



## Charles Taylor Trial Report (November 10, 2009 – February 18, 2010)

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### 1. Introduction

This report provides an in-depth review of the cross-examination and subsequent re-examination of Charles Taylor in the Special Court for Sierra Leone case *Prosecutor v. Charles Taylor*. Taylor first took the stand in his own defense on July 14, 2009. He testified under direct-examination for thirteen weeks. During his subsequent cross-examination, the Prosecution had the opportunity to question Taylor on the content of his testimony, and attempt to damage his credibility as a witness. Cross-examination began on November 10, 2009, and lasted approximately eleven weeks, concluding on February 5, 2010. The Court granted the Defense one week to prepare for its re-examination, which lasted from February 15 – 18, 2010. On February 18, 2010, Taylor finally stepped down from the stand, ending his seven-month period as a witness in the case against him.

The Prosecution's questions during cross-examination focused primarily on Taylor's claim that he was appointed by the Economic Community of West African States (ECOWAS) Committee of Five (a group of regional leaders attempting to negotiate peace in Sierra Leone) to be the "point president for peace" for the conflict in Sierra Leone. Additionally, the Prosecution tried to prove a pattern of conduct—*i.e.*, that the events that took place in Sierra Leone were seminal to those that took place in Liberia under the reign of the Taylor-led NPFL. The cross-examination, led by Senior Trial Attorney Brenda Hollis, seemed to be based largely on the introduction of various documents the Prosecution hoped would impeach Taylor's testimony. Several times throughout the course of cross-examination, the Prosecution successfully impeached Taylor's testimony with prior inconsistent statements and contradictory documentary evidence. The confrontational approach of the Prosecution triggered much resistance from Taylor—he frequently took a defensive stance when answering the Prosecution's questions.

The proper procedure for introducing documentary evidence became a contentious legal question during Taylor's cross-examination. The Court issued a decision on the matter on November 30, 2009, limiting the Prosecution's ability to introduce documentary evidence that could potentially go to proving Taylor's guilt.<sup>1</sup> The decision contravened previous jurisprudence on the matter, and the Judges refused the Prosecution's motion to appeal their decision.<sup>2</sup> This decision, as enforced by the Court, placed a substantial burden on the

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<sup>1</sup>*Prosecutor v. Taylor*, Case No. SCSL-03-01-T-865, "Decision on Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution During Cross-Examination," 30 November 2009[hereinafter "Fresh Evidence Decision"], ¶ 22.

<sup>2</sup>*Taylor*, Case No. SCSL-03-01-T-898, "Decision on Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination,"

Prosecution, preventing them from introducing a large portion of documentary evidence they claimed could help disprove Taylor's claims.

The change in Presidency of Trial Chamber II, from Judge Lussick to Judge Sebutinde, saw a noticeable shift in Courtroom management. The Judges of Trial Chamber II were generally passive in their approach to Courtroom management during direct-examination and did not attempt to limit the scope, duration, or manner of questioning.<sup>3</sup> However, during cross-examination, Presiding Judge Sebutinde took more initiative and was able to control the proceedings efficiently. Justice Sebutinde managed to guide the Accused, who has a reputation for giving rather lengthy answers on the stand, into giving shorter, more direct answers.<sup>4</sup> This assertiveness ensured more efficient trial proceedings.<sup>5</sup>

This report concentrates on Taylor's cross-examination, while identifying the legal and procedural issues that have arisen during the reporting period. As with previous WCSC monitoring reports, this document is available online at [http://socrates.berkeley.edu/~warcrime/SL\\_Monitoring\\_Reports.htm](http://socrates.berkeley.edu/~warcrime/SL_Monitoring_Reports.htm). Subsequent reports will return to providing monthly summaries of witness testimony and legal issues arising during trial.

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29 January 2010; *Taylor*, Case No. SCSL-03-01-T-904, "Decision on Urgent Applications for Leave to Appeal Oral Decisions of 18, 21, 25 and 26 January 2010 on Use of Documents in Cross-Examination," 9 February 2010 [hereinafter "9 February Decision"].

<sup>3</sup>For further discussion, see Kimberly Punt and Jennifer Easterday, *Charles Taylor Trial Report (July 13 – November 10, 2009)*, UC Berkeley War Crimes Studies Center, December 2009, available at [http://socrates.berkeley.edu/~warcrime/SL\\_Monitoring\\_Reports.htm](http://socrates.berkeley.edu/~warcrime/SL_Monitoring_Reports.htm).

<sup>4</sup>See, e.g., *Taylor*, Trial Transcript, 25 January 2010, pg. 124 (lines 15-10).

<sup>5</sup>See, e.g., *Taylor*, Trial Transcript, 2 February 2010, pg. 26 (lines 7-11).

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## **2. Prosecution Themes and Strategies**

The Prosecution's strategy during cross-examination was to impeach Taylor's testimony, which they attempted to do primarily through the introduction of various documents and the use of prior-inconsistent statements. The Prosecution would ask Taylor a question, refer to his previous statements about the issue from his direct-examination, and then try to introduce documentary evidence that tended to show Taylor was lying or inconsistent. This strategy was weakened early on; however, when the Judges rejected the use of many documents, pursuant to a November decision discussed in detail in Section 4.a. Notwithstanding this decision, the Prosecution did manage to show a number of inconsistencies in Taylor's testimony with this strategy.<sup>6</sup>

The Prosecution's aim also seemed to focus, *inter alia*, on proving a pattern of conduct and weakening the Defense's arguments that Taylor was a statesman in Liberia and a peacemaker in Sierra Leone. Thus, in particular, the Prosecution tried to show 1) that events during the war in Sierra Leone were similar to those that took place in Liberia under the NPFL; and 2) that Taylor's alleged position as point president for peace was an illusion he created.

During the cross-examination, Senior Trial Attorney Brenda Hollis's calm tone contrasted greatly with Taylor's demeanor. Taylor was frequently challenging and confrontational. He seemed argumentative, angry, and defiant—even when presented with very easy questions, which he could have simply answered with a direct "yes" or "no." The overall result was that Taylor portrayed an aggressive demeanor, counteracting the image of the Accused that the Defense sought to portray during examination-in-chief.

## **3. Defense Themes and Strategies**

During cross-examination, the Defense focused primarily on raising objections to the Prosecution's introduction of documentary evidence. The Prosecution repeatedly sought to impeach Taylor with newly introduced documents that were also potentially probative of Taylor's guilt. The secondary relevance of the evidence triggered many objections from the Defense, who argued that the Prosecution ought to have submitted the evidence during its case-in-chief.

## **4. Legal and Procedural Issues**

### ***a. Objection Relating to Documentary Evidence***

As noted above, the most important legal issue that arose during this period had to deal with the issue of the Prosecution introducing "fresh evidence" during its cross-examination. "Fresh evidence" refers to documents that the Prosecution wants to use during cross-examination of Defense witnesses, but that were not admitted during the Prosecution's case-in-chief. The documents are considered "fresh evidence" whether or not they were available to the Prosecution during its case-in-chief.<sup>7</sup>

The issue arose early in Taylor's cross-examination, when the Prosecution attempted to introduce a bundle of documents to which the Defense objected. The Defense argued that

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<sup>6</sup> One clear example of this cross-examination strategy is the questioning on Taylor's escape from prison and the 1985 attempted coup, as explained below in Section 5(h).

<sup>7</sup> Fresh Evidence Decision, ¶ 23.

introducing new documents during cross-examination was tantamount to “ambushing” the Defense, and that no category of “impeachment evidence” exists.<sup>8</sup> The Prosecution argued that there was a distinction between the “presentation” of fresh evidence during cross-examination, and the “admission” of said documents later in the trial. The Prosecution argued that during the presentation stage, it could use fresh evidence for cross-examination. The Prosecution argued, “We suggest that we may use new documents to challenge the witness's evidence, and it is an entirely separate argument as to whether those documents could be put to any other use by your Honors when you are considering the evidence before you at the end of the trial.”<sup>9</sup> The Judges requested a formal motion on the issue.

The Prosecution’s subsequent motion sought guidelines and/or an order on the admission of fresh evidence during cross-examination. In it, the Prosecution requested the Court to allow the use of fresh evidence to challenge Taylor’s credibility during cross-examination, and to allow that evidence to be tendered and exhibited for impeachment purposes and, in certain circumstances, for demonstrating Taylor’s guilt.<sup>10</sup> The Prosecution argued that this was the standard practice at the SCSL and ad hoc tribunals (ICTY and ICTR). It cited a decision in the *AFRC* case in which Trial Chamber II had allowed the Prosecution to use fresh evidence to impeach the credibility of a witness (notably, the First Accused, Brima), and later admitted the document into the evidentiary record, even though the document also went to prove the guilt of the Accused. The Judges reasoned that they were competent to use the documents appropriately.<sup>11</sup> The final Judgment in that case reflects the fact that the Judges indeed assigned the document no probative value, even though they had been admitted into evidence based on relevance.<sup>12</sup> The Prosecution noted that the same approach also was taken in the *CDF* case.<sup>13</sup>

According to the Prosecution, this use of fresh evidence does not violate the Accused’s fair trial rights, and is standard practice at other tribunals.<sup>14</sup> The Prosecution relied on a recent Appeals decision in the ICTY *Prlić* case, which allowed fresh evidence introduced during cross-examination, and also allowed that evidence to be later admitted as probative of guilt of the Accused in exceptional circumstances and in the interests of justice.<sup>15</sup>

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<sup>8</sup> *Taylor*, Trial Transcript, 11 November 2009, pg. 41.

<sup>9</sup> *Taylor*, Trial Transcript, 11 November 2009, pg. 43 (lines 3-7).

<sup>10</sup> *Taylor*, Case No. SCSL-03-01-T-860, “Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution During Cross-Examination,” 17 November 2009 [hereinafter “Motion on Applicable Law”], ¶ 31.

<sup>11</sup> Motion on Applicable Law, ¶ 20, referring to Prosecutor v. Brima, Case No. SCSL-04-16-T, Transcript, 29 June 2006, pgs. 75-76. This transcript was not available to confirm the accuracy of this argument, although it was also cited by the Trial Chamber in its decision on the matter. Fresh Evidence Decision, ¶ 3, note 17. The Trial Chamber also noted, “While the Prosecution refers only to the Trial Chamber’s oral ruling during the course of the proceedings, the Trial Chamber also considered this issue in its final judgment.” Fresh Evidence Decision, ¶ 3, note 17.

<sup>12</sup> Prosecutor v. Brima, Case No. SCSL-04-16-T, Judgment, 20 June 2007, ¶¶ 143-147.

<sup>13</sup> *Id.* at ¶ 7, note 13.

<sup>14</sup> *Id.* at ¶¶ 4, 10-12, 13-14 (arguing that evidence used to impeach witnesses can be admitted into evidence at other tribunals), and 23 (arguing that established practice at other tribunals allows the Prosecution to introduce fresh evidence during cross-examination of Defense witnesses).

