



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 2 SEPTEMBER 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding
Justice Richard Lussick
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate

For Chambers:

Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura
Ms Zainab Fofanah

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Morris Anyah
Mr Michael Herz

1 Thursday, 2 September 2010

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.04 a.m.]

09:04:17 5 PRESIDING JUDGE: Good morning. We will take appearances
6 first, please.

7 MS HOLLIS: Good morning, Madam President, your Honours,
8 opposing counsel. This morning for the Prosecution, Mohamed
9 A Bangura, Maja Dimitrova and Brenda J Hollis.

09:04:38 10 MR ANYAH: Good morning, Madam President. Good morning,
11 your Honours. Good morning, counsel opposite. Appearing for the
12 Defence this morning are myself, Morris Anyah, and Mr Michael
13 Herz. Thank you.

14 PRESIDING JUDGE: Good morning, Mr Witness.

09:04:53 15 THE WITNESS: Good morning, sir.

16 PRESIDING JUDGE: As we continue with your evidence, I
17 remind you again this morning of your solemn declaration to tell
18 the truth that's binding on you.

19 Mr Anyah, please continue.

20 MR ANYAH: Thank you, Madam President.

21 WITNESS: DCT-008 [On former affirmation]

22 EXAMINATION-IN-CHIEF BY MR ANYAH: [Continued]

23 Q. Good morning, Mr Witness.

24 A. Good morning.

09:05:13 25 Q. Yesterday afternoon before Court adjourned, we were
26 considering a transcript of evidence dated 2 December 2008, and
27 we stopped at page number 21493, and I ask Madam Court Manager if
28 that page could be pulled up again, please. Thank you.

29 Mr Witness, I read from the previous page 24 - 21492

1 yesterday until this page, and I had not concluded asking you
2 questions about what I had read. First of all, let me read some
3 of it again and then I'll proceed to ask you questions.

4 At line 3 there is a question that was posed to Dauda
09:06:15 5 Fornie. The question was - well, Dauda Fornie gave his response
6 to a question posed, and his response, starting at line 3, was:

7 "A. Well, within the RUF it was not everybody who had the
8 authority to just go on the Liberian net and call. Some
9 operators had the authority. It was not every substation
09:06:36 10 that had that authority. Some stations had the authority
11 to communicate directly to the Liberian side.

12 Q. Specifically at Base 1?

13 A. Yes, like Base 1. The late Sellay had that authority.
14 Nya too had that authority. Alfred Brown had that
09:07:02 15 authority. I had that authority. Tiger - almost every
16 radio operator that was assigned to Mosquito's station.
17 Every radio operator that was assigned to Mosquito's radio
18 station had the authority to contact Base 1 directly."

19 Let's pause. I asked you previously, Mr Witness, if you
09:07:25 20 knew someone called CO Nya. I also asked you previously if you
21 knew someone called Foday Lansana. There is a reference here by
22 Dauda Fornie to someone called Nya in the context of radio
23 operators who had the authority to contact Base 1 directly.
24 During the time period when you were stationed at Base 1, did you
09:07:52 25 ever receive radio communication from Sierra Leone, from the RUF,
26 from someone called Nya?

27 A. No.

28 Q. How about from somebody called Alfred Brown?

29 A. I don't know Alfred Brown. I don't know Nya.

1 Q. Was it the case when you were assigned at Base 1 that every
2 radio operator assigned to Sam Bockarie's radio station had the
3 authority to contact Base 1 directly?

4 A. No.

09:08:44 5 JUDGE LUSSICK: This authority that you are referring to,
6 Mr Anyah, from whence came the authority? And, if it didn't come
7 from the Liberians, how would this witness know what the RUF had
8 authorised?

9 MR ANYAH: Well, the answer to the first question --

09:09:03 10 JUDGE LUSSICK: Well, let's hear from the witness, please.

11 MR ANYAH: Yes, your Honour.

12 THE WITNESS: Okay. When I said no, it means that during
13 the time of communication between Base 1 and Bravo Zulu 4/Planet
14 there were specific operators at Bravo Zulu 4 that Base 1 dealt
09:09:35 15 with in terms of radio communication between Bravo Zulu 4 and
16 Base 1 or between - or from Sam Bockarie and Benjamin Yeaten.
17 That is, Sellay, who Base 1 earlier dealt with, and then Mortiga.

18 JUDGE LUSSICK: Mr Witness, you are not answering my
19 question. Where did the authority come from that you're
09:10:12 20 referring to?

21 THE WITNESS: Okay. Let me just make this clear. There
22 was no rule or authority actually given to Base 1 that these are
23 the people that you should deal with in accordance to the set
24 rules. But during that operation, the Base 1 operators were
09:10:43 25 satisfied or sure of those three operators that they were
26 operators for Sam Bockarie. So, beside those three operators,
27 they were not pleased or satisfied or sure of these operators
28 that who claimed to be Sam Bockarie's operators were actually
29 Sam Bockarie operators.

1 THE INTERPRETER: Your Honours, could the witness be asked
2 to slow down and repeat from where I stopped.

3 PRESIDING JUDGE: You are going too fast, Mr Witness. You
4 are going too fast. Slow down a little bit and finish your
09:11:17 5 explanation.

6 THE WITNESS: Okay. I said there was no given rule or no
7 given authority to Base 1, so to speak, that these are the radio
8 operators that you should deal with, or these are the radio
9 operators that you should not deal with in the RUF. But Base 1
09:11:45 10 operators themselves, to be on the safer side, in order to avoid
11 giving information to the wrong person on the RUF side, they
12 themselves decided that they will deal with only three operators
13 that they knew and whose names were given to them firstly by
14 Jungle, like Sellay, and then, after Sellay, the next person that
09:12:12 15 came up was - were Daf and Mortiga. But besides these three
16 guys, other operators who claimed to be calling from Bravo Zulu 4
17 or Planet 1, Base 1 never gave them information or Base 1 never
18 discussed detailed information with them, even though they would
19 come in and then connect Base 1 and say that they are calling
09:12:39 20 from Bravo Zulu 4, but Base 1 operators would tell them, "I
21 either want to deal with Daf or Mortiga." That, "I want to deal
22 with Daf", or, "I want to deal with Mortiga."

23 JUDGE LUSSICK: I think I am understanding you. Are you
24 saying that there was no official order relating to authority, it
09:13:02 25 was simply that your operators decided that there were only three
26 RUF operators that you would deal with. Is that correct?

27 THE WITNESS: Yes, from the Base 1 side. But whether this
28 authority was given to the RUF side, then the operators at Base 1
29 did not know. But from the Base 1 side, the operators at Base 1

1 were sure of Mortiga, Daf and Sellay as Sam Bockarie's operators.

2 PRESIDING JUDGE: Mr Anyah, the question that you put to
3 the witness was actually a quotation out of the evidence of a
4 Prosecution witness.

09:13:47 5 MR ANYAH: Yes.

6 PRESIDING JUDGE: Who, in his evidence, stated that the
7 authority was limited to certain RUF operators and not everybody
8 had access.

