



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 16 APRIL 2010
9.34 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:

Mr Artur Appazov

For the Registry:

Ms Rachel Irura
Ms Zainab Fofanah

For the Prosecution:

Mr Nicholas Koumjian
Mr Mohamed A Bangura
Ms Maj Di mitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths QC
Ms Logan Hambri ck

1 Friday, 16 April 2010

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.34 a.m.]

09:27:38 5 PRESIDING JUDGE: Good morning. We will take appearances
6 first, please.

7 MR KOUMJIAN: Good morning, Madam President. Good morning,
8 your Honours, counsel opposite. For the Prosecution this
9 morning, Mohamed A Bangura, Maja Dimitrova and Nicholas Koumjian.

09:35:11 10 MR GRIFFITHS: Good morning, your Honours, Madam President,
11 counsel opposite. For the Defence today, myself Courtenay
12 Griffiths, with me Ms Logan Hambri ck.

13 PRESIDING JUDGE: Good morning, Mr Faya. We will continue
14 your testimony today, and I remind you that you are still bound
09:35:29 15 by your oath to tell the truth in your testimony.

16 Mr Griffiths, you are ready to continue?

17 MR GRIFFITHS: Yes.

18 WITNESS: DCT-306 [On former oath]

19 EXAMINATION-IN-CHIEF BY MR GRIFFITHS: [Cont'd]

09:35:47 20 Q. Mr Faya, I want us today to deal with various accounts
21 given to these judges by witnesses called over the course of
22 these proceedings for your comment and to give you an
23 opportunity, if you disagree with anything, to let us know. Do
24 you follow?

09:36:19 25 A. Yes, counsel.

26 Q. Now, the first witness I want to deal with is an individual
27 who gave evidence to these judges in January of last year and
28 told the judges, first of all, that Isatta Kallon was a
29 go-between between the external delegations and Corporal Sankoh.

1 Is that correct?

2 A. Very true.

3 Q. Now, that individual also went on to say that when he
4 arrived in Danane in May, at the time that he arrived in Danane
09:37:14 5 Alhaji Kamara, Philip Sannoh, Mr Kono Manyi, Deen-Jalloh, and
6 yourself were already in Danane. Now, who is Mr Kono Manyi?

7 A. Kono Manyi was on the external delegation. He is a Sierra
8 Leonean, a Kono by tribe. In fact, his name is 'Kono people are
9 back'. That is the meaning of his name, Kono Manyi.

09:37:46 10 Q. And who is Alhaji Kamara?

11 A. Alhaji Kamara was the man who was arrested together with
12 Palmer in Guinea. So as a matter of fact, Alhaji Kamara was
13 never in Ivory Coast with us.

14 Q. Now, that individual told these judges, and I quote:

09:38:17 15 "All of them, apart from Alhaji Kamara, were already
16 residing in Danane, including Philip Sannoh, Mr Kono Manyi,
17 Deen-Jalloh and Faya Musa."

18 Now, Philip Sannoh, who is that?

19 A. Philip Sannoh was the radio operator that went with me.

09:38:43 20 Q. And the witness told the judges that when he arrived, those
21 individuals he named were living at Houphouetville in Danane. Is
22 that true?

23 A. Yes, we were living there.

24 Q. And that on his arrival he was taken to Belleville 2 - no
09:39:09 25 Belleville 1?

26 PRESIDING JUDGE: Please. Yes, Mr Koumjian.

27 MR KOUMJIAN: Your Honour, I am concerned with whether
28 counsel is complying with what we discussed yesterday afternoon,
29 and I don't think --

1 PRESIDING JUDGE: Why are you wondering?

2 MR KOUMJIAN: Because I believe there's quite - details
3 that are unique - absolutely clearly unique in what is being
4 read.

09:39:36 5 PRESIDING JUDGE: Mr Griffiths, what is your response?

6 MR GRIFFITHS: I really don't see the sense of the
7 objection. The witness has to be given an opportunity to deal
8 with the accounts and to comment on it, and it seems to me that
9 the objection is totally misplaced.

09:40:11 10 [Trial Chamber conferred]

11 PRESIDING JUDGE: We happen to disagree with the objection
12 raised. And also may I caution, with all due respect to both
13 parties, sometimes there is more harm in raising these objections
14 than good. Because as we carry along, perhaps - unless you
09:40:33 15 really have to object to a question, you may actually raise
16 concern for nothing, where a concern could be avoided. So we do
17 overrule the objection. Please continue.

18 MR GRIFFITHS:

19 Q. Now, did you or any of the external delegation stay at a
09:40:53 20 place called Belleville 1?

21 A. Yeah, some of them were staying there. Palmer was staying
22 in Belleville 1.

23 Q. Now, that individual went on to say that at Belleville 1
24 that was where the radio station was, the communication station,
09:41:12 25 the field radio. Is that true?

26 A. Yeah, that's very true.

27 Q. And that that was an NPFL radio. Is that true?

28 A. Yes.

29 Q. In fact, that was the residence of Mr Musa Cisse. Is that

1 right?

2 A. Yeah, before the coming of our own --

3 Q. So before the coming of your own radio, you used the
4 radio - an NPFL radio which was at the residence of Musa Cisse in
09:41:45 5 Belleville 1. Is that true?

6 A. Yes.

7 Q. Thank you. Now, the witness went on to say this:

8 "When I met my friends, the other delegates, they were just
9 residing blindly in Danane and so I asked them what contacts they
09:42:10 10 made so far. They said, well, the only contact was Mr Musa
11 Cisse's house wherein they could talk with Corporal Sankoh
12 anytime or they could talk with our brothers in RUF territories.
13 I said, 'But what about your status here? Have you established
14 your status here? Have you made the authorities to know that you
09:42:34 15 are existing here as a movement?' They said, no. I said, 'Well,
16 it's dangerous to live like this. So let's try and do that.' So
17 we all left and went and met the perfect, the perfect of Danane."

18 Now, Mr Fayia --

19 MR KOUMJIAN: Excuse me, your Honour acknowledging what
09:42:56 20 your Honour just said, may the record just reflect my continuing
21 objection to the questions.

22 PRESIDING JUDGE: Of course the record does reflect what
23 you are saying. Please continue.

24 MR GRIFFITHS:

09:43:06 25 Q. Now, my question, Mr Fayia, is this: Whose decision was it
26 to alert the perfect of Danane to the presence of RUF
27 representatives in that town? Whose decision was it?

28 A. It was purely - in the first place I would like to say here
29 that the last person who joined us on the external delegation in

1 Danane was Captain Palmer, because when he and Mr Danger left our
2 zone to come to Danane through Guinea, he and Alhaji Brima Kamara
3 were both arrested in Guinea. I think I have said that here
4 before. So he was there up until when I came to --

09:44:04 5 PRESIDING JUDGE: Mr Fayia, are you answering the question
6 asked, or you are telling us your own story?

7 THE WITNESS: Sorry.

8 PRESIDING JUDGE: You were asked a specific question and I
9 will caution you to answer the questions asked, not to meander
10 off. Please ask your question again precisely, Mr Griffiths.

11 MR GRIFFITHS:

12 Q. Who made the decision, Mr Fayia, to alert the prefect of
13 the presence of RUF representatives in Danane?

14 A. It was we who were in the first delegation.

09:44:38 15 Q. And by "we" to whom are you referring?

16 A. I am referring to myself and Mr Ibrahim Deen-Jalloh.

17 Q. Now, we were also told this:

18 "Because we were able to prevail on Mr Amara Essy that we
19 didn't mean harm, all we wanted was to get in contact with our
20 brothers in the diaspora and at the same time to open up with the
21 international community so we expected them to assist us to
22 achieve our goals. So while in Ivory Coast we met with
23 representatives from the Commonwealth, from the OAU, from the UN,
24 the Red Cross and other organisations, even International Alert."

09:45:52 25 Do you agree with that?

26 A. Yes, I do.

27 Q. And the contact with International Alert was through
28 Mr Akyaada Addai-Sebo?

29 A. Yes.

1 Q. And that he was a Ghanaian working for International Alert
2 who was a special envoy of International Alert. Is that correct?

3 A. Very correct.

4 Q. Now, we were also told this:

09:46:31 5 "In early 1996 an important event I can recall is there was
6 a national forum held in Sierra Leone in early 1996 and the
7 theme of the national forum was for election before peace
8 or peace before election, so all stakeholders were invited
9 to the national forum including the RUF. But as we learnt
09:46:57 10 later, the RUF was not represented. So that is the only
11 one I can recall.

12 Q. What was the result of the forum?

13 A. In the forum, it was unanimously agreed that elections
14 should be held before peace.

09:47:13 15 Q. What was Foday Sankoh's reaction to this decision?

16 A. Foday Sankoh was not in favour of election before
17 peace. He wanted peace before elections. And I think that
18 was why in fact he did not send a representative at the
19 national conference.

09:47:31 20 Q. Did you become aware of any actions he took, that being
21 Foday Sankoh, to try to have peace before elections?"

22 Then this:

23 "After the result, the result of the national forum was
24 announced, much to the dismay of Corporal Sankoh, then he called
09:47:48 25 a meeting of his combatants at Zogoda. At the meeting Mr Fayi a
26 Musa was there who represented us from the external delegation.
27 He had travelled from Danane all the way to Zogoda for that
28 meeting, so he came back and reported to us the outcome of the
29 meeting."