<sup>15</sup> Motion on Applicable Law, ¶¶ 15-21, citing Prosecutor v. Prlić, IT-04-74-AR73.14, “Decision on the Interlocutory Appeal Against the Trial Chamber’s Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defense Witnesses,” 26 February 2000, ¶¶ 23-24, 27-28.

The Defense responded by arguing that the *Taylor* case should be distinguished from others because the matter concerns the testimony of the Accused, and the Accused is afforded greater rights than other witnesses whose testimony may be impeached. The Defense agreed with a distinction between fresh evidence used for impeachment purposes and that which is used for proof of guilt, arguing that fresh evidence of the latter should only be allowed in exceptional circumstances.<sup>16</sup>

The Trial Chamber acknowledged that it is common practice to impeach witnesses during cross-examination—that is, to test the accuracy, credibility, and consistency of their testimony.<sup>17</sup> However, the Chamber agreed with the Defense argument that the Accused is in a different position from other witnesses, in particular related to the rights protected in Article 17 of the Statute.<sup>18</sup> Furthermore, the Trial Chamber noted an “important distinction between fresh evidence that is intended solely for the purpose of impeaching the Accused’s credibility, and fresh evidence that is probative of the guilt of the Accused.”<sup>19</sup> The Court opted to take a “particularly cautious” approach to determining issues related to the Accused’s cross-examination, since “the borderline between cross-examination as to credit and cross-examination on issues that may be probative of guilt is difficult if not impossible to determine.”<sup>20</sup>

The Court held that the Prosecution could use fresh evidence for the purposes of impeachment without requiring prior disclosure to the Defense, and that the Judges would decide whether to admit such documents into evidence on a case-by-case basis. However, the Court further determined that fresh evidence that could be probative of Taylor’s guilt had to be disclosed to the Defense. Moreover, this probative evidence would not be allowed during cross-examination unless:

- a) It is in the interests of justice; and
- b) It does not violate the fair trial rights of the Accused.

Such a document would not be allowed into evidence unless the Prosecution could establish “exceptional circumstances.” To determine whether such circumstances exist, the Court resolved to consider:

- a) When and how the Prosecution obtained the documents;
- b) When the Prosecution disclosed the documents to the Defense; and
- c) Why they were offered only after the Prosecution closed its case.<sup>21</sup>

During the cross-examination, this decision was referenced on nearly a daily basis, whenever the Prosecution would attempt to introduce documentary evidence, followed by objections from the Defense. The Bench routinely sustained Defense objections, rendering the Prosecution unable to introduce a large body of documentary evidence. In its application of

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<sup>16</sup> *Taylor*, Case No. SCSL-01-03-T-862, “Defence Response to the Public Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution During Cross-Examination,” 23 November 2009, ¶¶ 14-16.

<sup>17</sup> Decision on Fresh Evidence, ¶ 25.

<sup>18</sup> *Id.* Nothing in Article 17 addresses this issue in particular, except to guarantee that the Accused is guaranteed the right to a fair trial. See SCSL Statute, Article 17.

<sup>19</sup> Decision on Fresh Evidence, ¶ 26.

<sup>20</sup> *Id.* at ¶ 26.

<sup>21</sup> *Id.* at ¶ 27.

the November decision, the Court based its decisions about admissibility on the content of the document in question, not the Prosecution's intended use of it. Therefore, each application required a review of the document, and a determination of whether it, in whole or in part, was probative of Taylor's guilt. Even if the Prosecution only intended to use the document for impeachment, the Court would not allow the Prosecution to use those portions of the document it determined went to guilt. Several illustrative examples are included below.

**i. Examples of this Issue in court:**

The Prosecution attempted to introduce a three-paragraph excerpt from the Sierra Leone Truth and Reconciliation Report.<sup>22</sup> The Defense objected, insisting that this document went to prove Taylor's guilt and did not satisfy the two-prong admissibility test discussed above. The Prosecution argued that it was not asking the Judges to consider the document for guilt, but for impeachment purposes only. However, the Prosecution noted that the Judges could use it for guilt at their discretion. The Judges ruled that two paragraphs in the document went to guilt and that the Prosecution had not convinced them that introducing the document was in the interests of justice and would not violate the fair rights of the accused. The Judges said that their November 30, 2009 decision referred to the content of the document and not the intended use by the Prosecution. However, the Trial Chamber allowed the Prosecution to use the one paragraph that did not go to guilt.

On January 18, 2010, the Prosecution introduced an article by *Africa Confidential* magazine. The Defense objected, saying that the whole article, apart from the third paragraph, went to guilt. The Prosecution replied that they only introduced the document to show African leaders' condemnation of Taylor. The Judges unanimously ruled that the two-stage admissibility test for fresh evidence probative of guilt applied by the Prosecution was not convincing. They added that in their view, the whole article went to prove guilt of the Accused, apart from one sentence in the third paragraph that they felt was benign. They therefore only allowed the use of that one sentence.

In one of the few instances where the Prosecution was allowed to introduce a document that the Defense argued went to prove guilt, Counsel for the Prosecution successfully argued that the particular document in question was far removed from the type of fresh evidence typically denied by international courts. Counsel for the Prosecution distinguished the Prosecution's case from an example the *Krstić* case at the ICTY. During cross-examination of the Accused, Radislav Krstić, the Prosecution attempted to introduce an audiotape with the voice of the Accused saying "kill them all." In that case, the ICTY Trial Chamber ruled that this evidence should have been produced during the Prosecution's case in chief and the tape could therefore not be used. The SCSL Prosecution distinguished this kind of fresh evidence that clearly is probative of guilt from the document it wanted to introduce. Counsel for the Prosecution argued that the document they intended to introduce was concerning arms coming into Liberia, and as Taylor himself had pointed out, he was not charged with violating UN sanctions on arms against Liberia. Therefore, the Prosecution argued, this document clearly did not go to guilt. The Judges ruled that the document was far too remote to go to proof of guilt and allowed the Prosecution to use the document in cross-examination.<sup>23</sup>

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<sup>22</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 43 (lines 1-9).

<sup>23</sup> *Taylor*, Trial Transcript, 27 January 2010, pg. 57 (lines 15-29).

On another occasion where the Prosecution was successful in its application, the Prosecution introduced a document, IRIN West Africa Update 339, dated November 16, 1998. The Prosecution started by stating that it only intended to use two paragraphs and that they were not probative of guilt. The Defense objected, arguing that the IRIN document contained information probative of guilt. He added that the two paragraphs may be intended for impeachment purposes but that the document in its totality went to guilt. Justice Sebutinde reiterated that the Prosecution only intended to use the two paragraphs, to which the Defense responded that the paragraphs suggested a case of command responsibility. The Judges allowed the Prosecution to use the document, ruling that there was nothing in the two paragraphs that went to guilt.

There were several occasions where the Court did not allow the Prosecution to introduce documents that proved a pattern of conduct—and were therefore probative of guilt.<sup>24</sup> These documents, according to the Prosecution, would go to show that the crimes that took place in Liberia were similar to those crimes that took place in Sierra Leone. These are crimes such as use of child soldiers, amputations, and rape, which the Prosecution argues help prove that Taylor was in control of the Sierra Leone war, since he allegedly employed the same tactics there as in Liberia. During his testimony, Taylor frequently denied that these crimes had happened. To discredit this testimony, the Prosecution would need documents that tend to show otherwise. However, since they also went to prove guilt (pattern of conduct), the Judges did not allow the documents, routinely holding that the Prosecution had not met the required two-pronged test.

## **ii. Prosecution's Motion Seeking Leave to Appeal**

Pursuant to the November 30, 2009 decision, the Prosecution was unable to present numerous documents they felt were important to impeach Taylor's testimony, as discussed above. In an attempt to overcome this barrier, the Prosecution filed an urgent application for leave to appeal the Trial Chamber's oral decisions on the use of those documents in cross-examination.<sup>25</sup> The Prosecution based its request on the following grounds:

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<sup>24</sup> Such as the Prosecution's attempted use of the Liberian TRC report. *Taylor*, Trial Transcript, 27 January 2010, pg. 6 (lines 25-28). On other occasions, the Prosecution tried to introduce a US Department of State unclassified document which drew an objection from the Defense; *Taylor*, Trial Transcript, 2 February 2010, pg. 57 (lines 1-2); UN Security Council document S/2002/1115 dated October 25, 2002; *Taylor*, Trial Transcript, 4 February 2010, pg. 130 (lines 22-29); and UN Security Council document S/2003/498; *Taylor*, Trial Transcript, 4 February 2010, pg. 134 (lines 20-29).

<sup>25</sup> The first motion, *Taylor*, Case No. SCSL-03-01-T-882, "Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-Examination," 21 January 2010 [hereinafter "21 January Motion"], is related to the Trial Chamber disallowing the use of three documents during cross-examination of the Accused, namely (a) a decision disallowing the use of a news article from *Africa Confidential* entitled "West Africa, According to Mr. Taylor" dated 22 January 1999 (b) a decision disallowing the use of a news article from the *United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network (IRIN)* for West Africa entitled "ECOMOG Warns 'Warmonger Presidents'" dated 8 April 1999 and (c) a decision disallowing the use of the written testimony of John Leigh, Sierra Leone Ambassador to the United States before the United States House of Representatives Subcommittee on Africa, dated 11 June 1998. The second motion, *Taylor*, Case No. SCSL-03-01-T-889, "Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-Examination," 25 January 2010, relates to decision disallowing the use of footnote 18 and 19 of pg. 105 of a book entitled "*ECOMOG: A Sub-Regional Experience in Conflict Resolution Management and Peacekeeping in Liberia*" by Festus Aboagye. The third motion, *Taylor*, Case No. SCSL-03-01-T-892, "Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-Examination," 28 January 2010, related to decisions disallowing the use of the Liberian

- a) The Trial Chamber’s application of its November 30, 2009 decision was the result of “an erroneous conflation” of well-accepted legal principles related to the use and admission of documents in cross-examination, a factor that allegedly put the Prosecution in an unfair position throughout the cross-examination of the Accused;<sup>26</sup>
- b) The Trial Chamber created an unduly high burden for the Prosecution;<sup>27</sup>
- c) By adopting this approach, the Trial Chamber unnecessarily and incorrectly deprived itself of the ability to consider documentary evidence which impeaches the testimony of the Accused;<sup>28</sup>
- d) The unduly high standard applied by the Trial Chamber was likely to be applied every time the Prosecution sought to put a document to the Accused during the remainder of cross-examination, rendering it “an issue of fundamental legal importance that has so far not been considered by the Appeals Chamber ”; and<sup>29</sup>
- e) The Trial Chamber’s strict approach was likely to interfere with the course of justice as it prevented the Prosecution from fully exercising its right to test the evidence of the Accused in cross-examination and would deprive the Trial Chamber of information relevant to determining the weight to be given to the testimony of the Accused or in some instances, of evidence relevant to prove guilt.<sup>30</sup>

The Defense opposed both motions and submitted, *inter alia*, that the motions did not meet the conjunctive threshold of “exceptional circumstances” and “irreparable prejudice” under Rule 73(B) of the Rules.<sup>31</sup> It further argued that the Prosecution in effect impugned the Decision on Documents itself rather than “the application” of that Decision.<sup>32</sup>

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Truth and Reconciliation Final Report, Volume 2 comprising twenty documents and decisions disallowing the use of the Truth and Reconciliation Commission of Liberia Press Releases comprising seven documents. See 9 February Decision.

