



Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

TUESDAY, 5 AUGUST 2008
10.05 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Mr Felix Nkongho
For the Registry:	Mr Thomas George Mr Binneh Kamara
For the Public Defender:	Mrs Elizabeth Nahamya
For the Prosecution:	Mr Stephen Rapp Mr Peter Harrison Mr Charles Hardaway Mr Vincent Wagana Mr Reginald Fynn Ms Elisabeth Baumgartner Ms Bridget Osho Ms Andrea Gervais
For the accused Issa Sesay:	Mr Wayne Jordash
For the accused Morris Kallon:	Mr Charles Taku Mr Kennedy Ogeto Ms Louisa Songwe Mr Joe Holmes
For the accused Augustine Gbao:	Mr John Cammegh Mr Scott Martin Ms Lea Kulinowski Ms Charlotte

1 [RUF05AUG08A - MD]

2 Tuesday, 5 August 2008

3 [Open session]

4 [The accused present]

5 [Upon commencing at 10.05 a.m.]

6 PRESIDING JUDGE: Good morning. Good morning, Mr Taku.

7 MR TAKU: Yes, My Lord. Good morning, My Lords.

8 PRESIDING JUDGE: This is for the second accused to address
9 the Court this morning.

10 MR TAKU: Yes, My Lord.

11 PRESIDING JUDGE: And I know it is ten past ten so we will
12 make sure that you are not -- that your time is not abrogated.

13 MR TAKU: Yes, My Lord.

14 PRESIDING JUDGE: And just to remind you what we've said to
15 the other parties yesterday, we expect, and the parties have,
16 indeed, adhered to the time that had been allocated and we would
17 expect the same from the second accused and, obviously, if we
18 intervene and interfere and time will be added to you as we move
19 long. So we will try, as best as we can, not to interfere while
20 you are addressing the Court and also --

21 JUDGE ITOE: I know, President, but not adding five hours
22 to him.

23 MR TAKU: That is why we made a tactical decision out of
24 three of us who are here to ask Mr Kennedy to do our presentation
25 because, indeed, all of us had prepared something to say but --

26 JUDGE ITOE: In the context of the five hours.

27 MR TAKU: Yes, My Lord. I take the opportunity, My Lord,
28 to acknowledge the presence of my learned colleague and very good
29 friend, Miss Tanoo, and also Mr Mohamed Fofana is not yet here,

1 he will be here, he is with our team, and then of course we have
2 Mr Kennedy. We also have Mr Joe Holmes, Mr Kenneth Ejim and Miss
3 Louisa Songwe and Lois Mbafor. Thank you, My Lord.

4 PRESIDING JUDGE: These are very interesting names. I
5 would like to know who they are. I mean, you just mentioned
6 their names but I see many faces. Mr Ogeto we know, that's for
7 sure. No problem. And Miss Mylvaganam we know as well, so this
8 is okay but the other ones, if they can stand up.

9 JUDGE ITOE: And the Principal Defender we know.

10 PRESIDING JUDGE: Yes.

11 MR TAKU: Joe Holmes. Your Honours, Joe Holmes worked with
12 me in Military II in Arusha and actually also worked as legal
13 assistant for Hassan Ngeze and also worked in the Military I with
14 Mr Ntabakuze. Now, we also have here Miss Louisa, who is a legal
15 assistant. Mr Kenneth Ejim of the Nigerian Bar, he is also our
16 legal assistant. Miss Mbafor, Your Honours, she is not here, and
17 my most distinguished and acknowledged friend, Mr Mohamed Fofana,
18 is from the Republic of Sierra Leone. Thank you, Your Honour.

19 PRESIDING JUDGE: Thank you. So --

20 MR TAKU: He is a lawyer, he is a distinguished lawyer in
21 this country.

22 PRESIDING JUDGE: Thank you. So, from your presentation
23 Mr Taku, I understand that neither you, nor Mr Ogeto, nor Ms --

24 JUDGE ITOE: Mylvaganam.

25 PRESIDING JUDGE: Thank you.

26 JUDGE ITOE: Tanoo Mylvaganam.

27 PRESIDING JUDGE: He has been used to pronouncing your
28 name; I am not and I apologise. So none of you will be
29 addressing the Court, it will be your other assistant this

1 morning?

2 MR TAKU: No, Your Honour. Mr Kennedy [indiscernible]
3 Kennedy will address the Court this morning on behalf of Kallon.

4 PRESIDING JUDGE: He will, okay.

5 MR TAKU: Yes, Your Honour.

6 PRESIDING JUDGE: That is fine. So you are prepared to
7 address the Court now?

8 MR OGETO: I am, My Lords.

9 PRESIDING JUDGE: So, we are prepared to listen to you. As
10 I say, I just want to remind you what we've said yesterday. We
11 would appreciate not a restating of your case as submitted in
12 your written brief, because we have that, and I won't say that I
13 know exactly all the content of your brief but we will look into
14 it and we have a good idea as to what is in there but in due
15 course we will, indeed, pay attention and have a complete reading
16 of it.

17 So in the limited amount of time that we also have had, you
18 appreciate that it was impossible for the Bench to read all the
19 final submissions that have been made by all the parties. It is
20 an impossible task. But, having said that, I would appreciate if
21 you would focus on particular issues that have been raised by the
22 Prosecution that are of any impact on your case and any other
23 matter that you wish to raise with the Court. So, having said
24 that, we are prepared to hear you, Mr Ogeto.

25 MR OGETO: Thank you very much, My Lords. It's a great
26 honour for me to address Your Lordships this morning in the final
27 submissions for Mr Kallon.

28 Before I embark on the issues that I and my colleagues have
29 prepared for the oral address, I would like, with your

1 permission, very briefly, to respond to some issues that were
2 raised by the Prosecution yesterday, and which we think are
3 important in the context of the overall case.

4 My learned friend, Mr Harrison, raised the issue of agreed
5 statement of facts and said that we had misrepresented the true
6 meaning of that statement of facts, agreed statement of facts. I
7 wish to note, My Lords, that Mr Harrison did not fully read the
8 agreed statement of facts and I have copies of the agreed
9 statement of facts, My Lords, if Court Management can help me to
10 distribute. It is in the bundle of documents that we have
11 prepared for the Chamber and the parties. Can you give out the
12 copies, please, for me.

13 My Lords, this document will be at tab number 10 in the
14 bundle that I've handed out to the Chamber and the parties, and I
15 wish to refer to paragraph 10 of that document. It is exhibit
16 342, which was tendered, I guess, during the testimony of the
17 accused Kallon.

18 JUDGE ITOE: Paragraph what is that? You say it's tab 10?

19 MR OGETO: Tab 10 -- paragraph 10.

20 PRESIDING JUDGE: Paragraph 10 on tab 10?

21 MR OGETO: Yes, My Lords.

22 PRESIDING JUDGE: I don't have a paragraph 10 in there.

23 MR OGETO: The agreed statement of facts.

24 PRESIDING JUDGE: Yes, but it's not a paragraph. It has no
25 number, it has letters but anyhow, I can count.

26 JUDGE ITOE: Are you referring to --

27 PRESIDING JUDGE: Annex 1.

28 JUDGE ITOE: -- 11991; is that the document you are
29 referring to, Mr Ogeto?

1 MR OGETO: 11991, My Lords?

2 PRESIDING JUDGE: Yes, at the top of the page?

3 MR OGETO: Is it entitled "Agreed statement of facts"?

4 JUDGE ITOE: Well, this is an annexes, your tab 10. Yes,
5 yes, yes, at 26720.

6 MR OGETO: Yes, My Lords. 26721.

7 PRESIDING JUDGE: Yes, yes, that is fine. It's annex H.

8 MR OGETO: Yes, My Lords.

9 PRESIDING JUDGE: Thank you.

10 MR OGETO: Now the paragraph in contention is paragraph 10
11 of that document and when Mr Harrison spoke about that paragraph
12 he omitted -- let me read it out, My Lords.

13 "Between 1 May 1998 and 30 November 1998 Morris Kallon was
14 not a RUF and/or AFRC field commander in any location in
15 Bombali District and did not reside there."

16 What my learned friend Mr Harrison did yesterday was to
17 omit the key words "AFRC field commander. RUF and/or AFRC field
18 commander" and, in our submission, this is the most important
19 aspect of this paragraph because it has implications for command
20 responsibility and we have articulated our submissions in this in
21 the final brief. The only point I wish to draw to the attention
22 of the Chamber is that Mr Harrison omitted these important words.
23 The rest of it is in our final submissions in the final brief.

24 The other issue that I wish to address relates to alibi.
25 My learned friend Mr Harrison stated that we called witnesses
26 DMK-161 and 039 as alibi witnesses despite the fact that we had
27 not given them as alibi witnesses. In other words, they were not
28 in the notice that was filed before the Chamber.

29 My Lords, I do not know where my learned friend Mr Harrison

1 gets the idea that these were alibi witnesses, because they were
2 not. These are factual witnesses that were called to testify to
3 events relevant to the indictment and relevant to the defence of
4 the accused Kallon. It had nothing to do with alibi and, My
5 Lords, I wish to refer to the Defence summaries that were filed
6 on 30 January 2007, I guess, 30 January 2008. I have enough
7 copies for the Chamber and the parties. Here, the summaries in
8 respect of these two witnesses DMK-161 and DMK-039 --

9 PRESIDING JUDGE: But, Mr Ogeto, you say that the argument
10 in part that, as you say, that they were not listed as alibi
11 witnesses, and you are saying they were not listed because they
12 were not called as alibi witnesses.

13 MR OGETO: They were not.

14 PRESIDING JUDGE: But they did testify, isn't it, as to
15 alibi when they gave evidence. Or they did not at all? I am --

16 MR OGETO: Not specifically.

17 PRESIDING JUDGE: I have no recollection of that, so I can
18 tell you -- I'm just asking the question; I don't know. I
19 haven't looked at this evidence at all today or yesterday.

20 MR OGETO: I do not know exactly in what context my learned
21 friend said they were alibi witnesses. But what I can tell the
22 Chamber is that these two witnesses, generally, testified
23 about --

24 JUDGE ITOE: That is DMK-161 and DMK-039?

25 PRESIDING JUDGE: Ni ne.

26 MR OGETO: Yes, true. Yes, My Lords.

27 JUDGE ITOE: 039?

28 MR OGETO: Yes, My Lords.

29 JUDGE ITOE: Thank you.

1 PRESIDING JUDGE: So they did not testify. In the evidence
2 they gave in Court they did not give any evidence that was
3 related to the alibi?

4 MR OGETO: No, not at all, My Lords.

5 PRESIDING JUDGE: Okay. I am just asking. As I say, I am
6 not challenging you on this. I am just asking if they did. They
7 may not have been called, as I say, and they may not have been
8 listed as alibi witnesses, But that did not preclude you from
9 asking questions or they may have testified even without asking
10 questions about some matters that were related to alibi. I am
11 just raising that, but I don't know.

12 MR OGETO: As I said, My Lords, I do not know in what
13 respect my learned friend, Mr Harrison, categorises them as alibi
14 witnesses, but I can tell the Court that these two witnesses
15 spoke generally about UNAMSIL events at Makuth and they said
16 Kallon was not present at Makuth.

17 PRESIDING JUDGE: Isn't it in part what the alibi is about
18 too?

19 MR OGETO: Sorry?

20 PRESIDING JUDGE: Isn't it what the alibi is about?

21 MR OGETO: Yeah, but they did not say where Kallon was. It
22 is not like they came to say Kallon was not in Makuth but he was
23 somewhere else. They simply said he wasn't there.

24 PRESIDING JUDGE: Yeah, okay. Well, then, that answers my
25 question. They still talk about the fact that your client was
26 not there.

27 MR OGETO: Yes.

28 PRESIDING JUDGE: But they didn't say where he was, maybe,
29 but they [indiscernible] that is what I meant. So they did touch

1 upon the issue, I mean, in a collateral way?

2 MR OGETO: That's correct.

3 PRESIDING JUDGE: They may not have been called for that
4 purpose but they appear -- that's why I say I have some vague
5 recollection but I don't have that.

6 MR OGETO: Yes, My Lord.

7 PRESIDING JUDGE: Yes, Justice Thompson.

8 JUDGE THOMPSON: The short point is that, legally, what is
9 your submission then? What is the dispute between you and the
10 other side on this?

11 MR OGETO: They are saying that they are alibi witnesses.
12 We never --

13 JUDGE THOMPSON: And your submission legally is that --

14 MR OGETO: Legally, that they are not alibi witnesses.

15 JUDGE THOMPSON: All right. Yes, I mean, I just thought we
16 probably don't want to muddy the waters. I mean, if that is your
17 short submission we --

18 MR OGETO: That is our short submission, My Lord, yes.

19 JUDGE THOMPSON: Yes, quite.

20 MR OGETO: Now, the other issue that I wish to very briefly
21 refer to relates to the Kallon Defence material that was
22 mysteriously found in the Prosecution's computers. Let me tell
23 the Chamber that it was not our intention to make the submission
24 we made under abuse of process; it was inadvertent and we
25 apologise for that. Our intention was just to draw the attention
26 of the Chamber to that issue.

27 Let me also point out that we have requested for the
28 material that was found in those computers and up to now we have
29 not received that particular material and we feel that this is a

1 serious issue. It's of concern to us and we thought we should
2 draw the attention of the Chamber to this particular matter.

3 PRESIDING JUDGE: As you know, we are familiar with this
4 matter because we were notified all along.

5 MR OGETO: Yes, My Lords.

6 PRESIDING JUDGE: By both Prosecution and your party as
7 well.

8 MR OGETO: Yes, My Lords.

9 PRESIDING JUDGE: But as to what happened to the material
10 we are not aware as well.

11 MR OGETO: We are pursuing it. And, in case there is any
12 outcome, we will let the Chamber know.

13 PRESIDING JUDGE: That's fine.

14 MR OGETO: Thank you. My Lords, let me now go to the main
15 gist of our submissions this morning, and I wish to address the
16 issue of superior responsibility as it relates to Mr Kallon.

17 Your Lordships will recall that during the presentation of
18 the Defence case, we expressed deep concern about the lack of
19 clarity of the Prosecution case in relation to superior
20 responsibility for Mr Kallon. The Prosecution attempted to
21 portray Mr Kallon in relation to Kono, for instance, as the most
22 senior officer in 1998 after the retreat.

23 Our concern flows from the contradictory nature of the
24 testimonies that the Prosecution has adduced in support of this
25 important aspect of their case. It is contradictions that have
26 prejudiced the ability of Mr Kallon to defend himself in the
27 sense that he does not know what exactly is the case of the
28 Prosecution in relation to superior responsibility.

29 This dilemma is compounded by the Prosecution submissions

1 in their written brief and, My Lords, I wish to refer to
2 paragraph 308 of the brief, where the Prosecution states that at
3 the outset the assignments of the three accused, including
4 Mr Kallon, are significant and relevant, and that during the
5 majority, if not all, of the indictment period the first accused
6 was the battlefield commander and the second accused was the
7 battle group commander. So that is the contention: That during
8 the majority of the indictment period Mr Kallon held the position
9 of battle group commander.

10 In relation to joint criminal enterprise, which is
11 discussed in the same paragraph, the Prosecution alleges that the
12 joint criminal enterprise could hardly have been pursued without
13 persons holding those assignments. For the specific case of my
14 client, the Prosecution case is that the JCE could not have
15 succeeded, could not have been pursued without my client holding
16 the position of battle group commander. And that underscores the
17 importance the Prosecution attaches to this particular position
18 and assignment.

19 At paragraph 211, the Prosecution alleges that it is clear
20 that the accused person was one of the most senior commanders in
21 the RUF throughout the indictment period. At paragraph 193, the
22 Prosecution says the evidence is clear that each of the accused
23 held superior positions within the RUF; positions close to or at
24 the top of the RUF command structure.

25 In paragraphs 42 and 43 of the Prosecution's closing brief
26 there's additional emphasis on this assignment. They state that
27 assignment or appointment determined command and control and
28 showed who was the leader and, therefore, they are saying that
29 because my client was battle group commander during the majority

1 of the indictment period he had control and command.

2 My Lords, I find a lot of solace and comfort in the
3 assurance by the Chamber that this case is going to be determined
4 on the basis of the indictment that has been filed against my
5 client. This was consistently reiterated by Your Lordships
6 during the presentation of testimony in this case. I recall his
7 Lordship, Justice Itoe, remarking that the Prosecution will live
8 or die with their indictment, and that is very comforting to me
9 this morning.

10 I want to refer Your Lordships to paragraph 27 of the
11 indictment. This paragraph, very clearly, states that the second
12 accused became the RUF battle group commander in early 2000.
13 Assuming that is correct, and on the basis that the indictment is
14 what guides us in these proceedings, what that means, then --

15 JUDGE ITOE: You say the indictment alleges that he became
16 battle group commander on what date?

17 MR OGETO: Early 2000.

18 JUDGE ITOE: Thank you.

19 MR OGETO: Now, I was saying, that assuming that is
20 correct, My Lords, and given that this indictment is the basis of
21 these proceedings, and in view of the submissions that have been
22 made by the Prosecution in the final brief, what that means,
23 then, is that the accused Kallon started to have command
24 authority, control authority in early 2000. That cannot be
25 disputed.

26 PRESIDING JUDGE: You mean to say, command and control in
27 early 2000 as battle group, assuming the facts establishes that
28 he was battle group commander in 2000?

29 MR OGETO: Yes. And based upon the submissions of the

1 Prosecution that it was assignment and appointment that conferred
2 command and authority. That is their case. So --

3 PRESIDING JUDGE: I am not sure their case is really
4 limited to that but I hear what you are saying.

5 MR OGETO: That is an important aspect of their case, My
6 Lord.

7 PRESIDING JUDGE: It is. I'm not --

8 MR OGETO: And [Indiscernible]

9 PRESIDING JUDGE: -- I'm saying, as I listen to you, it's,
10 to my reading, and again it's not a detailed reading because
11 there is too much to read --

12 MR OGETO: Yes.

13 PRESIDING JUDGE: -- but my recollection and understanding
14 is not limited solely to that. That you say it's an important
15 aspect, probably.

16 MR OGETO: Extremely important, My Lords. And I agree that
17 there could be other aspects but this is the case that we were
18 notified about by the Prosecution.

19 PRESIDING JUDGE: Yes, but then you also refer to paragraph
20 24 of the indictment because this is -- that is where the
21 allegations concerning your client starts. At all times relevant
22 to this indictment Kallon was a senior officer and commander in
23 the RUF junta and the AFRC/RUF forces, so, and then it carries on
24 to paragraph 27 that you've just referred to. So, it's not
25 necessarily limited --

26 MR OGETO: Yes.

27 PRESIDING JUDGE: -- only to this paragraph 27.

28 MR OGETO: I understand but [microphone not activated]

29 PRESIDING JUDGE: I'm sorry, I may have cut off your

1 microphone.

