269 where the ECOMOG general from India, General Jetley,
11 was complaining that the Nigerian ECOMOG soldiers were trading in
12 diamonds with the RUF. All of this was taking place in
13 Sierra Leone and the Prosecution would have you believe that
14 Taylor was responsible for everything under the sun.

13:05:01 15 Now, I don't have enough time, but there are a few issues
16 one must address, and the first one I will deal with is something
17 Mr Koumjian said on Wednesday, regarding David Crane.
18 Mr Koumjian took exception to our brief and our assertion that
19 Mr Crane had no authority to disclose a sealed indictment.

13:05:27 20 I need to do this quickly. Madam court manager, if you
21 could please produce for the Court on the overhead the document
22 Mr Koumjian showed. It is CMS 003, as well as the other
23 documents I asked the Court manager to have available in court.
24 The first document would be dated 7 March 2003, CMS 003,
13:06:17 25 Mr Koumjian showed this to the Court on Wednesday. If you go to
26 the second page, yes, this is the order signed by
27 His Honour Judge Bankole Thompson on 7 March, and if we go to
28 where it says orders at the bottom, it reads:

29 "Pursuant to rule 53, and after consultation with the

1 Prosecutor, that there be no public disclosure of the indictment
2 or any part thereof or information pertaining to the indictment,
3 the warrant of arrest, the transfer and detention until further
4 order by the Special Court."

13:07:05 5 And below we see the seal and the stamp and we see Justice
6 Thompson's signature. We note there is no exception there for
7 any government or country and we submit that "public" includes
8 all others not privy to this exchange between the Office of the
9 Prosecutor and Justice Thompson.

13:07:28 10 What's interesting, when David Crane submitted the
11 indictment, he submitted a draft order for Justice Thompson to
12 consider. This order Justice Thompson signed is different from
13 the draft order that was proposed by Crane to the Justice to
14 sign. Can we show the Court what Crane submitted to Justice
13:07:50 15 Thompson to sign? We start with the first page.

16 MR KOUMJIAN: Your Honour, can I just ask what we are
17 looking at? Is this part of the case file?

18 MR ANYAH: Yes, this is CMS 001. The first document given
19 to Justice Thompson. It's file stamped with CMS, filed 7 March
13:08:20 20 2003, at 2 p.m.

21 PRESIDING JUDGE: Mr Anyah, is this part of the public
22 record?

23 MR ANYAH: Well, I'm not sure, but it is a document in the
24 case. We can go into private session. There is nothing here
13:08:35 25 that is different from the order I have just read, except for one
26 or two sentences.

27 Now, can we see the document? May I? Thank you. Okay. I
28 am told by my colleagues it is a confidential document,
29 Madam President. I don't see where - I don't see where it says

1 "confidential" on it. It doesn't say "confidential" on it.

2 JUDGE SEBUTINDE: Perhaps you could simply simplify this
3 issue and save time by simply telling us what additional words
4 were in the order, the draft order.

13:09:26 5 MR ANYAH: Okay, thank you, your Honour. It doesn't have
6 the same impact, but it is very important. The draft order
7 submitted by Crane, in that paragraph that Justice Thompson
8 I referred to, the orders paragraph of the document, the draft
9 document submitted by Crane had this line at the end: It says,
13:09:48 10 "Until further order by the Court, or at the discretion of the
11 Prosecutor," regarding non-disclosure.

12 So the Prosecution was suggesting to the Court, sign on
13 this document and say this document should not be disclosed until
14 further order by the Court or at the discretion of the
13:10:08 15 Prosecutor. Justice Thompson removed those last words, "at the
16 discretion of the Prosecutor." You won't find it in the order he
17 signed. He removed it. His order is also different from the
18 proposed order by the Prosecution. Theirs was titled, "Decision
19 confirming the indictment", and his is titled, "Decision
13:10:28 20 Approving the Indictment".

21 There is a reason the learned judge removed that sentence
22 from that document. He did not want to leave it at the
23 discretion of the Prosecutor to whom and when the Prosecutor
24 should disclose a sealed court document. There is no
13:10:44 25 jurisdiction you go to where a court enters an order, and then
26 there is this special exception for particular governments, that
27 the Prosecutor can at his discretion disclose a sealed
28 indictment. You cannot do it. And in this case, this document
29 proves the intent of the Court, which is come back to the Court,

1 seek permission, before you go waiving an indictment at the
2 breakfast meeting with a diplomat.