<sup>26</sup> 21 January Motion, ¶¶ 10-15. This argument was the same in each of the three motions decided in the 9 February Decision. See 9 February Decision.

<sup>27</sup> *Taylor*, Case No. SCSL-03-01-T-875, “Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination,” 18 January 2010, ¶¶ 9-17; 18-22.

<sup>28</sup> 21 January Motion, ¶ 16. This argument was the same in each of the three motions decided in the 9 February Decision. See 9 February Decision.

<sup>29</sup> 21 January Motion, ¶ 17. This argument was the same in each of the three motions decided in the 9 February Decision. See 9 February Decision.

<sup>30</sup> 21 January Motion, ¶¶ 18-22. This argument was the same in each of the three motions decided in the 9 February Decision. See 9 February Decision.

<sup>31</sup> Rule 73(B) says that decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders. In their decision, the Trial Chamber noted the Appeals Chamber’s decision on interlocutory appeals in the *Norman* case (*CDF* case). In that case, the Appeals Chamber held that at the SCSL, the procedural assumption is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and that any errors which affect the final judgement will be corrected in due course by this Chamber on appeal. *Prosecutor v. Norman et al.*, Case No. SCSL-2004-14-AR73, “Decision on Amendment of the Consolidated Indictment,” 16 May 2005, ¶ 43. Trial Chamber II has also held that an interlocutory appeal does not lie as of right and that “the overriding legal consideration in respect of an application of this nature is that the applicant’s case must reach a level nothing short of ‘exceptional circumstances’ and ‘irreparable prejudice’, having regard to the restrictive nature of Rule 73(B) and the rationale that criminal trials must not be heavily encumbered and, consequently, unduly delayed by interlocutory appeals,” 9 February Decision, pg. 9, citing *Taylor*, Case No. SCSL-03-01-T-584, “Decision on

Adopting the Defense rationale on the issue, the Judges of Trial Chamber II denied the Prosecution leave to appeal the decision. The Court considered that in each of the impugned decisions, the Trial Chamber was simply applying the two-pronged test from the November decision. The Judges concluded that they had correctly applied the test. In the Judges' view, any other factors mentioned in the oral decisions were taken into consideration in assessing those two criteria. They also considered that in this case, the Prosecution could effectively test the evidence of the Accused through means other than admission of fresh documentary evidence, and that the Prosecution had not exhausted these alternative means.

The Court's decision on the Prosecution's request to appeal did not focus on the core of the issue, that the test itself was flawed. However, the Prosecution limited its arguments to the application of the test, and not the test itself. Accordingly, the Judges ruled on their application of the test. This reflects a potential strategic error on behalf of the Prosecution.

It is true that the Court's approach to the use and admissibility of fresh evidence during cross-examination departed from established jurisprudence on the matter. The Judges focused only on the distinction between impeachment and proof of guilt, apparently ignoring the distinction stressed by the Prosecution—that between merely presenting fresh evidence in cross-examination, and later admitting it as evidence. The Court's decision effectively required the SCSL Prosecution to meet a higher burden than that required at other tribunals—and before this same Trial Chamber in the *AFRC* case. In the *Taylor* trial, the Prosecution was required to prove that the use of the document was in the interests of justice and did not violate Taylor's fair trial rights, before even presenting the document to the witness for cross-examination, let alone moving for admission into evidence.

Under existing ad hoc jurisprudence, Trial Chamber II's decision in the *Taylor* case is erroneous. The Chamber incorrectly applied an ICTY Appeals Chamber standard for the *admissibility* of fresh evidence probative of guilt to the *presentation* of such evidence during cross-examination. The ICTY Appeals Chamber previously recognized a distinction existed between fresh evidence probative of guilt and fresh evidence used for cross-examination, and upheld the ICTY Trial Chamber's more lenient approach to evidence used to impeach the credibility of a witness or refresh his or her memory.<sup>33</sup> The ICTY Trial Chamber in *Prlić* held that "the Prosecution may present documents during the cross-examination of defense witnesses primarily for the purpose of testing the credibility of that witness or refreshing

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Confidential Prosecution Application for Leave to Appeal Decision to Vary the Protective Measures of TF1-168," 10 September 2008. It held that "exceptional circumstances" may arise "where the cause of justice may be interfered with" or "where issues of fundamental legal importance" are raised. 9 February Decision, pg. 9, citing *Taylor*, Case No. SCSL-03-01-T-764, "Decision on Defense Application for Leave to Appeal the Decision on Urgent Defense Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE," 18 March 2009; *Taylor*, Case No. SCSL-03-01-T-764, "Decision on Public Prosecution Application for Leave to Appeal Decision Regarding the Tender of Documents," 11 December 2008, p. 3; Prosecutor v. Sesay et al., Case No. SCSL-2004-15-T-357, "Decision on Defense Applications for Leave to Appeal Ruling of 3rd February 2005 on the Exclusion of Statements of Witness TF1-141," 28 April 2005.

<sup>32</sup> *Taylor*, Case No. SCSL-03-01-891, "Defence Response to 'Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-Examination,'" 27 January 2010, ¶ 9. This argument was the same in each of the three motions decided in the 9 February Decision. See 9 February Decision.

<sup>33</sup> Motion on Applicable Law, ¶ 19, citing Prosecutor v. Prlić, Case No. IT-04-74-AR73.14, "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of defence Witnesses," 26 February 2009, ¶ 28.

his/her memory.”<sup>34</sup> It placed no further burden on the Prosecution. As the *Taylor* Prosecution noted in its motion on the issue, “even the Partially Dissenting Opinion recognized that a ‘new document’ could be used in the context of testing the credibility of a witness (albeit without requesting the admission of that document).”<sup>35</sup>

It should be noted that the SCSL Trial Chamber is not bound by previous decisions from the ad hoc tribunals.<sup>36</sup> It is only bound by the SCSL Appeals Chamber, which has not ruled on this matter. Procedurally, the Chamber is free to develop its own jurisprudence on issues such as this, even when it contravenes decisions from previous trials in the same Chamber, or cases in other tribunals. Nevertheless, this decision substantially detracted from the Prosecution’s ability to discredit portions of Taylor’s evidence and test the veracity of his testimony. By not allowing the Prosecution to appeal the application of this decision, the Trial Chamber has disadvantaged the Prosecution, giving them no opportunity for recourse.

**b. Accused Absent from Court**

On two occasions during this reporting period, Taylor was absent from Court at the start of proceedings. On both occasions, his Lead Counsel was also absent.

On January 12, 2010, the Accused was not present in Court, and Defense Counsel Morris Anya reported that the Defense team did not know the whereabouts of their client. After a break, the Defense reported that several months ago, the Dutch Security Services responsible for transporting detainees attempted to move Mr. Taylor and another detainee in the same convoy. According to the Defense, this process entailed taking Mr. Taylor down to the waiting vehicle where he would have to wait up to half an hour, handcuffed, as a second detainee was brought to another vehicle in an attempt to move both detainees simultaneously. The Defense explained that the detainees lodged a complaint, and were assured that this mode of transportation would no longer be employed. However, on the 12th, the Dutch Transportation Services again attempted the simultaneous transportation. Taylor refused to enter the waiting vehicle, eventually arriving for trial an hour late. The Judges, concerned over wasting time, asked the Acting Registrar to submit a report on the matter. The Acting Registrar submitted a confidential report on this issue, but there was no further discussion of the subject in public documents.<sup>37</sup>

Again, on the morning of January 27, 2010, the Accused was not present in Court. Counsel for the Defense reported that Taylor was complaining that the room in which he keeps his personal legal documents had been tampered with. According to the Defense, someone had

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<sup>34</sup> Motion on Applicable Law, ¶ 12, citing *Prlić*, Case No. IT-04-74-T, “Decision on Presentation in Cross-Examination of Defence Witnesses,” 27 November 2008, ¶ 10, referring to *Prosecutor v. Hadzihasanovic and Kubura*, Case No. IT-01-47-T, Oral Decision of 29 November 2004, Transcript, pgs. 12521-12528 (holding that “the Prosecution may present, in the course of cross-examination, any documents that have not already been admitted in order to test the credibility of a witness or to refresh such a witness’s memory. In each of these two cases, the Prosecution may present a document that has not already been admitted and which it had in its possession before or after the presentation of its case”).

<sup>35</sup> Motion on Applicable Law, ¶ 12, citing *Prlić*, Case No. IT-04-74-T, “Partially Dissenting Opinion of Presiding Judge Jean-Claude Antonetti Regarding the Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses,” 27 November 2008, at pg. 4.

<sup>36</sup> See, e.g., *Prosecutor v. Brima*, Case No. SCSL-04-16-PT, “Decision and Order on Defense Preliminary Motion on Defects in the Form of the Indictment,” 1 April 2004, ¶ 22.

<sup>37</sup> *Taylor*, Case No. SCSL-03-01-876, “Submission of the Acting Registrar pursuant to rule 33 (B) of the Rules of Procedure and evidence regarding the delay in bringing the accused to court on 12 January 2010,” 18 January 2010.

allegedly gone through Taylor's personal materials. After a break, the Mr. Gregory Townsend, Head of the Registry's The Hague sub-office, addressed the Court. Mr. Townsend said that he had spoken to the chief of the detention center, who had conducted an informal check at the detention center on January 25, 2010. The purpose was to check the amount of personal effects the detainees have, to determine whether they needed more room. However, Taylor found out about the search the following day, January 26, and claimed that he had felt too distressed about the situation to appear in Court on the 27<sup>th</sup> after detention center personnel had confirmed the search that morning. Taylor's Counsel reported that for over a year now Taylor has noticed that the room adjacent to his cell, where he keeps his personal and legal documents, has been visited frequently without him being informed. They added that although impromptu checks are common, the detainee is usually present. He concluded by saying that Taylor was too upset to come to Court, and would therefore not arrive until the afternoon session, at 2:30. The Prosecution argued that there was no valid reason for Taylor's absence and that he should appear at 12.00. The Prosecution added that if Taylor had admitted to suspecting a breach for about a year, he should have raised the issue in Court. The Judges felt that the matter did not violate the fair trial rights of the Accused and that the detention center chief had latitude to conduct checks. They added that Taylor should appear at 12:00 and use time outside the Court sitting time to check his documents.