9 MR ANYAH: Yes.

09:13:59 10 PRESIDING JUDGE: So this is the question you are now
11 putting to the witness to corroborate or deny?

12 MR ANYAH: That is exactly the case, Madam President.

13 Q. And, Mr Witness, although you said there were no clear
14 restrictions from the Base 1 side, and you were not aware of
09:14:23 15 instructions given on the RUF side vis-a-vis who should be able
16 to communicate with Base 1, my question has to do with the fact
17 of whether you communicated with certain RUF radio operators.

18 See, this witness, Dauda Fornie, told the Court that only
19 certain RUF radio operators from their side had the authority to
09:14:47 20 contact Base 1 directly. Dauda Fornie then went on to give us
21 some of the names of those operators who had that authority.
22 This is, according to Dauda Fornie, what he knew about the RUF
23 operations. All I need to know from you is on your side of the
24 equation at Base 1, taking, for example, the name Nya, did you
09:15:11 25 ever receive a call at Base 1 from someone called Nya?

26 A. No.

27 Q. How about Alfred Brown?

28 A. No.

29 Q. And continuing with the transcript of Dauda Fornie, I was

1 trying to find a reference from yesterday when I read the
2 evidence of TF1-585 because that Prosecution witness actually
3 stated that it was Sam Bockarie who placed limitations on who
4 could call Base 1, and I think we covered some of that yesterday
09:15:54 5 when I read that witness's evidence. I will attempt to find it.
6 I think - well, I will come back to that.

7 Now, Mr Witness, continuing with Dauda Fornie's evidence,
8 page number 21494 from December 2, 2008. You will recall,
9 Mr Witness, I read to you a transcript yesterday where Dauda
09:16:39 10 Fornie said that he could recognise the voice of Sunlight. Do
11 you recall me reading that to you yesterday?

12 A. Yes.

13 Q. Incidentally, let me ask you this question: Could the
14 operators at Base 1, after you had been in communication with
09:16:56 15 Buedu, Planet 1/Bravo Zulu 4 over a period of time - could the
16 Base 1 operators recognise or identify the voice of each of the
17 operators on the other side that you were allowed to talk to?

18 A. Yes, Base 1 could recognise the voices of those operators
19 that they dealt with from Bravo Zulu 4.

09:17:25 20 Q. Take Sellay, for example. Could Sunlight distinguish
21 between Sellay's voice and the voice of Daf, for example?

22 A. Yes, at the time Sunlight could distinguish the voice of
23 Daf from that of the voice of Mortiga or any other person that he
24 was dealing with.

09:17:51 25 Q. Now, how about recognising the difference between the voice
26 of Daf and Mortiga. Could Sunlight make that distinction while
27 at Base 1?

28 A. Yes.

29 Q. Thank you. Now page 21494, starting at line number 9. A

1 question was posed to Dauda Forni e:

2 "Q. Now you said before the break that you, at one point,
3 started recording some of the radio transmissions, the RUF
4 radio transmissions. Is that correct?

09:18:45 5 A. Yes.

6 Q. Do you recall approximately when you started recording
7 some of these?

8 A. The RUF radio conversations were after 6 January in
9 Freetown when RUF attacked Freetown. It was after 6
09:19:02 10 January that I did the recordings.

11 Q. And what did you do with these recordings?

12 A. I kept the recordings for my personal records, to
13 serve as personal reference for myself."

14 And then counsel for the Prosecution asked that a clip, an
09:19:26 15 audio clip, be played for the courtroom. We see at line 28 that
16 the clip was played and I can say to the Court that this clip was
17 ultimately admitted into evidence as Prosecution's exhibit P-261.

18 Madam Court Manager, with leave of your Honours, may I ask
19 that we play that clip at this time.

09:20:12 20 [Audio clip played to the Court]

21 PRESIDING JUDGE: We are going to have it played again
22 because a number of us did not hear what was said.

23 [Audio clip played to the Court]

24 MR ANYAH: Madam President, if I may just be heard. The
09:23:26 25 problem is actually with the audio because, when you read the
26 transcript of 2 December, there are about 15 pages of questions
27 back and forth from your Honours with Prosecution counsel about
28 how you could understand the audio, and they still applied and
29 had it admitted. So if you look at the transcript of December 2,

1 indeed Justice Lussick suggested a way in which it could be more
2 audible, and that is actually to reduce the volume and the
3 comments by Justice Lussick to the audio quality was at page - or
4 is at page, 21504 of the transcript of 2 December 2008. And
09:24:10 5 Justice Lussick said, "Just as a matter of interest, I found that
6 when I turned the volume down I could understand what was being
7 said. I think the recording was just played too loud and it
8 distorted the reception. But when I said I could understand what
9 was being said, I could hear the words clearly but I think they
09:24:33 10 were in Krio." So I think it is more audible when the volume is
11 lower actually than higher, but.

12 PRESIDING JUDGE: Well I can tell you one thing, speaking
13 for my own self, when the volume was down I couldn't hear a
14 thing; when the volume was up I couldn't hear a thing. And worse
09:24:57 15 still, I think the people were speaking in a language that I
16 don't understand. Other people say it is Krio, I am none the
17 wiser, but nonetheless the witness is here. Please go ahead.

18 MR ANYAH: Thank you, Madam President.

19 Q. Now, Mr Witness, we just played that clip, let me read you
09:25:16 20 what Dauda Fornie told the Court when they played this clip.
21 This is at 21495, the transcript of 2 December, line 2:

22 "Q. Who are the voices on that recording?

23 A. The first voice was the late Foday Sankoh's. That was
24 the late Foday Sankoh's voice. And Mosquito's voice is on
09:25:45 25 that and Sunlight's voice is on it."

26 Now, Prosecution counsel asked that the clip be played
27 again. The clip is played and then there are exchanges between
28 the Court, Mr Santora, Mr Munyard, and it goes on for several
29 pages, all about the quality of this clip, but we leave those for

1 a moment and we come to page 21500, page 21500. Dauda Fornie was
2 asked when this recording took place, at line 12:

3 "Q. Do you recall approximately when this recording
4 occurred?

09:26:35 5 A. It was around February to March - around February to
6 March 1999. Around February to March 1999. That was after
7 the Freetown invasion on January 6 by the RUF."

8 Then more questions from the Court regarding - from Judge
9 Sebutinde regarding whether or not there was a transcript with
09:27:04 10 the recording. And counsel for the Prosecution said they were
11 only relying on the witness's evidence and the recording
12 together. No transcript.

13 We then go to page 21504, line 29. There is a question
14 asked of Mr Fornie:

09:27:35 15 "Q. Now, Mr Witness, you have already said that you
16 recognise - and we go over to the next page - the voices on
17 this recording. And who are the voices again?

18 A. The first voice was talking something around the lines
19 like 'I'm not getting you clearly', that he was not getting
09:28:00 20 the transmission clearly. That's what he was talking.

21 That voice is the Lion, that is, Foday Sankoh. The second
22 voice was Sunlight, who intercepted and he was saying,

23 '35 Bravo, come in. Come in, 35 Bravo' that was Sunlight.