2 MR OGETO: That seniority -- that seniority that is
3 discussed in the indictment is pegged to the assignment which the
4 Prosecution alleges.

5 PRESIDING JUDGE: That is your position. That is fine. We
6 will listen to you. I don't want to interrupt you. I just want
7 to make sure that I understand clearly what your position is in
8 this respect, Mr Ogeto.

9 MR OGETO: Yes, My Lords. So, My Lords, it's important to
10 then understand what Prosecution witnesses testified to in
11 relation to this issue and it's important also to point out to
12 the Chamber that the Prosecution admits that, paragraph 211, that
13 its witnesses were unable to agree on the exact positions of
14 assignment held by the accused. And then what is interesting is
15 that at paragraph 191 the Prosecution makes what I consider, with
16 due respect to them, a very bizarre submission. They acknowledge
17 the contradictions in their testimonies by Prosecution witnesses
18 but they say that these contradictions are, in fact, a
19 demonstration of credibility.

20 JUDGE ITOE: This is paragraph what, Mr Ogeto?

21 MR OGETO: Paragraph 191, My Lords.

22 JUDGE ITOE: Thank you.

23 MR OGETO: It's a difficult argument to follow how
24 contradictions, in the testimonies of Prosecution witnesses, on
25 an important issue in the proceedings, can be a demonstration of
26 credibility. But, be that as it may, My Lords, the confusion
27 that has been created by Prosecution witnesses, regarding the
28 position that Kallon held in the relevant periods of the
29 indictment is truly confounding, and I wish to start with the

1 testimony of TF-371. TF-371, a very senior RUF officer, as Your
2 Lordships know, stated before Your Lordships that Mr Kallon
3 became battle group commander of the RUF before the junta period.
4 That is a big and significant contradiction of the indictment.
5 When 371 was confronted with testimony to the contrary,
6 documentary testimony to the contrary, he wasn't able to explain
7 the basis for his saying that Mr Kallon was battle group
8 commander before the junta period. He persisted to make that
9 allegation throughout the proceedings, throughout his testimony.

10 The other witness is TF1-366. Your Lordships are also
11 familiar with this witness. My good learned friend, Mr Jordash,
12 yesterday made extensive submissions on the credibility of this
13 witness, and I don't wish to repeat what he said. So this
14 witness said that Mr Kallon was battle group commander in Kono
15 from March 1998. Incidentally, these two witnesses, 371 and 366,
16 also stated that Kallon was the overall commander in Kono in
17 1998, after the retreat, and, of course, this is despite the
18 overwhelming testimony to the contrary.

19 We have documentary evidence; we have Exhibit 7, which was
20 prepared by witness TF-167. We have salute reports from Sam
21 Bockarie which clearly indicate that Mr Kallon was not the battle
22 group commander in Kono in 1998. In fact, we have a salute
23 report from Superman -- I think it's Exhibit 36 -- 32, My
24 Lords -- where Superman himself says he was in control of Kono in
25 1998, and this is an exhibit that was tendered by the
26 Prosecution, and in that exhibit Superman actually condemns
27 Mr Kallon for frustrating his efforts to fully control Kono.

28 My Lords, when 371 was confronted with this exhibit, he
29 stated it was not true but he had no basis for saying it was not

1 true. And, My Lords, this is a document that was written by
2 Superman, addressed to Foday Sankoh, and 371 could not explain
3 why Superman would impersonate himself to the leader of the
4 movement.

5 JUDGE ITOE: What exhibit are you referring to, the salute
6 report? Is it exhibit 32?

7 MR OGETO: 32, My Lords.

8 JUDGE ITOE: 32.

9 MR OGETO: 32, yes.

10 JUDGE ITOE: Thank you.

11 MR OGETO: My Lord, I am told 32 is a radio message. There
12 is also a salute report addressed to the leader and we also have
13 35, Exhibit 35, which is also a salute report.

14 PRESIDING JUDGE: That is the one you referred to which is
15 the salute report by Bockarie; isn't it?

16 MR OGETO: By Bockarie.

17 PRESIDING JUDGE: Exhibit 35.

18 MR OGETO: Yes, My Lords, by Bockarie.

19 PRESIDING JUDGE: Yes.

20 MR OGETO: And, My Lords, those exhibits are quite clear
21 that Mr Kallon was not battle group commander, he was not overall
22 commander in Kono at that time, after the retreat. There is also
23 Exhibit 9.

24 PRESIDING JUDGE: That is the [indiscernible] Exhibit 9?

25 MR OGETO: Yes, My Lords.

26 PRESIDING JUDGE: By 167, is it?

27 MR OGETO: Yes, My Lords, yes. My Lords, what is
28 surprising about the Prosecution case is that we have a witness
29 like TF-071, who was in Kono after the retreat, and witness 071

1 was very clear about the position held by Mr Kallon. He stated
2 quite clearly that Mr Kallon was neither the overall commander,
3 nor the deputy; he was an officer present in Kono. In fact, 071
4 even stated that Mr Kallon did not have any control, any
5 authority over people like Rocky CO. And 071, as Your Lordships
6 know, was a witness who dealt with civilians on a regular basis,
7 by virtue of his duties, and is a witness who would have known,
8 very clearly, the position held by Mr Kallon. And therefore, he
9 was quite clear that Mr Kallon did not hold the positions
10 testified to by 371 and 366.

11 Now, whereas 371 and 366 say Kallon was the overall
12 commander, 361 and 360 state that Kallon was the deputy to
13 Superman. But something interesting about 361 is that during
14 cross-examination by the Kallon Defence the witness admitted a
15 prior statement that he had made to the effect that he did not
16 know Mr Kallon well, while in Kono. Mr Kallon did not have a
17 radio, while in Kono, and Mr Kallon did not have a radio because
18 he did not have an area of responsibility in Kono. That is what
19 361 said.

20 So, the question is: If you have a radio operator in Kono,
21 who does not know Mr Kallon well, who says Mr Kallon did not have
22 a radio, and who says that Mr Kallon did not have a radio because
23 he did not have an area of responsibility, then, how do we place
24 the testimony of 371, who was in Buedu? How do we place the
25 testimony of 366, who, as we have demonstrated, has a clear
26 motive to accuse Mr Kallon? And there is also something
27 interesting about 361 and 360.

28 360 says, in his testimony, that during the retreat from
29 Freetown to Kono, Mr Kallon was in Makeni. 361, a colleague of

1 360, both were radio operators --

2 PRESIDING JUDGE: Yes, Mr Harrison.

3 MR HARRISON: Can I just, because there is a large gallery
4 here, pass a note to the Court clerk so that it can be conveyed
5 to the Trial Chamber, so that it's clear what the problem is that
6 is arising right now?

7 PRESIDING JUDGE: It has to do with protective measures?
8 Well, maybe I missed something but there is nothing I've heard up
9 until now that would raise concerns, but maybe you did.

10 MR HARRISON: There is only a very small number of
11 people --

12 PRESIDING JUDGE: Who occupied those positions, yes.

13 JUDGE ITOE: There were many radio commanders in the
14 evidence of -- in the entire evidence that was adduced by the
15 Prosecution, so I don't think, when there is a reference, in my
16 opinion, I don't think that there is a reference to radio
17 commanders, there is -- it identifies any particular one. That's
18 the way I reason, on a first view, you know, of that. I
19 honestly, I, who, we who are very familiar, you know, are not
20 even able to place who it is, you know, so how would the public?

21 PRESIDING JUDGE: Anyhow, we have noted your concerns,
22 Mr Harrison and, Mr Ogeto, I just remind you there are protective
23 measures as you know, [indiscernible] all, I would say most of
24 these witnesses, if not all of them, and obviously when you
25 mention the function vis-a-vis a particular individual, I mean,
26 it may, and by putting the two together, disclose some
27 information that you did not intend to do but just some caution.

28 MR OGETO: I appreciate that, My Lords, and I was truly
29 conscious of it but I take your point, My Lords.

1 So, I was relating the testimonies of 361 and 360 and I was
2 saying that during the retreat, 360 and 361 --

3 PRESIDING JUDGE: Try again.

4 MR OGETO: Yes; is it okay now?

5 PRESIDING JUDGE: Yes, it's okay now, yes.

6 MR OGETO: So, 361 and 360 were both in Makeni during the
7 retreat, and both of them travelled to Kono together. They were
8 actually close friends. What is interesting, My Lords, is that
9 360 says Kallon was in Makeni all the way to Kono and that Kallon
10 was actually the interface, that is the term he uses, he was the
11 interface between the soldiers and the civilians.

12 361 doesn't know anything about this. In fact, 361 says
13 that during the retreat from Freetown to Kono, Kallon was not in
14 Makeni, he was in Liberia, and that Kallon only came back to Kono
15 a week after the arrival of the troops in Kono, and that Kallon
16 actually did not find JPK in Kono.

17 It's important to note that 360, on the other hand, and
18 both of them were in Kono at that time, 360 says Kallon was in
19 Kono. Kallon was with JPK in Kono, and that Kallon, indeed,
20 attended meetings convened by JPK in Kono.

21 So here you have two witnesses living together, performing
22 the same function, an important function, but saying or giving
23 information that is extremely contradictory. So one wonders, My
24 Lords, who is picking the truth and what is interesting is that
25 the Prosecution is relying on all these witnesses. They are all
26 in the brief. And the Prosecution does not assist the Chamber in
27 any way by suggesting to the Chamber as to who should be
28 believed. So they are leaving it to Your Lordships to untangle
29 the puzzle.

1 Very interesting again, 371 says that when the retreating
2 forces arrived in Kono, Kallon left with JPK to Buedu. He stayed
3 in Buedu, together with 371 and Sam Bockarie, for close to two
4 months; two or three months. That's what 371 says, that Kallon
5 was not in Koidu after the retreat at least for about two
6 months -- he was in Buedu -- and this is a senior RUF officer, we
7 cannot say that he forgot. He was very positive. We cannot say
8 he did not know Kallon, he mistook him; he knew him.

9 366 contradicts 371. 366 says he was constantly with
10 Kallon in Koidu. Who do we believe? And what kind of case is
11 this where the accused does not know exactly what to defend? Is
12 he supposed to defend himself in relation to Buedu, that he was
13 there for two months? That he was with the High Command in Buedu
14 for two months? Is he supposed to defend himself in relation to
15 the allegations of 366, that he was in Kono throughout,
16 committing offences?

17 It is simply not possible, My Lords, to defend yourselves
18 in the light of such allegations; in the light of such
19 contradictory allegations; and this is compounded by the fact
20 that the indictment is not clear.

21 I will give you another example, My Lords, about the
22 difficulties we have.

23 PRESIDING JUDGE: Yes, but, Mr Ogeto, isn't it indeed a
24 question of reasonable doubt? If that is the case, and the
25 evidence is so confusing being these kind of contradictions as
26 such, questions for this Court to assess credibility and then
27 make a determination. So, you say he chooses to know the case,
28 well, the case is what you have, the allegations. If what the
29 evidence is brought is evidence that does not support the

1 allegation, well, the Court will have to act accordingly. I
2 mean, isn't it a question of -- you are alleging these --

3 MR OGETO: It goes to the --

4 PRESIDING JUDGE: -- to describe contradictions between key
5 witnesses.

6 MR OGETO: Yes, My Lords, and I am sorry, My Lords. My
7 submission is that this really goes to the root of the
8 Prosecution case. It shows the nature of the fabrications
9 against Mr Kallon because you cannot have key witnesses giving
10 such contradictory testimonies, particularly when the indictment
11 is not clear. It creates enormous difficulties for the accused
12 person, and this is what I'm trying to establish.

13 And what is more worrying, My Lords, is that the
14 allegations made by these two witnesses, 371 and 366
15 particularly, contradict the indictment. These are witnesses who
16 have been presented by the Prosecution but they contradict the
17 indictment. So, what do we say? We can only conclude that the
18 Prosecution has not proved its case as spelt out in the
19 indictment.

20 And it creates difficulties because the accused person does
21 not know the exact position that is being attributed to him,
22 because this has serious consequences, implications for command
23 responsibility. How does he defend himself? Was he battle group
24 commander? Was he a mere officer? Was he the overall commander
25 in Kono? Was he the deputy in Kono? It's difficult to defend
26 yourself in the light of this kind of testimonies.

27 And, My Lords, I wish to refer you to an authority, an ICTY
28 authority --

29 PRESIDING JUDGE: Is this contained in your brief, written

1 brief?

2 MR OGETO: No.

3 PRESIDING JUDGE: It's another one?

4 MR OGETO: It's not.

5 PRESIDING JUDGE: Okay. And it is not in the binder that
6 you have provided the Court with?

7 MR OGETO: It is.

8 PRESIDING JUDGE: It is?

9 MR OGETO: It is in the binder. I cannot place my hand --
10 it's in my own binder.

11 JUDGE ITOE: Why don't you continue and give it to us
12 later.

13 MR OGETO: Let me continue, My Lords.

14 JUDGE ITOE: So that you don't burn off your time.

15 MR OGETO: Yes. I'm really burning it. My Lords --

16 PRESIDING JUDGE: Yes, Mr Ogeto, please carry on.

17 MR OGETO: Yes. My Lords, the other issue that I wanted to
18 raise relates to the offence of looting, and the reason why I am
19 raising this is because it shows the nature of the Prosecution
20 once again.

21 Mr Kallon is charged with, according to the witnesses at
22 least, with looting a bank in Kono. Now, of course, this is not
23 pleaded in the indictment, and it's not in the pre-trial brief.

24 PRESIDING JUDGE: And not in the supplementary trial brief
25 either?

26 MR OGETO: It is not there, My Lords.

27 JUDGE THOMPSON: When you say he is charged with --

28 MR OGETO: Maybe I used the wrong term.

29 JUDGE THOMPSON: Precisely because if it's --

1 MR OGETO: Yes, I used the wrong term.

2 JUDGE THOMPSON: Because if he is charged with and it's not
3 pleaded in the indictment I find it difficult to process the two.

4 MR OGETO: It's a bit clumsy My Lords, I agree.

5 JUDGE THOMPSON: Well, a rather random thought.

6 MR OGETO: He was accused by witnesses --

7 JUDGE THOMPSON: Yes.

8 MR OGETO: -- for robbing a bank in Koidu.

9 JUDGE THOMPSON: In other words, evidence was led to that.

10 MR OGETO: Evidence was led, yes, My Lord.

11 JUDGE THOMPSON: But there is nothing in the indictment,
12 you say --

13 MR OGETO: Nothing in the indictment.

14 JUDGE THOMPSON: All right.

15 MR OGETO: Nothing in the pre-trial brief.

16 JUDGE THOMPSON: Thanks.

17 PRESIDING JUDGE: When you say nothing, you mean nothing
18 specific about a bank being robbed?

19 MR OGETO: Nothing specific about a bank being robbed by, I
20 say Mr Kallon.

21 PRESIDING JUDGE: Yes, yes.

22 MR OGETO: And the notice we received and this is --

23 JUDGE THOMPSON: And for a greater degree of clarity --

24 MR OGETO: Yes.

25 JUDGE THOMPSON: -- no specific or corresponding charge in
26 the indictment?

27 MR OGETO: Corresponding in terms of?

28 JUDGE THOMPSON: Well, if you say there is evidence led --

29 MR OGETO: Yes.

1 JUDGE THOMPSON: -- is there a disconnect between what was
2 adduced in Court and the road map which is the indictment?

3 MR OGETO: Okay. The road map is not very clear because it
4 talks about looting generally.

5 JUDGE THOMPSON: I see. Quite. That is what I am trying
6 to process.

7 MR OGETO: Yes.

8 JUDGE THOMPSON: Yes, quite.

9 PRESIDING JUDGE: But there is allegation in the indictment
10 on the count 14 about Kono District.

11 MR OGETO: Yes, there is. I don't -- there is no doubt
12 about it.

13 PRESIDING JUDGE: I just want to make it clear as well, for
14 our own understanding --

15 MR OGETO: Yes, My Lords.

16 PRESIDING JUDGE: -- that there is no confusion on that
17 issue.

18 MR OGETO: Yes, yes.

19 PRESIDING JUDGE: Your specific issue is that although
20 there are allegations of looting there is no allegation of
21 looting of a bank in Kono?

22 MR OGETO: In Kono.

23 PRESIDING JUDGE: During that period of time.

24 MR OGETO: Yes.

25 PRESIDING JUDGE: Okay.

26 MR OGETO: And all the witnesses who testified --

27 JUDGE THOMPSON: And the issue is specifically relating to
28 your client?

29 MR OGETO: Yes, My Lords.

1 JUDGE THOMPSON: Yes. Thank you.

2 JUDGE ITOE: The issue is what is your position about the
3 lack of specificity of looting in relation to a particular bank,
4 as far as the submissions you are making are concerned? There is
5 a general allegation of looting in Kono. You are saying that
6 there is no specific allegation about looting a bank?

7 MR OGETO: By Kallon, yes.

8 JUDGE ITOE: Yes, by Kallon.

9 MR OGETO: Yes. Yes.

10 JUDGE ITOE: Where do you stand? What submission are you
11 making in this regard?

12 MR OGETO: The submission I am making is that the
13 indictment ought to have pleaded the fact that Mr Kallon robbed a
14 bank. It is not enough to talk about looting generally or
15 looting in Kono without saying it was Mr Kallon who robbed or who
16 looted the bank.

17 JUDGE ITOE: Thank you.

18 MR OGETO: More fundamentally --

19 JUDGE ITOE: I don't want to go any further in these
20 matters.

21 JUDGE THOMPSON: Let me go further.

22 MR OGETO: Yes, My Lord.

23 JUDGE THOMPSON: In shorthand legal language --

24 MR OGETO: Yes.

25 JUDGE THOMPSON: -- the indictment is defective.

26 MR OGETO: Defective.

27 JUDGE THOMPSON: Right.

28 MR OGETO: Extremely defective.

29 PRESIDING JUDGE: And on this particular issue, it is

1 defective, if I can pursue that because this is here an
2 allegation through witnesses by the Prosecution of a specific
3 crime being committed by your client.

4 MR OGETO: Yes.

5 PRESIDING JUDGE: It's not just looting as general looting
6 in Kono but this is a particular act of looting, at a particular
7 time, by your client, your client himself?

8 MR OGETO: Yes, My Lord.

9 PRESIDING JUDGE: Is it what you are saying?

10 MR OGETO: Yes, [overlapping speakers] it is.

11 PRESIDING JUDGE: This evidence implies directly your
12 client at one specific time?

13 MR OGETO: Yes.

14 PRESIDING JUDGE: Committing himself those crimes?

15 MR OGETO: Yes, My Lords.

16 JUDGE ITOE: And you are saying that we don't have a
17 pre-trial brief here, you know, a supplemental brief. I don't
18 want you to refer to that. Are you telling the Chamber that that
19 specific looting was not pleaded as it was not in the indictment,
20 also in the pre-trial brief or even in the supplemental pre-trial
21 brief.