1 Is that true?

2 A. Yeah, that's true.

3 Q. So at the time of the national forum, Sankoh decided not to
4 send a representative. Is that right?

09:48:18 5 A. Where?

6 Q. To the national forum held in Sierra Leone as to whether to
7 have elections before peace or peace before elections. The RUF
8 were not represented there?

9 A. No, the RUF was not represented.

09:48:30 10 Q. Why had you travelled to Zogoda at that time?

11 A. I travelled to Zogoda for two reasons. One, to reemphasise
12 to Mr Sankoh the essence for him to embrace the peace process
13 because we had done a lot of work on it. Secondly, I wanted,
14 because when he said CO Mohamed would be there, since he is
09:48:58 15 second in command to him, we found it at the external delegation
16 level that it was necessary for me to be there so we can prevail
17 on him together to accept whatever the result was in Freetown.
18 In fact, to send somebody. So that was the reason for my going.

19 PRESIDING JUDGE: Mr Faya, I am going to caution you again
09:49:13 20 to speak clearly. I know you have a tendency to sort of jump
21 over some words. The transcriber will find it difficult if you
22 don't slow down.

23 THE WITNESS: Okay.

24 PRESIDING JUDGE: Slowing and articulating yourself,
09:49:28 25 please.

26 THE WITNESS: Yeah, sorry. I had to go to Zogoda once
27 again for two reasons. One, to continue to prevail on Mr Sankoh
28 to respect the peace process and to emphasise to him the need -
29 to reemphasise to him the need to see that the armed aspect of

1 the conflict was no longer relevant.

2 MR GRIFFITHS:

3 Q. Now, we were then told by this individual that Foday Sankoh
4 expressed his dismay about the decision taken in Freetown for
09:50:37 5 elections to be held before peace:

6 "According to him, that couldn't have given better
7 representation within the country because there were some areas
8 inaccessible for the election process to be carried out since the
9 country was still at war. But he said since the other
09:50:55 10 stakeholders have agreed, that is what it should be, that is,
11 that at all costs they should conduct elections before they talk
12 about the peace process, he said his combatants should run an
13 operation to stop the election."

14 Is that true?

09:51:12 15 A. Yeah, he told us in that particular meeting - yes, he told
16 us in that particular meeting that he had in fact discussed with
17 Maada Bio to work together to disrupt the elections.

18 Q. And indeed, this individual went on to say:

19 "In fact, he explained to them" - that being Sankoh - "that
09:51:33 20 he had talked with Brigadier Julius Maada Bio on the same issue
21 and that Maada too was not in favour of election before peace.
22 So he was sending his combatants to go and disrupt the polling
23 stations so that in the major towns like Kenema and Bo so that no
24 election will take place there. But in the event wherein the
09:51:56 25 citizens insist or come out in their numbers to force themselves
26 to vote, anyone they lay hand on they should cut the very hands
27 they wanted to use to go and cast their votes" and that it was
28 Sankoh who gave that instruction.

29 Is that true?

1 A. In fact, that was - yes, in fact that was the very time
2 when the - when some of us decided to pack our bags and leave
3 because CO Mohamed actually told him, he said, "That is wrong.
4 What the instruction" - CO Mohamed told him that what he - the
09:52:33 5 instruction he was giving was wrong, very, very wrong. He said
6 because that will not sell the RUF very well.

7 Q. Now, Mr Faya, help me with this: Prior to this
8 instruction, were you aware of any instance where the RUF
9 amputated people?

09:53:01 10 A. No, counsel.

11 Q. So that as far as you're aware, was this the first time
12 that the RUF were directly instructed by Foday Sankoh to amputate
13 people?

14 A. That was the very first time I heard that one. Very, very
09:53:20 15 first time.

16 Q. And Brigadier Maada Bio with whom Sankoh claimed he had
17 discussed this, who was Brigadier Maada Bio?

18 A. Brigadier Maada Bio was the Head of State at that time,
19 military Head of State for the NPRC.

09:53:38 20 Q. Now, can you help us as to how Sankoh would have been able
21 to discuss such an operation with Brigadier Maada Bio?

22 A. The radio set that he had - the radio set that Foday Sankoh
23 had was the one he was using to talk to Freetown in general.

24 Q. And so we have a situation where Maada Bio, the leader of
09:54:04 25 the country at the time, is discussing with Sankoh to disrupt the
26 very elections which Maada Bio had decided to hold. Is that
27 right?

28 A. Yeah, that was what Foday Sankoh told us.

29 Q. Now, we were also told this. You accept, do you not, that

1 while in Danane, Mike Lamin suddenly surfaced unexpectedly and
2 met up with you. Is that right?

3 A. Yeah, that's very right. I have said it before.

4 Q. Now, we were told this:

09:54:51 5 "From that time, nobody within the RUF knew what happened
6 to Mike." This is after Mike was arrested by the NPFL. "Not
7 until we surprisingly saw him. He met us in Danane in late 1995.
8 So we asked him what has happened. He explained. He said, in
9 fact he heard over the international media that there were
09:55:17 10 arrangements for peace talks to be arranged in Ivory Coast
11 between the RUF and the government. So that was what prompted
12 him to come back and join the - to meet Corporal Sankoh. He
13 learned that Corporal Sankoh was in Abidjan. So he told him,
14 yes, he was in Abidjan. I made a call to Corporal Sankoh that
09:55:38 15 Mike has reached to me and then he" - that being Sankoh - "told
16 me to facilitate his trip to him at Abidjan, which I did. So
17 Mike went and met him."

18 Now, the question I am asking is this: When you first saw
19 Mike Lamin in Ivory Coast, was Sankoh in Ivory Coast at that
09:56:04 20 time?

21 A. No, no, no, because that was in the first week in January
22 1996.

23 Q. So this suggestion that after Lamin met up with you
24 external delegates, Lamin was taken to meet Sankoh in Abidjan.

09:56:24 25 Is that correct?

26 A. No, it's incorrect.

27 Q. Where was Sankoh at the time you first saw Lamin in Danane?

28 A. Sankoh was in Zogoda.

29 Q. Now, this person was asked this:

1 "Q. How long did Mike Lamin stay in Ivory Coast on that
2 occasion?

3 A. He didn't stay too long. It was less than a week."
4 Is that right?

09:56:50 5 A. Yeah. Yes, that's right. That was the very week I took
6 him. I said before, that was the very week I took him to Zogoda,
7 he and one of his bodyguards, Massaquoi.

8 Q. Because we were then told:

9 "Q. Where did Mike Lamin go then?

09:57:10 10 A. He came back to Danane upon the instruction of Corporal
11 Sankoh. In fact, that was the time Corporal Sankoh
12 instructed Mr Fayia Musa to travel with him back into the
13 jungle so that there will be no problem of security. They
14 will know that he is coming from to him. So it was
09:57:31 15 Mr Fayia Musa went with Mike Lamin back to Zogoda and
16 reported him.

17 Q. And at Zogoda do you know - you mentioned Fayia Musa
18 going to a meeting with Foday Sankoh. When was that
19 occasion?

09:57:46 20 A. That was January.

21 Q. And when was it that Fayia Musa went to Zogoda with
22 Mike Lamin?

23 A. After that, after that programme when Mike came to
24 Danane in Abidjan."

09:57:59 25 Is that true?

26 A. No, it's not true. I disagree with him. Because I said
27 earlier Mike Lamin met us in Danane for the first week in
28 January. That was the time I was preparing to go to Sankoh. He
29 said he wanted to see Sankoh. I said I will try to get him there

1 for you to see him. So I tried. In fact, Addai-Sebo who gave us
2 the transportation to go. He gave me the money. There was some
3 money he wanted me to give to somebody in Guinea, one gendarmerie
4 in Guinea who had helped him. But he told me, Since you are
09:58:43 5 going with Mike and you don't have enough money there, you can
6 use that money to pay your transportation. It was the money I
7 used to take Mike Lamin and his bodyguard to Zogoda - I mean, up
8 - sorry, up to the Guinea border, because in our zone we used to
9 walk.

09:59:02 10 Q. Thank you. Now, we were also told that when Sankoh came to
11 the Ivory Coast, the Ivorian government provided him with six
12 cars in his villa at Cocody, and then they gave him a satellite
13 phone which he was using to do communications with so he could
14 communicate. He could move around with vehicles and then
09:59:26 15 communicate using the satellite phone. Is that true?

16 A. Some are true, some are not. First of all, he was not
17 immediately given a house with the six cars when he got to
18 Abidjan. He was given the house and the six cars when he decided
19 to leave Hotel Ivoire. He said he could not stand the heights.

09:59:56 20 Then the satellite phone was given to him by Omrie Golley. Omrie
21 Golley said that was his own contribution to the peace process -
22 the start of his own contribution to the peace process. So the
23 Ivorians gave him a place at the hotel, Hotel Ivoire first of
24 all, and then later at whole house at Cocody with six cars and
10:00:22 25 security, but they did not give him a satellite phone. The
26 satellite phone was given to him by Omrie Golley.

27 PRESIDING JUDGE: Did you say later they gave him a whole
28 house?

29 THE WITNESS: Yes.

1 PRESIDING JUDGE: And six cars?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE: Because that doesn't appear in the
4 LiveNote transcript at all. Again I will caution you, sir, to

10:00:46 5 speak articulately; not to eat your words. And, you see, you
6 need to slow down. That's why some of what you're saying is not
7 recorded.