3 Now, another issue raised. Mr Koumjian said - thank you,
4 Mr Fornah. Mr Koumjian said that we raised the issue of evidence
13:11:25 5 falling outside the temporal or geographic jurisdiction of the
6 Court and we did so untimely, that we waived the issue but
7 your Honours will recall you issued an order last year, CMS 1101,
8 when we filed a motion about the same, the very same issue, and
9 your Honours said in the order that this was a matter that was
13:11:48 10 raised prematurely, that we should raise it at the time of final
11 submissions. Your Honours words were, "The motion was" - this is
12 our brief, paragraph 28, that, "The motion was premature at that
13 stage of the trial, and that the motion was more appropriately
14 addressed by the parties in the final trial briefs or closing
13:12:15 15 arguments." CMS 1101, the 6th of October 2010.

16 So that addresses their issue. We haven't waived any
17 issue. We are following the directive of the Court.

18 I will take my time on these last three issues. The issue
19 of pillage. Ms Hollis has told the Court that one of the
13:12:41 20 ultimate objectives of the JCE was to pillage the resources of
21 Sierra Leone. The Prosecution, in their brief, say at page 261,
22 paragraph 579, and in court during closing arguments on
23 9 February, at pages 49292 through 49293, Ms Hollis adds that in
24 any event, one of the - one of the ultimate objectives of the
13:13:21 25 JCE, to pillage the resources of Sierra Leone, is charged in this
26 case. I assume referring to count 11, pillage. Count 11, as
27 Justice Sebutinde pointed out, falls under the rubric of
28 Additional Protocol II and Article 3 common to the
29 Geneva Conventions. Our Article 3 of the Court statute. There

1 is a problem there. Mr Rapp spoke of pillaging the natural
2 resources of a country. Common Article 3, when you look at cases
3 dealing with pillage usually deal with plunder and the like.
4 Then I look at count 11. When you look at count 11 in our
13:14:05 5 indictment, what does count 11 say? It doesn't speak of
6 diamonds. It doesn't speak of pillaging the resources of
7 Sierra Leone. It speaks of looting, awful taking of property,
8 personal property. There is a difference there legally. On the
9 one hand, they are speaking abstractly about the charge of
13:14:29 10 pillage under Article 3. On the other hand, in practice, they
11 are giving us notice, by virtue of the way count 11 is charged,
12 how they have charged Mr Taylor that what he's to defend is the
13 pillaging that constitutes an awful taking of civilian
14 property. Paragraph 28 of the second amended indictment from
13:14:54 15 May 2007, that there was engaged in widespread awful taking of
16 civilian property including the following.

17 Civilian property is not the same as the natural resources
18 of a country. And there is a distinction it would be made there.
19 The fact that is both of the alleged ultimate objectives of this
13:15:19 20 criminal enterprise are not crimes within the jurisdiction of the
21 Court.

22 Next issue about the JCE. This is also important. This
23 Court house in which we sit, Special Tribunal of Lebanon, the
24 Appeals Chamber on 16 February 2011, this year, issued a
13:15:42 25 decision. His Honour Justice Cassese presides over that chamber.
26 The decision is titled, "Interlocutory decision on the applicable
27 law, terrorism, conspiracy, homicide, perpetration, cumulative
28 charges." 16 February 2011. There is an important element to
29 this decision regarding the law and JCE. The judges of the

1 Special Tribunal, in particular in that decision at paragraph
2 249, suggest that in the case of JCE 3, the extended form of JCE,
3 where you have a specific intent crime like terrorism, a crime
4 requiring special intent, or dolus specialis, it is the better
13:16:35 5 approach under international law not to allow convictions under
6 JCE 3 for special intent crimes like terrorism. You have other
7 special intent crimes that this explanation and suggestion would
8 apply to, genocide, persecution, the crime of aggression. When
9 you have JCE 3 -- and why is that? JCE 3, in addition to the
13:17:06 10 actus reus elements, you require a mens rea element that is
11 generally different from JCE 1. You require that the accused
12 have an awareness that crime - a crime committed by a member of
13 the JCE was a natural and foreseeable consequence of the common
14 purpose. He has to have this awareness. He then also has to
13:17:33 15 willingly go along. In civil law jurisdictions, by civil law
16 meaning personal injury cases, we call it assumption of risk, he
17 has to be indifferent to the risk, in continuing his
18 participation in the JCE that crimes, not necessarily
19 contemplated by him and the others, may be committed by members
13:17:58 20 of the JCE. What this Special Tribunal for Lebanon is saying is
21 that you can't have a lower standard of intent for other members
22 of the JCE who, when they signed up to the criminal enterprise
23 and the concerted plan that was the primary common purpose, did
24 not know of this additional crime to be committed later on by a
13:18:22 25 member of the JCE. And that is significant in this case. It
26 means that some of these other offences that the Prosecution may
27 seek to ascribe to Mr Taylor, in our view, do us a disservice and
28 prejudice us to the extent that they also do not require the
29 degree of intent that the crime of terrorism requires. The

1 thread of this case is terrorism. Terrorism is a specific intent
2 crime. If someone commits another crime that requires dolus
3 eventualis, advertent recklessness, Mr Taylor should not be held
4 responsible for that.