22 MR OGETO: Yes.

23 JUDGE ITOE: Looting of the bank.

24 MR OGETO: Yes, My Lord.

25 JUDGE ITOE: Of the bank.

26 MR OGETO: In fact, My Lords, that is the point I was
27 coming to.

28 JUDGE ITOE: All right. Okay.

29 MR OGETO: The notice, the notice we received in the

1 pre-trial brief relates to the looting of the National Bank in
2 Bo, not in Kono. So there is a divergence between the notice
3 that we received and the testimonies that were tendered before
4 the Chamber.

5 JUDGE THOMPSON: The subsidiary notice? Because --

6 MR OGETO: Yes, subsidiary.

7 JUDGE THOMPSON: -- speaking precisely --

8 MR OGETO: Yes.

9 JUDGE THOMPSON: -- it is the indictment which is the
10 governing or controlling notice?

11 MR OGETO: Yes, My Lords.

12 JUDGE THOMPSON: Right.

13 MR OGETO: Yes. And the reason I am making this submission
14 is because the Prosecution say that they have gone to great
15 lengths to cure the defective indictment. I admit that an
16 indictment can be cured in certain circumstances but, according
17 to Kupreskic the cure must be clear, timely and consistent.

18 Now, the question one may want to ask in this particular
19 instance is whether there has been a cure. The Prosecution says
20 witness statements are sufficient to cure a defective indictment.
21 We disagree. But even assuming that argument is correct, is the
22 test in Kupreskic satisfied? Clear, consistent and timely
23 information in relation to this allegation of looting. Not at
24 all because the notice that the accused Kallon received relates
25 to the looting of a bank in Bo and not in Kono.

26 PRESIDING JUDGE: And the notice about Bo was a notice
27 alleging Kallon in Bo?

28 MR OGETO: Yes.

29 PRESIDING JUDGE: So it was specific to Kallon but to

1 Kallon in Bo?

2 MR OGETO: In Bo. That is the only notice we received.

3 PRESIDING JUDGE: Okay.

4 MR OGETO: And in relation to Kono, where you expect notice
5 in the pre-trial brief in relation to looting of the bank by
6 Kallon, there is a different kind of looting ascribed to
7 Mr Kallon.

8 The pre-trial brief says, the supplementary pre-trial brief
9 says that Mr Kallon was involved in the looting of sheep,
10 animals. That is the notice we received, so we were prepared to
11 defend this; he looted sheep in Kono, not money from a bank. So,
12 My Lords, you can see the difficulties that we have in trying to
13 defend this case.

14 I wish to refer Your Lordships very briefly to some
15 jurisprudence because I don't have time. My learned friend,
16 Mr Jordash, did a good job on this but I have additional
17 jurisprudence that I wish to refer to Your Lordships in relation
18 to the issue of notice, and witness statements, as a mode of
19 curing a defective indictment.

20 JUDGE ITOE: We would appreciate if they are not in any of
21 your folders --

22 MR OGETO: Yes.

23 JUDGE ITOE: -- we would appreciate, even after you have
24 referred to them here, that you submit to the Chamber legal
25 officers --

26 MR OGETO: Yes, I will.

27 JUDGE ITOE: -- all the jurisprudence you are relying on.

28 MR OGETO: Yes, My Lords.

29 JUDGE ITOE: And I am saying this, you know, to -- I think

1 it would help us, from all the parties.

2 MR OGETO: Thank you, My Lords.

3 JUDGE ITOE: Prosecution and all the Defence teams, please.

4 MR OGETO: Thank you, My Lords. I will oblige, My Lords.

5 The first authority I wish to refer to your Your
6 Lordships --

7 PRESIDING JUDGE: And it is not in the binder you gave us
8 this morning either?

9 MR OGETO: It is.

10 PRESIDING JUDGE: It is? Okay.

11 MR OGETO: Yes, it is. Only that my assistant is not here
12 to tell me exactly where it is, My Lords, but in due course I
13 will --

14 PRESIDING JUDGE: We have copies of it.

15 JUDGE ITOE: But you can summarise it, Mr Ogeto.

16 MR OGETO: That is what I want to do, My Lords. Yes. It
17 says, My Lords, this is a decision, an ICTR decision, on
18 Ntabakuzi interlocutory appeal on questions of law. It is dated
19 18 September 2006 at paragraph 26. The Chamber say:

20 "Where a Trial Chamber considers that a defective
21 indictment has been subsequently cured by the Prosecution
22 it should further consider whether the extent of the
23 defects in the indictment materially prejudice an accused's
24 right to a fair trial by hindering the preparation of a
25 proper Defence."

26 My Lords, even where the Prosecution alleges that the
27 defects in the indictment have been cured, this jurisprudence
28 confers upon the Chamber the authority to explore the matter
29 further, to determine whether, in view of the extent of the

1 defects, the Defence has been hampered in its efforts to mount a
2 proper defence. So it's not enough for the Prosecution to say:
3 The defects have been cured. The Chamber has the discretion.
4 The Chamber has the power to explore this matter further.

5 My Lords, the Prosecution states that we did not ask for an
6 adjournment; we did not -- we cross-examined witnesses,
7 Prosecution witnesses. My Lords, that does not waive the right
8 of the Defence to plead prejudice at the end of the case. And
9 the ICTR has also considered this issue, a similar issue, and
10 this is the case of Prosecution versus Muhimana, judgment of 28
11 April 2005. That will be in tab 5, My Lords, of the bundle.

12 And, My Lords, on a similar issue the Chamber stated as follows:

13 "The analysis of prejudice to the accused is not dependent
14 on whether the accused manages to call any witnesses in
15 rebuttal if the accused is not given clear and timely
16 notice of specific allegations he or she is not in a
17 position to appreciate or understand the full case to be
18 met."

19 So it's not enough to say you suffer no prejudice because
20 you called witnesses; you called Defence witnesses to rebut the
21 Prosecution case. It's not enough to say you cross-examined
22 Prosecution witnesses. It is important that the Prosecution
23 provides, through the key documents, which is the indictment,
24 probably the pre-trial brief, a clear case that the accused has
25 to meet.

26 The other jurisprudence, My Lords, relates to witness
27 statements, and I think my colleague, Mr Jordash, has already
28 dealt with that and there is no need for me to repeat what he has
29 said. I simply adopt the jurisprudence that Mr Jordash cited to

1 Your Lordships.

2 So, now, I will move to another issue. I don't seem to
3 have much time.

4 JUDGE ITOE: I think you still have about some 30 minutes
5 to go, from my computation.

6 MR OGETO: Thank you, My Lords.

7 JUDGE ITOE: From when you started.

8 MR OGETO: Thank you, My Lords.

9 JUDGE ITOE: I say from my computation. I may be wrong.

10 MR OGETO: In that case let me --

11 PRESIDING JUDGE: There is no split decision on this.

12 MR OGETO: Thank you, My Lord. It's always good to hear
13 there is consensus, unanimity.

14 PRESIDING JUDGE: That's fine. You have -- but if you keep
15 speaking though, you may not have another 30 minutes so --

16 MR OGETO: We will deduct it from the overall.

17 Your Lordships, in that case, let me point out some other
18 additional jurisprudence on witness statements, and this is --

19 JUDGE ITOE: But can you -- you referred to one --

20 MR OGETO: Yes, My Lords.

21 JUDGE ITOE: -- which you said you were adopting that was
22 cited by learned lead counsel Mr Jordash.

23 MR OGETO: Yes, My Lords.

24 JUDGE ITOE: Can you refresh the Chamber's memory on this,
25 please?

26 MR OGETO: This, I generally said that Mr Jordash --

27 JUDGE ITOE: I thought you were referring to a particular
28 case on which Mr Jordash may have relied in making his
29 submissions on this point?

1 MR OGETO: No, I don't have them here.

2 JUDGE ITOE: You don't have them here. All right. Go
3 ahead.

4 MR OGETO: I simply adopt that generally, the jurisprudence
5 jurisprudence that he cited. But I have another useful, I guess,
6 useful jurisprudence. Prosecutor v Ntakerimana, it is appeals,
7 ICTR Appeals Chamber judgment, 13 December 2004.

8 JUDGE ITOE: What date, please?

9 MR OGETO: 13 December 2004. The Chamber said:

10 "The test is not directed to the clarity and consistency of
11 the Prosecution's evidence as disclosed to the accused but,
12 rather, the clarity and consistency of the Prosecution's
13 announcement of the material facts it intends to prove."

14 So, quite clearly, My Lords, it is not the evidence that is
15 important; it is not the timely disclosure of evidence that is
16 important; it is the timely and clear and consistent information
17 in the indictment, in the pre-trial brief, and probably in the
18 opening statement that is important.

19 And further with this, there's another decision, Prosecutor
20 v Bagosora. This is a decision on Ntabakuze's motion for
21 exclusion of evidence, 29 June 2006, at paragraph 6. That is at
22 tab 9 in the bundle and this is what the learned Chamber said:

23 "The presence of a material fact somewhere in the
24 Prosecution's disclosure does not suffice to give
25 reasonable notice. What is required is notice that the
26 material fact will be relied upon as part of the
27 Prosecution case and how."

28 So it's not sufficient to say that you have disclosed
29 witness statements; that the allegations are somewhere in those

1 statements and that that is sufficient notice. The jurisprudence
2 says, no, you have to give notice of the allegations and how
3 those allegations relate to the accused person and you can only
4 do that by way of the indictment, pre-trial brief or opening
5 statement.

6 My Lords, let me now move to a slightly different issue. A
7 minute, My Lords. Now, in the Prosecution's final brief, the
8 Prosecutor has made what we consider serious misrepresentations
9 of the evidence and I think it is important for me to point this
10 out to the Chamber.

11 At paragraph 438, the Prosecution alleges that the stomach
12 of a pregnant woman was cut open by rebels in the presence of the
13 second accused to determine the sex of the child. My Lords, our
14 submission is that this is a totally misleading submission. It's
15 a misrepresentation. The testimony on this issue is that this
16 pregnant woman had been stabbed. The stomach had been slit by
17 the time the accused arrived on the scene. That is what the
18 evidence states.

19 And this misrepresentation, My Lords, is important because
20 it has got serious implications for the liability and
21 responsibility of the accused and, as my learned friend
22 Mr Jordash said, there are several sad misrepresentations in this
23 brief.

24 JUDGE ITOE: It is not enough to say there are several of
25 these representations. I mean, misrepresentations I think --

26 MR OGETO: I am giving further examples, My Lords.

27 JUDGE ITOE: The Chamber needs to have been guided. I
28 suppose we are so guided in your final briefs.

29 MR OGETO: No, we didn't have it, My Lords, we didn't have

1 it. We didn't have it at the time we were --

2 JUDGE ITOE: Well, you have the time now to do that very
3 very rapidly in order to let us know. Although we have all the
4 evidence before us and we will look through it but you may submit
5 on that.

6 MR OGETO: Yes, My Lords. And this is what I am doing. My
7 Lords, the [indiscernible] misrepresentation relates to the
8 testimony of TF1-288 and DIS-310. These are witnesses who were
9 abducted and taken to Yengema, in Kono. One is a Prosecution
10 witness, the other is a Defence witness.

11 At paragraph 1197 of the Prosecution final brief, the
12 Prosecution alleges that these two witnesses saw the first and
13 second accused about four times visiting and giving orders to
14 TF-362. That statement, My Lords, is not correct. DIS-310, who
15 is a Defence witness --

16 JUDGE ITOE: That he saw the first and second accused doing
17 what?

18 MR OGETO: Visiting Yengema and giving orders to
19 Prosecution witness TF1-362. Now, the Prosecution says that
20 these two witnesses corroborate each other. The true state of
21 the evidence, My Lords, is that this allegation was made by
22 TF1-288. DIS-310 contradicted the Prosecution witness TF-288, so
23 it's not correct for the Prosecution to allege that both
24 witnesses stated that my client visited Yengema four times.

25 JUDGE ITOE: Can you take that again please; who
26 contradicted who?

27 MR OGETO: The Defence witness.

28 JUDGE ITOE: DIS-310?

29 MR OGETO: 310.

1 JUDGE ITOE: Yes.

2 MR OGETO: During his testimony before Your Lordships
3 contradicted TF1-288. Whereas TF1-288 stated that my client
4 together with the first accused visited Yengema, DIS-310 never
5 gave such testimony. In fact, he denied any knowledge of my
6 client visiting Yengema at that time. So, it's not correct for
7 the Prosecution to allege that both witnesses stated that my
8 client went to Yengema and this also has serious, serious
9 implications.

10 PRESIDING JUDGE: But did you, I haven't checked the
11 footnote as to the reference in the transcript because all of
12 these, that evidence, is obviously footnotes making reference to
13 transcripts.

14 MR OGETO: Yes.

15 PRESIDING JUDGE: So is this an improper interpretation of
16 the evidence or this is -- the evidence is not there?

17 MR OGETO: The evidence is not there at all.

18 PRESIDING JUDGE: It's not there at all?

19 MR OGETO: It's not even, it's not even an improper
20 interpretation, My Lords. It is not there. DIS-310 was quite
21 clear because we cross-examined him at length on this issue, and
22 he was quite categorical, quite clear. That my client, he did
23 not see my client there.

24 The other issue, My Lords, relates to the selective nature
25 in which the Prosecution has picked its witnesses in relation to
26 certain serious allegations and one example is TF-035. The
27 Prosecution alleges that the second accused participated in
28 killings at Cyborg Pit, but there is no mention by the
29 Prosecution of the fact that 035 was actually relying on

1 hearsay -- I'm not saying hearsay is not admissible -- but it's
2 not clear why the Prosecution would prefer to rely on the hearsay
3 testimony of 035 and ignore the testimony of TF1-367 who gave
4 direct testimony on this, who was a senior officer of the RUF.

5 JUDGE ITOE: TF?

6 MR OGETO: TF1-367.

7 JUDGE ITOE: 367?

8 MR OGETO: Yes, My Lords. So the Prosecution prefers to
9 utilise the testimony of TF-035 which is hearsay, as opposed to
10 TF1-367 and, as Your Lordships may recall, TF1-367 was very clear
11 that my client was not in Tongo. My client was not in Kenema at
12 the time of the killings in Tongo and, in fact, he emphasised
13 that my client was nowhere near there. So the Prosecution
14 doesn't point this out to the Chamber. And also, My Lords, in
15 relation to Tombodu, at paragraph 522 of the Prosecution final
16 brief, the Prosecution relies on --

17 PRESIDING JUDGE: What is that?

18 MR OGETO: Sorry, My Lords 522.

19 PRESIDING JUDGE: 522.

20 MR OGETO: Yes. As Your Lordships are aware the
21 allegations in relation to Tombodu are fairly serious
22 allegations. These are allegations that were made by 366,
23 allegations that are not corroborated in any material sense. And
24 allegations that are contradicted by what I may call more
25 credible Prosecution witnesses. So, what the Prosecution does is
26 rely on 366 in relation to Tombodu, and ignore the others, like
27 071, who does not implicate my client in Tombodu, who is quite
28 clear about the command structure in Tombodu. 167, who also
29 testified on this issue and was quite clear about the command

1 structure. 334 and 012.

2 Now, My Lords, these are all Prosecution witnesses who gave
3 contradictory evidence, in my submission more credible evidence,
4 and the Prosecution chooses to rely on the testimony that
5 [indiscernible criminal with a clear intention to level
6 accusations against my client, at all material times.

7 The Prosecution talks about, and I am sorry to go back to
8 the issue of statements, the Prosecution says that statements are
9 an important aspect of notifying an accused person of the case
10 that he faces.

11 But the Prosecution makes interesting submissions about
12 these statements; statements from their own witnesses. And, My
13 Lords, if you look at paragraph 57 to 66 of the final brief, the
14 Prosecution says --

15 JUDGE ITOE: 50?

16 MR OGETO: 57 to 66, My Lords. The Prosecution takes a
17 very defensive position regarding the accuracy of their witness
18 statements, the statements they took from their witnesses. And
19 this is what they say:

20 For instance, at paragraph 59, George Johnson, and this is
21 a witness who testified in public, I think, George Johnson
22 testified that his statements were not read back to him after the
23 interviews for him to check the accuracy. Paragraph 60, some of
24 the investigators who interviewed witnesses were from countries
25 outside Africa. Paragraph 64. There is no reason why a person
26 suffering from post-traumatic stress disorder cannot be a
27 perfectly reliable witness. Any discrepancies in the Prosecution
28 evidence, sorry, My Lord. So, My Lords, the Prosecution is
29 critical of their own statements. They are saying they may not

1 be accurate. And these are the same statements the Prosecution
2 wants us to rely on as notice to the accused person regarding
3 allegations about the accused person and we have made extensive
4 submissions on this in our final brief and we don't want to
5 repeat it.

6 My Lords, I now want to talk about Additional Protocol II
7 and common Article 3, regarding the existence of an armed
8 conflict. I know Your Lordships took judicial notice of --

9 PRESIDING JUDGE: But this is in your brief; I know. You
10 have addressed this issue.

11 MR OGETO: Okay.

12 PRESIDING JUDGE: But you are not precluded from further
13 arguments, if you want to put that forward, that's fine. I'm
14 just mentioning that because you have a big five minutes left to
15 you, so if this is what you want to do, that's fine with me.

16 JUDGE ITOE: I agree.

17 PRESIDING JUDGE: But I know it is in your brief but maybe
18 you want to add something. Whatever. On this one this is your
19 call so.

20 MR OGETO: It's all right, My Lords. If it's clear in the
21 brief I won't --

22 PRESIDING JUDGE: Well, I mean, I know it's in your brief.
23 Whether it is clear or not I cannot say. However, I am saying it
24 is in the brief. And I know it is there, and I know you have
25 argued this, but it's just to tell you that there is five minutes
26 left, Mr Kennedy, so --

27 MR OGETO: I understand, My Lords. Can I consult for a
28 minute, My Lords?

29 PRESIDING JUDGE: Yes, you may, please.

1 MR OGETO: My Lords, the Prosecution, at paragraph 1181,
2 states that Defence witness DMK-444 testified that Kallon was
3 involved in several allegations involving Major Ganese. My
4 Lords, this is not correct at all, and I think it is important
5 for Prosecution and Defence to be candid with the Chamber.