8 THE WITNESS: Oh.

9 MR GRIFFITHS:

10:01:10 10 Q. We were also told this - and it's dealing with the various
11 trips you described around the sub-region to meet other West
12 African leaders. Do you recall telling us that?

13 A. Yes, I do.

14 Q. That you spent but one night in Ouagadougou; is that true?

10:01:33 15 A. Yeah.

16 Q. And from Ouagadougou you went to Libya, yes?

17 A. Yes.

18 Q. Tell me, did Philip Palmer go to Libya with you?

19 A. No, he did not. Yes, sorry. He went with us to Libya. He
10:01:57 20 did. It was Nigeria he did not go.

21 Q. And is it right that you spent two nights in Libya?

22 A. Yes, we spent two nights in Libya.

23 Q. And that you then came back to Ouagadougou and from there
24 travelled to Accra in Ghana?

10:02:20 25 A. Yes.

26 Q. When you were in Libya, did you meet Colonel Gaddafi?

27 A. No. It was the man who took us there, Musa. It was he who
28 was always with us. But we were in a very new hotel by the sea.

29 Q. Now, it's right, isn't it, that when you went to see Sani

1 Abacha you were given US\$50,000 in traveller's cheques along with
2 some clothing?

3 A. Yes.

4 Q. Now, can I ask you this, Mr Fayia. Gifts of money like
10:03:12 5 that, the 50,000 from Sani Abacha, the 40,000 from Blaise
6 Compaore, was it normal to receive gifts like that from West
7 African leaders?

8 A. Yes, yes. In fact, sometimes they call it your
9 transportation to go back.

10:03:39 10 Q. Now, we were also told this: Before we arrived at
11 Balahun - remember the trip you made to explain the details of
12 the Abidjan Peace Accord to the combatants?

13 A. Yeah.

14 Q. "Before we arrived at Balahun, there was a communication
10:04:03 15 between Corporal Sankoh and Sam Bockarie and the combatants. At
16 that time Sam was now in control, so they were at the field, the
17 football field to receive us. But before then, while we were in
18 Ivory Coast, there were rumours filtering to us from Kailahun
19 that the combatants were unhappy with Corporal Sankoh because he
10:04:26 20 had overstayed in Ivory Coast. The time he was leaving for Ivory
21 Coast, he didn't categorically tell them that he was coming for
22 peace talks. He said he was coming to make arrangements for
23 fighting materials. So to them, he has overstayed. And in his
24 absence, the enemy, that is, the civil defence force, so what we
10:04:52 25 used to call the Kamajors, they have overrun most of the RUF
26 positions to the extent that the RUF has even lost to Zogoda
27 headquarters and other places like Payamah and a lot of the
28 commanders had lost their lives along with the civilians. So
29 there was that disgruntledness even within the commando fold in

1 Kailahun and the RUF-controlled area of Kailahun. So he, that
2 is, Sankoh, personally told us before we left that he had a
3 report that the combatants wanted to kill him."

4 Is that true?

10:05:33 5 A. Yes, it's true.

6 Q. So --

7 PRESIDING JUDGE: Sorry, is what true?

8 MR GRIFFITHS: Very well. I am going to break it down.

9 Q. First of all, is it right that when you went to Balahun,
10:05:45 10 everyone was assembled at the football ground?

11 A. Yes, in Balahun, yes, they were there.

12 Q. Now, did you hear that Sankoh had told the combatants, when
13 he left for the Ivory Coast, that he wasn't going for peace
14 talks; he was going to get fighting materials. Did you know

10:06:03 15 that?

16 A. No, I was not there at all. I was not there when they were
17 leaving, but it was possible that he told them that.

18 Q. And when you went back on this trip, is it true that Sankoh
19 thought that the combatants wanted to kill him?

10:06:20 20 A. Repeat that question again?

21 Q. When you went back to Kailahun to explain the terms of the
22 Abidjan Peace Accord, is it true that Sankoh thought that the
23 combatants wanted to kill him?

24 A. Yes. That thinking was there because that was why he even
10:06:40 25 did not disembark. He told Palmer to disembark first, go talk to
26 the combatants, clear the situation before he can come down.

27 Q. Mr Faya, to your knowledge, was this man called Jungle
28 ever a member of the NPFL?

29 A. From the day I knew Jungle, he was an RUF member.

1 PRESIDING JUDGE: Yes, but how does that answer the
2 question? Do you or do you not know if he was an NPFL?

3 THE WITNESS: I don't know that he was an NPFL, but I knew
4 him to be an RUF.

10:07:44

5 MR GRIFFITHS:

6 Q. So from the very first time you met him, with which
7 organisation was he associated?

8 A. He was associated with the RUF Sierra Leone.

10:08:04

9 Q. And do you accept that Jungle took some cash money to Sam
10 Bockarie in Sierra Leone?

11 A. Yes. It was the \$7,000 I had mentioned here this week
12 from - which was taken from the \$500,000.

13 Q. Mr Faya, would you agree with the suggestion that Sankoh
14 was a secretive individual?

10:08:36

15 A. Very much. Very secretive and very unpredictable.

16 Q. And that one of his sayings was that whatever the right
17 hand should know, the left hand should not know. You agree with
18 that?

19 A. Very much. That is what he used to say. Very much.

10:09:08

20 Q. Mr Faya, were you aware of the Libyan government leaving
21 money with Blaise Compaore in Burkina Faso for the RUF?

22 A. No. Except when they - the one that was brought by Mohamed
23 Talibi from Ghana.

10:10:31

24 Q. Now, one of the individuals I asked you about, Mr Faya,
25 was a man called Ibrahim Balde. Do you recall me asking you
26 about him?

27 A. Yes, I do.

28 Q. Now, do you agree that Ibrahim Balde was a friend of Foday
29 Sankoh?

1 A. Yes, very much.

2 Q. Do you recall an occasion when Foday Sankoh travelled with
3 Ibrahim Balde to Burkina Faso?

4 A. No, because we travelled - when we went to Burkina Faso the
10:11:03 5 first time, that was where he introduced Ibrahim Balde to us.

6 Q. Do you recall in April 1996 Foday Sankoh travelling to
7 Burkina Faso with Ibrahim Balde?

8 A. No. That's what I am saying. It was when we went to
9 Burkina Faso in April '96 that he introduced Ibrahim Balde to us
10:11:30 10 as his friend. We did not go with him.

11 Q. Very well. Do you know of a trip made by Foday Sankoh with
12 Ibrahim Balde to Burkina Faso in December 1996?

13 A. No, no.

14 Q. The final thing I want to ask you about this particular
10:12:15 15 testimony is this: When you prepared that letter which you faxed
16 to Charles Taylor, did you tell all former members of the
17 external delegation that you were going to write and send that
18 letter?

19 A. In fact, yes. In fact, I did it upon our agreement because
10:12:40 20 I had already done the one in Freetown for President Kabbah and
21 the Sierra Leone population.

22 Q. Now, the other matter I want to deal with - I am going to
23 move now to what we were told by another witness. Is it true
24 that when it came to the time for you to be released by the RUF,
10:13:03 25 that Foday Sankoh on 25 July 1999 sent a radio message which
26 reads as follows:

27 "Reference my last message dated 25 July 1999, you are to
28 prepare to hand over the prisoners of war and all prisoners to
29 the International Committee of the Red Cross, UNAMSIL or ECOMOG

1 at any time they call upon you. Philip Palmer, Deen-Jalloh,
2 Faya Musa, Dr Barrie and Gbessay James should also be released,
3 but you are not to allow them to go anywhere. They should stay
4 at the HQ Buedu until I arrive at that location."

10:13:50 5 Were you told about such a message?

6 A. Yes, we were told about the message. What they did for us,
7 they were able to put us on parole.

8 Q. Right. And what did that mean, being put on parole?

9 A. Every morning they opened the door, we come outside and sit
10:14:12 10 on the veranda.

11 Q. Now, we were told that, for reference purposes, by TF1-274
12 at page 22184, the transcript of 11 December 2008.

13 Now, another witness on 3 December [sic] 2008, TF1-338,
14 told these judges this. In 1996 the witness was being asked
10:15:07 15 about a man called Ibrahim Bah whom you know as Ibrahim Balde,
16 yes, and he said this: That he saw Ibrahim Bah, Balde, in 1996
17 in Zogoda. He came together with Faya Musa and a Ghanaian
18 doctor, Simbo, and another Bah. He said he was a Guinean Special
19 Forces.

10:15:38 20 So, just so that we are clear, you, Dr Sebo and two Ibrahim
21 Bahs, one a Gambian and one a Guinean, travelled to Zogoda in
22 1996. Now, let me give you the full picture before I ask for
23 your comment.

24 "A. They came and held talks with Sankoh, but at the time
10:16:06 25 Sankoh did not allow us to be with them while the talks
26 were going on.

27 Q. Was it your understanding that Ibrahim Bah had come to
28 Zogoda in 1996 to sell arms - sell materials - to the RUF?

29 A. That was not my understanding because I did not see him

1 with arms.