24 The third voice that spoke was Mosquito's and he said 'my
09:28:33 25 man, stand by' and Sunlight continued talking. Sorry,

26 Sunlight continued talking. He said 'you can't remember

27 what you and my father' - or something like that, around

28 those lines. He said 'what you and my father spoke just

29 now, or what you and I spoke'. You know, they were talking

1 in Liberian English, I cannot quote exactly but they
2 were talking around those lines.

3 And the last speaker was CO Isaac. The last speaker was CO
4 Isaac, Isaac Mongor.

09:29:20 5 Q. Mr Witness, I'm not going to ask you particularly about
6 the contents of this, but you said earlier that you at
7 times recorded radio transmissions. Is that correct?

8 A. Yes.

9 Q. You said you started recording these after the Freetown
09:29:36 10 invasion of January 1999. Is that correct?

11 A. Yes."

12 Then if we were to go to the next page, page 21506,

13 Mr Fornie indicates at line 11 that after the recordings were
14 made, that he kept them for himself. And he was asked:

09:30:03 15 "Q. How long did you keep them?

16 A. Those cassettes were with me. Even now I have some of
17 the cassettes, even now I still have some of those recorded
18 tapes.

19 Q. Did you ever turn these cassettes over to anyone?

09:30:18 20 A. Yes, I turned them over, these cassettes - some of
21 these cassettes - to the investigators of, the Prosecution
22 investigators who were taking preliminary statements from
23 me. It was to them that I turned these cassettes over."

24 Well, Mr Witness, with the indulgence of your Honours, just
09:30:42 25 so there is no mistake, I want to ask that the tape be played
26 again before I ask the witness questions about it.

27 PRESIDING JUDGE: Yes, I think that is a good idea.

28 [Audio clip played to the Court]

29 MR ANYAH:

1 Q. Mr Witness, did you hear the audio tape that was played?

2 A. Yes.

3 Q. Do you recognise any of the voices that we heard on that
4 audio tape?

09:32:10 5 A. No.

6 Q. Did you understand any of what was being said on that audio
7 tape?

8 A. Yes.

9 Q. What did you understand?

09:32:23 10 A. First of all, I heard two different accents on the radio,
11 that is, the Sierra Leonean accent and that of the Liberian
12 accent. For the Sierra Leonean accent, I don't know who was
13 speaking, who said that, "I am not getting you loud and clear"
14 and for the Liberian accent, the individual who said, "35 Bravo,
09:32:58 15 come in" you know, what - you and I spoke, getting on fine, okay,
16 that voice is not the voice of Sunlight, as the witness stated.
17 That voice is not the voice of Sunlight. And Sunlight never
18 referred to Buedu as 3-5B since the start of communication with
19 3-5B, I mean, sorry, with Buedu. The beginning of communication
09:33:35 20 with Buedu, the first code that Sunlight used during that time
21 was the code Sellay, which was the code name for Sellay that
22 Jungle told Sunlight that the operator was Sellay. He called
23 Buedu as Sellay. "Sellay come in, Sellay come in to Base 1."
24 And, after all, before the end of that communication, the code,
09:34:07 25 the call sign for Buedu, was then given to Sunlight and, from
26 that time, up until 2000 - I'm sorry, up to 1999, late 1999 -
27 Sunlight was using the code either Planet 1 or Bravo Zulu 4.
28 Sunlight never used the code 3-5B.

29 Q. Mr Witness, the audio appears to have been saying 35 Bravo,

1 at least that's what is on the transcript of record from Dauda
2 Foday's interpretation of this audio tape. Did Sunlight ever use
3 that sign, 35 Bravo, to call Buedu?

09:35:06

4 A. Sunlight never used that call sign, 35 Bravo, to call
5 Buedu.

6 Q. Mr Witness, you said you heard two different accents.
7 Dauda Fornie spoke of more than two people speaking on this audio
8 tape. He said the first voice was Foday Sankoh; the second voice
9 was Sunlight; the third voice was Mosquito; and the last voice

09:35:35

10 was CO Isaac. That is four different voices on this audio. Now,
11 have you had an occasion previously to hear Sam Bockarie's voice
12 on an audio tape or over the radio?

13 A. I have heard Sam Bockarie's voice over the radio - over the
14 BBC before.

09:36:04

15 Q. Are you in a position to recognise Sam Bockarie's voice if
16 you heard it again?

17 A. If I heard it on the radio I think I can recognise it.

18 Q. Given what you heard from the audio clip that we just
19 played, did you hear anything in that clip that sounded like Sam
20 Bockarie's voice to you?

09:36:28

21 A. No.

22 JUDGE LUSSICK: Just before you leave that topic, Mr Anyah.

23 Mr Witness, you said that the person saying, referring to
24 35 Bravo was not Sunlight. Did you recognise who it was?

09:36:58

25 THE WITNESS: I don't know who the person is. I don't know
26 who the person was.

27 JUDGE LUSSICK: Was that the person you were referring to,
28 who had a Liberian accent?

29 THE WITNESS: Yes, your Honour. The person who said "3-5B,

1 come in, come in." He had a Liberian accent.

2 JUDGE LUSSICK: So that's a Liberian operator and you
3 couldn't identify his voice. Is that correct?

09:37:30

4 THE WITNESS: It is a Liberian voice but I don't know
5 whether he was operating from Liberia, but he spoke in Liberian
6 accent. He spoke like a Liberian. That person spoke like a
7 Liberian.

09:37:53

8 PRESIDING JUDGE: Mr Witness, did you not say, was it not
9 your evidence towards the beginning of your evidence, that the
10 RUF radio, from the period 1991 to '92 was code named 35 Bravo,
11 or 35B?

12 THE WITNESS: Yes, I said I was told by previous operators
13 that the RUF code between 1991 and 1992 was 3-5B. I said that,
14 your Honour.

09:38:26

15 MR ANYAH:

16 Q. Yes?

09:38:48

17 A. Yes, I said that, but what I am saying is that when Base 1
18 started its communication with Buedu, Base 1 never used a call
19 sign 3-5B. At first it was Sellay. Secondly, and continuously,
20 it was either Planet 1 or Bravo Zulu 4. No operators at Base 1
21 ever used a call sign 3-5B or 35 Bravo.

22 Q. Mr Witness, that Liberian voice, or the person with the
23 Liberian accent, do you recognise that voice to be the voice of
24 any Government of Liberia radio operator?

09:39:20

25 A. No.

26 Q. Do you know the location where that person who spoke with
27 the Liberian accent was speaking from?

28 A. I do not know who the person is, so I do not know where he
29 was speaking from.

1 PRESIDING JUDGE: Also, Mr Witness, in your opinion, having
2 listened to the audio, how many individuals do you think are
3 speaking on that audio? How many different voices did you hear?

4 THE WITNESS: From what I heard on this recording, I heard
09:40:08 5 two voices. That is, one, the person who called saying, "35
6 Bravo, come in. 35 Bravo, come in." He said, "My man, you know
7 what we are speaking about. I said try and get on fine." That
8 is voice number one. And the person saying that, "I am not
9 getting you clearly. I am not getting you clearly," and at last
09:40:35 10 the person who was saying, "I can't get you clearly. I can't get
11 you clearly. Okay," and later, it is like he said, "My man,
12 please stand by. Listen," that was the second voice in the
13 Sierra Leonean accent. So two voices are recognised from this
14 audio clip.

