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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 03 CR 978
)
Plaintiff,))
)
vs.)
)
MUHAMMAD HAMID KHALIL SALAH,) Chicago, Illinois
) March 13, 2006
Defendant.) 5:15 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - SUPPRESSION HEARING
BEFORE THE HONORABLE AMY J. ST. EVE

APPEARANCES:

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Also present: S/A DAVID BRAY, FBI
S/A BRADLEY BENAVIDES, FBI
S/A JILL ROBISON, FBI
MR. ELI, Legal Adviser
MS. NETA, legal Adviser
MR. ALON, Security Adviser
MS. AYELET LEVY,
Israeli Ministry of Justice
MS. MERAV ROZENBLUM, Interpreter
MS. DINA LEVINE, Interpreter

Court Reporter: Ms. Blanca I. Lara
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PROCEEDINGS RECORDED BY
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TRANSCRIPT PRODUCED BY COMPUTER

1 (Whereupon the Court directed its attention to the
2 suppression hearing, and to a CIPA Section 4 which is not part
3 of this record, after which the following further proceedings
4 were had herein)

5 THE MARSHAL: All rise.

6 THE COURT: You may be seated.

7 I have just completed a Section 4 hearing. Hearing
8 first, and then review of documents second.

9 I have directed the government to make some
10 additional disclosures to you based upon my review. And I
11 know Mr. Ferguson went down to get those disclosures for you.
12 He will be back up with them. In the interim, we're going to
13 start with the next witness.

14 MR. DEUTSCH: Judge, before we do, can we get some
15 understanding. As you know, I have a witness that traveled
16 6,000 miles.

17 THE COURT: He's not going to get on tonight.

18 MR. DEUTSCH: I understand that. Can he get on first
19 thing tomorrow?

20 THE COURT: We're going to try. I don't know if it
21 will be first thing. Let's see where we are tonight. I'm
22 willing to go past 6:00.

23 Did you say an hour?

24 MS. HAMILTON: Probably an hour.

25 THE COURT: On direct. I don't know who's crossing.

1 I don't know how long your cross is going to be.

2 MR. DEUTSCH: Well --

3 THE COURT: I'm trying, Mr. Deutsch.

4 MR. DEUTSCH: I understand, Judge. But all I'm
5 saying is that I don't think we're going to be able to get
6 both witnesses direct and cross, even on the quickest. If
7 they have an on both witnesses, that's 2 hours. If we have an
8 hour on cross for each, that's 4 hours. And it's 5:15 now.

9 THE COURT: Let's start with this witness. I'll see
10 where we are at the end of the day. You've known the time
11 constraints. I'm doing everything I possibly can to
12 accommodate your witness.

13 Bring in the witness, please.

14 MS. HAMILTON: Your Honor, the government calls Hezzi
15 Eliyahu.

16 THE COURT: Please raise your right hand.

17 (Witness duly sworn.)

18 THE COURT: You may be seated.

19 Ms. Hamilton, you may proceed.

20 MS. HAMILTON: Thank you, your Honor.

21 HEZZI ELIYAHU, GOVERNMENT'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MS. HAMILTON:

24 Q. Could you please state and spell your name for the, Judge.

25

1 THE WITNESS THROUGH INTERPRETER:

2 A. Hezi Eliyahu.

3 MS. HAMILTON: Your Honor, do you need him to spell
4 it?

5 THE COURT: Yes.

6 THE INTERPRETER: The witness knows it in Hebrew.
7 Shall I do it in English?

8 THE COURT: Sure. If you would, please.

9 THE INTERPRETER: Hezzi is H-e-z-i. Eliyahu, I think,
10 is E-l-i-h-a-u. I think, Eliyahu.

11 MS. HAMILTON:

12 Q. Where do you live?

13 A. In Israel.

14 Q. What languages do you speak?

15 A. Hebrew and Arabic.

16 Q. Do you speak any English?

17 A. Not at all.

18 Q. What do you do for a living?

19 A. I work for the Israeli police as a senior investigator,
20 and I am -- I am -- I train young officers.

21 Q. Are you a police officer?

22 A. In Israel they don't --

23 THE INTERPRETER: Sorry, that's translator note.
24 In Israel they don't call themselves officers. He has the
25 rank of rasau (phonetic) which is like a major or a captain.

1 Sergeant major.

2 BY MS. HAMILTON:

3 Q. As a sergeant major, do you investigate crimes that are
4 committed within the State of Israel?

5 A. Yes.

6 Q. How long have you done that?

7 A. Since I started working for the police.

8 Q. When did you start working for the police?

9 A. 22 years ago.

10 Q. Have you ever worked for the ISA?

11 A. No.

12 Q. Briefly, how do responsibilities of the Israeli police
13 differ from the responsibilities of the ISA, as far as you
14 understand?