2 Q. Did you have any idea at all why he had come to Zogoda
3 in 1996?

4 A. Later I got an idea why Ibrahim had come to Zogoda,
10:16:43 5 that was later in Zogoda.

6 Q. And why was it?

7 A. According to the idea that I got, he came to discuss
8 how the RUF leader would be able to get materials while he
9 was there and at the same time to encourage General Bah -
10:17:02 10 that was the other General Bah, the short one, the Guinean
11 Special Forces - to encourage him to be with us so we would
12 be acquainted with each other because he, the Guinean Bah
13 that is, had to use RUF fighters to go to Guinea. At the
14 same time he came with Dr Simbo for Dr Simbo to be with us,
10:17:31 15 he said because Dr Simbo had a mission in Ghana."

16 Then he was asked this --

17 MR KOUMJIAN: Excuse me, could I just ask for a page
18 reference so I can follow this.

19 MR GRIFFITHS: It is the 3 September 2008, page 15297.

10:17:56 20 MR KOUMJIAN: September? I thought counsel earlier said
21 December.

22 MR GRIFFITHS: 3 September.

23 PRESIDING JUDGE: Is this closed session material or
24 something that everyone can follow?

10:18:13 25 MR GRIFFITHS: The name of this particular witness is
26 protected.

27 PRESIDING JUDGE: I thought you mentioned the TF1 number.

28 MR GRIFFITHS: It's TF1-338.

29 PRESIDING JUDGE: And so my question is: Is this open

1 testimony or closed session testimony?

2 MR GRIFFITHS: It was open testimony but with the name
3 protected. The evidence was given in open session.

4 PRESIDING JUDGE: Yes, but the name would not be on the
10:18:40 5 transcript, would it? Like we normally follow open transcript
6 testimony on the overhead.

7 MR GRIFFITHS: Well, I am happy with that. So can we put
8 this up on the screen then, please. Page 15297. Do we have it?

9 Q. Mr Witness, can you see this on the screen?

10:19:09 10 A. Yes.

11 Q. Mr Fayia, rather than craning your neck, could you move the
12 microphone and push your chair over a bit. Come over a bit so
13 that you are in front of the screen and just move the microphone
14 so it will be easier for you to follow, yes? Do you see it now?

10:19:34 15 A. Uh-huh.

16 Q. Now, we are at page 15297. So just to put you in the
17 picture, do you see at line 7 - the number 7 on the side of the
18 page, yes?

19 A. Yes.

10:19:47 20 Q. "A. In 1996 in Zogoda I saw him." That being Ibrahim Bah.
21 "He came together with Fayia Musa and a Ghanaian doctor,
22 Simbo [phon], and other Bah. He said he was a Guinean
23 Special Forces. They came and held talks with the leader,
24 but at that time the leader did not allow us to be with
10:20:11 25 them while the talks were going on.

26 Q. And was it your understanding that Ibrahim Bah had come
27 to Zogoda in 1996 to sell arms - sell materials - to the
28 RUF?"

29 Jump to line 21:

1 "A. According to the idea that I got, he came to discuss
2 how the RUF leader would be able to get materials while he
3 was there and at the same time to encourage General
4 Bah - that was the other General Bah, the short one, the
10:20:46 5 Guinean Special Forces - to encourage him to be with us so
6 that we would be acquainted with each other, because he had
7 to use RUF fighters to go to Guinea. At the same time he
8 came with Dr Simbo for Dr Simbo to be with us, he said,
9 because Dr Simbo had a mission in Ghana."

10:21:09 10 Over the page, please line 10:

11 "A. There were two General Bahs who came at that time,
12 1996, to Zogoda.

13 Q. Are they both arms dealers?

14 A. No, there was one who was General Ibrahim Bah. He was
10:21:31 15 a Gambian. He was the arms dealer. The other short
16 Ibrahim Bah was a Guinean who only came to get acquainted
17 with RUF boys in Zogoda because he was later to use them
18 after the RUF struggle."

19 Did you ever travel to Zogoda with Ibrahim Bah?

10:21:58 20 A. No, I don't remember that. The only person I travelled
21 with, I do remember very well, is Mike Lamin and Massaquoi.
22 Balde - I saw Balde for the first time in Ouagadougou when we
23 went there in April 1996.

24 Q. Were you ever told by anyone, in particular Foday Sankoh,
10:22:26 25 that the Ibrahim Bah you met was an arms dealer?

26 A. No.

27 Q. Now, the Dr Simbo that was spoken about by this witness -
28 can we now go, please, to page 15561, same witness. 5 September
29 2008, page 15561. Look at line 7:

1 "A. Dr Simbo was a Ghanaian."

2 Line 11:

3 "A. He told us that he was a revolutionary and they would
4 have to lead a revolution in Ghana to oust John Rawlings.

10:23:52 5 He said he attempted once and he failed, but next time he
6 would have to try it in a revolutionary form. So that's
7 why he had - because RUF had fought and maintained their
8 war, so he liked the way the RUF fought. That's why he had
9 come to the RUF to be acquainted with the fighters, so he
10:24:11 10 wanted to understudy and he attended the formation. What I
11 mean by formation, it's a parade that we held every morning
12 for prayers and every commander who had a piece of advice
13 would come forward and give those advice to the soldiers
14 and that was the time he came forward and told us that was
10:24:31 15 the reason he was in our midst."

16 Do you know of a Dr Sebo leading any coup against Jerry
17 Rawlings?

18 A. No, I don't know that at all.

19 Q. Did Dr Sebo come to the RUF because he was attempting to
10:24:55 20 study RUF tactics in order to lead a revolution in Ghana?

21 A. No. Basically when Dr Sebo met us, he met us with an
22 agenda for peace. That was why. He said he was sent by his
23 secretary-general, Dr Kumar Rupesinghe, to say that they have
24 undertaken the Sierra Leone conflict resolution as a special
10:25:23 25 project. That was what he came for.

26 Q. Can we go to 3 September 2008, page 15296. Top of that
27 page:

28 "Q. Ibrahim Bah said that mercenaries would come to help
29 you fight to capture Kono and they would be mining and

1 supplying you with materials, so the Ukrainian mercenaries
2 were going to fight with you, they were going to mine with
3 you and they were going to supply you with materials. Is
4 that what you are now saying?

10:26:23 5 A. They will come in the first place to assist us to
6 fight, capture Kono, if we allowed them, and later after
7 the capture of Kono they will continue with their mining
8 and whilst we would be fighting they would continue giving
9 us supply of arms and ammunition that we needed to fight.

10:26:45 10 Q. Have you any idea who these Ukrainians were that General
11 Ibrahim Bah was going to supply to assist you in all these
12 ways?

13 A. I hadn't any idea about that."

14 Mr Faya, do you know anything about this; an attempt by
10:27:02 15 the RUF to recruit Ukrainians through Ibrahim Bah to fight and
16 capture Kono?

17 A. Absolutely no idea at all. Because these were the same
18 people we said will leave the country before we can succeed.
19 These were the same people we say will leave the country to stop
10:27:29 20 the mining. So I absolutely have no idea about this one at all.

21 PRESIDING JUDGE: I'm sorry, I don't understand your
22 answer. You said these are the same people we said will leave
23 the country. "Will" leave or "we" leave?

24 THE WITNESS: Will leave. The foreign troops - we
10:27:53 25 mentioned that the foreign troops.

26 PRESIDING JUDGE: Are you saying the Ukrainians were part
27 of the foreign troops?

28 THE WITNESS: The Executive Outcomes.

29 PRESIDING JUDGE: Are they Ukrainians?

1 THE WITNESS: No, no, no they are not Ukrainians.

2 MR GRIFFITHS:

3 Q. Just to explain that. Mr Fayia, what was the attitude of
4 the RUF towards the involvement of foreign troops on Sierra
10:28:29 5 Leonean soil?

6 A. We were very much against that one. In fact, that was one
7 of the conditions that we said would be our - in the peace accord
8 that we signed in November 1996.

9 Q. In Abidjan?

10:28:49 10 A. In Abidjan.

11 Q. And just to remind ourselves. There was a provision in
12 that, was there not, Article 12:

13 "Executive Outcomes should be withdrawn five weeks after
14 the deployment of the neutral monitoring group. As from the date
10:29:19 15 of the deployment of the neutral monitoring group, the Executive
16 Outcomes shall be confined to barracks under the supervision of
17 the joint monitoring group and the neutral monitoring group.
18 Government should use all its endeavours consistent with its
19 treaty obligations to repatriate other foreign troops no later
10:29:41 20 than three months after the deployment of the neutral monitoring
21 group?"

22 That was a provision of the Abidjan Peace Accord, was it
23 not?

24 A. Yes, it was.

10:29:51 25 Q. At whose request was that provision included in the
26 Abidjan Peace Accord?

27 A. It was at our own request, the RUF.

28 Q. And did that provision cover the involvement of people like
29 Ukrainians in Sierra Leone?

1 A. Yes, indeed.

2 Q. Now, the final matter I want to ask you about, Mr Witness,
3 is this: Could the witness please be shown exhibit P-277?

4 MR KOUMJIAN: Your Honours --

10:30:59 5 PRESIDING JUDGE: Yes, Mr Koumjian. Before you show the
6 witness the exhibit, please wait.