09:41:03 15 MR ANYAH:
16 Q. Mr Witness, Mr Fornie told the Court that this was sometime
17 after January of 1999 or thereabouts, that was when this
18 recording was made. Do you know whether Foday Sankoh was a free
19 man around February or March 1999?

09:41:29 20 A. I don't know.

21 Q. Now, let us continue with Mr Fornie's evidence. May we go
22 to page 21516. Actually, one last question about that audio
23 clip, Mr Witness. The voice that you said was the voice of a
24 Liberian, or, rather, a voice that had a Liberian accent, was
09:42:03 25 that the voice of either Dew or Romeo Tango?

26 A. No. That voice was not the voice of Dew, nor was it the
27 voice of Romeo Tango.

28 Q. Thank you, Mr Witness. May we go to page 21516, please.
29 The question was posed to Mr Fornie. This is at line number 15:

1 "Q. Now, I'm going to ask you about some of these trips
2 specifically. You've already described one trip for the
3 Court. Do you recall your second trip to Monrovia?

09:43:12

4 A. Yes. I recall part of my second trip to Monrovia. I
5 recall.

6 Q. Can you describe for the Court that trip?

09:43:32

7 A. Yes. The second trip I made to Monrovia was also with
8 Mosquito, and on that trip I went with Mosquito and that
9 was the trip that we made when - I think when I went with
10 one of the code. I had to travel the code, the
11 communication code, the RUF communication code, to
12 Sunlight.

13 Q. Why were you travelling with the RUF communication code
14 to Sunlight?

09:43:52

15 A. For him to be able to monitor communications directly
16 from Sierra Leone and for him to use the code for himself
17 so that he will be able to give briefings to Benjamin at
18 any time when Benjamin asked him about updates from
19 Sierra Leone."

09:44:14

20 We are now on the next page, 21517. Mr Fornie continues:

21 "A. And also so that at any time he came to the RUF radio
22 net he would not use the Liberian voice procedure there and
23 he would not use the Liberian code there. Instead, he
24 would use the RUF codes on the RUF net, on the RUF radio
25 net.

09:44:44

26 Q. Who instructed you, if anyone, to give these codes to
27 Sunlight?

28 A. It was the overall signals commander, and that was the
29 Late Sellay. The Late Sellay M Duwor.

1 Q. Now, you've talk about codes previously. What type of
2 codes are you referring to here that you gave to Sunlight?

3 A. It was a communication code, radio code.

4 Q. Meaning what specifically?

09:45:24 5 A. Like in the radio code, for example, we had all the
6 arms and ammunition. We wrote all the different types of
7 arms and ammunition and we gave each one of them numbers to
8 disguise them. For example, AK rounds, you can say X-ray
9 1-2. Ambush, we might say Echo Bravo 7. Attack, we can
09:45:57 10 say Oscar 1-1. Enemy aircraft is coming, we can say 4-4-8.
11 And we also used to have nicknames that we gave to
12 commanders in those codes just to disguise the actual
13 identity of the particular commander or the subject matter
14 that we wanted to discuss.

09:46:23 15 Q. Now, why were you giving him these codes at this time,
16 do you know?

17 A. Yes, because the other codes that we had been using
18 before, we changed them, and during the first visit that we
19 went to Monrovia".

09:46:41 20 And then there is an interruption there. Let's pause there
21 for a moment. Mr Witness, Dauda Fornie is speaking of a second
22 trip he took to Monrovia with Sam Bockarie. If we were to go to
23 page 21519, we will find out that he says this trip occurred
24 around the middle of 1998. At line 17 of that page, 21519, Dauda
09:47:15 25 Fornie said, "Yes, we were approaching mid-98, yes, around
26 mid-98. We were approaching mid-98." That's when he claims this
27 trip took place, and that's when he claims he handed over the
28 code to Sunlight. We will come to the part where he says he
29 actually gave Sunlight the codes.

1 Let me ask you this. What I've just read, Dauda Fornie
2 said to the Court that in addition to giving you the codes - in
3 addition to giving Base 1 the codes so that briefings could be
4 given to Benjamin Yeaten, they also gave Base 1 the codes so that
09:48:04 5 the operator Sunlight, when he came on the net, that is the RUF
6 radio net, Sunlight would not use the Liberian voice procedure,
7 that he would not use the Liberian code there.

8 Mr Witness, while you were at Base 1, did you ever know
9 Sunlight to go on the RUF radio network and to use Liberian voice
09:48:31 10 procedure on that network?

11 A. Yes. When I was there - Sunlight is a Liberian. He always
12 called - when he was calling the RUF radio, he called using his
13 normal tone, that is the Liberian voice. That was not changed.

14 Q. How about using the Liberian code? Because you listened to
09:49:04 15 what the witness said, "So that Sunlight, he would not use the
16 Liberian code there." Now, this is different from a person's
17 voice. The witness is saying that on the RUF radio net, they did
18 not want - or he did not want Sunlight to use the Liberian code
19 there. Was there ever an occasion that you can recall when
09:49:33 20 Sunlight accessed the RUF radio net and used the Liberian code?

21 A. I don't understand when he said "the Liberian code". But
22 what I observed was that when Sunlight was calling on the RUF
23 net, he used his Liberian call sign, that is Base 1. If that is
24 what he's referring to, Sunlight used the Liberian call sign,
09:50:06 25 which is Base 1, and that's it. He never changed it.

26 Q. Yes. Forgetting call signs, this is radio communication
27 terminology. There is a difference between call sign and code.
28 You told us the Government of Liberia had its own radio
29 communication code. Now, did Sunlight, to your knowledge, ever

1 use that code or share it with those at base - at Bravo Zulu 4 or
2 Planet 1?

3 A. Sunlight never shared the Liberian code with Bravo Zulu 4.
4 Sunlight never used the Liberian code on the Sierra Leonean or
09:50:59 5 the RUF net.

6 Q. Thank you. What about these codes that Dauda Fornie gave
7 as examples? Dauda Fornie gave as examples that arms and
8 ammunition, for example, AK rounds, could be referred to as X-ray
9 1-2. Enemy aircraft could be referred to as 4-4-8. Mr Witness,
09:51:36 10 was it the practice, when you were at Base 1 and communication
11 ensued between Base 1 and Buedu, that AK rounds were referred to
12 as X-ray 1-2?

13 A. No. Those codes that he is making mention of were not
14 given to Base 1, not at all. Those codes he is making mention of
09:52:02 15 were not given to Base 1. And the Government of Liberia - on the
16 Government of Liberia radio communication net, when it comes to
17 coding, we had categories of coding. Okay. We had the
18 communication language that is similar to what he is trying to
19 say. Like in a communication language, we have codes for words,
09:52:34 20 like what I made mention of yesterday, like four hours long range
21 for the VHF radio, we had a terminology of communication language
22 which is different from the alphabetical - the phonetic alphabet.
23 Okay. For the communication language, like, for example, attack,
24 the word "attack" or "I am under attack", we used 15-8, 15-8.