6 Defence witness DMK-444 very clearly stated before the
7 Court that he actually did not even know Mr Kallon. So, for
8 Prosecution now to misinterpret the testimony of that witness, to
9 say that he alleged Mr Kallon was involved in the abduction of
10 Ganese, is completely unacceptable, My Lords, in my humble
11 submission. I agree DMK-444 was cross-examined generally about
12 some board of inquiry, which may have made reference to Kallon,
13 but this witness did not specifically, positively say that it was
14 the accused Kallon who was involved in the abduction of Ganese.

15 PRESIDING JUDGE: But that paragraph, I mean, depends how
16 you read it because that paragraph says DMK-444, for instance,
17 said he knew from reports through the board of inquiry. I mean,
18 this is obviously from report. He didn't know personally. It
19 was from the Board of Inquiry and then says that on May 1 the
20 second accused did so-and-so. So this is clearly spelt out that
21 this witness knows from the report, not has any personal
22 knowledge. This is, at least this paragraph you have just
23 referred to, so --

24 MR OGETO: Yes, but if you go further, My Lords, the
25 evidence is presented in a way to suggest that the Defence
26 witness actually knew that it was the accused person who was
27 involved in the abductions.

28 PRESIDING JUDGE: In the portion where he says he had heard
29 of the events that they were held hostage, that part? Anyhow, we

1 will --

2 MR OGETO: There is an extensive discussion of that My
3 Lords, yes. Now the other issue I want to raise, My Lords,
4 relates to the command position of Mr Kallon during the UNAMSIL
5 event. Our submission is that Mr Kallon did not have any command
6 authority, any command control right from the time he received
7 the message from Foday Sankoh, on 16 April 2000, which message
8 was clearly a warning to Mr Kallon to keep off UNAMSIL affairs.
9 From that date Mr Kallon was not in a position to exercise
10 command authority over any perceived subordinates in Makeni or
11 anywhere else in Sierra Leone. The Prosecution has not adduced
12 evidence --

13 PRESIDING JUDGE: And on this particular issue, you say
14 that, Mr Ogeto, based on the fact of this direction, instruction
15 or whatever you want to call it, communication from Sankoh to
16 Kallon, on 16 April, and this is regardless of the evidence about
17 the rank and position and function he may have occupied?

18 MR OGETO: Yes. Rank is important; I agree.

19 PRESIDING JUDGE: But your position is because of this
20 communication he received from Sankoh at the time.

21 MR OGETO: Yes, My Lords.

22 PRESIDING JUDGE: Whatever his position rank and so on.

23 MR OGETO: Yes. Yes.

24 PRESIDING JUDGE: He didn't play. He stayed out of it
25 essentially. He did not exercise whatever it was.

26 MR OGETO: And he was not capable of exercising any
27 command.

28 PRESIDING JUDGE: And why is it he was not capable?

29 MR OGETO: Because of the directions from Sankoh and from

1 the instructions given to other commanders, like Kailondo and
2 Komba Gbundemba, he wasn't able to control the course of events
3 in Makeni and any other place in Sierra Leone at that time.

4 PRESIDING JUDGE: So what are your final comments, Mr
5 Ogeto, before -- we will break after this and we may have a few
6 questions for you and we will come back after this break.

7 MR OGETO: Let me look at my notes, My Lords.

8 One comment, My Lords, relates to count 14 and I adopt the
9 submission made by my learned friend Mr Jordash on the issue of
10 the Prosecution trying to utilise burning, the evidence of
11 burning, in support of count 1 and 2. I fully endorse the
12 submissions made by my very able friend, Mr Jordash, but I want
13 to add something, My Lords, and this relates to --

14 JUDGE ITOE: You are running out of time, Mr Ogeto.

15 MR OGETO: Yes.

16 JUDGE ITOE: I mean, you can't continue forever.

17 PRESIDING JUDGE: Your final comment, please.

18 MR OGETO: Yes. The comment relates to the way these has
19 been framed. AFRC, that is count 14, AFRC/RUF engaged in
20 widespread unlawful taking and destruction by burning of civilian
21 property. Our submission is that unlawful taking and destruction
22 by burning of civilian property is conjunctive so you cannot
23 separate, you cannot separate unlawful taking, which is looting,
24 from destruction by burning, so that essentially you cannot use
25 burning as evidence in isolation from unlawful taking.

26 And, My Lords, if you look at count 12, for instance, on
27 child soldiers, the framing is disjunctive. It's quite clear.
28 It's disjunctive but in this one it's conjunctive, so you cannot
29 separate the two. That is our submission. So, if the

1 Prosecution, assuming they were correct, wanted to use this count
2 in support of 1 and 2, then it has to be unlawful taking, which
3 is looting, and destruction by burning; both of them.

4 PRESIDING JUDGE: But we have ruled on the Rule 98 that
5 burning could not constitute and was not part of looting. So, we
6 have ruled that. Looting did not include burning.

7 JUDGE THOMPSON: Is your submission in line with our ruling
8 or you have a different appreciation of the law?

9 MR OGETO: I am asking Your Lordships to reconsider your
10 ruling.

11 JUDGE THOMPSON: I see. To reconsider our ruling?

12 MR OGETO: Yes, My Lords. In terms of what I consider to
13 be the literal interpretation of this phrase.

14 JUDGE THOMPSON: Would you be able to supply some
15 authorities to persuade us in that direction?

16 MR OGETO: To reconsider?

17 JUDGE THOMPSON: Yes.

18 PRESIDING JUDGE: Yes. And therefore to reconsider at this
19 very late stage of the trial and overrule our Rule 98 decision
20 which would change the picture for everybody at this juncture?

21 JUDGE THOMPSON: Yes. Quite right.

22 PRESIDING JUDGE: Do you think it would be an unacceptable
23 means?

24 MR OGETO: Yes, I can, My Lords.

25 PRESIDING JUDGE: I am not saying, I am not even raising
26 whether or not legally we should -- we have the authority to do
27 it but, that aside, just on the fairness of the process --

28 JUDGE THOMPSON: Yes.

29 PRESIDING JUDGE: -- you think it would be fair?

1 MR OGETO: I have seen a discussion of that, My Lords, in
2 the AFRC case.

3 JUDGE THOMPSON: Yes.

4 MR OGETO: And that issue has been dealt with by the Trial
5 Chamber and also the Appeals Chamber.

6 JUDGE THOMPSON: You are virtually asking us to adopt
7 the --

8 MR OGETO: Yes, My Lords.

9 JUDGE THOMPSON: -- position of the Trial Chamber in the
10 AFRC decision?

11 MR OGETO: It's persuasive, My Lords, and I'm saying it.

12 JUDGE THOMPSON: I see.

13 MR OGETO: Yes.

14 PRESIDING JUDGE: Very well.

15 JUDGE THOMPSON: Yes. Thanks.

16 PRESIDING JUDGE: Thank you. We thank you. As I say, we
17 may have a few questions for you when we come back. So we will
18 break now for a short time. Thank you.

19 [Break taken at 11.52 a.m.]

20 [Resuming at 12.18 p.m.]

21 PRESIDING JUDGE: Mr Ogeto, we do, indeed, have a few
22 questions and Justice Thompson will raise a few issues with you.
23 Justice Thompson, please.

24 JUDGE THOMPSON: Thank you, Presiding Judge. Learned
25 counsel, your final trial brief does raise some quite serious
26 problems or issues with the form of the indictment. In other
27 words, there are several allegations as to the form of the
28 indictment and then, given your several legal submissions on the
29 alleged defects and deficiencies in the indictment, where do you,

1 as a matter of law, draw the line between one, the legal
2 requirement to plead material facts and, two, the prohibition
3 against pleading evidence in an indictment? For my purposes, two
4 short legal submissions will suffice. In other words, that's the
5 way I perceive it. Those serious allegations that you've raised,
6 the deficiencies in respect of the indictment seem to require the
7 Chamber to exercise its judicial, collective judicial mind and
8 also individually on where do we draw the line between the
9 requirement, in terms of legality, to plead material facts and,
10 two, the legal prohibition against pleading evidence in an
11 indictment?

12 MR OGETO: Thank you, My Lord, for the question. I think
13 the answer of this lies in the jurisprudence and I think one
14 cannot give a blanket answer to that. I think it's a question
15 that ought to be considered on a case-by-case basis. And if I
16 may give an example, in relation to my client, the Prosecution in
17 their final brief alleges now that my client is responsible for
18 killing 18 individuals in Kono.

19 Now, the jurisprudence requires that where there is an
20 allegation that the accused person killed, and you are talking
21 about a limited number of people, then it's incumbent upon the
22 Prosecution to plead the identity of the victims, and here I am
23 not talking about names -- they may not have names -- but at
24 least provide some identifying information. That is a material
25 fact that ought to be pleaded.

26 The other material fact is the date when the killing took
27 place. The other material factor is where the killing took
28 place. Now, other details will be questions of evidence but, in
29 a nutshell, in relation to killing, those are the particulars

1 that ought to be pleaded and, in our case, the Prosecution simply
2 talks about killing 18 people. At this late stage in the
3 proceedings, having not provided any particulars, like the
4 identities of these victims; when they were killed; and where
5 they were killed, those were not provided -- we got that by way
6 of statements.

7 Now, in relation to looting, for instance, the example that
8 I give, the fact that it is the accused person who was involved
9 in the looting, that ought to be mentioned in the indictment, or
10 at least if it is not mentioned in the indictment then it ought
11 to be mentioned in the pre-trial brief, that the accused person
12 was involved in looting a specific bank on a particular date in
13 Kono.

14 Now, the difficulty we have in relation to this, and on
15 killings, for instance, My Lords, the opening statement in this
16 case alleges that my client was involved in the killing of one
17 person in Kono over a sheep. That is what is contained in the
18 opening statement. But now we have submissions in the final
19 brief that actually my client was involved in the killing of 18
20 persons. There may have been evidence but we are saying that
21 that evidence is not sufficient. The identities of the 18
22 individuals ought to have been pleaded because we are talking
23 about a limited number of people, we are not talking about a
24 large number of people.

25 The other example is the Kamachendeh killings, for
26 instance, where the Prosecution alleges in the evidence that my
27 client was involved, one way or the other, in the killing of 101
28 civilians in Kono. Now, this is a large number of people -- we
29 do not expect identities -- but at least the Prosecution ought to

1 have pleaded that my client was involved in the killing of 101
2 people, in Kono, at a specific place in Kono. This was never
3 pleaded. And to make it worse, as I have said, the only
4 allegation pleaded, the only allegation discussed, rather, in the
5 opening statement, relates to the killing of one person. So one
6 may want to know why would you want to specify one person in the
7 opening statement as opposed to 101? A massacre, that is my
8 answer.

9 JUDGE THOMPSON: Well, thank you. And the short, the last
10 question is a much shorter one. Do you agree that the case law
11 authorities on the subject of defects in the form of the
12 indictment generally, and the requirement for the pleading of
13 material facts to be done with much specificity and
14 particularity, turns on the key distinction of how the concept of
15 specificity and particularity is applied, having regard to
16 domestic criminality and criminality alleged at the international
17 level or is this a narrow interpretation of the jurisprudence on
18 the subject because I have studied this carefully and it would
19 seem to me that this is a key distinction that, in fact, it is
20 possible that some of the deficiencies alleged in this
21 indictment, if they were to be put through a judicial
22 kaleidoscope, in the context of domestic criminality might, in
23 fact, be legally sustainable? That's my short second question.

24 MR OGETO: I agree with you entirely, My Lords, that the
25 jurisprudence on International Criminal Law makes that
26 distinction quite clearly and it does that because of the massive
27 nature of the killings and atrocities that are subject of
28 International Criminal Law and that it may not be possible to be
29 as specific as you can be, if you are dealing with crimes in

1 municipal law. But again, as I said earlier, this is dealt with
2 on a case-by-case basis. You cannot say that there are general
3 requirements that cut across the board, and the Rules require,
4 for instance, that where Prosecution has information about
5 identities, for instance, they should provide that information.

6 It's understandable where they don't have that information
7 where, for instance, there was mass killings somewhere, they will
8 not be expected to provide particulars. But where you are
9 talking about a limited number of victims, in a place like Koidu,
10 for instance, a limited geographical area, then ideally the
11 Prosecution should provide that information because there is no
12 reason why they should not provide it. Why should they not
13 provide it in the indictment and wait for witnesses to testify to
14 provide it, because they were tempted to provide it through
15 witness statements? That is the dilemma we find ourselves in and
16 the Prosecution really ought to explain why it is difficult for
17 them to provide this information in the indictment because that
18 is what the Rules ideally require, why they wait until they call
19 their witnesses late in the day to provide this information.

20 PRESIDING JUDGE: Mr Ogeto, you do refer to the rule
21 requires; what is the rule you are making reference to?

22 MR OGETO: It is the rules that have been enunciated by the
23 jurisprudence of international criminal law, the principles
24 rather. Probably my use of the word "rule" is not quite correct.

25 PRESIDING JUDGE: And by this you mean the principles that
26 you have referred to in some of the case law this morning?

27 MR OGETO: Yes, My Lords.

28 PRESIDING JUDGE: That is what you mean by the rule?

29 MR OGETO: Those are the principles. I use the word

1 "principles" instead of rules.

2 PRESIDING JUDGE: I am just asking the question because
3 "rule" -- maybe there is a rule somewhere we that are not
4 familiar with that you know of, so --

5 MR OGETO: No, no, that is not what I meant, My Lords.

6 PRESIDING JUDGE: That's okay. Thank you very much.

7 JUDGE ITOE: Are you also referring to the -- the reference
8 to specificity, as to the content of the indictment, when you are
9 talking of the rules that you have referred to, and that have
10 been enunciated in the jurisprudence of international criminal
11 jurisdictions?

12 MR OGETO: Yes, My Lords. I am specifically referring to
13 the indictment and that there are certain basic requirements as
14 to what should be pleaded in the indictment, like identities of
15 victims, where they are available.

16 JUDGE ITOE: I have just a very short question, you know,
17 for you.

18 MR OGETO: Yes, My Lord.

19 JUDGE ITOE: The Prosecution has made a very strong point
20 about the alibi which you have raised for your client, and it is
21 the Prosecution's position that you did not give enough notice,
22 sufficient notice about these witnesses, and that they didn't
23 have a resume of the evidence that was going to be led by these
24 alibi witnesses, and they refer specifically to DMK-039, DMK-161
25 and DMK-082. What would be your response to this in the light of
26 what we know the law is on relying on an alibi which you have
27 specifically pleaded and for which you raised, you called
28 evidence to prove, and I am raising this also, maybe you may
29 subsidiarily respond, given what arose this morning about, your

1 argument that even though a particular witness testified
2 generally about Makeni and said Kallon was not there, he was not
3 really an alibi witness because he did not, he did not, after
4 stating that your client was not there, indicate where he was? I
5 want a focused reply on this, you know, to clarify my thoughts on
6 how I would wrestle after this with the issue of the alibi that
7 you have raised, and which is very seriously contested by the
8 Prosecution.

9 MR OGETO: My Lords, as I stated in the morning, we did not
10 call DMK-161 and 039 as alibi witnesses and that we are not
11 relying on them as alibi witnesses. That is our position. And
12 that if those witnesses came before the Chamber and gave evidence
13 that Prosecution interprets to be alibi witnesses that does not
14 deprive the Chamber of the power to rely on that evidence simply
15 because Prosecution considers it to be alibi evidence.

16 Now, these two witnesses, as I said in the morning, came
17 and gave a factual appreciation of what happened in Makuth, and
18 there are many other witnesses, apart from those two, who gave
19 similar testimony, and these were not alibi witnesses.

20 In relation to DMK-082, submissions were made when this
21 witness testified before the Chamber. The Prosecution objected
22 to the testimony of that witness and we made arguments based on
23 section -- Rule 67(B) and Prosecution was allowed at that time
24 the statement that had been made by the witness because their
25 objection was based on the fact that they didn't have notice of
26 the specific issues that the witness was going to raise in
27 relation to alibi and, for that reason, they wanted a detailed
28 statement, which we provided to the Prosecution, and our
29 submission is that any prejudice that they may have argued was

1 cured by the provision of that statement. In fact, they didn't
2 demonstrate any prejudice. And I find it interesting that
3 Prosecution is talking about notice here when they are saying
4 that Defence shouldn't raise the issue of notice in relation to
5 their testimonies and they are alleging that --

6 JUDGE ITOE: This is an alibi. This is an alibi. I mean,
7 what is the purpose of an alibi in law? I think the necessity
8 for notice, the necessity for notice --

9 MR OGETO: Yes.

10 JUDGE ITOE: -- is to allow the adverse party to carry out
11 an investigation as to the locations which you allege were where
12 your client was present. If you say he was not in location A, as
13 alleged by the Prosecution, and you say he was in location B, as
14 we saw it, Masingbi I think was the place where you say he was,
15 with DMK-082, then, enough notice is supposed to be given to the
16 Prosecution for them to investigate whether the allegation is
17 true or whether what you -- your assertion that he was not in
18 Makump or in Masingbi is true. That is the purpose of the
19 notice. Are you saying that not providing that notice cures the
20 situation, even if the Prosecution are given the latitude to
21 further cross-examine, or even to rely on the statement or even
22 if you served the Prosecution with that notice that belatedly in
23 the course of the trial? That is the challenging issue as far as
24 I see it and I think it needs to be addressed.

25 MR OGETO: I agree with you, My Lords, that sufficient
26 notice is important, but it's also important that Prosecution
27 establishes actual prejudice. It is not enough for the
28 Prosecution to say that his testimony should not be relied upon
29 because the alibi was given late. They must demonstrate that

1 they have suffered prejudice as a result of the late delivery of
2 the alibi and, in this case, my submission is that no prejudice
3 has been established by the Prosecution.

4 PRESIDING JUDGE: This goes to prejudice of the Prosecution
5 or it goes essentially to the credibility of the alibi? You say
6 it goes to prejudice, if any, to the Prosecution?

7 MR OGETO: No, no, I was responding to the issue raised by
8 Justice Itoe.

9 PRESIDING JUDGE: Yes, about the notices. I mean --

10 MR OGETO: Regarding investigations, My Lord, because there
11 is also the aspect of investigations. If they are able, have
12 enough time to investigate this alibi.

13 PRESIDING JUDGE: Yes, it's one aspect of it.

14 MR OGETO: Yes.

15 PRESIDING JUDGE: But the requirement that alibi be
16 disclosed at the first, at the earliest opportunity has to do
17 obviously with credibility of this particular defence, as such,
18 and relative to that obviously is the ability to investigate the
19 facts surrounding this particular alibi.

20 MR OGETO: On the issue of credibility I think that is a
21 matter for the Chamber to evaluate.

22 PRESIDING JUDGE: It's because we are talking of prejudice
23 to the Prosecution, but I understand what you are saying.

24 MR OGETO: Yes, My Lord.

25 PRESIDING JUDGE: Prejudice, in what you are raising has to
26 do with the ability or not to investigate in due course.