15 A. As I understand, the ISA is an intelligence unit that
16 investigates if a crime was committed. And then the function
17 or role of the police, according to the law and to the extent
18 that there is -- that somebody committed crimes against the
19 law, its function is to investigate, to give testimony, to
20 collect evidence and to bring the suspects to trial.

21 Q. Is taking a statement of someone who is being interrogated
22 by the ISA one of the ways that the Israeli police collect
23 evidence for their criminal prosecutions?

24 A. Certainly. As I indicated before, our role or function is
25 to obtain testimony and to bring the suspect to trial.

1 Q. And when you say "obtain testimony," is that a written
2 statement that you take from someone as a police officer?

3 A. Exactly. Yes. An investigation of the suspect.

4 Q. In the course of your career with the Israeli police,
5 approximately how many statements have you taken from
6 individuals who are being interrogated by the ISA?

7 A. Between 10 and 20.

8 Q. I want to direct your attention to January 30, 1993.

9 Did you take a statement from a man named Muhammad
10 Salah?

11 A. Yes. I got testimony from this person.

12 Q. Was he being interrogated by the ISA?

13 A. Yes, he was interrogated by the ISA.

14 Q. What facility was he at?

15 A. In Ramallah.

16 Q. In January of 1993, what was your position with the
17 Israeli police?

18 A. I was a senior investigator, and I was the head of the --
19 the interrogation or investigation bureau.

20 MS. HAMILTON: Your Honor, may I approach?

21 THE COURT: You may. Or hand it to the agent and he
22 will give it to the witness.

23 BY MS. HAMILTON:

24 Q. I'm showing you what is already in evidence as 1/30/93
25 Salah Statement.

1 What is that?

2 A. This is the testimony that was taken from the witness,
3 Mr. Muhammad Salah, on the 30th of January 1993, at 8:15 in
4 the morning in Ramallah.

5 MS. HAMILTON: Your Honor, we have an English
6 translation. And actually I have a new replacement to give
7 you for your binder.

8 THE COURT: Okay.

9 (Brief pause)

10 MR. HAMILTON: Your Honor, consistent with the other
11 translations we've done so far, I move for admission, for
12 purposes of this hearing, of 1/30/93 Translation SH.

13 MR. BLOOM: What is that?

14 MS. HAMILTON: Of 1/30/93 Translation SH.

15 THE COURT: Mr. Deutsch, is there any objection?

16 MR. DEUTSCH: No objection.

17 THE COURT: So admitted.

18 (Government Exhibit 1/30/93 Translation SH was
19 received in evidence.)

20 BY MS. HAMILTON:

21 Q. Who handwrote that statement?

22 THE COURT: I'm sorry. The underlying transcript,
23 the Hebrew version, is already in evidence, is that correct?

24 MS. HAMILTON: Yes, it is.

25 THE COURT: Okay.

1

2 BY THE WITNESS:

3 A. I wrote it. This is my handwriting.

4 BY MS. HAMILTON:

5 Q. Who was present when you wrote that statement?

6 A. I and Mr. Muhammad Salah.

7 Q. Are statements taken--statements like this--taken by

8 Israeli police officers in different kinds of criminal

9 investigations?

10 A. Yes.

11 Q. The form that was used for this statement, was this a

12 pre-printed form that was used by the Israeli police in all

13 cases at that time?

14 A. Yes.

15 Q. When you became a police officer, did you receive training

16 on the proper way to take a statement like this?

17 A. Of course.

18 Q. And as a senior officer, do you conduct training of

19 younger police officers on the proper way to take a statement

20 like this?

21 A. Of course. I teach them.

22 Q. Generally, what is the proper way to take such a

23 statement?

24 A. It's divided into three parts. There's a warning as to

25 what the suspect is -- is -- what is the allegations. And the

1 second part is a warning that he doesn't have to say anything
2 unless he wants to say something.

3 MR. DEUTSCH: Judge, I object. Let's talk about
4 Mr. Salah. What he did.

5 THE COURT: Why don't you stand up when you object so
6 we can all hear you.

7 MR. DEUTSCH: I'm sorry. I object to this. Let's
8 hear what was asked of Mr. Salah than some generalized
9 testimony.

10 THE COURT: I think we're getting there. Overruled.
11 You may continue.

12 The last part of your answer was,

13 "... and the second part is a warning that he doesn't
14 have to say anything unless he wants to say something."

15 BY THE WITNESS:

16 A. But all that he will state will be written by me and will
17 be -- could be used against him in court. This is the second
18 part that is being told to each suspect.