However, the Defense continued to argue that this was a very serious circumstance in which documents that might contain information privy to attorney-client confidentiality might have been inspected, and that this violated Taylor's fair trial rights. Justice Sebutinde interrupted, saying that by not appearing, Taylor was holding the court ransom. She agreed with the Prosecution that Taylor should have appeared and raised the issue with the Court but the fact that he felt the need to take time out without Court authorization was wrong. She added that Anya was speculating on whether the documents had been tampered with whereas it sounded like a routine check and therefore Taylor should appear at 12:00. At 12:05, the court resumed with Taylor present. The Registrar also submitted a confidential report to the Court on this issue, but there has been no further public discussion.<sup>38</sup>

## **5. Taylor's Cross-examination**

### ***a. Taylor's Personal Archives***

An important issue during Taylor's direct-examination was the inclusion of documentary evidence originating from his presidential archives.<sup>39</sup> Taking advantage of the opportunity to address this issue again, the Prosecution distinguished between documents originating from Taylor's personal archives and documents that the Defense found in the Monrovia office provided to them by the UN Mission. The Prosecution argued that the latter documents fell into a different evidentiary category than the former, since they were not specifically compiled by Taylor himself. As regards Taylor's knowledge of documents from his personal archives, the Prosecution questioned Taylor about the location where he kept the

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<sup>38</sup> *Taylor*, Case No. SCSL-03-01-908, "Submission of the Acting Registrar pursuant to Rule 33 (B) of the Rules of Procedure and evidence regarding the non-attendance of the accused in court on 27 January 2010," 18 February 2010.

<sup>39</sup> See Kimberly Punt and Jennifer Easterday, *Charles Taylor Trial Report (July 13 – November 10, 2009)*, UC Berkeley War Crimes Studies Center, December 2009, available at [http://socrates.berkeley.edu/~warcrime/SL\\_Monitoring\\_Reports.htm](http://socrates.berkeley.edu/~warcrime/SL_Monitoring_Reports.htm).

documents in order to demonstrate to the Court that Taylor did not have complete control over the whereabouts of the documents. By questioning Taylor on the possibility of other individuals having access to the documents, the Prosecution tried to show that the content of the boxes could have been compromised. The Prosecution argued that it was important to know who held the documents for Taylor and how they were provided to the Defense, especially because of the heavy reliance of the Defense on those documents.

***b. Benefits due to the Conclusion of the Lomé Agreement***

In keeping with the strategy to discredit Taylor's claims that he was involved with the Sierra Leonean rebel groups (in particular, the RUF) as a peace broker, the Prosecution asked Taylor a series of questions insinuating that he tried to benefit the RUF through his peace negotiations. For example, the Prosecution suggested that Taylor ensured that the RUF would benefit from the conclusion of the Lomé Agreement by becoming a part of the Sierra Leonean government. The Prosecution maintained that by transforming into a political party, the RUF (and therefore Taylor) made sure that it would benefit from all the rights of a political party, such as the right of assembly. The Prosecution also confronted Taylor with the position given to Sankoh within the Sierra Leonean government as a result of the Lomé Agreement. Counsel for the Prosecution argued that Sankoh was given a position that was equivalent to that of a vice-president. Consequently, the Prosecution suggested, Sankoh would only have to report to the President, and his function placed him in power over the diamond mining in Sierra Leone. Taylor agreed that Sankoh had powers that were equivalent to those of a vice-president, but noted that Sankoh was a part of a Committee that controlled the diamond mines. Hence, Taylor argued that he did not ensure that the RUF remained in charge of the diamond mining in Sierra Leone.

The Prosecution further suggested that Taylor made sure that the RUF received the most benefits out of the Lomé Agreement, because the amnesty covered the crimes that were widely committed by the RUF. Taylor denied this, and stated that concessions were a necessary aspect of the Lomé negotiations. He further asserted that the Sierra Leonean government benefitted from the Lomé Peace Agreement as well, since it achieved consensus on the demobilization, disarmament, peace, and cessation of hostilities, while the amnesty covered all parties, not merely the RUF.

***c. Linking Atrocities in Liberia to those in Sierra Leone***

The Prosecution spent a large portion of its cross-examination on the crimes allegedly committed by NPFL soldiers between 1991 and 1997. By emphasizing the extent of the atrocities, and linking the specific crimes that were committed by the NPFL to those committed by the RUF in Sierra Leone, the Prosecution tried to demonstrate that Taylor was involved with the RUF.

According to the Prosecution, NPFL soldiers committed ethnically motivated crimes at NPFL checkpoints. Although Taylor acknowledged that this happened at the beginning of the war, he stated that those responsible for the actions in question were punished. Taylor testified that the practice of punishing certain tribes began with the Gios wanting revenge against the Krahn and Mandingo, but that Taylor made sure that the NPFL did not adopt that "as its form," and that perpetrators were punished.<sup>40</sup>

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<sup>40</sup> *Taylor*, Trial Transcript, 19 November 2009, pg. 147 (lines 8-12).

Taylor denied every connection between the Liberian war and the conflict in Sierra Leone. Taylor also tried to distinguish between the nature of the Liberian war and the Sierra Leonean war, and frequently pointed out that the Prosecution has not been able to produce a single amputation witness from the Liberian war who could testify that such practices were common during the war. The Prosecution, on the other hand, tried to demonstrate that while the specific crimes may have differed, they were all widespread and systematic, and were committed by rebel forces (the NPFL and RUF) under Taylor's direct control.

While Taylor acknowledged that NPFL soldiers committed crimes, he also regularly denied knowing about specific incidences or types of crimes the Prosecution mentioned in their questions. Taylor argued that such crimes were not widespread, and that the NPFL dealt with those who had committed the crimes. Taylor stated that the Prosecution tried to generalize the crimes that NPFL soldiers committed as if it was a part of a policy and he vehemently denied that this was true. In this regard, he referred to the efforts within the NPFL to prosecute those individuals who were responsible for the crimes. The following provides a few examples of the alleged NPFL crimes the Prosecution asked Taylor about, and his response.

**i. Rape**

The Prosecution questioned Taylor about his brother, Nelson Taylor, and asked Taylor if he knew of his brother killing people in Bong and Lofa County. Taylor responded that Nelson could not have done that, as he was mostly living in Rhode Island during the war. The Prosecution then asked Taylor if he knew of a woman named Jayneh Seekie, an activist against the Doe Government and a girlfriend to General James Kpoh, an NPFL General. Taylor responded that he did not know her. The Prosecution claimed that Edna, Taylor's sister, was romantically involved with General Kpoh and that she asked Nelson to do something about Jayneh. The Prosecution claimed that Jayneh was later gang raped by Nelson's bodyguards, and when she asked Taylor to intervene, Taylor told Nelson to disappear for a while to avoid confrontations. The Prosecution asked if Taylor knew all this, to which Taylor responded that he did not know about this, and that it sounded like propaganda. This was one of the instances in which the Prosecution tried to show that crimes like rape were committed by the NPFL, and to suggest that Taylor knew about these crimes, especially when they involved members of his own family.

**ii. Use of Child Soldiers**

The Prosecution also questioned Taylor about the use of child soldiers by the NPFL in an attempt to show a pattern of conduct. When the Prosecution claimed that Taylor and the NPFL used children as young as seven years-old as soldiers, Taylor insisted that he did not use child soldiers during the war in Liberia. Counsel for the Prosecution asked if, starting 1990, Taylor used children to patrol the Liberian boarder with Ivory Coast and to man NPFL gates. Taylor answered that he did not. The Prosecution then introduced a transcript containing a prior statement by Taylor, where he denied that young boys took part in the war, but acknowledged that boys were used to man gates.<sup>41</sup> This prior inconsistent statement could damage Taylor's credibility before the Judges.

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<sup>41</sup> *Taylor*, Trial Transcript, 16 July 2009, pg. 109 (lines 7-9).

The Prosecution also asked whether Taylor had used members of a Small Boys Unit (SBU) during Operation Octopus.<sup>42</sup> Taylor responded that he did not. The Prosecution then asked if children were used to fight in 1996 and given drugs to do so. Taylor denied the allegation, at which point Counsel for the Prosecution attempted, unsuccessfully, to introduce documents to impeach Taylor's statements. To end the line of questioning, the Prosecution asked if Taylor knew about the use of child soldiers by the RUF and the AFRC. Taylor responded that he had not been aware of it. The Prosecution maintained that Taylor had been aware of the use of child soldiers, the rapes, and the amputations, since it was a reflection of what had happened in Liberia. Taylor responded that this allegation was totally incorrect.

### iii. Police Brutality in Liberia

Although the crimes Taylor is indicted for do not include and are not related to police brutality, this line of questioning was likely introduced by the Prosecution to show that Taylor's forces in Liberia routinely committed crimes and violated the human rights of Liberian citizens—under Taylor's command. The Prosecution referred to Paul Mulbah, who became director of police after Joe Tate (Taylor's cousin, who had previously served as director of police) was killed. The Prosecution introduced an article from *The Perspective* titled, "Human Rights defenders call for the resignation of police director Paul Mulbah" dated February 23, 2002. The article reported that Mulbah's tenure was characterized by police brutality, including the arrest of national director of the Catholic Justice and Peace Commission, Frances Johnson-Morris. The article alleged that Ms. Johnson-Morris was stripped of her clothing and put in a cell with males. Taylor responded that he knew of her arrest, but that the allegation that she was stripped of her clothing was "total nonsense."<sup>43</sup> The article also reported the flogging of University of Liberia students and that Mulbah had boasted about it on state radio. Taylor responded that he was made aware of the flogging but did not know that Mulbah had boasted about it.

Taylor also testified that he was not aware of a police unit called the SOD (Special Operations Division). Documents from the BBC, IRIN, Amnesty International, and Human Rights Watch were then presented all reporting on human rights abuses by the SOD. The Prosecution suggested that it was strange that these organizations all knew of an SOD whereas Taylor did not. Asked if he remembered an incident where Joe Tate was suspended by the Senate because of the SOD beating up a Senate client, Taylor responded that he was not aware the incident. The Prosecution insisted that he was aware of it because he was the one who reinstated Tate, and therefore should have known why he was suspended in the first place. Taylor maintained that he was not aware of the incident.

The Prosecution asked if Charles Taylor's son, "Chuckie Taylor," engaged in torture as head of the Anti-Terrorist Unit (ATU). Taylor responded that he was not aware of this. Counsel for the Prosecution referred to John Tarnue, who was allegedly tortured by Chuckie. Taylor responded that he was aware of a conflict between the two that led to a fistfight but that was all.

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<sup>42</sup> In October 12, 1992, the NPFL launched "Operation Octopus" which was repulsed by combined ECOMOG, Armed Forces of Liberia (AFL), and United Liberation Movement of Liberia for Democracy (ULIMO) forces. For more information, see Abdoulaye W. Dukule, "Anniversary of Terror: October 12 - Operation Octopus," *The Perspective*, available at <http://www.theperspective.org/octopus.html>.

<sup>43</sup> *Taylor*, Trial Transcript, 2 February 2010, pg. 57 (lines 1-2).