27 MR OGETO: Exactly, My Lord.

28 PRESIDING JUDGE: The facts.

29 MR OGETO: Yes.

1 MR TAKU: Your Honours, if I may assist my colleague in
2 this regard? My Lords, the argument the Prosecutor raised here
3 is basically the same argument the Prosecutor raised when he
4 applied for Mr Kallon to comply with the Rules, interpretation to
5 Your Lordship, in relation to the same arguments, [indiscernible]
6 at the time. Indeed, Your Honours would inquire as to the
7 reasons for the late disclosure of that information. As Your
8 Honours will remember, the reason which was given then was
9 because of protective measures that were in place. And there was
10 no bad faith in doing so. There was no attempt to conceal this
11 information.

12 And, Your Honours, in your recent decision, in giving seven
13 days to the Kallon team to comply, to give that information,
14 permitted the Kallon team to give the pseudonyms at least of the
15 witnesses. And Your Honours went further to say that the
16 Prosecution would suffer no prejudice because that information at
17 the time was enough to conduct the investigation. Furthermore,
18 Your Honours, Your Honour will remember that Mr Kallon gave
19 evidence, alibi evidence in his own defence which was not
20 challenged and if he gave that evidence there was no reason for
21 him to bother the Court by calling --

22 JUDGE ITOE: Mr Taku, are you sure it was not challenged,
23 evidence that Mr Kallon gave in terms of his alibi? Are you
24 sure, are you certain that the Prosecution did not challenge that
25 evidence in cross-examination?

26 MR TAKU: Your Honour, I say --

27 JUDGE ITOE: In cross-examination.

28 MR TAKU: They didn't challenge the alibi of Mr Kallon.
29 They challenged his witness. In any case, Your Honours, a number

1 of factors arose in this case that made the call of this witness
2 not necessary. You have Exhibit 7 and you also have Exhibit 9
3 and other exhibits, especially Exhibit 7 in which the Prosecutor
4 detailed the movements from Kono prior to Freetown, mid-level
5 officers and senior officers that commanded this group of people,
6 and also the statement of agreed facts that had taken away the
7 necessity to call witnesses in certain locations, and simply also
8 because there was no reason for Mr Kallon to call evidence in
9 respect of locations in which the Prosecution provided no
10 evidence, so we provided the witnesses in respect of those areas
11 especially --

12 PRESIDING JUDGE: Yes, but we are dealing with alibi here.

13 MR TAKU: Yes.

14 PRESIDING JUDGE: I mean, what has that to do with that?
15 It is at a very specific period of time, as such. We are not
16 talking about in Kono in 1997 or 1998. Here, we are talking in
17 2000.

18 MR TAKU: Well, the notice of alibi confirms the whole
19 period and different locations. It's not only about one location
20 only. And that is why I refer to this evidence. We have the
21 notice here. We talk about Kono, Koinadugu, Bombali District in
22 Sierra Leone.

23 PRESIDING JUDGE: Yes.

24 MR TAKU: So we are saying that, one, the Prosecutor
25 himself introduced evidence that tended to show that Mr Kallon
26 wasn't in those locations or, in the course of the trial, we
27 discovered that enough evidence have not been called by the
28 Prosecutor, there was no reason to call witnesses to come and
29 bother the Court. We called the witnesses that we indicated

1 where necessary and that is why we called the witnesses, Your
2 Honours, in respect at least -- in respect of Makuth and about
3 the witness from Masingbi, Your Honours will understand the issue
4 was resolved. The Prosecutor himself presented to Your Honours a
5 manner of resolving the issue by asking that the witness
6 statement be made available to him. It was made available to him
7 and therefore he was able, Your Honour, thereafter
8 to cross-examine this witness. I think these issues --

9 JUDGE ITOE: We have always said here that we don't go by
10 the compromises between the Defence and the Prosecution; it
11 depends on whether the Tribunal adopts that compromise. We are
12 not bound by such compromises. We are bound by issues of law,
13 you know, as to whether what has happened or what has transpired
14 between the parties on both sides of the aisle has any legal
15 foundation and, at the end of it, as we are addressing ourselves
16 in this final brief, I think all the issues are on the table.

17 MR TAKU: Yes, Your Honour.

18 JUDGE ITOE: And we thought that you should adequately be
19 able to throw some light on this very important aspect of your
20 case as far as the Makump incident is concerned.

21 MR TAKU: Your Honour, thank you.

22 JUDGE THOMPSON: I think I join Justice Itoe in this, that
23 what we now have is everything is open season now because we are
24 being called upon to revisit issues like alleged defects in the
25 indictment. We are being called upon to re-consider certain
26 aspects of our previous decisions in respect of the entire trial,
27 so I don't see why issues of that nature, regardless of whatever
28 position the Prosecution might have taken, should not be also
29 open season, so that everything now is considered in the totality

1 of the evidence before the Court.

2 MR TAKU: Your Honours, with due respect, Your Honours,
3 just like you remember the witness who testified about the person
4 Mr Kallon in Masingbi came to testify, the Prosecutor objected.
5 Your Honours made a recent ruling on the spot about the
6 admissibility of that alibi. The Prosecutor had objection they
7 were prejudiced, to object to any of these witnesses testifying
8 at the time they did. The Prosecutor did not.

9 JUDGE ITOE: Did we not talk of weight at that time, when
10 we were making -- I don't quite remember what happened but didn't
11 we, even in allowing it, go -- talk of the weight to be attached
12 to his testimony at the end of the case and when assessing the
13 entirety of the evidence?

14 MR TAKU: Well, Your Honours, I don't have that, it's in
15 the transcript, what -- a ruling from the Bench at that point in
16 time. Your Honours will look at it. What my submission now --

17 JUDGE ITOE: We will indeed because it's a very important
18 issue.

19 MR TAKU: My objection now, Your Honours, is this: At the
20 time that this evidence was being given the Prosecutor will have
21 forgotten about [indiscernible], I did not have the time to
22 investigate this alibi in respect of this witness. The
23 Prosecutor never did that. The Prosecutor cannot wait, Your
24 Honours, until it comes at this point in time and say that it was
25 late. Now, if it was late, what were the consequences? He
26 hasn't told you that that alleged lateness impeded his ability in
27 order to investigate alibi. He didn't say so. That is not his
28 submission, they say, Your Honour. So we say that you object at
29 that point and the Court would have made a decision about whether

1 that witness can testify about alibi or not. Be that as it may,
2 Rule 67 nevertheless says that even if a notice of alibi is not
3 given it doesn't preclude the Court, in the interests of justice,
4 to weigh the probative value of the alibi and make -- and
5 determine the possible [indiscernible] of the Court.

6 JUDGE ITOE: I agree with you entirely there.

7 PRESIDING JUDGE: And this is what we are going to do.

8 JUDGE ITOE: I agree with you entirely.

9 MR TAKU: Thank you, Your Honour.

10 JUDGE ITOE: And that is just what we are going to do.

11 MR TAKU: Thank you, Your Honours.

12 PRESIDING JUDGE: I just have one more question for Mr
13 Ogeto in respect of this particular witness, DMK -- I think it is
14 162 but I may be wrong with my number here but the witness that
15 was --

16 MR OGETO: 161, I think.

17 PRESIDING JUDGE: 161. The witness that was -- you say is
18 not alibi although he did testify about the non-presence, as
19 such. You say that we should not rely, that you are not relying
20 on that fact for the purpose of the alibi, so how is the Court to
21 consider that evidence as a whole? I mean, this witness has
22 testified about using a factual scenario that existed. So are we
23 to ignore all of that evidence or just to say in your view we
24 should ignore whatever part of his evidence that relates to
25 alibi?

26 MR OGETO: No, that is not what I meant, My Lords. What I
27 meant is that this witness was not presented as an alibi.

28 PRESIDING JUDGE: Yes, but the fact that he is presented or
29 not, if he does testify as to this issue, so this is, I mean, it

1 is an issue that we should ignore; that is what you are saying?

2 MR OGETO: No, I am not -- that is not what I mean, My
3 Lords. What --

4 PRESIDING JUDGE: Please make it clear so I understand what
5 you mean.

6 MR OGETO: From my interpretation, from my interpretation,
7 this witness never testified to anything that may be considered
8 as alibi because my understanding of an alibi is when a witness
9 comes before the Chamber and says: Mr Kallon was not there and I
10 know where he was.

11 PRESIDING JUDGE: But if he has only half of that answer,
12 he says I know he was not there, this is not alibi?

13 MR OGETO: That is what every witness says. All Defence
14 witnesses say that.

15 JUDGE ITOE: Even in that situation does it or doesn't it
16 have the effects, some of the effects of an alibi? The side
17 effects of an alibi?

18 MR OGETO: It has some of it, My Lords, and it's difficult
19 to draw the line because many witnesses will come here and say
20 Kallon was not there, Sesay was not there, and they are not
21 considered alibi witnesses because if we did that then every
22 witness is an alibi witness.

23 JUDGE ITOE: No, we are not saying that. I mean, all we
24 are saying, we are putting it in context, in the context, you
25 know, of this particular -- of your client's case.

26 PRESIDING JUDGE: You have given notification on behalf of
27 your client that there was an alibi that he wasn't there. That
28 is one part of the alibi that has been put forward and you have a
29 witness that you called that says, indeed, he wasn't there but

1 you say it is not alibi because he didn't go the next step to say
2 where he was.

3 MR OGETO: Yes, My Lords.

4 PRESIDING JUDGE: Well, okay. I understand what you are
5 saying. Well, I will appreciate in due course. Thank you. We
6 have no further questions for you, Mr Ogeto, so you will feel
7 relieved that --

8 MR OGETO: Very relieved, indeed.

9 PRESIDING JUDGE: So, we do not intend to proceed with the
10 third accused at this particular moment. We will proceed this
11 afternoon at 2.30.

12 MR CAMMEGH: Your Honour, could I just make a -- it's
13 probably the last thing Your Honours want to hear but it's a
14 heart-felt request. Given that we are right at the end of these
15 proceedings, and given the sheer amount of preparation that has
16 gone into my final address, I would be very grateful if Your
17 Honours would consider giving me an extra 15 minutes. 15
18 minutes, proportionally speaking, may not have been an awful lot
19 more for my two learned friends but for me, proportionately
20 speaking, it's an awful lot more and it just means that I would
21 be able to address you in, I hope, a rather less rushed fashion
22 in a more impactful way and, overall, I think I might be able to
23 do justice to my client and various --

24 PRESIDING JUDGE: There seems to be agreement that you be
25 given 15 minutes but I know the way, but having given you 15
26 minutes, will not, doesn't mean necessarily that you must employ
27 all of it but it will give you that flexibility.

28 MR CAMMEGH: I am very much obliged.

29 PRESIDING JUDGE: So, indeed.

1 JUDGE ITOE: One of the rare unanimities in our Chamber
2 decisions.

3 PRESIDING JUDGE: So we will hear with much attention your
4 submission at 2.30 this afternoon.

5 MR CAMMEGH: Thank you.

6 PRESIDING JUDGE: Thank you. Court is adjourned.

7 [Luncheon recess taken at 12.50 p.m.]

8 [RUF05AUG08B - MD]

9 [Upon resuming at 2.40 p.m.]

10 PRESIDING JUDGE: Good afternoon. Mr Cammegh, it is now
11 your turn to deliver the final submission. It is 10 to 3, so we
12 have an hour and 15 minutes from this moment for you --

13 MR CAMMEGH: Is that a joke, Your Honour?

14 JUDGE ITOE: You say it is what?

15 PRESIDING JUDGE: 20 to.

16 JUDGE ITOE: I volunteer to be the timekeeper, so as to
17 time Mr Cammegh, you know, properly.

18 PRESIDING JUDGE: I meant to say we were ten minutes late
19 from 2.30. So, having said that, I will ask you if you are ready
20 and prepared to address the Court?

21 MR CAMMEGH: Yes, I am. Thank you very much, Your Honours.

22 PRESIDING JUDGE: Please proceed.

23 MR CAMMEGH: Your Honours, my learned friends. It's a
24 privilege, in fact, to be the last to speak on the evidence in
25 this case that has kept us here for so long. And I'm very
26 fortunate going last that the Gbao team, ably assisted as I have
27 been, the Gbao team has been able to perhaps put together a
28 cogent critique of the Prosecution brief, and I hope to deliver
29 that now with a sense of balance, a sense of fairness in a way as

1 to demonstrate, with the greatest of respect, that however you
2 look at the Prosecution's final brief, texturally or
3 contexturally, it fails.

4 After the calling of some 80 or so witnesses in all that
5 time it fails to sustain proof beyond reasonable doubt against
6 our client, Augustine Gbao, that he committed any single offence
7 with which he has been charged.

8 That is a bold claim. It's one that I made I think in my
9 opening to the Defence case some time ago. With the passage of
10 time, the passage of the Gbao Defence case, it's one that with
11 conviction I repeat today.

12 The difficulty, again I say this with the greatest of
13 respect, upon close inspection, is that the Prosecution brief has
14 failed to adequately, in some areas we would say to faithfully
15 reflect the actuality of the evidence that we have heard, and
16 part of my purpose over the next hour-and-a-quarter will be to
17 try to illustrate our serious misgivings about the way some of
18 the evidence has been presented, and I hope to do that, as I
19 said, with a sense of balance because we are not afraid of the
20 Prosecution case. We urge Your Honours, and I think this is the
21 theme behind what I'm trying to say, we urge Your Honours, we
22 urge Chambers, everybody who is charged with the analysis of our
23 final brief, to examine it, to take it apart, dismantle it, but I
24 hope you will find that we haven't resiled, we haven't hidden
25 from the height of the Prosecution case on any single count.
26 We've expressed the Prosecution case and then we've expressed how
27 we intend to deal with it.

28 In short, what we have tried to do is identify the case in
29 our brief and meet it but what I'm going to try to do now is --

1 will no doubt be the passing reference to what is in our brief
2 but what I am going to hope to do now is deal with some of the
3 matters that have been raised in the Prosecution's brief that the
4 Court has received.

5 This has been an enormous case. How does one distill it?
6 How does one break it into its constituent parts in a manageable
7 way in order that we can reach satisfactory verdicts?

8 In our submission, there is a process that can be employed
9 and I hope that we've elucidated this in our final brief.

10 The first step, we would suggest, is to weed out the
11 evidence that is worthless, and I say worthless advisedly because
12 it's our submission that witnesses who have been criss-crossing
13 with inconsistencies and proven lies must be worthless. It's all
14 very well talking about corroboration but there are witnesses, we
15 suggest, who have transgressed over what is reasonable. They've
16 crossed the line beyond which really nothing, no credibility
17 should be attached to anything that they have said. It's too
18 dangerous and it's wrong. I'm talking about witnesses such as
19 TF1-108, 366, 117. In our brief we list about six at the
20 beginning who we say, and we explain --

21 JUDGE ITOE: Mr Cammegh, can you take them again?

22 MR CAMMEGH: Your Honour, these are just random but I think
23 I said 108, 366, 1 --

24 PRESIDING JUDGE: 117.

25 MR CAMMEGH: Yes. There were more, and our brief deals
26 with those, and of course it's not my purpose to revisit too much
27 of our brief. But if I can pick one of those, 366, who I believe
28 was the longest in the witness box, in the entire Prosecution
29 case -- I think I am right about that -- 29 material

1 inconsistencies were identified in his evidence in relation to
2 what he said against Augustine Gbao alone. This really isn't
3 good enough, and I don't think I need to dwell on the point.

4 Similarly, the second stage that we would suggest would be
5 to remove erroneous misrepresentations of the law as it currently
6 stands.

7 JUDGE ITOE: Mr Cammegh, you said 29 inconsistencies?

8 MR CAMMEGH: Yes.

9 JUDGE ITOE: Concerning just what he said about your
10 client?

11 MR CAMMEGH: About Gbao from 366, yes.

12 JUDGE ITOE: Thank you.

13 MR CAMMEGH: There is a case, I think I am pronouncing it
14 right, Hajicinovic, ICTY, 22 April of this year, at paragraph
15 191. We have copies here for distribution afterwards if anybody
16 wishes to see it. The Prosecution have relied on that case --

17 JUDGE THOMPSON: Just a minute; you said the second
18 methodology was to remove?

19 MR CAMMEGH: To remove erroneous representations of the
20 current law from the Prosecution brief. We suggest that the
21 Prosecution have misstated what was held in Hajicinovic in their
22 brief and, forgive me, I don't have the paragraph to hand in the
23 Prosecution brief where this is cited but in their brief the
24 Prosecution stated that that case held that there is a burden on
25 the Defence to prove that there was no effective control. They
26 didn't notice that the Appeals Chamber at the ICTY, in fact,
27 overruled the Trial Chamber's ruling at paragraph 191 and held
28 thus:

29 "The burden of proving beyond reasonable doubt that the

1 accused had effective control over his subordinates
2 ultimately rests with the Prosecution."

3 Your Honours --

4 PRESIDING JUDGE: But were they doing -- pardon me --
5 dealing at that time with, if I am not mistaken, the issue was
6 whether or not there existed a presumption arising from the fact
7 that the person did occupy a position of command and therefore
8 some cases seemed to have moved in the direction of indicating
9 that might be a presumption of control. This kind of scenario
10 and that decision that you are quoting has stated no such
11 presumption exists so -- and clearly said the burden is on the
12 Prosecution and there is no presumption. There is facts and
13 circumstances the Court needs to look at but there exists no
14 presumption. At least that's my recollection of reading it.
15 It's a recent case that you're --

16 MR CAMMEGH: It's a recent case. It's one that obviously I
17 haven't had much opportunity to digest other than to take what I
18 thought was the rationale or the ratio from it. If it's capable
19 of another interpretation, as I said, the authorities are here
20 and we are more than happy to distribute them afterwards, but
21 that was our understanding, that it effectively overturned the
22 Trial Chamber's original ruling.

23 But if I can move on. If one weeds out these erroneous
24 issues, witnesses and what have you, we suggest that there really
25 isn't a great deal of credible case left.

26 The Prosecution opened this case very high; I've made
27 comments about that. And it was true that at the beginning of
28 this case they seemed to be very anxious to portray what was the
29 story, the big story linking Charles Taylor in Liberia with what

1 was going on in Sierra Leone, and they called Liberian witnesses.
2 One remembers General Tanu, and the other Liberian whose name and
3 number for a moment I forget, to try to suggest this was an
4 internationally generated conflict, but as day-by-day went by the
5 coherence of that theory, we suggest, fell away and in the end
6 the Prosecution were as if flailing around in the dark for a case
7 against Augustine Gbao. And examples for that, I will go back to
8 TF1-117 whose evidence seemed to fly in the face of everything
9 but just for one example.