13:19:05 5 We ask your Honours to look at this decision. It's an
6 important decision. It is at variance with some of the
7 jurisprudence from the ICTY. In fact, it is at variance from the
8 ICTY Appeals Chamber, but as the judges of the Special Tribunal
9 point out, there have been only four cases that have survived
13:19:25 10 appeal vis-a-vis JCE 3 at the ICTY, General Krstic, Stakić, Tadić
11 and Martić. This is at footnote 368 of the STL Appeals Chamber
12 decision. That is a very problematic mode of liability, to
13 charge someone under JCE 3 in a case like this, especially one
14 involving a specific intent crime, terrorism.

13:19:54 15 I said I would yield some time to Mr Griffiths. I have
16 used up more time than expected. It remains for me to thank you
17 for your attention.

18 PRESIDING JUDGE: Thank you, Mr Anyah. Mr Griffiths?

19 MR GRIFFITHS: Madam President, your Honours, counsel
13:20:12 20 opposite, can I use the remaining ten minutes to touch upon a
21 couple of discrete topics, not in any particular order, and then
22 to deal with a separate matter altogether?

23 Mr Koumjian's point this morning regarding the absence of
24 proof as to meetings between Taylor and Bockarie, in the latter
13:20:36 25 half of 1998, Mr Koumjian pushed that point to the stage where it
26 would appear that he was suggesting on behalf of the Prosecution
27 that the defendant bears some burden of proof in terms of
28 providing evidence for the absence of such documentation. But
29 what holds that argument below the waterline is this: If that be

1 the case, that Mr Taylor was anxious to keep that relationship
2 private, why is there documentary proof of his contact with
3 Issa Sesay? Why? If he was seeking to conceal his nefarious
4 activities, why act in one way in relation to Bockarie and
13:21:26 5 another way in relation to Issa Sesay?

6 And Justice Sebutinde asked us for references to documents
7 that are available to show contact between Taylor in 1998, and
8 can I invite attention to exhibit D-169, dated 16 October 1998:

9 "On the 13th of October 1998, President Kabbah informed me,
13:22:05 10 the Secretary-General, of alleged preparation by Liberia for the
11 dispatch of fighters for an incursion into Sierra Leone. The
12 allegations were vigorously denied by Taylor. UN military
13 observers also detected no evidence of an armed incursion from
14 Liberia."

13:22:23 15 Then this: "On the 16th of October, the two Presidents
16 were reported to have spoken by telephone and to describe the
17 matter as a misunderstanding that had been clarified. The two
18 leaders were reported to have agreed to be in regular telephone
19 contact in order to work towards strengthening relations."

13:22:47 20 So there is that.

21 We then come to this: Exhibit D-175, UN Secretary-General
22 report of the 16th of December 1998, which refers to a meeting of
23 the Mano River Union and the three heads of state agreed to work
24 collectively to restore peace in Sierra Leone and maintain
13:23:15 25 stability in the subregion.

26 "The Liberian government subsequently announced that Kabbah
27 had agreed with Taylor's request for cooperation on joint border
28 patrols."

29 And moving along swiftly, there is exhibit D-176, a letter

1 to Bill Clinton, the contents to which speak for themselves, and
2 so, consequently, I do not repeat them here.

3 The Tiagen Wantee letter, to which Mr Koumjian referred,
4 the point he makes in our submission is without basis.

13:23:56 5 Eddie Kanneh was Secretary of State for the East based in Kenema
6 during the AFRC regime. Thereafter, the evidence is quite clear
7 that he was in bed with Sam Bockarie. So I repeat the question:
8 Why did he need to travel all the way to Conakry in order to seek
9 permission to enter Liberia? The point remains.

13:24:23 10 Third point. Issa Sesay should be disbelieved because he's
11 a murderer, he committed atrocities and the like. Very well.
12 Let's apply that standard to all of the Prosecution insiders
13 witnesses. Somebody like Zigzag Marzah. Remember the
14 cross-examination? How do you kill a baby, Mr Marzah? Oh, you
13:24:46 15 just hold it by the feet and smash his head against a wall or
16 throw him in the river. Very well, disbelieve Issa Sesay. Also
17 disbelieve him and people like Isaac Mongor.

18 Discrete point number 4, at the time of the Camp Naama
19 training between September 1990 and March 1991, Gbarnga was not
13:25:13 20 the headquarters of the NPFL. The NPFL headquarters at that time
21 was many miles away, perhaps 200 miles away, in Buchanan. You
22 recall the point made this morning about his proximity to the
23 camp.