7 MR KOUMJIAN: Please do not show the exhibit to the witness
8 yet.

9 Your Honour, this is what we - this is a confidential
10:31:10 10 document, and we can briefly go into private session. We can
11 discuss it. Actually, we discussed it yesterday and I made a
12 proposal, and I don't know why it was ignored, but we cannot show
13 the witness a confidential document.

14 PRESIDING JUDGE: Mr Griffiths, of course, I haven't seen
10:31:34 15 the document myself. I am trying to find it from our courtroom
16 folder. Mr Griffiths, could I hear from you regarding the
17 objection.

18 MR GRIFFITHS: Well, the point I make, Madam President, is
19 very straightforward. A defendant has the right to deal with all
10:32:26 20 the evidence against him. And, in effect, to prevent me from
21 using this document with the witness is to deny the defendant an
22 opportunity of dealing evidence upon which the Prosecution will,
23 no doubt, place a great deal of emphasis upon in due course.
24 And, in our submission, the defendant cannot be so prevented,
10:32:54 25 during the course of the Defence case, from dealing with
26 important evidence.

27 And, in any event, whether the document be confidential or
28 not, in the first place, my learned friend, by objecting to its
29 use, places a spotlight upon something which, left - if left or

1 if ignored, might not have attached the attention it has.

2 I cannot see how, by asking this witness about the contents
3 of this document, any protection or any other matter is in any
4 way impacted. In our submission, if we deal with this matter
10:33:43 5 without in any way drawing attention to it, that is the best way
6 to proceed. Those are my submissions.

7 PRESIDING JUDGE: Incidentally, this exhibit was admitted
8 in a number of parts, wasn't it? Was it admitted as one part?

9 MR GRIFFITHS: It was admitted in toto at the request of
10:34:12 10 lead counsel, Ms Brenda Hollis.

11 PRESIDING JUDGE: Give us a moment to find it.

12 MR KOUMJIAN: Your Honour, it is on the exhibit - in your
13 emails it will be in parts because of the size of the documents,
14 it is my understanding, but it is a single document with a single
10:34:45 15 exhibit number. I could hand a copy, for the purpose of
16 deliberations, to the Bench.

17 [Trial Chamber conferred]

18 PRESIDING JUDGE: Mr Koumjian, would you object to us going
19 into a brief private session in order for this document to be
10:36:17 20 dealt with?

21 MR KOUMJIAN: That's what I requested at page 30. Yes,
22 your Honour, I request that.

23 PRESIDING JUDGE: So, Mr Griffiths, why are you not given
24 to using private session to put this document before your
10:36:30 25 witness? Why must you put a confidential document before your
26 witness in an open session?

27 MR GRIFFITHS: Because the reason for the document - we all
28 know the reason why the document is said to be confidential.
29 Now, in our submission, that reason has nothing to do with the

1 contents of the document per se, because the contents of the
2 documents per se cannot infringe any protective measure which has
3 been put in place so long as nothing is done to infringe the
4 protective measure itself. So that the document can be dealt
10:37:25 5 with in open session without in any way protecting the underlying
6 foundational reason why it was deemed to be confidential in the
7 first place.

8 One has, in our submission, to locate what was the mischief
9 at which this was directed. One that is identified, then one can
10:37:49 10 see that logically the document can be dealt with without in any
11 way infringing the particular mischief at which certain
12 provisions were directed when they were put in place.

13 PRESIDING JUDGE: Mr Griffiths, you do concede that this is
14 a confidential document?

10:38:07 15 MR GRIFFITHS: Yes, I do.

16 PRESIDING JUDGE: It was marked "confidential".

17 MR GRIFFITHS: Yes, I do.

18 PRESIDING JUDGE: And the meaning of 'confidential' means
19 it is not open to the public for whatever reason. By what
10:38:18 20 stretch of imagination do you imagine that this confidential
21 document can be dealt with in open session?

22 MR GRIFFITHS: Because the reason for it being marked
23 "confidential" has nothing whatsoever to do with the contents of
24 the document itself.

10:39:15 25 [Trial Chamber conferred]

26 PRESIDING JUDGE: We are of the view, first of all, this is
27 a document that went all the way up to the Appeals Chamber at one
28 time in the past and in relation to one of the witnesses that -
29 at the time it was thought that this document should be

1 maintained as a public document and that the witness should
2 testify openly in relation to this document, and the
3 Appeals Chamber rejected that view in light of the protective
4 measures that that witness enjoyed.

10:40:19 5 Now, so subsequently, this document maintained its
6 confidential status, and we are not prepared to go behind the
7 straightforward orders of court confidentiality to start
8 dissecting the reasons behind the confidentiality. So the
9 Defence cannot use a confidential - this confidential document in
10:40:51 10 open session. The objection is sustained.

11 MR GRIFFITHS: Are we going into private session then?

12 PRESIDING JUDGE: Not unless you ask me to.

13 MR GRIFFITHS: Well, can we go in private session? Because
14 I do intend to put this document to the witness.

10:41:22 15 PRESIDING JUDGE: Certainly, Mr Griffiths --

16 MR GRIFFITHS: I'm grateful.

17 PRESIDING JUDGE: -- we can arrange. And for the members
18 of the public listening, for the protection of other witnesses
19 than this witness, we will go into a private session.

10:41:31 20 [At this point in the proceedings, a portion of
21 the transcript, pages 39198 to 39221, was
22 extracted and sealed under separate cover, as
23 the proceeding was heard in private session.]

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1 [Open session]

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

3 PRESIDING JUDGE: As I was saying for the benefit of the
4 parties, this afternoon we will sit until 3.30, that's from 2.30
12:04:47 5 to 3.30, because there's an urgent matter that must be attended
6 to shortly after that.

7 For the members of the public sitting, we are going into a
8 brief private session. We were in a brief private session before
9 the break to consider testimony that regards a protected witness,
12:05:09 10 other than this witness of course. So we will return into
11 private session to conclude the examination of that evidence.

12 [At this point in the proceedings, a portion of
13 the transcript, pages 39223 to 39231, was
14 extracted and sealed under separate cover, as
12:05:13 15 the proceeding was heard in private session.]

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1 [Open session]

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

3 MR KOUMJIAN: Your Honour, I have a motion to make outside
4 the presence of the witness. It's public, but I believe it
12:26:07 5 should be outside the presence of the witness. And just so it's
6 clear, it relates to, among other matters, a postponement of the
7 cross-examination.

8 PRESIDING JUDGE: Madam Court Officer, could you kindly
9 escort the witness temporarily?

12:26:31 10 Mr Witness, this has nothing to do with you. It's an
11 administrative matter that we don't want to concern you with.

12 [In the absence of the witness]

13 MR KOUMJIAN: Your Honour, my motion relates to the
14 sufficiency of the witness summary that was provided to
12:27:07 15 your Honours and the Prosecution for this witness. It's the
16 Prosecution position that the witness summary for this witness is
17 patently insufficient and rather egregiously so.

18 Your Honours, we wish to remind everyone of the law on this
19 issue. Of course, your Honours ordered in this case, as provided
12:27:34 20 for in Rule 73 ter, that the Defence provide summaries. The Rule
21 says and your Honours' order said summaries of the facts that the
22 witness will testify upon.

23 There is case law from various cases, particularly in the
24 Special Court, regarding what is or is not a sufficient witness
12:27:56 25 summary. Your Honours, for example, cited that in your decision
26 in Brima, the oral decision, on 11 July 2006. One of the cases
27 cited - that has been cited is the Norman decision of - first the
28 Sesay decision of 28 March 2007. It's entitled "Consequential
29 orders concerning the preparation and the commencement of the

1 Defence case".

2 At page 4 of that decision, the bottom paragraph, the Trial
3 Chamber stated:

4 "Considering that production of witness summaries by the
12:28:45 5 Defence within its materials is intended to enable the other
6 Defence teams, the Prosecution, and the Chamber, to appreciate
7 and understand the nature and content of a witness's proposed
8 testimony."

9 Then going on to the next page, the second paragraph, and,
12:29:11 10 if it's helpful, the CMS number on this filing is 26993, so now
11 reading from 26997, the second paragraph, it states:

12 "Noting in the case of the Prosecutor v Norman this Trial
13 Chamber ordered that the witness summary shall include detailed
14 summaries of the incidence and/or events which a witness is
12:29:36 15 called to testify upon: Exact location and date if available of
16 these alleged incidents and/or events; position and/or role of a
17 witness in relation to the crimes charged in the indictment;
18 nexus between the accused and the proposed testimony of a
19 witness; and other details as counsel deems necessary and would
12:30:03 20 clearly demonstrate the essence of that testimony."

21 We have copies of all this. Perhaps we should hand these
22 out now for the Court and counsel. Madam President, should I
23 continue while these are being distributed?

24 PRESIDING JUDGE: Certainly.

12:30:59 25 MR KOUMJIAN: Thank you. The language that the Sesay
26 decision was quoting was from the decision in Norman of 2 March
27 2006 in the order to the first accused to re-file summaries of
28 witness testimonies, and that has a - I believe it's called a CMS
29 number - of 14992. I think it's also very instructive to look at

1 the Court's order in the Brima case where your Honours held that
2 it's necessary - well, let me make it clear. The Prosecution
3 motion in this case is to obtain the witness statements of this
4 witness.

12:31:46 5 JUDGE LUSSICK: You mean in the Brima case or in the
6 present case?