10 He maintained that Augustine Gbao was in Makeni in February
11 of 1998 probably involved in Operation Pay Yourself, looting,
12 burning and what have you, at the same time as the welter of
13 Prosecution evidence suggested that Mr Gbao was in Kailahun Town
14 at the time of the Kamajor murder.

15 330 said that, who stated in evidence he had been with Gbao
16 for more than three years, said that Gbao remained in Kailahun
17 until disarmament, flying in the face of a welter of evidence
18 agreed by the Defence that from February of '99 Gbao was living
19 in Kailahun. And what of the -- I am sorry, Makeni.

20 What of the strange way the Prosecution seem to try to ride
21 every horse in relation to unit command.

22 141 told the Court Gbao was a G5. He said in Court "he
23 himself told me." The Prosecution similarly in their brief
24 employ 330 who also said that Gbao was supposedly a G5, having
25 been with him for three years who, nevertheless, I think in
26 cross-examination for Mr Jordash, went off his script saying that
27 it was Morie Fekai, in fact, who took orders from Prince Taylor,
28 the boss of the G5, having previously said that Fekai was
29 receiving his orders from Gbao, an inconsistency there, and I

1 will be coming on to plenty of inconsistencies later on.

2 The Prosecution similarly have used in their brief 113 to
3 testify that Gbao was head of the G5, a woman who lived in
4 Kailahun Town for four years, and we suggest should have known
5 better, should have known that he was overall IDU, particularly
6 given the fact that her nephew, Francis Musa, was Mr Gbao's
7 nephew. I am sorry, Mr Gbao's deputy.

8 PRESIDING JUDGE: Again, just to warn you of --

9 MR CAMMEGH: I understand.

10 PRESIDING JUDGE: -- being careful about this kind of
11 relationship as --

12 MR CAMMEGH: I do understand, Your Honour. I don't think
13 that will happen again.

14 So the Prosecution attempt to use, in various paragraphs of
15 their brief, the convenient evidence that Gbao was head of the G5
16 which we suggest was simply not the case.

17 Similarly, they suggest that he was, where it suits them,
18 head of the Military Police. 168, who, as I recall, gave the
19 statement of 175 pages to the Prosecution in April 2003, came
20 back in February of 2006 and mentioned Gbao for the first time as
21 the overall MP and the most senior man in Kailahun.

22 I should say this while I am on the subject of MP. Before
23 I was receiving instructions in this case I cross-examined
24 witness TF1-361 and erroneously put it to him that Mr Gbao was
25 head of the MP. That was a mistake by me at a time when I wasn't
26 receiving instructions, and I am sure the Prosecution wouldn't
27 wish to take advantage of that. It was one of the things that
28 happened. If anyone's to blame it's Mr Gbao, and I'm sure he
29 recognises that. What about TF1-371? He flies in the face of

1 the idea that Gbao was boss of G5 or MP because he confirmed
2 there were separate structures for the G5 and the MP and the IDU
3 and, moreover, there was TF1-071, who you remember submitted
4 those two exhaustive and highly detailed command charts, Exhibits
5 20 and 21, which showed unequivocally there were separate units
6 with separate commanders but interestingly failed to name
7 Augustine Gbao on the chart in any capacity at all.

8 As I said, having weeded out the bad witnesses, errors of
9 law and various confusion, we have to come to the sure conclusion
10 that the case against Gbao is going to be difficult to prove.
11 There have been many misrepresentations of facts in the
12 Prosecution's brief, we suggest. I'm just going to take one or
13 two of them now.

14 The first one, and this is fairly random, is that the
15 Prosecution brief alleges, at paragraph 1183, that Mr Gbao was in
16 charge at Magburaka at the time of the UNAMSIL incident of 2 May
17 and they cite Colonel Ngondi's evidence at 29 March 2006, page
18 38, where he said: "Gbao was there" -- sorry, we cite, we cite
19 this. "Gbao was there and Alfred in charge of Magburaka was
20 there." If one looks at that citation at page 38, on 29 March,
21 it's quite clear that the Prosecution are wrong in suggesting
22 that Gbao was in charge. The sentence reads: "Gbao was there
23 and Alfred in charge of Magburaka was there" but the Prosecution
24 appear to perhaps misinterpret the sentence.

25 PRESIDING JUDGE: Sorry, could you repeat that particular
26 reference?

27 MR CAMMEGH: Yes. It's 29 March 2006, at page 38. "Gbao
28 was there and Alfred in charge of Magburaka was there." Another
29 one, and I will come into more detail in misrepresentations

1 later. This is just to set out the theme.

2 The Prosecution claimed, again in relation to the UNAMSIL
3 attacks, that DAG-111, Gbao's driver, had said that Gbao fired
4 his weapon at the DDR camp. It's absolutely not the case. I
5 will give Your Honours the paragraph, the Prosecution's
6 paragraph, later on in this speech for that item.

7 Not only is evidence misrepresented but it's used
8 selectively, we say, in a discerning manner or a discriminatory
9 manner. For example, TF1-041 is said, at paragraph 225 of the
10 Prosecution's brief, to be "reporting to Gbao as were all the
11 other security units" but he neglects to say that 041 also said
12 in evidence that he didn't even know who Gbao was before the end
13 of 1998. The way the Prosecution put it they seem to be -- it's
14 implied that for years, for the whole length of the indictment
15 period, he knew Gbao was being reported to. It's not taken in
16 its right context.

17 Secondly, TF1-071, at paragraph 222, Prosecution brief, it
18 is claimed by the Prosecution that Gbao was chief of security in
19 1998. They neglect to say that later in his evidence 071 said he
20 had never heard of Gbao before 2000, corroborated by that chart
21 I've just told you about, and he didn't even meet him until about
22 2001.

23 There are material allegations, we say, that are without
24 foundation. The classic one being the allegation that Gbao
25 should be held responsible via individual responsibility, on
26 counts 10 and 11 for physical violence, without averring any
27 allegations against him individually. I challenge anybody to
28 find anything in the brief that accuses Gbao of that.

29 I want to concentrate, if I may, on the issue of

1 credibility of Prosecution witnesses because I think everyone
2 would agree that that has probably been the most spoken about
3 feature in this trial and, in particular, I would like to flag up
4 this recurring theme of late additional allegations. And Mr Gbao
5 has been a victim of these as much, we would say, as anybody.

6 I start with perhaps the Prosecution's star witness,
7 TF1-371, who occupied the highest position within the RUF of any
8 of their insiders. Your Honour, we deal with this in our brief
9 and I will hope to pass over the references so I just deal with
10 this quickly, if I can.

11 Two weeks after he was -- forgive me, I'll start again. He
12 testified in August, July and August 2006. He was first proofed
13 by the Prosecution in December 2005 and by the time that we had
14 what, by early July he produced more than 100 pages of statements
15 and material. Nowhere in those 100 pages had he said anything
16 about Gbao in his guise as overall security commander or IDU
17 commander being "horizontal or parallel to the area commander."
18 Suddenly, bingo. Two weeks before he -- two weeks before he
19 testified in here, I think it's July 5th, he produced a document
20 that said that Gbao was horizontal or parallel to area
21 commanders. Where did that come from and why?

22 TF1-330, his first statement given in 2003, announced Gbao
23 was someone as the leader of those who investigated. He was
24 proofed again in 2004. Didn't say a word about Gbao. In March
25 2006, when he testified, he said, well, maybe the Prosecution
26 forgot that he had told them, in fact, on a previous occasion,
27 that Gbao had ordered civilians to work over a period of three
28 years. That he had been a major part of his, 330's life for
29 three years, and that Gbao had been ordering Morie Fekai to pass

1 orders in the G5.

2 Incidentally, he made a mistake. Again, I think it was
3 Mr Jordash's questioning. He reverted, we say, to the truth when
4 he said it was Morie Fekai "who was over us. He told us to
5 cultivate that farm. He had his own boss Prince Taylor." Why
6 was it though, that 330 came up with this late disclosure
7 impugning Augustine Gbao and why was it that when he was
8 testifying 330 couldn't even remain true to it?

9 TF1-168, a brief mention of Augustine Gbao -- I've touched
10 on him already in his famous 175 page interview in April 2003 to
11 Corrine Dufka. He said in that 175 page document just this: "I
12 saw Gbao once in Kailahun Town." February 2006, three months,
13 two-and-a-half months before he testified. Suddenly Gbao is the
14 overall MP commander. He is the most senior commander in
15 Kailahun Town. He was the one that passed Sam Bockarie's message
16 that the killing should take place down to John Aruna "and I saw
17 him every day." Where did that come from so late in the day?
18 And why?

19 TF1-045, he'd made no mention whatsoever of Augustine Gbao
20 until June 2005. He testified in November. I forget how long he
21 had been giving statements to the Prosecution but it had been for
22 quite time. TF1-314 we say who is shattered through her lack of
23 credibility; several statements before the trial in which she had
24 given a hearsay account that Superman and Gbao had planned an
25 attack on Makoth. In additional information, just before the
26 trial, it changes. It is suddenly Kallon, coincidentally a
27 defendant, and Gbao who was making the attack at Makoth. In
28 evidence it's Kallon and Gbao at Makump. Why? How can this
29 happen?

1 TF1-141 gave five separate statements. He mentioned Gbao
2 in a very incriminating way in his last, leading to emotion from
3 the Gbao team. How did that happen? TF1-054, he mentioned Gbao
4 and Kallon again in relation to the killing of, I think it was Pa
5 Demby, a chief in Bo, but two years had passed since his first
6 statement to the Prosecution before he named Gbao as one of the
7 perpetrators. And that, Your Honour, can be seen at page 30 to
8 31, transcript 1 December 2005.

9 How did the Prosecution respond to this litany of "I said
10 it. It's in there. I don't know what those Pas up there are
11 doing" or "check your notes, counsellor." What is the
12 Prosecution's response?

13 They say at paragraph 65 and the following in their brief
14 that the investigation work was a struggle. There were failings
15 on the part of the investigators. There were translation
16 problems and other challenges. Well, we refer the Court to the
17 case of Kayishema, ICTR Trial Chamber, paragraph 78, which we
18 cite at paragraph 270 and 271 of our brief. It was held thus:

19 "It's not for the Trial Chamber to search for the reasons
20 to excuse inadequacies in the Prosecution's investigative
21 process."

22 Well, Your Honours, we can supply that authority later on.
23 We can --

24 JUDGE ITOE: Mr Cammegh, we did appeal this morning, when
25 you weren't here, that the parties should submit authorities
26 which they are relying on.

27 MR CAMMEGH: I am sorry, I did hear about that.

28 JUDGE ITOE: If they are not, if they are not already in
29 the folders which -- feel free to supply them, you know.

1 MR CAMMEGH: I will when I sit down. Your Honour, it was a
2 late decision to include that, and I apologise for that. There
3 won't be any more, by the way. There's only the two.

4 PRESIDING JUDGE: And we would like to know if that
5 decision you are quoting is at trial judgment or --

6 MR CAMMEGH: Trial.

7 PRESIDING JUDGE: It's a final judgment or in the course of
8 a trial? A decision -- and this is why we need to have not only
9 the name but the date because it is very difficult to track them
10 down.

11 MR CAMMEGH: Your Honour, I can pass it up now, but I did,
12 as I said, it's a trial judgment. It's 1999. I don't believe it
13 was subject to appeal, but we can check that, and I will get back
14 to you on that by the end, if I can.

15 PRESIDING JUDGE: That's fine. That's okay. Yes, yes.

16 MR CAMMEGH: Now, what we say is this: That regardless of
17 the authorities, neither is it nor should it be for the defendant
18 to suffer by failings in the investigative process, if that is
19 the reason why so many statements against our client seem to have
20 been bettered in time. It's a bit like a layer cake; you put
21 another layer on. The icing on the top in 168's case was: Gbao
22 is the overall MP commander. I saw him every day. Roll back
23 three years and it was "I saw him once." That is the point we
24 are getting at.

25 Contrast that, if you will, with the unimpeached, candid
26 and well-demeanoured group of largely educated and erudite
27 individuals, some of whom of course had been insiders, who
28 testified for Augustine Gbao. I think there were seven of them.
29 Not a single one of them, we submit, was controverted in

1 cross-examination. Not a single one of them was found to be
2 telling lies. Not a single one appeared to give an inconsistent
3 statement.

4 Demeanour is important, and who can forget the demeanour of
5 someone like 110, the first one who walked into the room. In
6 particular of 080, who met the Prosecutors questions by looking
7 at him square in the face, not in a challenging way, but in a
8 candid, sure and certain way. 101, the lady who testified, who
9 was commended by the Bench and at the end, 111, a meek, mild
10 character, who stuck to his guns and gave evidence right at the
11 end under stern cross-examination from Mr Fynn, with a
12 wonderfully spontaneous and I would say, I would suggest to you,
13 utterly true account of what happened when he was asked to drive
14 a truck to Kono and what happened to him when he got back when
15 Augustine Gbao was annoyed with him for disappearing without
16 permission. There is a great difference, we say, in the manner
17 in which the two parties testified.

18 Can I now go count-by-count through the indictment. And,
19 Your Honour, I'm doing well so I think we are going to finish on
20 time. There is not much I want to say about count 1. There was
21 nominal evidence against Mr Gbao on count 1. I don't want to say
22 there was none because we might have missed some, so let's just
23 say it was nominal. That being the case why is it, we
24 respectfully ask, at paragraph 1079, the Prosecution claim thus:

25 "By virtue of their superior position within the RUF
26 hierarchy they, all three defendants, are responsible for
27 terrorism."

28 Well, you need some evidence. I might be wrong, maybe it's
29 there. We haven't found it and we suggest that count should be

1 di smi ssed.

2 Similarly count 2. It's pleaded that Gbao is guilty of
3 collective punishment in relation to the Kamajors, the basis
4 being that Gbao allegedly ordered Kamajors to be screened for,
5 that he allegedly passed down the order from Sam Bockarie for the
6 executions to take place and on the basis that he was present
7 when the shooting happened. Well, we refer Your Honours to the
8 points that we made in the brief on that matter. We'd say only
9 to add this: That collective punishment, to our knowledge,
10 requires speci fic intent. We suggest that that intent was
11 never -- there was never even an attempt to make out that
12 speci fic attempt throughout the Prosecution's case and,
13 accordingly, count 2 should be di smi ssed against Gbao.

14 More controversially, we move to counts 3 to 5 and the
15 issue of Kono raises its head. I don't think the Chamber needs
16 to be reminded of the controversy that 371's evidence caused when
17 he testified that the IDU may have known about killings in Kono.
18 It led to emotion; I know that we don't need to revisit that.

19 Perhaps it's worth me saying at this point that 371 was the
20 highest ranked Prosecution witness. He had been given immunity
21 from prosecution. That was dealt or dwelled on at some length in
22 cross-examination, as was the fact that he was caught out lying
23 about attempting to partake in an arms' deal in Dananon, Ivory
24 Coast in 1996.

25 The evidence that the Prosecution wished to place before
26 the Court I think is this: It's what 371 said at 24 July 2006 at
27 page 19:

28 "The IDU at that point in time, who I cannot recall, the
29 IDU commander at that time knew about it."

1 He'd already indicated that he felt that Gbao and Sesay
2 knew about the atrocities in Kono.

3 Well, let's leave aside the arguments that I raised in the
4 motion because they are now moot for these purposes, but move to
5 the Defence, the Sesay witness DIS-188, who was a unit commander
6 and I think we can all remember which unit he commanded.

7 Now, on 2 November of 2007, I cross-examined this man and I
8 just want to cite one or two items from his cross-examination
9 which we suggest deals with the point of Gbao knowing about what
10 happened in Kono, once and for all.

11 At page 14, on 2 November, he had been discussing a man
12 called Sheku Coomber, who was the IDU man based, commander based
13 in Buedu.

14 "A. Yes, Sheku Coomber was based in Buedu.

15 "Q. At the time that the reports came through from Kono?

16 "A. Yes.

17 "Q. Okay. And was he the local IDU commander in Buedu?

18 "A. Yes.

19 "Q. Was he quite close to Bockarie?

20 "A. Mmm, yes.

21 "Q. And can you confirm I think that during this period
22 Augustine Gbao was based in Kailahun Town?

23 "A. Yes."

24 And he makes it clear in his testimony, both before and
25 after that, that Sheku Coomber received a radio report direct
26 from Kono, which he acted on by passing it to Bockarie. Page 16,
27 I suggested to him:

28 "Q. But the IDU and the G5 simply were unable to do their
29 jobs properly in Kono during that time, weren't they?

1 "A. Yes.

2 "Q. And as you've indicated there was no question of a
3 Joint Security Board investigation being able to operate in
4 Kono at that time?

5 "A. Yeah.

6 "Q. You told Mr Jordash that you (this man was based in
7 Pendembu at the time) received a message in a letter; is
8 that right?

9 A. From?

10 Q. With a message from Kono?

11 "A. Yes, from someone in his unit. (He names the unit).

12 "Q. And you acted on that immediately, did you?

13 "A. Yes."

14 And finally this: I asked him:

15 "Q. Is this the case: That as soon as you had felt that
16 you had confirmation you acted by informing Bockarie?

17 "A. The leader, yes."

18 This is in relation to the letter. This is the other item
19 of communication. The first was a radio message direct to Buedu,
20 the second was a letter that this unit commander received
21 elsewhere in Kailahun District.

22 "Q. Right. Now are you able to say whether or not
23 Augustine Gbao, Sam Bockarie, are you able to say whether
24 or not Sam Bockarie had already been told what was going on
25 by the time you forwarded your report to Bockarie? Had he
26 already been informed of the trouble in Kono?

27 "A. I can't tell.

28 "Q. You can't tell. So it's possible he could have been
29 informed already?

1 "A. Yes. "

2 Now, what this all means, I am sorry if it doesn't make
3 much sense at first hearing, but what it all means is that people
4 were doing their best to quell what was going on in Kono, but the
5 loop didn't contain Augustine Gbao at that time.

6 The IDU man in Buedu, Sheku Coomber, received a radio
7 message which he gave to Bockarie immediately. And, as the
8 testimony goes on to say, Bockarie acted immediately in
9 withdrawing two individuals from Kono District.

10 The second one was a letter which was handed by -- given by
11 hand to 188 which he also himself acted on immediately, Gbao not
12 being in the loop and that, I hope, deals with the suggestion
13 that Augustine Gbao was aware of any crimes being committed by
14 named individuals in Kono at that time, and I hope I can move on,
15 having established that, and giving Your Honours the references.
16 I must say that this didn't find its way into our brief.

17 The final point I would like to make on Kono is this: We
18 called the witness who himself, as you remember, was an RUF
19 insider unit commander, DAG-080, who confirms, on 6 June, page 12
20 this year, reports were not being sent, so far as he was aware,
21 from Kono.