The Prosecution also asked about Tiawan Gongloe, a human rights lawyer who was stripped naked and beaten by the police. As a result of this beating, Tiawan lost hearing in his left ear. Taylor responded that he was aware of Tiawan's arrest but was not aware that he was beaten. The Prosecution wanted to know if Taylor took any action against the police for all these human rights abuses. Taylor reiterated that he was not aware of the incidents.

**d. *Mistreatment of the Liberian Media***

When discussing an incident in which Taylor had detained a few journalists because he purportedly thought that their camera contained a toxic substance, the Prosecution alleged that he merely feared that the journalists would reveal the truth about the abuses that the Liberian government had committed throughout his presidency. Taylor, on the other hand, claimed that his intelligence agencies had been informed by other agencies, including the French intelligence agency, that such cameras could contain carcinogens. He argued that Liberian agencies were told that Taylor should be careful with cameras of that kind. The Prosecution referred to the mistreatment of a journalist and noted that he had been threatened with a knife to his throat. Taylor countered that this never happened, insisting that the journalists were treated with respect by the Liberian Government.

The Prosecution also asked Taylor about a state of emergency in Liberia that began on February 8, 2002 and ended in September 2002. Counsel for the Prosecution asked if Taylor had suspended freedom of expression, including the freedom of press, during this period. Taylor responded that he did not have an absolute authority to do this, and that in fact during his presidency the press grew. The Prosecution then asked if it was correct that Taylor's government used violence to restrain the press. Taylor responded that they did not. Taylor denied knowing about a journalist who was arrested and charged with treason for investigating Samuel Dokie's death. The Prosecution continued with this line of questioning asking about threats, censorship and acts of vandalism aimed at the media in Liberia, specifically *Heritage Newspaper* (owned by Momoh Kanneh, who later fled from Liberia), Radio Veritas and Star Radio. Taylor denied the Prosecution's allegation that the independent radio stations were closed down in order to leave only Taylor's government radio operative.

**e. *Expulsion of Bockarie from Liberia***

The Prosecution questioned Taylor about why Sam Bockarie was expelled from Liberia. Taylor claimed that, due to the allegations concerning his involvement in the Sierra Leonean conflict, he decided that it was necessary to expel Bockarie from Liberia in order to avert the allegations. Taylor stated that he had not wanted Bockarie's actions to be construed as those of a citizen of Liberia, so he stripped Bockarie of his citizenship. The Prosecution alleged that Taylor merely tried to get rid of Bockarie, and sent him to Burkina Faso along with the other former RUF members who had been incorporated into the ATU. The Prosecution further alleged that Taylor had arranged with President Compaoré that Bockarie would participate in the fighting in the Ivory Coast. Although Taylor denied this, the Prosecution suggested that Compaoré had previously helped Taylor, thereby rendering an arrangement between them a possibility.

The Prosecution continued to say that Taylor had not informed the UN of Bockarie's travel plans, despite the travel ban imposed upon Bockarie. Counsel for the Prosecution also suggested that Taylor did not inform the UN because he did not want the UN to know Bockarie's whereabouts (and thereby ensure that Bockarie could continue working for

Taylor). Taylor denied the allegations and argued that it was not the task of the Government of Liberia to individually inform other governments of Bockarie's whereabouts. Also, Taylor stated that the Government of Liberia had announced that Bockarie had left Liberia.

In asking Taylor about his relationship with Bockarie, the Prosecution managed to point out inconsistencies in Taylor's testimony. For instance, the Prosecution asked Taylor whether Bockarie left for Cote d'Ivoire in February. Taylor testified that it was not in February, but in January. Counsel for the Prosecution referred to Taylor's testimony during direct-examination where Taylor said that Bockarie left early to mid-February.<sup>44</sup> Taylor replied that it was in that period and that he could not recollect the exact dates. The Prosecution then asked if Taylor had contacted UNITA (The National Union for the Total Independence of Angola, a rebel group led by Jonas Savimbi) after Bockarie left for Ivory Coast. Taylor said that he did not. Taylor denied that he had met Savimbi. Taylor's prior testimony was then re-introduced, where he had testified that he met Savimbi in Ivory Coast in 1990 and they became "very good friends."<sup>45</sup> Counsel for the Prosecution alleged that Taylor lied under oath. Taylor replied that he had merely made a mistake during direct-examination and that he never met Savimbi. The Prosecution then asked Taylor if Moussa Sesay accompanied Bockarie to Zambia after Bockarie left Liberia. Taylor responded that he did not have any information on this but that he saw Sesay at work every day and would have known if he had gone with Bockarie. The Prosecution then introduced Moussa Sesay's passport, which had stamps indicating that, as of February 2001, Sesay had spent a couple of days in Lusaka, Zambia. This weighed against the accuracy and credibility of Taylor's statement to the contrary.

The Prosecution then questioned Taylor about Bockarie re-entering Liberia and how long Taylor had known about Bockarie's return. Taylor replied that he found out only a few days before Bockarie re-entered the country, and that Liberian government forces tried to hold him off, but that Bockarie forced his way in. Taylor also said that he had one meeting with his National Security Council to discuss Bockarie. To impeach this testimony, the Prosecution introduced a part of Taylor's prior testimony where he said that they held meetings frequently to discuss Bockarie.<sup>46</sup>

The Prosecution also asked Taylor about Bockarie's SCSL indictment. Taylor claimed he was not aware of the indictment, even after meetings with his National Security Council.<sup>47</sup> When the Prosecution asked who else would know about Taylor's relationship with the RUF besides Bockarie, Taylor replied that Issa Sesay and perhaps Johnny Paul Koroma would know, but then amended his answer, asking for Johnny Paul to be deleted because he was SLA, not RUF. The Prosecution concluded this line of questioning by asking how many people were killed and arrested along with Bockarie. Taylor said he did not know. There was no written report from the government, and Taylor said he could not remember how many people died on the scene.<sup>48</sup>

The Prosecution asked Taylor about a conversation with Kabbah on January 28, 2001, when they supposedly discussed returning Bockarie to Sierra Leone. Taylor responded that he told Kabbah that Bockarie did not pose a threat to Sierra Leone, and that since it was an ECOWAS

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<sup>44</sup> *Taylor*, Trial Transcript, 27 August 2009, pg. 86 (lines 4-5).

<sup>45</sup> *Taylor*, Trial Transcript, 24 August 2009, pg. 86 (lines 1-9).

<sup>46</sup> *Taylor*, Trial Transcript, 4 November 2009, pg. 55 (lines 1-2).

<sup>47</sup> *Taylor*, Trial Transcript, 28 January 2010, pg. 114 (lines 24-29).

<sup>48</sup> *Taylor*, Trial Transcript, 28 January 2010, pg. 123 (lines 3-23).

idea to bring him to Liberia in December 1999, he would not repatriate him. The Prosecution asked if bringing Bockarie to Liberia was actually Taylor's idea and not an ECOWAS idea. Taylor responded that he was part of the process, and that it was not solely his idea. The Prosecution alleged that it was Taylor's idea, and further, that he pressured the other presidents to back him. Taylor disagreed, saying that The Prosecution's argument "presupposes that these people are so weak and foolish that they had to succumb."<sup>49</sup> To help prove its point, the Prosecution introduced a code cable from Felix Downes-Thomas to the UN, New York dated December 22, 1999, that stated that Taylor was responsible for mediating the problems between Bockarie and Sankoh and had reached the conclusion that Bockarie should move to Liberia and that Obasanjo had backed him. In response, Taylor suggested that the code cable merely showed "colleagues exchanging ideas."<sup>50</sup>

**f. Taylor's Contact with Witnesses**

The Prosecution also confronted Taylor about his contact with witnesses. Taylor told the Prosecution that he did have contact with three to five witnesses, and that for two or three of those witnesses the testimonies had already been provided to the Court. Taylor argued that this contact stopped months ago, since he was only allowed to have contact with his family. At the time, he maintained that he spoke with them as friends, that the conversations lasted for ten to twenty minutes, and that these conversations were recorded.

The Prosecution suggested that the account given by Taylor was not accurate, since he spoke over a privileged access line that is not recorded. The Prosecution added that Taylor was forbidden to have contact with those individuals over those privileged lines, because these privileged lines were limited to Taylor's contact with his Defense team. However, Taylor claimed that he had been allowed to use the privileged line, since his counsel was present at the time. Nevertheless, the Prosecution argued that Taylor had abused his right to access the privileged line to contact individuals in order to intimidate others. Taylor maintained that he only had contact with two to three witnesses for three to four months while his counsel, Mr. Supuwood, was also present. Additionally, Taylor acknowledged that he had contact on a regular basis since his incarceration with a few witnesses without using the privileged lines.

**g. Weapons in Liberia**

The Prosecution questioned Taylor about arms acquisitions in Liberia, providing evidence that seemed to suggest Taylor engaged in corruption in order to purchase and transport weapons into Liberia to support the conflict in Sierra Leone. The Prosecution alleged that Taylor used false end-user certificates to purchase arms from abroad, due to the arms embargo against Liberia. Taylor responded that he used a valid end-user certificate from Liberia to purchase arms in Serbia. The Prosecution suggested that the Serbian government would have never accepted an end-user certificate in violation with the arms embargo. Taylor, however, argued that the Serbian government "didn't give a damn."<sup>51</sup> The Prosecution then referred to an expert report that concluded that Taylor purchased weapons from a company in Serbia without the knowledge of the Serbian Government and that the weapons were brought to Liberia through Niger. This report could put the truth of Taylor's testimony into doubt.

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<sup>49</sup> Taylor, Trial Transcript, 2 February 2010, pg. 34 (lines 1-2).

<sup>50</sup> Taylor, Trial Transcript, 2 February 2010, pg. 38 (lines 3-4).

<sup>51</sup> Taylor, Trial Transcript, 25 November 2009, pg. 166 (line 8).

According to Taylor, Liberia did not have any arms after the disarmament process. Taylor told the Court that, due to his struggle with the rebels, he started obtaining weapons in the middle of 2001, about which he had written a letter to the UN Security Council telling them that Liberia had a right to purchase weapons for self-defense. When discussing the transportation of weapons into Liberia, Taylor stated that there was a general practice of bribing government officials in the region and that he had engaged in that practice several times. In this respect, Taylor specifically referred to his involvement bribing officials in Niger. Taylor noted that he had authorized a covert budget that was used to bribe government officials, but that he did not know the names of those responsible for arranging the bribes. "I just made the money available," Taylor testified.<sup>52</sup> He further stated that the weapons were transported through countries that turned a blind eye, or where officials had been bribed. However, apart from Niger, Taylor said that he could not identify the specific countries.

Counsel for the Prosecution introduced a UN Security Council note by the President of the Security Council on the situation in Liberia, dated December 29, 2000. The report stated that MI-2 and MI-17 type helicopters were used in July and August 2000 to deliver arms from Europe to Liberia. Taylor swore that he never had an MI-17 and that the panel of experts who submitted that report had lied. He added that he had two MI-2s and MI-8s, and that they are still in Liberia, but he never had an MI-17. The Prosecution then introduced a UN Security Council document pursuant to resolution 1343 concerning Liberia, dated October 26, 2001. The document stated that during the panel's visit to Liberia, they noted two MI-17s, one with the words "Anti-Terrorist Unit," based at the airport of Spriggs Payne, close to the city of Monrovia, and the other grounded at Roberts International Airport. The report said that the two had come from someone called Sanjivan Ruprah. Taylor responded that the two places indicated by the panel were correct, but that the helicopters were MI-8s, not MI-17s.