7 MR KOUMJIAN: In the present case.

8 JUDGE LUSSICK: I thought your motion was to postpone
9 cross-examination.

12:31:59 10 MR KOUMJIAN: Thank you, your Honour. I will go beyond
11 getting the witness statement for this witness. I would perhaps
12 like to state our request for relief - well, I can state it now.
13 It's our view that because this is happening over and over again
14 that the witness summaries are insufficient and it's causing an
12:32:20 15 inefficiency in the trial where cross-examination has to be
16 delayed, that it is within your Honours' absolute discretion and
17 we believe entirely appropriate in the interests of justice and
18 the efficiency of this trial that the Court order that all
19 witness statements of the Defence witnesses be disclosed ten days
12:32:39 20 before they testify so that this issue doesn't continue to occur.

21 We are particularly asking for this witness statement. I
22 would also point out what we are not asking for is the relief
23 provided for in Bagosora from ICTR in the decision of 5 July
24 2005, the decision on the sufficiency of Defence witness
12:33:07 25 summaries. Paragraph 6 makes it clear that a remedy available to
26 the Prosecution for insufficient details in the summaries is the
27 same as the remedy that would have been available to the Defence
28 for failure to disclose, which would include not just adjournment
29 of the testimony but exclusion of the testimony that is not

1 covered in the disclosure. We are not asking the Court to
2 exclude any of this witness's testimony.

3 We have some more materials to hand out.

4 PRESIDING JUDGE: Mr Koumjian, could you restrict your
12:33:51 5 submissions to what you are asking for, not what you are not
6 asking for. For example, you said something about a request that
7 all witness statements relating to Defence witnesses be disclosed
8 ten days before each witness is due to testify. Are you serious
9 about that request?

10 MR KOUMJIAN: Yes. The reason I'm serious about that
11 request is, as your Honours point out correctly continually, the
12 Prosecution has no right to witness statements. Equally clearly,
13 there is no right of the Defence not to provide them.

14 PRESIDING JUDGE: We have also stated that your right to
12:34:27 15 the statements commences after a witness has testified in chief.
16 That is why I'm asking you are you serious about this application
17 for all Defence witness statements to be disclosed ten days
18 before a witness testifies? Are you serious about that?

19 MR KOUMJIAN: I'm serious about it, your Honour, because it
12:34:48 20 is provided, I believe, when Rule 73 ter allows - clearly it's
21 within your discretion. I'm not saying - and I recognise it's
22 not a right that we have, it's within your Honours' discretion as
23 the persons running the trial, but Rule 73 ter which allows
24 your Honours a discretion to even provide these summaries before
12:35:10 25 the start of the Defence case - excuse me, the statements, to
26 order that they be provided. Mutatis mutandis it's clear that if
27 your Honours have that discretion, you would have the discretion
28 ten days before a witness testifies to order that disclosed. But
29 I submit that's within your Honours' discretion to decide whether

1 that's appropriate or not.

2 PRESIDING JUDGE: That's fine. I just wanted to be clear
3 what it is you're asking for.

4 MR KOUMJIAN: Thank you. In particular we're asking for
12:35:34 5 this witness statement.

6 Now in the decision of your Honours in the AFRC case on 11
7 July 2006 your Honours held, citing other case law, that the
8 Prosecution had to show undue or irreparable prejudice. And
9 "undue" in my thesaurus means unwarranted, unnecessary,
12:36:03 10 unjustified.

11 In our submission this witness summary clearly is - the
12 Prosecution suffers both undue and irreparable prejudice, either
13 one is sufficient, but the Prosecution suffers both and I think
14 it's very instructive to look at your Honours' decision in Brima.
12:36:24 15 In that case - I hope it's been distributed - the witness summary
16 that was deemed to be insufficient - perhaps I'll wait for that
17 to be distributed, and so the Defence has a copy also.

18 PRESIDING JUDGE: Please continue with your submissions.

19 MR KOUMJIAN: Okay. The witness summary that was deemed to
12:36:54 20 be insufficient, I would read it but I believe it would take too
21 long, is nine paragraphs. I believe it's 53 lines. The
22 testimony of that witness was one afternoon and 80 pages. Your
23 Honours deemed it insufficient.

24 So I think now it's appropriate to look at the witness
12:37:21 25 summary in this case and this I can read word for word because it
26 won't take very much time. The witness summary states:

27 "Background. The witness was a former member of the
28 external delegation. The witness is expected to discredit one of
29 the OTP witnesses."

1 The summary does not say which witness, what will be
2 discredited. It does not state the facts that the witness - a
3 summary of the facts the witness will testify about concerning
4 whatever witness is allegedly being discredited and at this point
12:38:10 5 I still don't know which Prosecution witness this summary is
6 referring to.

7 It goes on and states: "And is also expected to testify."
8 Your Honours, that phrase that the witness is expected to testify
9 obviously doesn't add or state any fact that's helpful to the
12:38:27 10 Prosecution or your Honours in understanding the essence of the
11 testimony.

12 Then it goes on and states:

13 "And give an explanation of Foday Sankoh's fundraising
14 trips around the sub-region prior to the Abidjan Accord."

12:38:44 15 Well, that is a fact that the witness is going to come and
16 give an explanation of Foday Sankoh's fundraising trips around
17 the sub-region prior to the Abidjan Accord, and this witness did
18 testify to those facts and I believe it was on the 14th and it
19 was testimony that took a few minutes, maybe half an hour at
12:39:17 20 most, while this witness has testified since 13 April. This is
21 the fourth day, not complete, but he has testified for more than
22 three days; transcript of probably more than 400 pages.

23 The only facts that were included were about the
24 fundraising trips around Abidjan where - around the sub-region
12:39:38 25 which would be the trip to Nigeria, the trip to Burkina Faso and
26 the trip to Ghana. Those three trips.

27 That formed a very, very small portion of this witness's
28 evidence. It would be very difficult to list all of the topics
29 that this witness testified about, but this witness has testified

1 about, for example, the entry of the invading forces on 13 April
2 1992 in Kailahun, the make-up of those invading forces, their
3 ethnicity and what group he alleges they belong to. He talked
4 about Foday Sankoh coming nine days later to Kailahun Town. He
12:40:26 5 talked about the reaction of the civilian population to the RUF
6 invasion. He actually talked about life before the RUF invasion
7 and the attitudes toward the APC government and the history of
8 civilian relations with the APC government. He talked about his
9 agriculture in the Kailahun District. He talked about his own
12:40:52 10 appointment as the agriculture director, I forget the exact words
11 he used.

12 He talked about no forced conscription, he claimed, in the
13 RUF. He said there was no terror campaign in the RUF. He talked
14 about Jungle. He talked extensively and significantly about
12:41:16 15 Ibrahim Balde. He talked about trading weapons with Guinea and
16 named a sergeant, named a specific person as Guinean sergeant
17 that he said was involved. He talked about there being no forced
18 labour in farming and how farming was organised. He talked
19 specifically about several direct interactions with Charles
12:41:39 20 Taylor, including his sending rice to Charles Taylor. He talked
21 about a senior citizen from Kailahun being sent to Gbarnga and
22 spending five months with Charles Taylor to test the friendship
23 between Foday Sankoh and Charles Taylor.

24 He talked about "Footpaths to Democracy", the ideology and
12:42:03 25 what the beliefs were of the RUF and he specifically talked about
26 how that document was written and who wrote it and claims he
27 himself played a role in authoring that document. And he talks
28 extensively about Addai-Sebo and his role with the RUF with the
29 Abidjan negotiations, with the writing of "Footpaths to

1 Democracy". He talked about the RUF's position regarding the
2 elections and his own presence at a meeting with Foday Sankoh
3 where Operation Stop Election was ordered. He talked about a
4 meeting in Freetown where the population and civil society had a
12:42:47 5 meeting where they rejected the idea of delaying elections and
6 said elections before peace, they did not accept the RUF position
7 no elections before peace.

8 He's given a definition of vanguards which is different
9 than other witnesses in this case. He's talked about Top 20, Top
12:43:14 10 40 and Top Final, giving a unique explanation of those events,
11 claiming that Top 20 and Top 40 was fighting within the RUF.
12 He's talked extensively about Isaac Mongor, claims that he was
13 one of those on the Liberian side in Top 20 contrary to another
14 Defence witness who said - well, we can come to that later.

12:43:36 15 He talked about the incident at Giehun and he gave the full
16 name and explained that when you attach the other adjective to
17 Giehun it's Yiehun, but this incident where Jande, Foday Sankoh's
18 concubine or girlfriend, was killed and he said 350 people were
19 killed. He talked about Sandiallu I believe it's pronounced
12:43:58 20 where Isaac Mongor he said killed 30 people.

21 He talked about the military situation of the RUF
22 throughout the 1990s and the fall of Zogoda. He gave times as to
23 when ULIMO controlled the border. He gave his opinion about
24 where the RUF got its arms and ammunition or whether they did or
12:44:18 25 didn't get arms and ammunition and how much arms and ammunition
26 they had. He talked about receiving assistance in the Ivory
27 Coast from Musa Cisse. He talked about the use of the radio at
28 Musa Cisse's house. He talked very significantly, and again a
29 direct contact with Charles Taylor, that he himself went to see

1 Charles Taylor in Gbarnga. He spend three weeks with Charles
2 Taylor in Gbarnga and two weeks --

3 PRESIDING JUDGE: Mr Koumjian, are you going to summarise
4 everything that the witness said?

12:44:52 5 MR KOUMJIAN: Well, thank you. I hope it's not necessary.
6 I'll just stick with - the last one I'll just mention is this
7 trip with Charles Taylor to both Gbarnga and then with Charles
8 Taylor to Ghana; Charles Taylor sending Musa Cisse, he says, to
9 ask for his release and the other captives to Sam Bockarie and
10 the letter he wrote to Charles Taylor.