22 So, what we have is isolated reports taking place, not part
23 of a system but isolated reports going to various recipients --
24 well, Sheku Coomber/Bockarie and 188 being the other one, in
25 different towns, both are being acted on immediately they are
26 received, Gbao not being in the loop.

27 But, even if one was to believe that Gbao did receive
28 reports, what power to punish did he have? 188 made it clear
29 within that same transcript that he did not have liberty to act

1 without Bockarie's permission, and nor did Gbao, which I suppose
2 is a point that also could be levelled when one looks at the
3 Kailahun killings, and I move on to that now.

4 We submit that we have already anticipated all of the
5 Prosecution's submissions on the Kailahun killings in our brief,
6 but we do urge Your Honours once again, please, to pay the
7 strictest attention to the credibility, or not, of the witnesses
8 who the Prosecution called in support of that allegation against
9 Mr Gbao, which we anticipate is founded mostly on 63 liability
10 rather than anything else.

11 There was 168, I've already dealt with him. I don't think
12 I need to repeat the oddities which occurred in his evidence and
13 in his previous statements and, of course, that's dealt with
14 exhaustively in our brief.

15 But there was also 113, TF1-113. TF1-113, as I suggested
16 in our brief, might have had a personal motive or grudge against
17 Augustine Gbao. It was suggested by a Prosecution, I am sorry,
18 Defence witness -- I think it was DIS-069 but I can't be sure --
19 that she may have received some sort of encouragement from the
20 Prosecution. That is something which I am not going to take
21 further here. The evidence spoke for itself and it's not a line
22 which I'm necessarily proponing at this time.

23 But 113 was, on the face of it, a dangerous witness except
24 when you look at the chronology of what she told investigators
25 and the Court, we see a different picture. From 2003, in
26 chronological order, her account of the number of people she saw
27 Sam Bockarie kill at the roundabout in Kailahun goes like this:
28 Two, seven, two, eight. "I've not said a different thing" she
29 said when I asked her why that was. "Were you there, madam?"

1 Asked Mr Justice Itoe at that point. Well, it's a question that
2 I might have wanted to ask myself. In fact, we suggest she
3 probably wasn't there because she admitted lying, when I
4 suggested to her that she was lying when she told the Court she
5 actually counted 65 dead bodies. She actually said, "Yes, I am
6 lying." How can a witness, who confesses to lying, having taken
7 the oath in a trial as grave as this, testifying on an offence as
8 sickening as this, be held against any defendant? In our
9 submission her testimony must be banished from any further
10 consideration.

11 045, similarly, remarkable confusion. He actually claimed
12 to have been one of the shooters and yet he didn't mention Sam
13 Bockarie being there at all; and then he contradicted himself.
14 First of all, saying he saw all 65 and later saying in his
15 evidence, we deal with this in our brief, so I'm not going to
16 cite the references, later saying in his brief, he couldn't say
17 where the balance 55 died. Utterly confusing.

18 And then there is 366 who, we submit, really we needn't
19 deal with any further here. Those 29 inconsistencies are not all
20 dealt with in our brief but many of them are, and we submit that
21 he was not a witness worthy of belief.

22 Now, a further concern that we have derived from the
23 Prosecution brief is this. There's a footnote number 1408 in
24 relation to the Kailahun killings which reads like this:

25 "All Prosecution witnesses said that the Kamajors were
26 civilians although the RUF, in particular the third
27 accused, suspected they were Kamajors."

28 There it is, bold as brass, a declaration like that. No
29 reference given whatsoever. And it's certainly not a claim that

1 we could remember ever hearing or reading in the transcripts.
2 These things are dangerous and it is going to give Chambers and
3 Your Honours' assistants a lot of hard work because we suggest
4 that this is only the tip of the iceberg. I haven't got time to
5 go through all of them and that amplifies the danger, because if
6 I can't flag them all up, then we have to trust people in
7 Chambers to identify them all and I am sure they have got more
8 important things to be doing.

9 JUDGE ITOE: Well, no, they are very focused on this case,
10 Mr Cammegh, I can assure you.

11 MR CAMMEGH: They probably prefer to be focused on --

12 JUDGE ITOE: They do their job.

13 MR CAMMEGH: Yes, I have no doubt they will. It will be
14 laborious.

15 Now, the Prosecution claims superior responsibility in
16 paragraph 524 but realistically, we have heard so much evidence
17 about Bockarie's dictatorial personality et cetera, et cetera, it
18 became boring. Who was Mr Gbao to punish? Surely not Sam
19 Bockarie. And given what 188 said, and the tenor of evidence as
20 we heard, would Gbao have had the power to have punished anybody?
21 We, I think 70-odd pages in our brief, describe how the IDU
22 fitted in with other units; how reporting and ordering et cetera
23 intermingled and basically established with very little retort
24 from the Prosecution in their brief, by the way, how Augustine
25 Gbao didn't have the power to prevent or punish wrongdoing of
26 members of other units, let alone combatants. We suggest there
27 is no question of superior responsibility applying in the awful
28 case of the killing of the Kamajors, whether Gbao is found to
29 have been there or not.

1 Another set of killings that alleged by the witness
2 TF1-108, in our brief we have cited why that man is not worthy of
3 credit. He gave two non-corroborated accounts of Mr Gbao being
4 involved. The first, the killing at a court barri in Kailahun,
5 and the second the killing of his brother pursuant to a forced
6 labour march which Gbao had ordered. We submit, Your Honours,
7 for reasons I won't go to in depth here, that 108 impeached
8 himself to such an astonishing degree that Your Honours should
9 not belabour yourselves with considering any of his evidence
10 against any defendant. Besides which, there was no corroboration
11 of those allegations from anybody.

12 Furthermore, at paragraph 486, the Prosecution claimed that
13 in Bombali District TF1-041, said the last of the December 1998
14 attack, it was the murder of an elderly gentleman, I think in
15 Makeni, it was reported to Gbao and Gbao didn't appear to act on
16 it. We submit that not only is TF1-041 not credible, for reasons
17 I will go into later on, in connection with the UNAMSIL incident,
18 the indictment, paragraph 51, makes no allegations of unlawful
19 killings in Makeni beyond 30 November 1998 and because the date
20 of the killing is not specified we submit there is no case to
21 answer on that.

22 Moving then to counts 6 to 9; forced marriage.

23 I have to go back to TF1-366 because he is about as good as
24 it gets from the Prosecution. In cross-examination he
25 admitted --

26 JUDGE ITOE: Mr Cammegh, which one is this? TF1 --

27 MR CAMMEGH: 366.

28 JUDGE ITOE: 366. Okay.

29 MR CAMMEGH: In cross-examination he admitted that no, Gbao

1 had no wife in Makali or Masingbi, as he had originally
2 suggested. The Prosecution brief, however, neglects to refer
3 Your Honours to that admission in cross-examination. Whilst it
4 asserts that Gbao had a forced wife in Kailahun Town, in
5 cross-examination 366 said Gbao did not. I am sorry, he never
6 said Gbao had a forced wife in Kailahun Town at all; it's a
7 misrepresentation of the records.

8 It's certainly an innocent mistake but it's a dangerous
9 one. We also submit in relation to forced marriage that there is
10 a disingenuous use of DAG-101's evidence that -- that lady who
11 had a position in the RUF -- when she said that WACs were at the
12 front lines helping combatants.

13 Well, what is in the word "helping" that is suggestive of
14 forced marriage? The Prosecution didn't even cross-examine her
15 on it. The count should be dismissed.

16 Counts 10 and 11, physical violence. I've already referred
17 to that. Nominal, if any, because we can't find any evidence
18 alleged against Gbao in relation to amputations and what have
19 you. And yet, as I've already highlighted, the Prosecution claim
20 that Gbao should be held individually responsible along with the
21 other two defendants. No evidence, Your Honours, we say and it
22 should be dismissed.

23 Count 12, the use of child soldiers, is covered against
24 Gbao, at least I think, in paragraph 824 of the Prosecution brief
25 and they rather misleadingly give an inventory of insiders who
26 they say saw all three accused with child soldiers. It's just
27 when you actually look at the paragraphs that follow, to say that
28 these -- and I will go through them in a moment -- but to say
29 that all of them saw all three accused with child soldiers is

1 absolutely wrong. The insiders named are 045, 366, 036 and 367.

2 So taking them in turn, 045 made no mention of Augustine
3 Gbao with child soldiers. 366 did, which I will come on to in a
4 moment. 036 made one general blithe comment Gbao had child
5 soldiers, without any specifics whatsoever, and we submit that
6 that really isn't something that could be rightfully used against
7 Mr Gbao.

8 367 made no claim whatsoever that Augustine Gbao had child
9 soldiers, and returning to 366, there are some unacknowledged
10 misrepresentations in the Prosecution brief and, again, I'm not
11 suggesting any malfeasance on the part of the Prosecution. It's
12 an error. We have all been working under a tremendous pressure,
13 almost to the bounds of human endurance, and mistakes are going
14 to happen, but it's a pity that they happen in this arena at this
15 time. He alleged Gbao had child soldiers or was with child
16 soldiers in Kono, paragraph 787 of the Prosecution brief, but, in
17 cross-examination 366 admitted that Gbao was never in Kono. 17
18 November 2005, page 84.

19 Two. Contrary to the Prosecution claim 366 never alleged
20 that the boys were under 15 or that Gbao was with boys under 15,
21 and forgive me, we deal with this now in our brief, and I haven't
22 got the citation but it's there under child soldiers. What 366
23 actually said was that he didn't know their ages and that there
24 were "so many." It's not actually evidence at all because the 15
25 year age threshold isn't met by him. Why did the Prosecution
26 include that?

27 Other witnesses, these are the non-insiders, so they also
28 cite as testifying that Gbao had child soldiers. TF1-113, at
29 paragraph 803 in their brief, there is just a blind claim:

1 Augustine Gbao had child soldiers in Buedu. There is no
2 citation, and we can't find the reference either. Fourth
3 misleading entry. TF1-141, again I'm afraid I haven't got the
4 Prosecution brief reference to him, but in our brief it's at
5 paragraph 1145. He said, he talked about boys but he said he
6 didn't know their ages. He said they were older than him, and
7 memorably he said they had a bigger volume than he did,
8 describing them as being bigger. How can that be evidence?
9 Five, TF1-314, who we submit is -- her credibility was destroyed
10 beyond recall -- and I have written a long section on that in the
11 brief.

12 According to the Prosecution, at paragraph 929, Gbao used
13 SGUs in Buedu. Now, either this is a woeful error or it's a
14 desperate misrepresentation because I'm going to read the
15 following extract from my cross-examination of this woman at 7
16 November 2005, page 37:

17 "Q. You told us earlier on when you said you never saw
18 Augustine Gbao in Buedu -- do you remember telling us that
19 earlier?

20 "A. Yes.

21 "Q. So it follows, doesn't it, that if you didn't see
22 Augustine Gbao in Buedu you could not have seen Augustine
23 Gbao with some SBUs in Buedu; that would be fair, wouldn't
24 it?

25 "A. Yes. "

26 It was funny. If it wasn't funny it would just be
27 desperately sad, but that is the evidence that the Prosecution
28 are forced to lead. It doesn't get off the ground.

29 Six. TF1-263, paragraph 824.

1 In their brief, Prosecution say that she makes an
2 allegation against Gbao. She doesn't even mention him. I
3 mentioned in my opening some time ago that Mr Gbao had fear.
4 Mr Jordash used the same word yesterday. This is why. This is
5 what we are talking about. This is exactly what we are talking
6 about.

7 Can I move on to count 13, forced labour. At paragraph
8 953, the Prosecution suggest that TF1-141 was sent to Bunumbu
9 training base after Augustine Gbao had screened him. The
10 Prosecution suggest that the screening was to divide the
11 civilians up for various tasks, but if one looks at what 141
12 actually said, it was to screen for enemies. 12 April 2005, page
13 20. And what he then said was that he had been in Kailahun Town
14 some time. I can't remember how long -- I think it might have
15 only been a few days. He was taken by surprise early one
16 morning, he said, by -- he said combatants who matched him off --
17 my words not his, to the training base.

18 Now, that's all very well and good and it may be that
19 somebody committed a criminal offence there, I don't know, but
20 there is no -- where is the link to Augustine Gbao? And where is
21 the evidence that Augustine Gbao had any sort of effective
22 control over the combatants anyway, even if it is true? When you
23 look at the welter of evidence that we cite in our brief to
24 demonstrate that Gbao had no command and control over combatants,
25 over anybody else, other than those people below him in the IDU.
26 Unimpeached Defence evidence, trotted that out witness after
27 witness; unimpeached.

28 And then we had this, from the Prosecution, at paragraph
29 912. Apparently 141, we must have missed it, said the biggest

1 farms belonged to the three accused and Sam Bockarie. There is
2 no citation, and we can't find it. It may, again, it's probably
3 just a human error but it's a whopping great human error if it
4 is. We have done our best to find it, we couldn't. We will be
5 corrected if we are wrong, because we don't want to take an
6 unfair point; that is the last thing we want to do.

7 In relation to the rest of the allegations on count 13,
8 Your Honours, we respectfully suggest that you look at our brief.

9 Count 14, pillage. The Prosecution use TF1-117 who we say
10 was utterly fanciful in the evidence that he gave to allege that
11 Gbao was involved in Operation Pay Yourself. I touched on this
12 earlier on.

13 The whole Prosecution, the whole case, we agree with it, is
14 that Gbao was in Kailahun Town at that time. Indeed, and this is
15 ironic, even 117 himself testified that he was told to take a
16 message to Gbao, in Kailahun Town, to get him to receive Johnny
17 Paul Koroma which had to have been in February 1998. It's almost
18 as if 117, who we suggest, without wanting to be patronising,
19 because he was a man who went through a terrible time and was
20 forced to take drugs at a young age, may well be particularly
21 disturbed and given his evidence, without wanting to be
22 patronising, there are aspects to it which really do seem to be
23 quite fanciful.

24 We suggest he is inherently unreliable. That evidence
25 cannot be used. The Prosecution say, well, Mr Gbao, in the
26 alternative, failed to punish the looting and by omission
27 therefore he is aiding and abetting. Well, we ask: How on earth
28 could he have stopped what was going on on the highway from
29 Makeni to Kono? And what power would he have had anyway?

1 Counts 15 to 18 are on the thorny subject of UNAMSIL which
2 has of course exercised this Court, and the Gbao Defence team in
3 particular, for much of the last three months. And what I want
4 to do now, I hope with candor, and accuracy, is fairly reflect
5 the evidence that this court has heard on this topic over the
6 years without any tricks or bending of the facts, to demonstrate
7 that the Prosecution case is replete with dangerous
8 inconsistencies and factual errors. But, first of all, I have to
9 suggest sadly once again that there have been some very serious
10 misrepresentations by the Prosecution in their brief.

11 The first one is this -- and I've mentioned it already but
12 I want to put these in as a package -- they are not exhaustive,
13 there are more, but we are constrained by time.

14 The first one is that Gbao, at paragraph 1183, Gbao was in
15 charge of Magburaka. It appears that the Prosecution want to, as
16 it were, nail Gbao for everything that happens in Magburaka after
17 2 May, which we suggest is wholly inappropriate. They suggest in
18 their brief, at paragraph 1183, in the context of the abduction
19 of Major Rono that Gbao was involved. They quote Colonel Ngondi
20 from 29 March 2006, page 38.

21 "They were telling me (Ngondi) they were telling me that
22 the RUF" -- sorry, I will start again.

23 "They were telling me that the RUF and Gbao was there (this
24 is during Rono's abduction) and Alfred in charge of
25 Magburaka was there."

26 Now, however you look at that sentence, you can't, in our
27 submission, conclude that Gbao was in command at Magburaka. The
28 way it's worded is quite clear it was Alfred but, thereafter, the
29 Prosecution, in their brief, attempt to attribute all

1 responsibility for what happened at Magburaka at Gbao's door. We
2 say that is either desperate or reckless. It really doesn't bear
3 scrutiny.

4 DAG-111, as I have already said, in their brief at
5 paragraph 1170 assert that DAG-111 said --

6 PRESIDING JUDGE: But I would like to -- just to interject
7 here. I am just reading this particular paragraph that you are
8 alluding to, 1183, and what the Prosecution is saying is that:

9 "Major Rono and three soldiers had allegedly been abducted
10 earlier by the third accused who was at the time in charge
11 of the situation at Magburaka at the time."

12 To be in charge of the situation does not necessarily mean
13 that you are what you are alleging to say, so I was questioning
14 the nuances, I agree, but they are not alleging what you are
15 saying they allege, saying, and I am quoting from the paragraph
16 in question. So it may be misleading as well, so I --

17 MR CAMMEGH: Well, this is the problem. We never quite
18 know what they mean, but what they do is they quote Ngondi. And,
19 in my submission, the allegation that Your Honour has just read
20 out is probably founded, it can only be founded on this quote
21 from Ngondi, which tends to go the other way. In other words,
22 the allegation that the Prosecution make, that you've just read
23 out, is we say groundless because the only evidence on or
24 surrounding the topic is that sentence that I've just read from
25 Ngondi.

26 PRESIDING JUDGE: Yes, but it's different. What I am
27 saying to you, this is quite different to say he was in charge of
28 the situation, whatever the situation means. It's quite
29 different then to say that he was the commander as such, at

1 Magburaka. It's not what the allegation says, and that is not
2 what this paragraph is saying.

3 MR CAMMEGH: Well, if that's right --

4 PRESIDING JUDGE: Well, anyhow, this is certainly one
5 reading of it. This is --

6 MR CAMMEGH: I don't want to take unfair points. This is
7 how we read it and that is the citation that the Prosecution
8 appear to rely upon. And, if we are wrong about that, we are
9 wrong, but it's the interpretation that we gave to it. We have
10 to, obviously, play devil's advocate with ourselves. We have to
11 look at the worse case scenario, or the worst possible
12 interpretation. That was how we thought it could have been seen
13 to Mr Gbao's detriment. But it's a matter for Your Honour, and
14 I'm not going to dwell on it or seek to argue it further.

15 I've already mentioned 111 being misquoted, saying that he
16 saw Gbao fire shots at the DDR camp. In actual fact, the
17 cross-examination from Mr Fynn went like this, at 19 June 2008,
18 at page 30:

19 "Q. Would I be correct to suggest that Augustine Gbao also
20 fired shots?

21 "A. No. "

22 The third, what we say is a misrepresentation, takes place
23 at paragraph 1162. Joseph Mende, I think he was 044, was the
24 UNAMSIL personnel who the Prosecution claimed was having heated
25 negotiations with Gbao on 17 April. In fact, in
26 cross-examination, well, the Prosecution neglected to put in
27 their brief, in cross-examination Mende admitted that he was 150
28 metres away from the discussion which was an argument between
29 Mr Gbao and Colonel Poraj Wijinski [phon]. That is at 29 June

1 2006, page 8.