The Prosecution questioned Taylor about a plane that crash-landed at Roberts International Airport carrying weapons. Taylor responded that he knew of the crash but not the details surrounding it. The Prosecution asked Taylor if he was aware that a UN investigative panel, which had come to Liberia to investigate the crash, was barred from visiting the site. Taylor responded that he was not aware, but that it was Liberia's sovereign right to do so. The Prosecution suggested that the reason given to the UN team was that the site was full of dissidents. However, the Prosecution continued, no warning had been issued about the existence of dissidents near the airport and there was no military presence indicating that there were dissidents in the area. Taylor responded that he did not know the details, and was not aware what information was given to the team. The Prosecution asked Taylor if he was briefed on the panel's visit or on the report they wrote. Taylor responded that he was not.

The Prosecution then asked about a letter that Taylor claimed he wrote to the Security Council in 2001 to inform them that Liberia had taken measures to arm itself for self-defense. Taylor reiterated that he personally signed the letter in 2001. The Prosecution countered with the suggestion that it was not until a UN Panel report in 2002 that a letter was written by the Ministry of Defense. Additionally, the Prosecution alleged that it was not until March 26, 2003 that Taylor informed the press that Liberia had armed itself. Taylor responded that this was just a follow-up procedure and that they did indeed write a letter in

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<sup>52</sup> *Taylor*, Trial Transcript, 25 November 2009, pg. 165 (line 19).

2001. The Prosecution asked if Taylor had lied when he said that he never brought weapons into Liberia by sea, and whether he actually brought them in through the port of Buchanan and the Harper port. Taylor responded that he had not lied. The Prosecution asked if Abbas Fawaz had brought weapons to Taylor through Harper port. Taylor responded that he had already admitted to bringing weapons into the country, and that it did not make any sense for him to lie about his means. The Prosecution then asked what other business Abbas Fawaz was involved in to which Taylor said that he only knew of the timber business. The Prosecution insisted that Fawaz had warehouses where he would store weapons for Taylor, but Taylor refuted this.

***h. Escape from Prison and 1985 Coup***

The Prosecution also raised doubts regarding the truth of Taylor's testimony about his escape from prison in the United States and his movements afterwards. The Prosecution asked Taylor whether it was true that in the course of two months, Taylor had managed to escape from prison, travel to West Africa, and take part in a coup. Taylor said that he had indeed escaped from the US prison in September 1985, and that the coup led by Gen. Thomas Quiwonkpa indeed took place in November 1985. However, Taylor insisted that he was not part of the coup, and said he did not remember saying that he had taken part in the coup. The Prosecution then introduced an attorney file, which was submitted by Ramsey Clark, Taylor's former defense counsel, to the District Court of Massachusetts on July 27, 1990. This file said that Taylor had escaped on September 15, 1985 and that "within months he was in Africa assisting Gen. Quiwonkpa in the coup to overthrow Samuel Doe." Taylor said that he was still in New York when Gen. Quiwonkpa was killed, and that Ramsey knew that, and he did not know why Ramsey would lie in his report. Taylor admitted that he had made an error of the time that elapsed between his escape and the coup, but testified that if he had been on the ground, Gen. Quiwonkpa would have succeeded.

The Prosecution referred to a transcript where the Prosecution had asked Taylor during cross-examination if two months had passed between his escape from jail and the Quiwonkpa coup attempt—to which he had replied, "That is totally, totally incorrect."<sup>53</sup> However, during this cross-examination on January 11, 2009, Taylor admitted that there were two months between the two events. At this, the Prosecution said that Taylor was "fashioning" his answer to the questions asked, after reviewing the transcripts. Taylor responded that he has a right to read the documents and that if he misstated the dates, he would correct them. The Prosecution told him that he is a witness and should just answer the questions as asked. Taylor angrily responded that he does not take instruction from the Prosecution and that he was not only a witness, but also the Accused. "There are contexts involved here and this is my life," he said.<sup>54</sup>

***i. First meeting with Foday Sankoh***

The Prosecution asked Taylor if he had met Foday Sankoh before August 1991. This line of questioning followed allegations from Prosecution witnesses, most notably Suwandi Camara, who had testified that he met Taylor with Sankoh and Doctor Manneh in 1990 in the Mathaba (a guesthouse for the revolutionaries in Libya). Allegedly, Taylor, Sankoh, and Manneh had plotted from there to destabilize the West African region. Taylor responded that he had not met Sankoh before 1991. The Prosecution then introduced a 1998 BBC

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<sup>53</sup> *Taylor*, Trial Transcript, 16 November 2009, pg. 41 (lines 16-17).

<sup>54</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 18 (line 12).

report by Mary Harper where Taylor said, "It is known by everyone that I have been friendly with Foday Sankoh for many years before the revolution."<sup>55</sup> Taylor answered, "That's the knowledge of the people . . . I had never in my life met Foday Sankoh, and I'm saying to you, it is known by everybody that I met him, that is incorrect."<sup>56</sup> The Prosecution argued that Taylor was just playing with words. Taylor said, "I had never known or met him before and I'm telling her that everyone knows this just like everyone knows that I have billions of dollars, everyone knows, and there is no truth to any billions."<sup>57</sup> The Prosecution claimed that this was a lie and that Taylor had met Sankoh in Libya, and that the alliance between Alie Kabbah and Sankoh had gone wrong because Kabbah had wanted a structured revolution. The Prosecution insisted that after the fight, Sankoh wanted to join Taylor and so he travelled through Burkina Faso to join Taylor. Taylor responded, "That's a Prosecution lie."<sup>58</sup>

***j. Trip to South Africa and the Naomi Campbell story***

The Prosecution has alleged that Taylor used diamonds to buy weapons. In particular, the Prosecution further alleged that Taylor went to South Africa to obtain a weapons shipment. Asked about his visit to South Africa in September 1997, Taylor said that while in South Africa he received medical treatment and had dinner with Nelson Mandela. At the dinner, he met Quincy Jones, Mia Farrow, and Naomi Campbell. Taylor had previously said that the only diamonds he had were in his personal jewelry. In cross-examination, the Prosecution accused Taylor of lying, and argued that he had carried diamonds with him to South Africa to buy weapons. Taylor denied this accusation. The Prosecution alleged that after dinner with Mandela, Taylor's men awoke Naomi Campbell and gave her a large, rough-cut diamond that he had obtained from the RUF/AFRC forces in Sierra Leone. Taylor denied the allegation. According to the Prosecution, Naomi Campbell related this incident to Mia Farrow. To prove this, the Prosecution tried to introduce a statement from Mia Farrow, which led to an objection from the Defense. The Defense argued that the document should not be allowed because it went to prove guilt and because it was not a sworn affidavit. According to the Defense, the Prosecution had contacted Mia Farrow on August 10, 2009, and failed to obtain the evidence in a timely manner for the Prosecution's case-in-chief.

The Defense further complained that no contact was made with Naomi Campbell, who would have been in a better position to explain the alleged incident firsthand. The Defense maintained that the statement about the origin of the diamond was hearsay from mysterious unidentifiable men to Naomi Campbell to Mia Farrow. The Prosecution responded that they had disclosed the document to the Judges and the Defense, and informed them that they intended to use it for both impeachment (countering Taylor's testimony that he never had any diamonds) and guilt.<sup>59</sup> Nevertheless, the Defense objection was upheld. The Judges acknowledged that the document is a central issue in the Prosecution case, but the Court disallowed it, holding that the Prosecution had not fulfilled

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<sup>55</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 32 (lines 21-24).

<sup>56</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 34 (lines 9-11).

<sup>57</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 34 (lines 14-19).

<sup>58</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 36 (line 29).

<sup>59</sup> The Prosecution said that the trip to South Africa happened in September, and that Taylor gave a speech in Liberia on the October 3, upon his arrival. In that same month of October, the Magburaka shipment was made to the Junta. The Prosecution concluded that the timing of this occurrence was inculpatory.

the two criteria for inclusion of fresh evidence containing evidence probative of guilt.<sup>60</sup> The Judges also noted that it was not produced during the Prosecution's case-in-chief and that the statement was "by a person as to what she was told by a second person who was relating what she was told by a third person or persons. The accused has not had a chance to challenge what was said in the allegations or to cross-examine the alleged makers of the statement . . . the document is highly prejudicial . . ." <sup>61</sup> This response to hearsay evidence further demonstrates the relatively strict approach the Trial Chamber has been taking to admissibility of evidence during Taylor's testimony—hearsay evidence is usually admitted at the SCSL so long as it is relevant.

**k. *Liberia's Natural Resources***

This line of questioning was used to show that Taylor had reason to perpetrate a war in Sierra Leone in order to gain better quality diamonds across the border. A major element of the Prosecution's case entails trying to show a link between diamonds from Sierra Leone and arms shipments from Liberia. Taylor has continuously insisted that he had no need for Sierra Leonean diamonds, because Liberia also has diamonds.

The Prosecution suggested that when Taylor thought about Liberia's natural resources, he thought about timber and iron ore, yet when he thought about Sierra Leone's resources, he thought about diamonds. Taylor maintained that Liberia had sufficient diamonds of its own. Counsel for the Prosecution then introduced a document titled "President Taylor's address at the 20<sup>th</sup> ECOWAS summit" dated August 20, 1997, where Taylor spoke about improving West Africa by using their resources. He talked about the oil in Nigeria, cocoa and coffee in Ghana, rainforest and iron ore in Liberia and diamonds in Sierra Leone. The Prosecution said that the reason Taylor referred to the diamonds in Sierra Leone was that they were of better quality and much more quantity than in Liberia, a proposition Taylor refuted.

The Prosecution then referred to a map (introduced by the Defense during Taylor's direct examination) of mineral resources that stated that iron ore was the principle earner of Liberia. Under the subheading "Diamonds," it said that the mining was small scale, and that the minerals found did not warrant the same economic importance as of those from Sierra Leone. While Taylor agreed that diamonds were small enough to be more easily transported in a briefcase than timber or iron ore, he consistently denied any suggestion that he traded in Sierra Leonean diamonds or used them to advance his interests or the interests of the RUF.

**l. *Taylor's Position as "Point President for Peace"***

Another Prosecution line of questioning aimed at proving to the court that Taylor's position as the "point president for peace" was merely a ruse. Taylor was asked by the Prosecution if he had reminded anyone during the many accusations aimed at him, that he was point president for peace. Taylor answered that everyone knew of his position so there was no need to remind them.