24 So far as the point made about RUF personnel being in
13:25:37 25 SAJ Musa's group during the advance on Freetown and vice versa,
26 the evidence, in our submission, is quite clear that that was not
27 as a result of any organisational links between the two groups
28 but rather based on personal links between people like Gullit,
29 who you remember, had had an altercation with Bockarie and had

1 left Kai Lahun to join SAJ Musa, and so far as the latter is
2 concerned, ample evidence to demonstrate his antipathy towards
3 the RUF.

4 Justice Sebutinde asked a question regarding witnesses paid
13:26:20 5 by the Prosecution at the time when WVS should have paid all
6 expenses. We draw attention to rule 39(2) which states, "In the
7 conduct of an investigation," and we stress that, "the Prosecutor
8 may take all measures deemed necessary for the purpose of the
9 investigation including the taking of any special measures to
13:26:42 10 provide for the safety, support and assistance of potential
11 witnesses and sources."

12 The Defence position is that only WVS may provide for
13 witnesses after the investigation stage. Rule 34(A) provides for
14 WVS to provide such assistance. And we submit it is an abuse of
13:27:06 15 the Prosecution's discretion under rule 39(2) for the WVS and the
16 Prosecution to pay a person at the same time, because the person
17 is either a potential witness or a witness. The person can't be
18 both at the same time. An individual - and individuals who fall
19 into this category of overlapping payments include: TF1-274,
13:27:36 20 TF1-362, TF1-334, and that list is not exhaustive. But if
21 your Honours require further assistance in that regard, we may be
22 in a position to provide that in writing.

23 Next point: The reason why we have dwelt on JCE in detail
24 is that it lays the basis for all the alleged interactions
13:28:09 25 between Charles Taylor and the RUF, or the RUF/AFRC, and it
26 therefore establishes the factual basis for all other modes of
27 liability. That's why it's so central to this case.

28 Finally this, your Honours: When in July of 2007 I took
29 over as lead counsel for Charles Taylor, it was on the basis that

1 this case would last 12 to 18 months. Three and a half years
2 later, we have, to everyone's relief, finally got to this stage.
3 It has been on occasion a very rocky road. On occasions, both
4 anger and passion have come to the surface. Life at the front
13:29:02 5 line of a trial such as this cannot be unemotional.

6 Now, on the 25th of February of this year, I walked out of
7 this Court despite your request, Madam President, that I remain.
8 I make it clear, I did not leave through anger, but principle,
9 because I am enjoined by the code of conduct of the Bar in
13:29:28 10 England and Wales, and I quote, "To promote and protect
11 fearlessly and by all proper and lawful means the lay client's,"
12 that's Mr Taylor's, "best interests and do so with regard to -
13 without any regard to my own interests or to any consequences
14 either to myself or to any other person."

13:29:53 15 However, if it is felt that I have been disrespectful to
16 this Court, then I am willing to make a formal apology to this
17 Court, in order to draw a line finally underneath these
18 proceedings and bring it to an amicable end. We have always
19 treated this tribunal and these proceedings with respect and will
13:30:18 20 continue to do so.

21 But before I sit down, I am singularly unimpressed by
22 Mr Koumjian's attempt this morning to see some kind of moral high
23 ground by emotionally stating that the Prosecution were here
24 representing the interests of victims. We are human too. We,
13:30:41 25 too, appreciate that the inhumane acts which were conducted in
26 Sierra Leone. But the point is this: Emotion is no useful guide
27 to a fact finder in their task; it is a distraction. But before
28 I sit down, I must say thanks to your Honours to all the Court
29 staff, for whatever organ of the Court they belong to, and also

1 thank those opposite for their endeavours ensuring that this
2 trial has proceeded smoothly, and it has been a personal honour
3 for me to have been involved in this trial. Thank you very much.

4 PRESIDING JUDGE: Mr Griffiths, I would like, on behalf of
13:32:18 5 myself and my learned colleagues, to first deal with the matter
6 that you raised personally concerning the apology and your
7 willingness to give that and to draw a line. And we will proceed
8 in that way and we will hear you out.

9 MR GRIFFITHS: Well, I do apologise to the Court.

10 13:32:37 PRESIDING JUDGE: Thank you. That will draw a line under
11 that matter and bring it to an end.

12 As there are no other matters from the parties,
13 I therefore, in accordance with the provisions of rule 87(A) of
14 the rules of procedure and evidence declare the hearing closed
13:33:01 15 and that the Trial Chamber shall now deliberate in private.

16 The parties will accordingly be notified when a judgment is
17 to be delivered.

18 I, too, take the opportunity, on behalf of my learned
19 colleagues and myself, to thank counsel, the court management
13:33:20 20 service, our own Trial Chamber staff, the interpreters,
21 transcribers and the many others who have worked throughout this
22 trial, for their dedication and their contribution.

23 The Court will be adjourned to a date to be fixed.

24 Please adjourn the court.

13:34:10 25 [Whereupon the hearing adjourned at 1.34 p.m.]

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