09:53:12 25 That means that I am under attack, and that is different from the
26 alphabet. So, this form of communication was not handed to
27 Sunlight by the RUF. This is what he's - the one that he's
28 talking about was not handed. But the alphabet that they
29 prepared and gave to Memuna was the only code that he received,

1 and that code was between just Bravo Zulu 4 and Base 1.

2 Q. Mr Witness, you have referred to a code for the word
3 "attack" and, at least as I see it on this transcript, you said
4 you used - I don't know if you said 1-5 but it is written 15-8.

09:54:03 5 Did you say 15-8 for the word "attack"?

6 A. Yes.

7 Q. Well, Dauda Fornie said for "attack" they could say
8 something to the effect of Oscar 1-1. Are you familiar with that
9 kind of terminology, that in lieu of saying the word "attack" the
10 code Oscar 1-1 was used?

09:54:22

11 A. No, I am not familiar with that code and I don't know it.
12 It is not to my knowledge.

13 Q. Shall we go over to the next page, page 21518, please, line
14 7. Mr Fornie continued to explain his answer, or elaborate. He
15 said:

09:54:55

16 "A. We changed the code. We changed the code and then
17 Sunlight requested Sellay to make sure to help him get one
18 of our codes, because by then we had got the current code
19 that they were using at that time. So for us to have
20 smooth operation between us, that is Mosquito's station and
21 Base 1.

09:55:25

22 Q. During the time you were in Buedu about how often did
23 the codes change?

24 A. Sometimes two months, sometimes three months. There
25 was no standardised duration for the changing of the
26 codes."

09:55:44

27 Mr Witness, listen to this part carefully when the witness
28 said, "Sunlight requested Sellay to make sure to help him get one
29 of our codes."

1 Now, this witness is giving the impression that Sunlight
2 was pleading with Sellay, making a request, to help - that Sellay
3 should help him get one of the RUF codes. Now let's bear in mind
4 that the backdrop of all of this is that this is Benjamin
09:56:31 5 Yeaten's station communicating with Sam Bockarie's station. Are
6 you aware of the operators at Base 1 making a request or pleading
7 with Sellay on the other side that Sellay should help them get
8 the RUF codes?

9 A. No.

09:56:56 10 Q. How again did the operators at Base 1 get a code for use in
11 communicating with the RUF?

12 A. The operators at Base 1 got a code through Memunatu and
13 that code, like I said, was a special code that was only made use
14 of between Base 1 and Buedu. She brought it.

09:57:30 15 Q. Dauda Fornie told the Court that the code in Buedu, at
16 least when he was there, was changed sometimes two months,
17 sometimes three months - every two months or three months. Now
18 while you were at Base 1 was it the case that you received new
19 codes from the RUF every two to three months?

09:58:02 20 A. No. Even when I was there the code that Sunlight received
21 from Memunatu was never changed and they did not even send in
22 another one and he was not notified by Sellay or Daf or anybody
23 else that things have changed. If there was any change made,
24 maybe they gave it to Memuna, but Sunlight did not know about it,
09:58:37 25 because Memuna was now the one who was dealing with them
26 continuously.

27 Q. Thank you. Shall we go to the next page, page 21519,
28 please, line 2:

29 "Q. Now, did you eventually turn over these codes to

1 Sunlight?

2 A. Yes.

3 Q. And in what form were these codes recorded?

09:59:21

4 A. Well, it was a handwritten one. I can say it was a
5 small exercise book, those small exercise books that we
6 used to make or create the codes, and we used it to copy
7 the codes in there. It was not a very big pamphlet and it
8 was something that you can even take to the front line.

09:59:48

9 You can even pocket it and take it to the front line. It
10 was not something you needed to put into a bag, or maybe at
11 the front line you might drop the bag, or maybe somebody
12 will steal that away from you.

13 Q. Now, back to this trip. You said this was your second
14 trip to Monrovia. Is that correct?

10:00:09

15 A. Yes.

16 Q. Can you approximate when this trip occurred.

17 A. Yes. We were approaching mid-98. Yes, around mid-98.
18 We were approaching mid-98."

10:00:32

19 Let's pause. Mr Witness, in mid-98 was there a radio with
20 the call sign Base 1?

21 A. No.

22 Q. In mid-1998 did you, or any other Liberian radio operator,
23 receive a code from Dauda Forni e?

24 A. No.

10:01:05

25 Q. Where were Dew and Sunlight assigned to in mid-1998?

26 A. In mid-1998 Dew was assigned in Gbarnga. Sunlight was
27 assigned in Monrovia at the Executive Mansion of the Republic of
28 Liberia.

29 Q. Are you aware of either of those individuals, in mid-1998,

1 receiving the RUF radio communication codes from somebody called
2 Daf or Dauda Fornie?

3 A. No.

4 Q. When you say no, does that mean you are not aware of it?

10:01:50 5 A. When I say no, it means it's not true.

6 MR ANYAH: Madam President, with leave of your Honours,
7 there are a few matters I wish to address in private session and
8 the reason being to protect the identity of confidential exhibits
9 and all protected witnesses.

10:02:24 10 PRESIDING JUDGE: Very well. Madam Court Manager, for
11 those reasons we will go into private session, please.

12 [At this point in the proceedings, a portion of
13 the transcript, pages 47811 to 47848, was
14 extracted and sealed under separate cover, as
15 the proceeding was heard in private session.]

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1 [Open session]

2 MS IRURA: Your Honour, we are in open session.

3 PRESIDING JUDGE: Ms Hollis, please repeat that.

4 MS HOLLIS: I will be handling the cross-examination of
12:13:27 5 this witness and the Prosecution has an application to make,
6 outside the presence of the witness.

7 PRESIDING JUDGE: Mr Witness, there's a matter, an
8 administrative matter, that doesn't concern you, that we wish to
9 handle. So you will be shown out temporarily and then we'll call
12:13:50 10 you back for you to continue your evidence.

11 THE WITNESS: Thank you.

12 [In the absence of the witness]

13 PRESIDING JUDGE: Yes, Ms Hollis?

14 MS HOLLIS: Thank you, Madam President.

12:14:20 15 Madam President, at this time the Prosecution requests that
16 the Trial Chamber order the Defence to provide the Prosecution
17 with all the statements of this witness. And by "statements" we
18 mean by as defined in this Court; that is to say, interview
19 notes, statements that have been signed or adopted by the
12:14:41 20 witness, transcripts of audio or video interviews, as well as
21 proofing notes. And the Prosecution ask for this relief for the
22 following reasons:

23 The Prosecution has been provided six summaries from this
24 witness, the first summary having been provided on 29 May 2009.

12:15:12 25 In the first two summaries of this witness, the Defence has
26 indicated - has included in those summaries no statement
27 "recorded".