The Prosecution then referred to a Liberian government document where the government responded to the allegations of their alleged involvement in the Sierra Leone war. The Prosecution said that, yet again, the document did not point out that Taylor was in fact point president for peace. Counsel for the Prosecution added that Taylor did not even mention his

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<sup>60</sup> See discussion above, Section 3(a).

<sup>61</sup> *Taylor*, Trial Transcript, 14 January 2010, pg. 99 (line 15-26).

meetings with Bockarie in September and October of that year in the policy statement while he was listing his efforts in Sierra Leone. Taylor insisted that he did not feel the need to do this. The Defense objected, saying that on the next page, the statements said that the Committee of Five had *inter alia* appointed Liberia to head the search for peace in Sierra Leone. The Prosecution answered by saying that its point was to prove that Taylor never mentioned his meetings with Bockarie to anyone as part of his duties as point president for peace. Judge Sebutinde asked the Prosecution to continue and instructed the Defense to bring this up in his re-direct if he so wished.

The Prosecution went on to introduce a *Sierra Leone Web* news report, dated December 29, 1999, which reported that Gambian President Yahya Jammeh offered to mediate in Sierra Leone. The Prosecution asked why Jammeh would offer this if Taylor was in fact the point president for peace. Taylor said he was not aware that Jammeh had offered.

At this point the Prosecution asked questions aimed at showing that, as the alleged point president for peace, Taylor was sure to hear of the threats continuously issued by Bockarie, and therefore could not have held meetings for peace with Bockarie at the same time. Counsel for the Prosecution asked Taylor if he had been briefed that Sam Bockarie wanted to attack Freetown. Taylor said that he did not recall that particular briefing. Asked if he thought it would have been important for the point president for peace to know this, Taylor said it would definitely have been important, but maintained that he could not remember hearing it. The Prosecution then introduced an Inter Press Service (IPS) article, "Politics Sierra Leone: No lawyer offering to defend rebel leaders," dated September 7, 1998. This article reported Bockarie as saying he would "kill all living things including chicken if Sankoh was not released."<sup>62</sup> Taylor testified that he did not remember the briefing, but insisted that he would have raised the issue with Bockarie if he had known. The Prosecution suggested that Taylor did know, because Bockarie was acting under Taylor's command. The Prosecution also resubmitted that, as point president for peace, Taylor was told what Bockarie intended to do. Taylor said that if he knew Bockarie was planning this, he would not have accepted Bockarie in his presence. He further commented that would be ludicrous to imagine "that president Hu Jintao would know every detail of what is happening in North Korea."<sup>63</sup>

At this, the Prosecution asked if Taylor had told his briefers what was important to him as point president for peace, because then they would have known to inform him on Bockarie's statements. Taylor said that his role was not to brief them. The Prosecution continued to press the issue, and Taylor became agitated, telling Counsel for the Prosecution, Brenda Hollis, that she had never worked for a government and could therefore not know what she was talking about.<sup>64</sup> Judge Sebutinde told Taylor to control himself and not to make such statements.

The Prosecution also tried to illustrate to the Court that the NPFL did not act in good faith when it negotiated the peace agreement between the warring factions in Liberia in order to show Taylor's lack of commitment to peace in general. The Prosecution emphasized that the NPFL did not fully comply with the peace process in Liberia, since it did not adhere to the

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<sup>62</sup> *Taylor*, Trial Transcript, 18 January 2010, pg. 69 (lines 21-25).

<sup>63</sup> *Taylor*, Trial Transcript, 11 January 2010, pg. 37 (lines 23-27).

<sup>64</sup> Colonel Brenda Hollis, now Prosecutor of the SCSL, is actually a retired U.S. Air Force officer.

arms embargo and the demobilization and disarmament process as much as Taylor had led the court to believe during his direct-examination.

**m. Taylor Condemned?**

The Prosecution introduced this line of questioning to yet again impeach Taylor's testimony that he was appointed point president for peace by the West African states. Counsel for the Prosecution stated that many African presidents had condemned Taylor's actions in Sierra Leone. The Prosecution went on to say that many West African presidents were worried about Taylor's ambition in West Africa. Taylor replied that the Committee of Five and the Secretary General of the UN commended his work. Asked if he remembered Major General Felix Mujakperuo (ECOMOG commander in Sierra Leone as of April 1999) warning him and the president of Burkina Faso, Taylor said that he did not remember any such warning, and that commanders were not in a position to issue such warnings. Taylor continued, testifying that previous commanders Malu and Shelpidi were both disciplined for their misconduct, and removed from their position. The Prosecution suggested that Taylor had insisted on their removal because, with them around, he could not continue with his misdeeds in the region. Taylor denied this.

The Prosecution then suggested that Jerry Rawlings had condemned Taylor's actions in Sierra Leone and saw Taylor's actions as a stab in the back. Taylor responded that he was good friends with Rawlings, and that Rawlings had never told him this. The Prosecution introduced an article in *African Politics* magazine, dated January 18, 1999, titled "Africa Politics: Liberia blamed in Sierra Leone conflict." This article reported that Rawlings was the most outspoken of the West African leaders blaming Taylor for the Freetown carnage. Rawlings reportedly warned Liberia to stop supporting the rebels or face the full effect of the region. Counsel for the Prosecution stated that Rawling's condemnation was clear. Taylor countered that the Prosecution was assuming that Rawlings had actually said this.

Taylor was then asked by the Prosecution about his alleged friendship with Kabbah—specifically whether Kabbah had accused Liberia of interference. Taylor answered that he had received letters from Kabbah expressing his gratitude. He said he had heard of the allegations but did not consider Kabbah his enemy. The Prosecution asked Taylor if he remembered a representative from the Government of Sierra Leone who said that Taylor was involved with the rebels. Taylor said he had no recollection of that. The Prosecution then introduced an article by Sierra Leone web news, dated October 30, 1997, where an aid from the Government of Sierra Leone said that he had information that Taylor was working with the Junta. Taylor responded that he did not know of this aid, and seeing as it was not Kabbah or an official, he could not take this seriously.

The Prosecution continued, stating that Kabbah did not invite Taylor to his reinstatement. Taylor said that he was invited but did not attend. The Prosecution insisted that Taylor sent a low ranking delegation that was not well received. To corroborate this, the Prosecution introduced a story from a newspaper, the *Independent Observer*, entitled, "We don't want Taylor here tomorrow." The article stated that Sierra Leoneans had criticized the fact that Taylor would attend. This was mainly because Taylor had insisted on the release of Foday Sankoh as the only road to peace. Taylor responded that Kabbah was "smart enough," and that if these allegations were serious, he would not have been invited by Kabbah. Hollis then introduced an article by the *Sierra Leone Web* news, dated March 14, 1998, where deputy minister for information Arthur Massaquoi said that there was poor reception accorded to

the Liberian delegation, and that they were jeered. Taylor answered that the allegations definitely caused some tensions. He equated the situation to when somebody threw a shoe at former US president George Bush in Iraq.

The Prosecution asked Taylor if he knew that Obasanjo had expressed his concern that Taylor was destabilizing the region. Taylor said he did not know. The Prosecution introduced a Security Council document, S/2000/992, dated October 16, 2000, and titled "Report of the Security Council mission in Sierra Leone." The document stated that Guinean President Conte, echoed by Obasanjo, had said that Liberia was contributing to the destabilization of the region. The Prosecution also introduced a document from the Embassy of Nigeria in Monrovia, dated January 19, 1999, on the events in Sierra Leone. The text said that the position played by Liberia in Sierra Leone was regrettable.

***n. Human Rights Commission and the Judiciary***

The Liberian Human Rights Commission (LHRC) was the next subject on the Prosecution's list. The aim was to discredit this institution by showing that it was not independent from the Executive. This was likely aimed at disproving Taylor's claims that his presidency respected human rights in Liberia. The Prosecution introduced various newspaper articles that suggested that the LHRC did not investigate human rights violations, did not take office until 1999, and did not have offices or a budget, and that all investigations it conducted had to be approved by the Government. Taylor denied each of these claims.

Counsel for the Prosecution alleged that the only viable adjudication option the LHRC had (if and when they found human rights violations) was the judiciary, which was heavily influenced by the executive. The Prosecution insisted that the judiciary was not independent, that very little money was allocated to them, and that the chief justice complained about interference from the executive. Counsel for the Prosecution introduced a newspaper article from *allafrica.com* from 1998 to support this contention. Taylor replied that there might have been members of his government who did interfere with the judiciary, but that he could not account to everyone in his government. Taylor then explained that western countries have even more interference with the judiciary. At this point, Counsel for the Prosecution interjected and asked Taylor if he was done with his speech, which incensed Taylor. He demanded that the Prosecution "Stop referring to my statement, my evidence, as a speech, please."<sup>65</sup>

The Prosecution asked if Taylor's failure to pay the judiciary contributed to their corruption. Taylor responded that there was a time when no one, including the executive, was unpaid. A report from the International Legal Assistance Consortium (ILAC) on Liberia, dated December 2003, stated that there was an almost unanimous distrust of Liberia's courts. Submitted into evidence by the Prosecution, the report noted, "Judgment, freedom and even life itself, were often sold to the highest bidder."<sup>66</sup> Asked if this was the case in his government, Taylor responded that he was not president in 2003.<sup>67</sup>

***o. Taylor's Awareness of a possible Indictment***

The Prosecution alleged that Taylor must have known that he would be indicted for war crimes, and accordingly took measures to protect himself. During Defense questioning dated

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<sup>65</sup> *Taylor*, Trial Transcript, 19 January 2010, pg. 88 (lines 11-14).

<sup>66</sup> *Taylor*, Trial Transcript, 19 January 2010, pg. 95 (lines 16-17).

<sup>67</sup> Taylor stepped down as President and left Liberia in August 2003.

August 6, 10 and 31, 2009, Taylor had repeatedly stated that not even in his “wildest dreams” did he expect or foresee an SCSL indictment. Nevertheless, the Prosecution insisted that as early as 1993, Taylor knew that he could be tried of war crimes. Taylor responded that he had “no recollection of such awareness.”

The Prosecution claimed that during an OAU meeting held in July 1996, the members resolved to ask for the formation of a war crimes tribunal to be established for crimes committed by warring factions in Liberia. An ECOWAS official journal from 1997 was introduced as documentary evidence to support this contention. Taylor denied knowing about the meeting and the resolution. He also denied knowing about the Nigerian government saying in January 1999 that they would do everything possible to bring men like Taylor before the courts for crimes committed in Liberia. He said that if he had known, he would have changed his decision to go to Nigeria after leaving office in Liberia.

Taylor admitted that he knew about the formation of the Special Court, and the war crimes charges faced by Foday Sankoh. The Prosecution suggested that it was not until after Security Council resolution 1315 (S/RES/1315), dated August 14, 2000, on the creation of the SCSL, that Taylor’s government disengaged itself from the RUF. Taylor responded that his government made the announcement in 2001, and that the Prosecution’s insinuation that it was right after the resolution was wrong.