2 Four. Paragraph 1221, there is the allegation that Gbao
3 stormed the DDR camp on 17 April with 25 to 30 men. The only
4 evidence on that point, unless we are wrong, and we think we've
5 checked everything, is that 042 Ganese, said it is with a few
6 armed men. That is evidence that we reject in any event and also
7 runs contrary to what Colonel Ngondi said about Gbao's behaviour
8 on 17 April, which we cite I think twice in our brief. I am
9 afraid I don't have that reference here.

10 Five. The Prosecution allege that Gbao, at paragraph 1221,
11 assembled and organised at the Caritas Makeni for the attacks on
12 the DDR camps and the KENBATT positions. The citation that they
13 give from TF1-314 bears no relation to that quote.

14 PRESIDING JUDGE: Before you go further, are you saying and
15 suggesting that, I am reading at 1163 of their brief, and it's
16 really in reference to just one quote that you have mentioned,
17 that's Major Ganese Jaganathan --

18 MR CAMMEGH: Yes.

19 PRESIDING JUDGE: -- he testified how on 17 April 2000, the
20 first day of demobilisation at Makeni, a group of 25 to 30 RUF
21 combatants arrived on truck led by the third accused. So that's
22 what is the -- the number comes from that and the quote is
23 Jaganathan transcript 20 June 2006, page 57, so, I haven't looked
24 at these pages, but that's the reference, so are you saying this
25 is not what that page is saying?

26 MR CAMMEGH: What actually the witness says was that a few
27 went to the camp. That -- the allegation is that Gbao stormed
28 the camp with 25 to 30. In the transcript we noted that although
29 Gbao allegedly arrived at the camp or outside the camp with 25 to

1 30 he went to the camp -- Ganese says he stormed the camp -- with
2 "a few." In other words, there is a distinction.

3 PRESIDING JUDGE: But that is what he says. The third
4 accused, with a few armed combatants stormed into the camp. That
5 is what he says two lines down.

6 MR CAMMEGH: Well, Your Honour, I am at a disadvantage
7 because I don't have the transcript in front of me.

8 PRESIDING JUDGE: Anyhow, I just read to you that he
9 testified that on 17 April, the first day, a group of 25 to 30
10 RUF combatants arrived on truck led by the third accused.

11 MR CAMMEGH: Yes.

12 PRESIDING JUDGE: The RUF overall security commander. They
13 jumped out and lined up in front of the DDR camp. The third
14 accused with a few armed combatants jumped into the camp
15 threatening to dismantle all the tents. This is what is quoted.

16 MR CAMMEGH: But that is our point, Your Honour. We say
17 there is a serious distinction between 25 to 30 that arrived in a
18 truck, allegedly, and the few that go into the camp. Ganese,
19 according to the Prosecution brief, said that Gbao stormed the
20 camp with all of them, 25 to 30 -- I think it's paragraph 1221.

21 PRESIDING JUDGE: Oh, I see. So it's not a misquote. The
22 misquote by the Prosecution you are saying is that they say he
23 stormed with a few combatants while the witness says with 20 or
24 25. It's the opposite.

25 MR CAMMEGH: What we are saying is that he turns up with 25
26 to 30.

27 PRESIDING JUDGE: Yes.

28 MR CAMMEGH: Ganese says he turns up with 25 to 30. The
29 active storming the camp takes place with "a few."

1 PRESIDING JUDGE: Yes.

2 MR CAMMEGH: So it's not implicitly all of them; it's a
3 few. The Prosecution however, in their brief, at paragraph 1221,
4 aver that Gbao stormed the camp with 25 to 30, not a few, and
5 that's the difference.

6 PRESIDING JUDGE: I follow you. You are in a different
7 paragraph. I am still at 1163 and you are at 1221.

8 MR CAMMEGH: Can Your Honour award me 90 seconds for that,
9 please?

10 PRESIDING JUDGE: Justice Itoe is the timekeeper, as you
11 know.

12 JUDGE ITOE: And, Presiding Judge, I am doing my job. I am
13 following his argument very closely as well.

14 MR CAMMEGH: I think I have got about 12 minutes left.
15 Your Honours, those are what we suggest are misrepresentations
16 and I want to emphasise we are not suggesting they are
17 deliberately misleading. It's the human condition; we can't work
18 18 hours a day and get everything right. And I've seen a lot of
19 people across the room are doing that as well as people here
20 were, but it's dangerous because these are documents of record
21 and they are the documents on which you and your -- I was going
22 to say subordinates -- people in Chambers are going to be working
23 on in this case.

24 Now, if we look at other witnesses, we wish to make the
25 suggestion that the only two allegations left, which are capable
26 of conviction in relation to Augustine Gbao, are the allegations
27 of the abductions of Major Rono and Major Maroa. And I say that
28 in the light of the following eight witnesses who we say are very
29 badly damaged, some beyond recall, if not all of them.

1 Again TF1-366. The way he delivers his chronology of
2 events alone, we suggest, rules him out of contention as a
3 credible witness on this issue, because the fighting at Makump
4 and Lunsar simply couldn't have taken place at the same day.
5 Lunsar followed Makump after the ZAMBATT had been alerted.

6 Secondly, TF1-360 was another witness who I think the words
7 were "what you said is a tissue of lies isn't it" and he replied
8 "yes." Very dangerous to rely on a witness who makes that kind
9 of concession.

10 Thirdly, TF1-071 he, we say, lied in relation to Augustine
11 Gbao leading attacks on 1 May 2000 in Lunsar. There were no
12 activities in Lunsar on that day. For reasons I have already
13 dealt with, both here and in the brief, we suggest that numbers
14 four and five, TF1-117 and TF1-314 have been totally discredited.

15 Six, TF1-041, again, his chronology completely wrong. The
16 Zambians hadn't even contemplated fighting at the point that he
17 said that they were.

18 Joseph Mende, 044, number seven, didn't see Gbao after 17
19 April 2000. I am not suggesting that any lies followed that but
20 how could he give evidence when he hadn't seen Gbao?

21 Number eight, TF1-174, he too lied. He said that he saw
22 pushing children into the truck to send them off to fight at
23 Lunsar having earlier told the Court that he had just heard a
24 report to that effect, not that he'd seen it. We suggest those
25 witnesses cannot be relied on.

26 What then of Major Maroa. Well, we have worked hard to
27 exculpate Augustine Gbao in relation to the abduction of Major
28 Maroa, since April. Leaving everything else aside we suggest,
29 Your Honours, that DAG-111 did that all by himself.

1 Secondly, Major Rono, very little has been made of this man
2 in this trial. The evidence is the evidence that I read out
3 already in relation to Magburaka. If I said the abduction of
4 Major Maroa, I should have said the aiding and abetting of that
5 abduction, by the way. With Rono, that account, the account from
6 Ngondi was hearsay, but, which might be admissible but it didn't
7 state, if one looks at the record of what Ngondi said, it didn't
8 state that Gbao was responsible; just that he was there.

9 Secondly, it's a hearsay account which denotes no clear
10 knowledge as to who the source was. And I think it's probably
11 fair, isn't it, to suggest that hearsay, where we know the
12 source, as opposed to hearsay that's just coming from the ether,
13 is more reliable.

14 Thirdly, given Gbao's conduct, the conduct that we suggest
15 he exhibited at Makump, on 1 May, even if he had been there when
16 Major Rono was abducted, which was the day after, which we deny,
17 but even if he had, who is to say that he wasn't trying to stop
18 that one as well? There is nothing to gainsay that theory. Our
19 conclusion then on UNAMSIL is this:

20 We've tried to demonstrate, over the past few months, that
21 Augustine Gbao committed no single offence, ordered the
22 commission of no single crime in the Makeni area in the first
23 week of May and thereafter in Kono in 2000, or that he aided and
24 abetted, he planned or instigated any criminal offence either.

25 We hope to have shown this Court beyond -- well, it's not
26 our burden -- but we hope to have shown this Court that there
27 simply isn't any basis on which he could be held to have been a
28 willing participant on any mode of liability.

29 And lastly on UNAMSIL --

1 PRESIDING JUDGE: On UNAMSIL, I just would like to ask you
2 a clarification of what you said. You said that the evidence of
3 Ngondi is hearsay, and you mentioned something of not knowing the
4 source and therefore it's impossible. So, I thought the evidence
5 did disclose the source of what he heard; it was his radio
6 operator or somebody from his unit communicating with him, or
7 something like that, but I haven't looked at this evidence last
8 night.

9 MR CAMMEGH: I'll read it out. This is the line on which I
10 based that. It's for Your Honours, I am obviously taking a
11 Defence perspective: "They were telling me that the RUF and Gbao
12 was there and Alfred in charge of Magburaka was there."

13 PRESIDING JUDGE: But they, these are his own people that
14 [indiscernible] see to; isn't that what he is saying?

15 MR CAMMEGH: Supposedly but "they," of course, is a
16 ubiquitous term, and it is hearsay and there is no confirmation
17 as to who "they" were. And, moreover, of course, there's no
18 confirmation as to who they got that information from. Your
19 Honour, it's a matter for you. We don't --

20 PRESIDING JUDGE: No, that's okay. I just -- that does not
21 accord with my recollection as to it was an unknown person all of
22 a sudden telling him something but we will look at the record in
23 this respect and make our own assessment. We appreciate it. I
24 thank you.

25 MR CAMMEGH: Thank you. If the Court finds that Augustine
26 Gbao went to the DDR camp earlier on 17 April we refer Your
27 Honours, I am so sorry, I don't have the reference, but we cite
28 it twice in our brief, what Colonel Ngondi said about Gbao's
29 behaviour that day ending with the line "I commend him for that."

1 No evidence, we suggest, in the light of that evidence from a
2 highly respectable individual, that Gbao committed any offence at
3 that place or that he left there having arrested anyone or
4 attacked anything et cetera, et cetera and who is to say that the
5 same result may have been seen if Kailondo and others had not
6 turned up to the camp at Makump on 1 May.

7 PRESIDING JUDGE: So what are we to make out of this
8 statement? I'm trying to follow the logic that you are advancing
9 now.

10 MR CAMMEGH: Well, the point is this. Given what Ngondi
11 said about how the --

12 PRESIDING JUDGE: Yes, is this 17 April?

13 MR CAMMEGH: Yes. Given what Ngondi said about how Gbao
14 behaved at the camp on the 17th, where he concluded -- I've got
15 it here thanks to Mr Martin -- I will read it.

16 "On the 17th (and they weren't even ganged up or gathered
17 up at the reception centre for disarmament, which was at
18 Makeni) there the topmost person who I met there was
19 Augustine Gbao. He couldn't give me the reason why they're
20 not going to do that (disarm), and as usual we had a lot of
21 understanding and respect for one another with Augustine
22 Gbao. We talked about it, and he said he so sensed that
23 our reception centre should remain and since the
24 disarmament is for the long-term we should, each party
25 should report, give a report to their higher headquarters
26 on what's going on in the crowd. That there was no need of
27 having combatants demonstrating in town."

28 He was asked:

29 "Would you agree it was Augustine Gbao on the RUF side who

1 was instrumental in urging those people to disperse
2 peacefully on the 17th? Yes, yes, yes Gbao. I commend him
3 for that."

4 And my point then is this: I'm not going to repeat the
5 evidence that we heard from 111 about how Gbao behaved at the
6 Makump camp on 1 May. We admit he was angry when he got there
7 but calmed down having discussed matters and so forth.

8 The comment that I made is this: The evidence has been --
9 and this isn't controversial -- the evidence is that Kailondo
10 turned up in a Land Rover, and that is when things went downhill
11 very rapidly indeed. My point is, well, if Kailondo hadn't
12 turned up, if he had stayed put in Makeni as Augustine Gbao had
13 asked him to do so through, I think it was Ishmael, then isn't it
14 a reasonable inference to draw, if one accepts what DAG-111 has
15 told the Court, that there would have been no trouble at all?

16 Which brings me to the end of the review of the evidence.
17 And, at the end of this long trial, perhaps it's time to draw the
18 line under why Augustine Gbao is here and focus a little bit more
19 on why we are here, and it's a poignant moment. I was trying to
20 think of an amusing anecdote, such as the one when travel sent me
21 to the wrong country on my first trip out here, landing me in
22 Conakry without any visa or money or anything, but it doesn't
23 seem appropriate to make any amusing comments at this stage
24 because this process, this trial has been a very poignant event,
25 particularly for those of us who have been here all along.

26 I would like to say that it's been a lot of fun but it
27 hasn't. It's been hard relentless work, often in the face of
28 great adversity, which I would suggest means that certain people
29 who have dedicated so much time to it deserve a great deal of

1 respect and commendation.

2 One doesn't come here for the money or the easy life or the
3 sunshine. One comes here for a higher value than that, to ensure
4 not that, not just that justice is seen to be done but that those
5 of us who are charged with taking care of it in this fledgling
6 jurisdiction ensure that it is done.

7 My job, as I often shock juries at home, is to say -- well,
8 it is this: It's not to win at all cost; it's no Defence
9 lawyer's job to win at all costs; it's to ensure the Prosecution
10 case is tested, filtered; it's to ensure the defendant's case is
11 heard and understood and then to leave it to the tribunal of fact
12 to do what they want with it. It's to try to ensure that no
13 unfairness is allowed in to hurt the process.

14 There are those who say, of course, that the Special Court,
15 and they are probably right, came here to educate this part of
16 the world and to uphold the rule of law and so it is and that is
17 the privilege which must not be abused.

18 There is also the aspect of course that I think many of us
19 learn an awful lot ourselves about living in a country like this,
20 and observing it first hand the suffering and in many ways the
21 quiet dignity that people display here.

22 Mr Jordash mentioned something that Mr Sesay said the other
23 day. There is one thing that I remember that Mr Gbao said to me,
24 which is something I shall never forget. He said: It's out of
25 adversity that the greatest bonds between men are often formed.
26 And I suggest that is absolutely right. That is what I will take
27 with me from this place and this trial.

28 I hope that what we have done here is to lay down some kind
29 of legacy, to put some sort of history down in the development of

1 this sort of law. I also confidently hope after this review of
2 the evidence, which I hope can be seen to be fair and
3 appropriate, that we've earned something else: And that is at
4 the end of this proceedings Mr Gbao will receive his freedom back
5 again. Thank you very much.

6 PRESIDING JUDGE: Thank you. We will break again for a
7 short pause -- I say short -- it will be short; I will suggest no
8 more than ten minutes and then we will be back to see if we have
9 further questions. Thank you. The Court is adjourned.

10 [Break taken at 4.00 p.m.]

11 [Resuming at 4.20 p.m.]

12 PRESIDING JUDGE: Mr Cammegh, you may feel relieved; we
13 have no questions for you.

14 MR CAMMEGH: Thank you.

15 PRESIDING JUDGE: And we thank you very much for your final
16 presentation. We appreciate your comments and the assistance you
17 have provided to the Court with these comments. We thank you
18 very much.

19 MR CAMMEGH: Thank you.

20 PRESIDING JUDGE: Before we conclude, I would like to
21 express on behalf of the Chamber our thanks and appreciation to
22 all of you for in particular the efforts you have put in putting
23 these final briefs together, and for your very timely
24 presentation in your final submissions in Court. We have
25 appreciated all the assistance you have indeed provided to us.

26 Now, as you can imagine, the work remains with us to
27 complete. But, in the mean time, I would like to express as well
28 our thanks to those of you who have devoted so much time and
29 attention and effort to get to this point in time where we are

1 now close to making the final decision about this RUF trial and
2 we wish to thank people from both Prosecution and Defence in this
3 respect.

4 I am informed that some of you will depart tomorrow and not
5 come back, so, those of you, I am not sure who in particular but
6 I understand that some will not come back. And, well, for those
7 of you, as I say, we have appreciated your efforts, your
8 professionalism and everything you have done in this trial to
9 assist the Court.

10 It's been a long trial. It has been going on for many many
11 years as such, and I know some of you have been with us right
12 from the beginning. So again, our thanks and appreciation and I
13 would like also to express our thanks from the Bench for Mr Rapp
14 to have attended this final submission. It is appreciated.
15 Thank you very much.

16 So I know a few names. I know Mr Harrison, I understand,
17 is departing soon, if I think "soon" means tomorrow and is not
18 likely to come back anyhow. We thank you, Mr Harrison, for your
19 participation. I am not sure who else in the Prosecution.
20 Mr Hardaway, I think, is leaving tomorrow as well. What about
21 Mr Wagona? No, you are staying and Mr Fynn you are staying
22 obviously. So, all of those leaving good luck in your future
23 endeavour and it has been a pleasure having you in this Court.
24 Thank you again.

25 And the Defence, I am coming to you, Mr Taku, don't worry,
26 I can only address one side at a time so I will start with the
27 first accused Mr Jordash. Again, thank you for your
28 participation and your efforts and assistance to this Court. It
29 has been, as you know, a very challenging effort and endeavour

1 and we've appreciated all of it, so, thank you very much and I
2 don't know who in your group will be coming back but, anyhow, it
3 will be a pleasure to see you sometime in the future, whatever
4 the future means, and I obviously deliberately do not mention a
5 time only to say that don't expect anything in August and don't
6 expect anything in September. So, after that, we shall see.

7 So, Mr Taku, again, thank you very much. I know you have
8 been a participant at distance at times but we have enjoyed your
9 participation and your presence here and we appreciate your help
10 and assistance as well. So you were standing up to say something
11 or --

12 MR TAKU: Yes, Your Honour. We will be filing the public
13 version of our brief, negotiating with the Public Defender to
14 very kindly permit my legal assistant Mr Joe Holmes to remain
15 around for at least a week and do the redactions [indiscernible]
16 before leaving back to England. Thank you, My Lord.

17 PRESIDING JUDGE: Thank you, Mr Taku, and Mr Cammegh as
18 well, we thank you very much for your able assistance. And we
19 wish you and all of you good luck in the future. Thank you
20 indeed.

21 And I would like to express our thanks to our own people
22 here and to our legal staff but for them the work is only
23 starting so it's not the end, it's only the beginning of the road
24 before we get to the end, but the Court Management deserves
25 special consideration and thanks because they have done a
26 tremendous job with the final briefs to provide us with as timely
27 distribution, whenever it was timely, but at least for us it was
28 delivered as soon as it was feasibly possible, and I know they
29 devoted many hours and they worked late at night on many nights

1 to do that, and we have appreciated very much that service and I
2 thank you all from the Court Management.

3 Having said that, thank you all. The Court is adjourned
4 until the final judgment in the fall. Thank you very much. The
5 Court is adjourned.

6 [Whereupon the hearing adjourned at 4.23 p.m.]

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