28 The third, fourth and fifth statements are, compared to the
29 great majority of the - excuse me the third, fourth and fifth

1 summaries are, compared to the great majority of summaries the
2 Prosecution has been provided, very detailed, running over three
3 pages, when you have a chart-type, not a portrait-type, of page.
4 The third summary was filed on 10 July 2009, 4, 29 January 2010.

12:16:04 5 The fifth 12 May 2010.

6 On 23 August, at 17:55 hours, the Prosecution was provided
7 with a sixth summary, and it was entitled an "updated summary"
8 not a "supplemental" or "additional summary" but an "updated
9 summary".

12:16:31 10 23 August, of course, was the day before this witness's
11 testimony was to begin. And, in fact, it began 24 August.

12 This witness's testimony has basically been re-invented
13 since the summary disclosed on 10 or 12 of May of this year.

14 The witness's testimony to your Honours and the very
12:17:03 15 general contents of the sixth summary have resolved around this
16 witness's contacts with, communications with, personal contacts
17 with, various RUF radio operators, Sam Bockarie, Issa Sesay, and
18 other RUF personnel.

19 This witness has told you about being in communication with
12:17:33 20 RUF operators in 1998 and 1999. Those operators have included
21 Mortiga.

22 The witness has also told you about a person he was in
23 contact with, Seibatu Jusu, that he saw at Benjamin Yeaten's
24 house.

12:17:57 25 The witness has told you about seeing Sam Bockarie at
26 Benjamin Yeaten's house.

27 The witness has told you about being in contact with a
28 radio operator by the name of Sellay, and that it was both
29 contact over the radio and personal contact, and that the witness

1 remembered this contact with Sellay because they were both radio
2 operators and they had been in contact.

3 This information is totally contrary to what was contained
4 in the summaries three, four and five.

12:18:44 5 In those summaries, the witness told the Defence, if the
6 summary is accurate, told the Defence the following things in
7 relation to this topic.

8 The witness told the Defence that he would testify he does
9 not remember seeing Sam Bockarie around Benjamin Yeaten's house.
12:19:11 10 It could have happened, but he doesn't remember that. The
11 witness was very clear to you when he talked about Sam Bockarie
12 at Benjamin Yeaten's house, having a meal there.

13 The witness in summaries three, four, and five, said he
14 does not know a Sellay Duwor, but the witness went on to tell the
12:19:39 15 Defence that he remembers a Duwor who was part of Benjamin
16 Yeaten's reactivated Jungle Fire unit. He doesn't tell the
17 Defence, "I don't know a Sellay Duwor, but I know an awful lot
18 about a Sellay."

19 In the summaries three, four and five, the witness said he
12:20:00 20 could scan and hear Sierra Leoneans talking on the radio but
21 denied ever knowing or receiving RUF radio code. When he came in
22 here, he told you much more than just listening to "Sierra
23 Leoneans". He told you about intercepting and monitoring RUF
24 communications and he told you about instances where he received
12:20:22 25 code that was RUF code.

26 Now, in relation to Memuna Deen giving him a code, he said
27 it wasn't the general RUF code, but certainly we suggest he was
28 saying it wasn't RUF code, totally contrary to his summaries.

29 He also told the Defence all the way up to the 12 May of

1 this year, that if RUF people knew his name it was because they
2 all came to Monrovia with Sam Bockarie when Taylor agreed to
3 allow Sam Bockarie to stay in Liberia as part of the peace
4 process.

12:20:59 5 Now, in his testimony to you, he has told you that he,
6 personally, knew, over radio contact and in person, many people,
7 and he has named them. So this is also contrary to summaries
8 three, four and five.

9 He specifically told the Defence he never saw Seibatu Jusu
12:21:22 10 at Benjamin Yeaten's house. He specifically told the Defence he
11 does not know Mortiga. So there has been a sea change in this
12 witness's testimony since these summaries, the one as late as
13 12 May of this year.

14 He also told the Defence that he will insist that no
12:21:42 15 foreigners were allowed to operate Benjamin Yeaten's radio, and
16 yet he has told your Honours that Memunatu Deen, who was a
17 Sierra Leonean RUF, and Mortiga, were allowed to use Benjamin
18 Yeaten's radio. Totally contrary to what he has in these
19 summaries.

12:22:04 20 He has also come up with a great deal of new information,
21 some of it contained in the sixth summary we were given at 17:55
22 hours on 23rd, some of it not.

23 The following are not included in summaries three, four and
24 five. Nothing about SBUs. Nothing about Sam Bockarie's trips to
12:22:27 25 Liberia in late 1998 or in 1999, before Sam Bockarie finally
26 located to Liberia. Nothing about two Lebanese with Sam Bockarie
27 on one of his trips to Liberia in 1998. Nothing about meeting
28 Sam Bockarie at the YWCA or any other place, and that is not
29 included in the sixth summary either. Nothing about Eddie Kanneh

1 and Gibri I Massaquoi being with Sam Bockarie on his 1998 trips to
2 Liberia, and that is not included in the sixth summary either.
3 Nothing at all about the communications centre in the Executive
4 Mansion in Monrovia being moved from the fourth to the seventh
12:23:13 5 floor; and nothing about secret communications from the seventh
6 floor involving Jungle, Sampson and a person named William Jimmy.
7 Nothing about Sampson going to Buedu and meeting Sam Bockarie's
8 convoy on the way. Nothing about secret deals between Benjamin
9 Yeaten and Sam Bockarie. Nothing about Benjamin Yeaten, Musa
12:23:39 10 Cisse or Varmuyan Sherif giving ammunition to the RUF or that
11 Jungle, Sampson and Zigzag Marzah are also involved in this.
12 Nothing about Musa Cisse being part of secret deals with the RUF.
13 Nothing about Memunatu Deen, and there's nothing about
14 Memunatu Deen in the sixth summary. Nothing about Daf being in
12:24:01 15 Togo as part of the peace process there, and there's nothing
16 about that in the sixth summary. Nothing about meeting with
17 Issa Sesay in Liberia; nothing about that in the sixth summary
18 either. Nothing about visiting the RUF guesthouse, and there's
19 nothing about that in the sixth summary either. Nothing about
12:24:21 20 Benjamin Yeaten's reaction to the news of the January attack on
21 Freetown. Nothing at all about hearing a serious confrontation
22 between Foday Sankoh and Sam Bockarie and hearing Foday Sankoh
23 order Issa Sesay to take charge, and nothing about that in the
24 sixth summary either.

12:24:40 25 Nothing about the SSS building next to White Flower and the
26 storage of arms and ammunition and other supplies there and with
27 Kai being in charge, and there's nothing about that in the sixth
28 summary either. Nothing about Benjamin Yeaten going to Sierra
29 Leone in 2000, or whenever it was he said he went, and there's

1 nothing about that in the sixth summary either.

2 Nothing about a LURD operation called Jungle Fire, not even
3 in the sixth summary. Nothing about a change of composition of
4 the Liberian Jungle Fire Unit when it was fighting against LURD,
12:25:19 5 and there's nothing about that in the sixth summary either.

6 Nothing about Sam Bockarie and those who came with him
7 in December 1999 being given Liberian citizenship, and the sixth
8 summary does not have that either.