The Prosecution introduced a Security Council report pursuant to resolution 1343 (2001), document S/2001/424, dated April 30, 2001, that announced that Taylor’s government had disengaged itself from the RUF and expelled Bockarie. Counsel for the Prosecution stated again that the government only did this to distance themselves from the RUF at that time. Taylor responded that resolution 1343 demanded that they take these measures, and they were therefore complying. Taylor testified that he had not known that Sam Bockarie was among the Accused at the SCSL. To counter this assertion, the Prosecution introduced an Amnesty International report titled, “Sierra Leone: First indictments before the Special Court for Sierra Leone” dated April 2, 2003. The report noted that the SCSL had announced its first indictments on March 10, 2003, and that amongst them was an indictment against Sam Bockarie. The report stated that, between the seven Accused, five were in custody, but Johnny Paul Koroma had evaded arrest while Bockarie was in Liberia. The Prosecution asked if Taylor had seen the report. Taylor said no.

**p. Sanjivan Ruprah**

One of the people often named by the Prosecution as Taylor’s arms dealers is Sanjivan Ruprah. Taylor has repeatedly denied personally knowing Ruprah. The Prosecution, using documentary evidence showing a \$500,000 payment to a Swiss bank account in Ruprah’s name, asked Taylor whether he had authorized the payment. Taylor responded that he had, but he could not recollect the specifics. The Prosecution suggested that it was a large amount to forget, and asked who Sanjivan Ruprah was and why large amounts of money were sent to him. Taylor responded that Ruprah was a Liberian Ambassador at large. Regarding the money, Taylor commented, “A president doesn’t bother himself with getting into the details.”<sup>68</sup>

Taylor insisted that he had been completely honest with the Judges about what he knew of Sanjivan Ruprah. Taylor claimed that that he had told a UN panel of experts that he “knew

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<sup>68</sup> Taylor, Trial Transcript, 27 January 2010, pg. 61 (lines 8-12).

of” Ruprah. Trying to show inconsistencies in Taylor’s various responses to questions on this issue, the Prosecution then referred a Court transcript where Prosecution witness Ian Smiley (who had been the head of the UN panel of experts) testified that when they asked Taylor if he knew Ruprah, he said that he did not. The Prosecution introduced another transcript where the Defense had asked Taylor if he knew Ruprah. He replied that he did not.<sup>69</sup> This made Taylor go into a long explanation that he had not lied, and that he did not know Ruprah but he knew *of* him. “Is that the kind of word games you were playing with the panel of experts?” asked Counsel for the Prosecution.<sup>70</sup> Taylor became agitated, and denied the Prosecution’s accusation.

The Prosecution then asked Taylor if he knew of a Mr. Leonid Minin, who the UN panel had indicated traded arms in conjunction with Ruprah. Taylor said he did, but had not tried to use him for arms deals. The Prosecution referred to a transcript in which Taylor said he had tried to do arms deals with Minin but Minin failed.<sup>71</sup> Yet again, the Prosecution managed to point out an inconsistency in Taylor’s testimony. Taylor defended himself by saying that lawyers kept twisting questions. The Prosecution then noted that the lawyer who had asked the question was Courtenay Griffiths, lead counsel for the Defense. The Prosecution asked Taylor if he was implying that Griffiths was twisting questions. Again, Taylor became agitated, and Presiding Justice Sebutinde intervened to instruct the Prosecution that they had made their point and could move on.

**q. United Nations Office in Liberia**

The Prosecution has alleged that some of the documents in Taylor’s possession were obtained in suspicious ways. Most of these documents are UN code cables between the Representative of the Secretary General in Liberia and John Prendergast in the UN office in New York. Taylor was questioned about the Representative of the Secretary General (RSG) Felix Downes-Thomas, who was appointed on December 12, 1997. The Prosecution asked Taylor if he knew why Downes-Thomas was replaced by Abu Musa. Taylor said that he did not know. Taylor testified that the only UN code cables he received from Downes-Thomas were the ones that focused on Sierra Leone. To impeach Taylor’s testimony on this point, the Prosecution introduced a prior inconsistent statement where Taylor had testified that his government discussed receiving code cables from Downes-Thomas that are not secret but pertain to Liberia.<sup>72</sup> The Prosecution noted that nothing in that testimony indicated that Taylor had asked for code cables focused on Sierra Leone. Taylor responded that, at that time, Liberia was most concerned with Sierra Leone. His answer implied that by receiving cables pertaining to Liberia, they would automatically receive those on Sierra Leone.

The Prosecution suggested that when Taylor received the code cables, he knew that he was not supposed to receive them. The Prosecution introduced various cable codes, and asked if Taylor had received them. Taylor responded that he had. One cable talked about Special Envoy Okello’s unannounced visit to Monrovia. The Prosecution alleged that, at this point, Okello was sent to Monrovia because the UN feared Downes-Thomas was getting too close to Taylor. Taylor denied the allegation, saying he did not know why Okello was sent. The Prosecution then introduced more code cables that were signed as received by the UN

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<sup>69</sup> *Taylor*, Trial Transcript, 25 August 2009, pg. 145 (lines 2-3).

<sup>70</sup> *Taylor*, Trial Transcript, 27 January 2010, pg. 67 (lines 11-12).

<sup>71</sup> *Taylor*, Trial Transcript, 25 August 2009, pg. 129 (lines 16-21).

<sup>72</sup> *Taylor*, Trial Testimony, 29 September 2009, pg. 35 (lines 19-25).

Department of Peace Keeping Operations (DPKO) Registry and asked Taylor where he obtained them. Taylor responded that he received the cables from the RSG. The Prosecution alleged that he must have come across the documents from other means. Taylor denied this allegation and insisted he received the code cables from the RSG.

***r. Conspiracy from the West***

The Prosecution also asked Taylor about the supposed conspiracy from the west that he consistently referred to in his testimony. Taylor had testified that cooperation existed between his government and the Central Intelligence Agency (CIA) when he was in power in Liberia. He had also told the Court that the CIA had tipped him off to an assassination attempt against him. The Prosecution suggested that if such cooperation existed, then it would be inconsistent with the US trying to oust him. Taylor responded that sometimes intelligence agencies do one thing, and then they switch to something different. The Prosecution asked about whether various people were part of the conspiracy. Taylor excluded Kabbah, Maxwell Khobe (former Nigerian commander of ECOMOG based in Sierra Leone) and other military commanders of the West African peacekeeping troops, including General Timothy Shelpidi, General Victor Malu, and General Mujakperuo from the supposed conspiracy, saying that these people were just doing their jobs. Former Nigerian president Olusegun Obasanjo was also excluded from the conspiracy as Taylor felt Obasanjo was pressured by the US to arrest him and transfer him to the Special Court for Sierra Leone.

The Prosecution concluded its cross-examination by asserting that Taylor was indeed guilty of all the charges in the indictment. Taylor denied the assertion.

**6. Taylor's Re-examination**

The Defense started their re-direct examination on February 15, 2010, and concluded on February 18, 2010. During this week, the Defense, led by Courtenay Griffiths, QC, re-introduced documents the Prosecution had used during cross-examination. The purpose was to have Taylor explain and deny the many Prosecution allegations leveled against him that arose from those documents.

Taylor reiterated that he last bought arms in 2002, but that the delivery continued until 2003. Additionally, he added that the Liberian Government set up a bank account for covert purposes pursuant to a resolution passed around November-December 1999 by the legislature, which asked the government to use "any and all necessary means" to protect the country.

Counsel for the Defense asked Taylor about the residence Taylor had provided Foday Sankoh in Gbarnga. The Prosecution had suggested that this residency was inside Taylor's executive mansion. Taylor denied that this was true. He added that Sankoh did not live there permanently and that the residency was a few blocks away from the executive mansion, but that he could not remember the name of the area. Additionally, Taylor said that the Sankoh only had the facilities from August 1991 until May or June 1992. The Defense referred to the Mary Harper interview,<sup>73</sup> and asked Taylor to tell the Court when he met Sankoh. Taylor responded that he met Sankoh in August of 1991 in Gbarnga.

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<sup>73</sup> Taylor, Trial Transcript, 11 January 2010, pg. 32 (lines 21-24).

The Prosecution alleged that Taylor had intimidated some witnesses. To clarify this point, the Defense asked Taylor to explain the procedure he had to undergo to make a call at the SCSL's Detention Center. Taylor responded that he had to submit the name of the person he intended to call together with their number. The Court would conduct background checks on the person before giving an approval, usually two weeks later. The guards at the detention center would then call the person, transfer the call to Taylor's cell phone, and record the conversation. Griffiths then asked for the procedure if Taylor intended to talk to his lawyers. Taylor answered that he had a privileged list of his lawyers with all the names apart from that of Terry Munyard. He would select the lawyer he intended to talk to, and then guards would place the call. The Defense asked if Taylor spoke to Mr. Supuwood (a member of the Defense team) and if the phone call was shared by anyone else. Taylor responded that indeed he spoke to Supuwood and that the call was shared, as he was using Supuwood's help to try to get two witnesses from Monrovia. The Defense wanted to know whether the Court's Registry Office had ever accused Taylor of intimidating the Prosecution's witnesses. Taylor said no, and that all the phone calls were recorded.

Counsel for the Accused also re-directed on the allegation that Taylor insisted on being in the Committee of Five to help the RUF and the AFRC. The Defense asked how Taylor came to be on the Committee of Five. Taylor responded that after coming from a civil war, he felt he had expertise in the subject of Sierra Leone and the Committee agreed. Other than peace, he testified, he did not have any other agenda. Asked who else was on the committee, Taylor responded that there was the President of Guinea Lansana Conte, the president of Ivory Coast, Henri Konan Bédié, the president of Nigeria, Sani Abacha, and the president of Ghana, Jerry Rawlings. Taylor said that he did not get along well with Conte and Bédié. Taylor testified that the presidents on the Committee of Five were not so weak or stupid as to allow themselves to be convinced by Taylor, and therefore the Prosecution's allegation about his involvement with the committee was wrong.

The Defense then asked if Taylor had an international investigator and who he was. Taylor named individuals who had worked as his international investigator, including Defense counsel Morris Anya. He then explained that the international investigator's work was to be a fact finder—*i.e.*, he visited the UN headquarters in New York, ECOWAS headquarters in Abuja, AU headquarters in Addis Ababa, Justice Minister and Vice President's office in Sierra Leone amongst other locations to collect information. The Defense followed this line of questioning because of the Prosecution's doubt of where the Defense acquired their documents. Taylor confirmed that the international investigator obtained these documents.

Counsel for the Defense then asked Taylor about his relationship with Felix Downes-Thomas and reminded Taylor of the Prosecution's allegations that Downes-Thomas was his lackey. Taylor responded that he resented that allegation "with a degree of anger,"<sup>74</sup> as Downes-Thomas was an honorable man. The Defense asked if Downes-Thomas was prohibited from providing Taylor with UN code cables. Taylor responded that he was not prohibited, and nor would he jeopardize his job to do something he was prohibited to do.

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<sup>74</sup> Taylor, Trial Transcript, 16 February 2010, pg. 117 (line 26).