11 So these and other items which I won't take up your time
12 mentioning were - none of these are included in the witness
13 summary. So the witness summary is patently insufficient. No
14 one could seriously believe that this complies with your Honours'
12:45:31 15 order to give a summary of the facts upon which the witness would
16 testify, and that's the reason that we seek the relief that we
17 are seeking, which is specifically for this witness to obtain the
18 witness statement and a short postponement of the
19 cross-examination.

12:45:46 20 I've already stated the longer-term submission, which I can
21 see is not going to get me too far, so I will drop it there.
22 Thank you.

23 PRESIDING JUDGE: When you say postponement of the
24 cross-examination, until when?

12:46:02 25 MR KOUMJIAN: I propose to interpose the next witness.

26 PRESIDING JUDGE: The full testimony of the next witness?

27 MR KOUMJIAN: I think that would be fine with me. That
28 would - and then that way it would not interrupt two witnesses.

29 PRESIDING JUDGE: Mr Griffiths, would you respond to the

1 application, please.

2 MR GRIFFITHS: As I understand it, the application being
3 made by Mr Koumjian on behalf of the Prosecution is threefold:
4 Firstly, the disclosure of the statement taken from this witness
12:46:49 5 by the Defence; secondly, disclosure of all future Defence
6 witness statements ten days in advance.

7 JUDGE LUSSICK: I think he has dropped that one,
8 Mr Griffiths --

9 PRESIDING JUDGE: He did not.

12:47:11 10 JUDGE LUSSICK: That's what I understood Mr Koumjian to
11 say. "I can see it's not going to get me too far, so I will drop
12 it there." Did that mean you are discontinuing that application,
13 or not?

14 MR KOUMJIAN: Your Honour, I'm discontinuing that
12:47:23 15 application on making an appraisal of the situation. I just
16 wanted to state that it was a very serious application and we may
17 renew that in the future.

18 MR GRIFFITHS: Very well. I will deal with, then, the two
19 applications now, that is, disclosure of the witness statement,
12:47:42 20 and the adjournment of the cross-examination of this witness,
21 although at no point has Mr Koumjian stated why such an
22 adjournment is necessary.

23 PRESIDING JUDGE: You are right, Mr Griffiths. You are
24 right.

12:48:07 25 MR GRIFFITHS: At no point has Mr Koumjian told the Court
26 why such an adjournment as requested is necessary.

27 Now, the details of the witness were disclosed on 8 March
28 of this year to the Prosecution, so they have known from as long
29 ago as then the name of the witness and been able consequently to

1 conduct any inquiries they may have deemed necessary into that
2 individual.

3 Now, it is accepted that the summary of the evidence of
4 this witness falls within a fairly narrow compass, but note what
12:49:30 5 it says. "The witness was a member of the external delegation."
6 Why is that of significance? It is of significance for this
7 reason: There were only a limited number of members of the
8 external delegation, as we know: Philip Palmer, Dr Barrie,
9 Ibrahim Deen-Jalloh, his wife, this witness. So we're talking
12:50:03 10 about five or so individuals. So by referring to the external
11 delegation, that should immediately have alerted the Prosecution
12 to the fact that they had called a witness TF1-168 who dealt with
13 the activities of the external delegation in extensive and in
14 great detail.

12:50:30 15 Consequently, putting the two together, the disclosed name
16 and the fact of what he would be dealing with, in our submission
17 the Prosecution should have been in a position to know the
18 identity of this person and the various topics upon which he
19 would be giving evidence. In our submission, that should have
12:50:52 20 been clear to them from, at the very least, 8 March, when the
21 name was released. In reality, the essence of Mr Faya's
22 evidence has indeed been his work with the external delegation,
23 and we would submit that at least 95 per cent of what he said
24 about the work of the external delegation is mirrored in the
12:51:22 25 testimony this Court heard last January from TF1-168.

26 So consequently, we submit this is not a case where the
27 Prosecution can reasonably argue that they have been taken by
28 surprise by any of the major issues raised in the testimony of
29 this witness because, in our submission, that is the important

1 factor. The mischief at which disclosure is aimed is to alert
2 the Prosecution to prevent that element of surprise, and we would
3 submit there is no surprise here; that the Prosecution should
4 have realised what the essence - that is the important word - the
12:52:09 5 essence of this testimony of this witness would involve; that is,
6 the work of the external delegation.

7 In our submission, this witness has not dealt with any
8 important - and I underline that word - topic on which evidence
9 has not already been heard by this Court, particularly during the
12:52:36 10 course of the Prosecution case - and I stress the fact any
11 important issue.

12 By way of example, my learned friend at the close of his
13 submissions mentioned Musa Cisse and his involvement. Musa Cisse
14 and his involvement was disclosed in that fax sent from Abidjan
12:53:05 15 by the witness during the testimony of Mr Taylor. The
16 Prosecution have known about the link between Fayia Musa and Musa
17 Cisse since last year, when that fax was brought into evidence.
18 So we're not talking about them being taken by surprise.

19 Every single document that I have put to this witness has
12:53:34 20 already been exhibited. Every single document; the salute
21 reports, the last document we looked at, every single one of them
22 has been in the public arena from a very, very long time ago.

23 Now, we need to also bear in mind the principles to be
24 applied here. First of all, we submit that the following
12:53:59 25 propositions are right: There is no blanket right for the
26 Prosecution to see the Defence statement of a Defence witness.
27 The Prosecution has the power only to apply for disclosure of a
28 statement after the witness has testified with the Trial Chamber
29 retaining the discretion to make a decision based on the

1 particular circumstances of the case.

2 Proposition 2: The Trial Chamber in Brima et al stated
3 that the Chamber has the discretion to order disclosure after
4 examination-in-chief, but it is upon a showing of necessity by
12:54:48 5 the Prosecution.

6 Proposition 3: According to the decision of 21 February
7 2006 in Norman et al, the Prosecution must show by prima facie
8 evidence that by failure to disclose the Defence witness
9 statement, the Prosecution will suffer undue or irreparable
12:55:17 10 prejudice.

11 Proposition 4: The Trial Chamber in Brima et al stated
12 that the power of a Trial Chamber to order the disclosure of a
13 prior Defence witness statement relates to an evidentiary
14 question; the Prosecution's ability to test the credibility of
12:55:41 15 the Defence witnesses.

16 Finally, a summary is exactly what it says. It is not
17 exhaustive; it is a summary.

18 Now, the issue then is what is the prejudice suffered by
19 the Prosecution? At no point has Mr Koumjian sought to explain
12:56:08 20 to this Court what prejudice is suffered by the Prosecution.

21 Note: Prima facie evidence is required that they will suffer
22 undue or irreparable prejudice. Where is that prima facie
23 evidence? Because as we submit, the only prejudice which the
24 Prosecution could feasibly suffer in this situation is an
12:56:41 25 inability to cross-examine at this stage.

26 So what is Mr Koumjian saying? That he is not in a
27 position now to cross-examine this witness, when all of the
28 important aspects of the witness's evidence have already been in
29 the arena of this courtroom for a very long time indeed?

1 As I understand the role of the cross-examiner, it is to
2 give the cross-examining party a opportunity to test the evidence
3 of the witness and also to put forward their allegations as to
4 the nature of their case. I would assume that Mr Koumjian knows
12:57:30 5 what the Prosecution case is. Consequently, how is it that he is
6 now unable - which appears to be the subliminal text to his
7 motion - how is he now unable to cross-examine? And how is he
8 unable to test the credibility of this witness, given that all of
9 the material disclosed by this witness has been in the public
12:57:57 10 arena for a very long time indeed.

11 It would seem to us that the Prosecution have failed
12 miserably to place before this Court any evidence that they have
13 in fact been prejudiced - that is the important word -
14 irreparably prejudiced by the so-called paucity of the contents
12:58:22 15 of the summary. In our submission, they have neither shown or
16 sought to show why they are unable to commence their
17 cross-examination now.

18 So in summary, we would submit that both of the
19 applications made by Mr Koumjian should be refused because he has
12:58:43 20 established no basis for either of them. Those are my
21 submissions.

22 PRESIDING JUDGE: Thank you. Mr Koumjian, point of law, or
23 not?

24 MR KOUMJIAN: Your Honour asked me --

12:58:55 25 PRESIDING JUDGE: Point of law.

26 MR KOUMJIAN: Yes. The prima facie showing of the
27 prejudice is the witness summary itself and the testimony of this
28 witness. Parties are expected - are provided the right to
29 prepare - we don't disclose witness statements the moment a

1 witness takes the stand; we allow the Defence to prepare.

2 There are materials - many materials to impeach this
3 witness. Those materials include almost 40,000 pages of
4 transcript now from 90-some witnesses and thousands and thousands
12:59:33 5 of pages of documents. The Defence --

6 PRESIDING JUDGE: Mr Koumjian, what is the point of law you
7 are making?

8 MR KOUMJIAN: That the Prosecution has suffered both undue
9 and irreparable prejudice --

12:59:44 10 PRESIDING JUDGE: Yes, make that point. Don't go into
11 other things.