9 Nothing about Junior Sei atoe as a bodyguard to Sam
12:25:39 10 Bockarie; nothing in fact about Sam Bockarie to the Ivory Coast,
11 and nothing about Junior Sei atoe and Musa Cisse following Sam
12 Bockarie to the Ivory Coast.

13 And I want to be sure that I am not misleading the Court.

14 I think I've said that there was nothing in the sixth summary
12:25:58 15 about Memunatu Deen. There may be something in the sixth summary
16 about that.

17 I also think I said there was nothing about Daf being in
18 the Togo peace negotiations. There may be something about that.

19 But in general, your Honours, what we have is a witness
12:26:17 20 whose testimony is totally contrary to what he had told the
21 Defence up to 12 May of this year. In those circumstances, we
22 think there is more than just cause for the Prosecution to be
23 provided with all his statements, so that we can try to track
24 this sea change in his evidence and be able to cross-examine him
12:26:41 25 effectively.

26 We ask that your Honours order the disclosure of all of
27 these statements and that they order them immediately so that the
28 Prosecution has time to review them today so that we do not have
29 to interrupt our cross-examination of this witness.

1 It is our suggestion that the Defence must have these
2 readily available, as this is the witness on the stand, and we
3 would ask that they be provided very quickly, and not this
4 evening or late tonight. And that is our application, your
12:27:12 5 Honours. Thank you.

6 PRESIDING JUDGE: Thank you, Ms Hollis.

7 Mr Anyah, can you respond, please.

8 MR ANYAH: Thank you, Madam President.

9 Madam President, our position is simple, and I will
12:27:26 10 elaborate on it. Our position is that the Prosecution is in no
11 way entitled to this witness's statement or statements. And the
12 reasons are these.

13 What is the applicable legal principle? The applicable
14 legal principle is whether there is such undue or irreparable
12:27:47 15 prejudice to the Prosecution such that it is in the interests of
16 justice for the Prosecution to receive the witness's statement.

17 Your Honours are well familiar with the case law in this
18 area. The case law is not complicated. The case law states
19 clearly that the Prosecution has no automatic right to a Defence
12:28:09 20 witness's statement.

21 During the course of the Defence's case, there have been
22 instances, a few of them, where your Honours have ordered
23 disclosure. Generally, there are two issues that arise in these
24 circumstances. One is whether or not the summary disclosed to
12:28:26 25 the Prosecution is sufficient. And even in regard to that
26 particular aspect, sufficiency, there is a distinction being made
27 between grossly insufficient and general sufficiency.

28 The second aspect of the equation is whether or not there
29 are inconsistencies, and in this regard, the inconsistencies that

1 your Honours have considered are inconsistencies between a
2 witness's testimony in court and the witness's summary.

3 So these are the basic ground rules.

12:29:13

4 Now, to expedite matters, can I ask for the assistance of
5 the Court Manager to display the last summary we have given to
6 the Prosecution on 23 August? I have a clean copy here that
7 should be displayed, because I wish to call some matters to your
8 Honours' attention. Can you display this, please.

12:29:44

9 Give me a second. Given today's proceedings, I want to be
10 sure that there is nothing here that might pose a problem
11 vis-a-vis protected witnesses. Well, do not display it. I will
12 read it for the Court. But I hope your Honours have a copy of
13 it.

12:30:02

14 PRESIDING JUDGE: We do have copies. Yes, we all do have
15 copies.

12:30:19

16 MR ANYAH: Now, the first thing I should point out, it is
17 dated 23 August. Today is 2 September. That means the
18 Prosecution has had this summary, which is what they are entitled
19 to - they are not entitled to a statement - they have had this
20 summary for over a week. The witness has been on the stand and
21 they've had the summary. Second point, learned counsel opposite
22 referred to five previous summaries, the last one being filed on
23 12 May 2010, CMS-957.

12:30:39

24 Our position is that as far as the issue of fairness to the
25 Prosecution is concerned, what matters most is the last summary
26 we gave to them, whether it accurately reflects the witness's
27 evidence, whether it accurately reflects the information we have
28 from the witness. And in that regard, we propose that we have
29 satisfied our obligation to them. We have provided the

1 Prosecution with an updated summary. Nomenclature in this regard
2 does not override substance. The fact that in our letter to the
3 Prosecution I did not write "supplemental" or "additional
4 summary" is irrelevant. The question that begs for an answer is
12:31:20 5 whether the summary, its contents, in its totality, conveys in a
6 comprehensive manner the totality of the witness's evidence. And
7 that's what we've provided to the Prosecution.

8 PRESIDING JUDGE: Mr Anyah, if I may interrupt, what then
9 is the status of the previous summaries?

12:31:37 10 MR ANYAH: Exactly. Counsel, in most of the submissions
11 made, have relied on the previous summaries. What has happened
12 in Court when there have been inconsistencies amongst the
13 summaries? Learned counsel opposite, counsel for the
14 Prosecution, have often attempted to impeach our witnesses by
12:31:57 15 saying, "Isn't it true that in a summary filed by the Defence
16 they have you saying such-and-such as opposed to what you've said
17 in court?" That's the manner in which the Prosecution may make
18 use of those prior summaries.

19 If you look at the new summary we have provided, counsel
12:32:16 20 said there is no reference to Jungle Fire. Well, the last line
21 of that summary says, "Witness will also testify about Jungle
22 Fire. It was set up by Yeaten to re-take Gbarnga in 1994 and
23 that it was later re-activated by Yeaten to fight LURD." There
24 is reference there to Jungle Fire. This is a very comprehensive,
12:32:37 25 though succinct, yet comprehensive summary we have given them.

26 Now, there is another point that is noteworthy. Counsel
27 said our first two summaries - the first one, filed on
28 29 May 2009, CMS-784, and the second one, filed on 23 June 2009,
29 CMS-793 - that there is the indication in those summaries that no

1 statement had been recorded from the witness. All correct. What
2 is further noteworthy in that regard is that both summaries are
3 identical, except for the fact that the word "background" appears
4 at the beginning of the summary for 12 June 2009. So on
12:33:26 5 29 May we file a summary, we regurgitate it exactly, repeat it
6 and replicate it on 12 June. So the first two summaries,
7 essentially, are one document, if you will.

8 We go to summaries three, four and five, the basis for most
9 of the Prosecution's arguments today. Summary number three was
12:33:48 10 filed on 10 July 2009, CMS-809; summary number four filed on
11 29 January 2010, CMS-897; summary number five was filed on
12 12 May 2010, CMS-957. If you look at those three summaries,
13 from July last year until May this year, everything in them is
14 identical. They are not three different summaries. They convey
12:34:21 15 the same information. And then we come to August of this year.
16 July/August, proofing sessions are had, and we prepare a summary
17 for the Prosecution about the witness's evidence.

18 Has the Prosecution really shown any insufficiency of the
19 summary that we have prepared and tendered to them over a week
12:34:46 20 ago? They haven't. That is what we submit. There is no
21 insufficiency regarding this summary. And even if there was,
22 your Honours have found that the remedy for insufficiency in a
23 summary is additional time for the Prosecution to prepare. That
24 is what the remedy is for insufficiency. They haven't shown
12:35:05 25 insufficiency.

26 The next question is: Have they shown a contradiction
27 between the summary that we gave them on 23rd of this month and
28 the witness's testimony? They have not shown such a
29 contradiction. Indeed, not any and all contradictions warrant

1 the disclosure of a witness's statement to the Prosecution. It
2 has to be a contradiction that is significant.

3 Your Honours found a contradiction that was significant
4 when DCT-179 testified. This was in March of this year. And
12:35:37 5 because it was such a crucial issue, the issue there being
6 whether or not a certain trip was taken to Voinjama at a
7 particular time, the summary said one year and the witness's
8 testimony gave another year for the trip, your Honours found that
9 to be a significant contradiction and that's when you ordered
12:35:57 10 disclosure of that witness's statement.

11 The Prosecution, who has the onus now to show such a
12 contradiction in this witness's testimony and the summary we gave
13 them, they have not shown that. They cannot show that. There is
14 no inconsistency; there is no insufficiency; they have not shown
12:36:16 15 a contradiction. All the complaint is is that summaries three,
16 four, five, which are all identical summaries, are different from
17 the last summary.

18 Well, the issue is one of interests of justice, it's one of
19 fairness to the Prosecution. They can ask the witness, "Why did
12:36:30 20 you say such-and-such to the Defence through May of this year?"
21 They can ask that of the witness, have the witness give them an
22 explanation. They haven't even cross-examined the witness. So
23 what is the complaint really? You can put the summary to the
24 witness and say, "Isn't it true you told the Defence
12:36:49 25 such-and-such, and in Court you've testified this way? How do
26 you explain yourself? We have no explanation." They want to go
27 around the general rule that says there is no blanket right of
28 disclosure of a witness's statement to the Prosecution. And we
29 say in this situation the Prosecution is not entitled to

1 disclosure, they have not met the necessary legal steps, and the
2 witness's statement should not be disclosed.

3 PRESIDING JUDGE: We are going to retire to consider the
4 application. It's quite detailed and there are a number of
12:37:58 5 documents that have been cited that we are going to ask our legal
6 officers to avail us with. And we'll take more or less half an
7 hour and then we will return with our ruling, please.

8 Thank you.

9 [Break taken at 12.39 p.m.]

10 [Upon resuming at 1.16 p.m.]

11 PRESIDING JUDGE: Now, the following is the ruling on the
12 Prosecution application for disclosure of witness statements.

13 The Prosecution application that the Defence now be ordered
14 to disclose the statement or statements including transcripts,
13:17:05 15 audio or visual interviews and proofing notes, of witness
16 DCT-008, who has just concluded his testimony in chief, is on the
17 grounds that the evidence given by the witness in chief is
18 "totally contrary to what is contained in the witness summaries
19 three, four and five, filed by the Defence on 10th July 1999,
13:17:35 20 29th January 2010 and 12th May 2010 respectively."

21 The Chief Prosecutor proceeded to point out examples of
22 these alleged contradictions. However, the Prosecution did not
23 point to any contradictions between the witness's testimony and
24 the latest witness summary filed on 23 August of this year.

13:18:05 25 The Defence oppose the application on the grounds that the
26 Prosecution has not shown justification for disclosure of the
27 witness statement.

28 Now, the Trial Chamber has held on numerous occasions
29 before that there is no blanket right for the Prosecution to see

1 the statement of a witness, a Defence witness, but that in each
2 case the Trial Chamber retains the discretion to order such
3 disclosure, depending on the circumstances of each case. The
4 test for the Court to determine is whether the Prosecution has
13:18:43 5 demonstrated that such undue or irreparable prejudice has been
6 occasioned to it, that it would be in the interests of justice to
7 order the disclosure of the statement or statements. We have
8 also held that a summary is not meant to be a complete statement
9 of everything that the witness will attest to, but that it must
13:19:05 10 at least provide a reasonable indication, however brief, of the
11 evidential areas to be covered by the witness in his testimony.

12 In the current case, we note that the witness summaries
13 which the Prosecution asserts contain the inconsistencies or that
14 are contrary to the witness's testimony, are summaries that have
13:19:29 15 been superseded by summary number six, filed on 23 August 2010.

16 The Prosecution has not pointed to any major inconsistency
17 between this summary and the witness's evidence-in-chief, nor
18 have they alleged that this summary is insufficient.

19 In the premises, we agree with the Defence submissions that
13:19:53 20 the Prosecution submission has not satisfied the requirements for
21 disclosure of the Defence witness statement. We also agree that
22 any inconsistencies between the previous summaries, that is the
23 summaries three, four and five, can simply be put to the witness
24 in cross-examination. Accordingly, the application is dismissed.

13:20:17 25 Now, the Prosecution have not asked for extra time to
26 prepare based on the fact that this summary was filed rather
27 late, but the Trial Chamber is willing to entertain such an
28 application, if one does arise. Otherwise, that's it. We would
29 expect to start cross-examination.

1 MS HOLLIS: Madam President, the Prosecution would request,
2 based on your ruling about the inconsistencies or contradictions,
3 based on all of the new information that the Prosecution pointed
4 out, the Prosecution would request quite simply that we be
13:21:04 5 allowed this afternoon to finish our preparations. As soon as we
6 did receive this latest summary, we began to work on the new
7 areas. During testimony other new areas arose and we have been
8 working on meeting those, but we would ask that we be allowed the
9 rest of the day to finalise those preparations for those new
13:21:28 10 areas.

11 PRESIDING JUDGE: Would the Defence object to this
12 application?

13 MR ANYAH: We have no objection to the application.

14 PRESIDING JUDGE: The Prosecution application for an
13:21:57 15 adjournment until tomorrow morning is granted, and so Court will
16 adjourn until tomorrow morning at 9.

17 MR ANYAH: Madam President, may the witness --

18 PRESIDING JUDGE: Sorry?

19 MR ANYAH: I was wondering if your Honour wanted to caution
13:22:18 20 the witness.

21 PRESIDING JUDGE: Yes. Certainly, the witness may be
22 brought in.

23 [In the presence of the witness]

24 PRESIDING JUDGE: Now, Mr Witness, we are going to continue
13:22:59 25 with your testimony in cross-examination tomorrow morning, not
26 today, because the Prosecution has been allowed a bit of time to
27 organise their papers, et cetera.

28 So, in the meantime, you are not to discuss your evidence,
29 this is how I normally caution you every day, and you will return

1 tomorrow at 9 to continue with your testimony in
2 cross-examination.

3 THE WITNESS: Yes, your Honours, Madam President.

4 PRESIDING JUDGE: The Court is adjourned until 9.

13:23:34

5 [Whereupon the hearing adjourned at 1.23 p.m.
6 to be reconvened on Friday, 3 September 2010 at
7 9.00 a.m.]

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WITNESSES FOR THE DEFENCE:

DCT-008	47789
EXAMINATION-IN-CHIEF BY MR ANYAH	47789