12 MR KOUMJIAN: -- by the admitted failure of the Defence to
13 disclose the facts that this witness will testify upon. The
14 Defence is saying that the Prosecution is supposed to guess what
12:59:59 15 the Defence witness will say. This witness contradicts - has
16 testified, for example, to no crimes being committed. The RUF
17 not being engaged in terrorism.

18 PRESIDING JUDGE: Mr Koumjian, that is not a point of law.
19 If there is a point of law, make it. Otherwise, don't augment
13:00:21 20 your arguments.

21 MR KOUMJIAN: So the issue, your Honour, is not whether or
22 not the Prosecution can ask questions now. Certainly we could
23 ask questions. The issue is whether the Prosecution has a right
24 to be properly prepared by knowing the topics - the facts that a
13:00:38 25 witness is going to testify about so that we can put our case
26 properly and the abundance of evidence - the abundance of
27 contradictions in other testimony, including Defence testimony,
28 to this witness, rather than the Defence admittedly not providing
29 this information to the Prosecution and trying to take - for

1 tactical advantage to take the Prosecution by surprise. That's
2 undue prejudice and it's irreparable unless the Prosecution gets
3 the statement.

13:01:11 4 Further, your Honour, the other reason prejudice regarding
5 not getting the statement, this summary indicates that this
6 witness only had one topic to provide relevant evidence on and
7 that is the trips around the sub-region for fundraising. Now,
8 he's testified about many other facts including personal
9 interactions with Charles Taylor. Are these recent inventions?

13:01:29 10 The Prosecution can only know that if we see the witness
11 statement and the original statements that this witness gave. So
12 we are irreparably prejudiced. It's with undue prejudice if we
13 don't get the statements to see if all these interactions with
14 Charles Taylor that this witness testified to that are not in the
13:01:48 15 summary were ever stated by the witness in his earlier statements
16 to the Defence.

17 PRESIDING JUDGE: Mr Koumjian, I think you should advise
18 the judges why, in addition to a witness statement being
19 disclosed, you require as much time as you are asking for. It
13:02:10 20 doesn't necessarily follow that every time the judges accord you
21 with this disclosure you necessarily are entitled to a long and
22 interposed period of time. It doesn't necessarily follow.

23 MR KOUMJIAN: Well, I'm not asking for, I think, a long
24 period of time. I need to review the material that we have that
13:02:31 25 we'll put to the witness and that will require a couple of days.

26 PRESIDING JUDGE: What you have asked for on the record is
27 the interposing of a witness's full testimony. I have no idea
28 how long this interposed witness will take, but that's what
29 you've asked for.

1 MR KOUMJIAN: Right.

2 PRESIDING JUDGE: On the other hand, we have a weekend
3 coming up.

4 MR KOUMJIAN: Yes, we have a weekend. Your Honours, I
13:02:53 5 suggest that I need a couple of working days to prepare. That's
6 what I'm asking for. The witness statement is the most
7 fundamental part of my request. And if your Honours don't give
8 me time, we'll start. But I think we deserve the time in order
9 to - and, actually, to give a more efficient cross-examination,
13:03:17 10 it will probably be shorter and more efficient if we have time to
11 properly prepare the relevant materials to put to this witness.

12 PRESIDING JUDGE: Thank you. We are minded to take an
13 early luncheon adjournment to enable us to deliberate and then we
14 will reconvene at the usual - the normal time, that is, 2.30 in
13:04:13 15 the afternoon, with a ruling, et cetera.

16 [Lunch break taken at 1.04 p.m.]

17 [Upon resuming at 3.06 p.m.]

18 PRESIDING JUDGE: Good afternoon. When we rose before the
19 lunch break there was a pending Prosecution motion. We retired
15:07:29 20 to deliberate and the following is the Chamber's ruling:

21 The Prosecution applied that the Trial Chamber order the
22 Defence to disclose to the Prosecution the statement of witness
23 Faya Musa, DCT-306, on the grounds that the witness summary
24 filed in relation to this witness is insufficient to enable the
15:07:56 25 Prosecution to effectively cross-examine the witness and that the
26 Prosecution will suffer undue or irreparable prejudice if the
27 statement is not disclosed because the witness has attested to a
28 lot of facts not contained in his summary and that as such the
29 Prosecution is unable to adequately prepare the

1 cross-examination.

2 The Prosecution also asks that once the statement is
3 disclosed, the Prosecution be given adequate time to prepare of
4 not less than two working days or, alternatively, that the
15:08:40 5 cross-examination of Mr Fayia should commence only after the next
6 Defence witness has testified.

7 Now, the Defence opposed the motion in all respects. While
8 conceding that the summary of this witness "falls within a fairly
9 narrow compass", the Defence submits that the Prosecution has had
15:09:07 10 adequate time to prepare the cross-examination of Mr Fayia since
11 8 March 2010 when his identity was disclosed to the Prosecution.

12 Furthermore, the Defence argues that the facts disclosed in
13 the witness summary are sufficient to have put the Prosecution on
14 notice as to the contents of his testimony and therefore to
15:09:32 15 enable them to adequately prepare for his cross-examination.

16 In particular, the Defence argues that the witness having
17 been a member of the external delegation is a significant fact in
18 the summary that should have put the Prosecution on adequate
19 notice to prepare cross-examination along those lines.

15:09:59 20 Furthermore, the Defence argues that much of the testimony
21 of Mr Fayia is his comments arising out of existing Defence and
22 Prosecution exhibits, none of which pose any element of surprise
23 to the Prosecution. The Defence submits therefore that the
24 Prosecution has not demonstrated undue or irreparable prejudice
15:10:23 25 warranting either the disclosure of the witness's statement or
26 the extra time to prepare that they have sought for.

27 Now, as the Trial Chamber has held on numerous occasions
28 before, there is no blanket right for the Prosecution to see the
29 statement of a Defence witness, but in each case the Trial

1 Chamber retains the discretion to order such disclosure depending
2 on the circumstances of each case. The test for the Court to
3 determine is whether the Prosecution has demonstrated such undue
4 or irreparable prejudice that it would be in the interest of
15:11:01 5 justice to order the disclosure of the statement. We have also
6 held that a summary is not meant to be a complete statement of
7 everything that the witness will attest to but must at least
8 provide a reasonable indication, however brief, of the evidential
9 areas to be covered by the witness in his testimony.

15:11:24 10 In the present case the Trial Chamber notes that the
11 summary is indeed brief but not necessarily insufficient - or
12 shall I say not necessarily grossly insufficient. In particular,
13 the summary states that the witness was a former member of the
14 external delegation.

15:11:46 15 As the Defence has rightly pointed out, the external
16 delegation comprised a very limited number of persons and a
17 number of witnesses have already testified extensively on the
18 role and experience of the external delegation. Furthermore, we
19 agree with the Defence that a large portion of Mr Fayia's
15:12:06 20 testimony relates to existing Defence or Prosecution exhibits,
21 the contents of which do not take either of the parties by
22 surprise.

23 In the circumstances, the Trial Chamber finds that the
24 witness summary of DCT-306, although brief, is not necessarily
15:12:28 25 insufficient and that the Prosecution has not demonstrated undue
26 or irreparable prejudice in that regard. The Prosecution motion
27 for disclosure of the witness statement is therefore denied.

28 However, the Trial Chamber does agree with the Prosecution
29 that the witness's evidence-in-chief did span over areas not

1 specifically mentioned in the summary, and to this extent the
2 summary could be considered as insufficient, although not grossly
3 so. As mentioned in our prior rulings, the proper remedy in that
4 case is to allow the Prosecution some time to prepare its
15:13:10 5 cross-examination in relation to those areas not contained in the
6 summary. The Trial Chamber does not consider that in the present
7 case a substantial adjournment is called for; therefore, the
8 Trial Chamber grants the second leg of the Prosecution motion for
9 a short postponement and will adjourn for the rest of today and
15:13:35 10 adjourn to Monday morning.

11 Accordingly, I will have the witness brought back --

12 MR KOUMJIAN: Excuse me, your Honour, if I could explain.
13 What the Prosecution was seeking was time to research the
14 transcripts and other matters. We're prepared to start asking
15:13:58 15 questions. The extra half hour or hour, whatever it is, that we
16 would have to go back to the office today won't help us in that
17 research because it's 40,000 --

18 PRESIDING JUDGE: What do you mean, an extra half hour?

19 MR KOUMJIAN: Is it 15 minutes? I'm not sure how much time
15:14:14 20 is left now today. But I can begin asking questions whenever
21 you --

22 PRESIDING JUDGE: Yes, but, Mr Koumjian, firstly, I don't
23 appreciate you interrupting, as I was still reading my orders.
24 That I absolutely do not appreciate.

15:14:32 25 Secondly, the rest of today takes you up to 4.30. That is
26 the normal sitting day. Although I had announced today that we
27 would rise at 3.30 for reasons that I gave. But that doesn't
28 mean that you're not supposed to work until 4.30, and I know that
29 most diligent people do work even beyond.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-306	39170
EXAMINATION-IN-CHIEF BY MR GRIFFITHS	39170