19 And the third part is the version of the suspect and
20 what he states, word by word.

21 Q. Prior to January 30, 1993, had you personally been
22 involved in an investigation of Muhammad Salah?

23 A. Before this date, no.

24 Q. Were you aware of his arrest?

25 A. No.

1 Q. Did you know anything about him at all before you went to
2 the Ramallah facility?

3 A. Nothing.

4 Q. Before you took this statement, did you meet with anyone
5 at the Ramallah facility?

6 A. Before I started to investigate him I met with the
7 interrogators, either Nadav or Haim, I don't remember.

8 Q. What, if anything, were you told by either Haim or Nadav
9 about Muhammad Salah?

10 A. They told me that he is a U.S. citizen. That he was
11 arrested or arraigned with a suitcase with money. That he
12 came from the U.S. in order to establish infrastructure of the
13 Hamas as the result of the expulsion of the Hamas people to
14 Lebanon. That is what I was told then.

15 Q. Did you review any documents before you took the
16 statement?

17 A. Of course. I read -- I read the documents before I sat
18 with him.

19 Q. When you say "the documents," what documents are you
20 referring to?

21 A. The memorandum that the interrogators of the ISA gave me.

22 Q. Did any ISA agent tell you specifically what they wanted
23 you to ask Muhammad Salah?

24 A. No.

25 Q. Did they provide you with a list of topics that they

1 wanted you to cover?

2 A. No. I am stating again that I got the correspondence, in
3 general, regarding the activities of Mr. Muhammad Salah.

4 Q. When you use the word "correspondence," are you talking
5 about the ISA memos?

6 A. Yeah, I'm talking about the ISA memos. Yes.

7 Q. Did you take any of the ISA memos into the interview with
8 you?

9 A. Yes. Yes, I did.

10 Q. Did you have any other documents with you?

11 A. No.

12 Q. Once you reviewed the ISA memos and talked to the ISA
13 agents, what did you do next?

14 A. I took them, I went into the room, and I asked them to
15 bring me the suspect so I can take down his version.

16 Q. When you say you went to the room, what room did you go
17 to?

18 A. The regular -- the regular room, four by four meters, with
19 a table and two chairs. That's it.

20 Q. When you say "regular room," was it an interrogation room
21 at the Ramallah facility?

22 A. It's one of the offices of the interrogation. One of the
23 rooms.

24 Q. You said that you asked them to bring the suspect to you?

25 A. Yes.

1 Q. Who? When you say "them," who are you referring to?

2 A. Soldiers.

3 Q. Before you sat down and began talking with Muhammad Salah,
4 did you write any of the information contained on Government
5 Exhibit 1/30/98 Statement?

6 A. No. Before sitting with him I wrote nothing.

7 Q. Was that form completely blank?

8 A. Yes.

9 Q. You described a little bit about the interrogation you
10 were in, the interrogation room you were in. Was there window
11 in that room?

12 A. I don't remember.

13 Q. Do you remember anything about the temperature of the
14 room?

15 A. Normal temperature.

16 Q. And when you say "normal," what do you mean?

17 A. Regular. Like the temperature in this room. Nothing
18 unusual.

19 Q. Were you armed while you were in the room?

20 A. No. It's forbidden.

21 Q. At some point was Muhammad Salah brought to you?

22 A. One or two minutes afterwards.

23 Q. Was he handcuffed?

24 A. I don't remember.

25 Q. Was he --

1 A. But even if he was handcuffed, once he's interrogated or
2 investigated by me I do not conduct interrogation or
3 investigation when the suspect is handcuffed.

4 Q. So if he had been handcuffed, what would you have done?

5 A. I would have asked them to take the handcuffs off.

6 Q. When you say "them," are you referring to the soldiers?

7 A. Yes.

8 Q. And would that have been the first thing you would have
9 done?

10 A. Yes. Of course.

11 Q. When Muhammad Salah was brought to you, was he hooded?

12 A. No. No.

13 Q. Can you generally describe what he looked like?

14 A. Ordinary person. With a beard. That's it.

15 Q. Did you see anything about his clothing that was ripped or
16 torn?

17 A. No.

18 Q. Did you see any cuts or bruises?

19 A. No. If I would have seen it, I would have had to note it.

20 Q. What do you mean you would have had to note it?

21 A. I would have had to write a memo about it.

22 Q. To whom?

23 A. To my bosses.

24 Q. And as an Israeli police officer, are you under an
25 obligation to report any signs of abuse to your bosses?

1 A. Of course. This is my obligation.

2 Q. Did Muhammad Salah complain to you of any physical abuse?

3 A. No. If he would have -- if he would have complained, I
4 would have written it.

5 Q. You would have written it where?

6 A. In the memos. In the memorandum.

7 Q. During the course of your career in the Israeli police,
8 have you ever had anyone that is in custody complain to you
9 that he was abused?

10 A. There were several cases, but they were more criminal in
11 nature. And it was reported and it reached the Ministry of
12 Justice. To a special unit there.

13 Q. Were any of those complaints made by individuals in ISA
14 custody?

15 A. No, I said criminal cases. In my case, criminal cases.

16 Q. When Muhammad Salah came into the room, did you introduce
17 yourself?

18 A. Of course.

19 Q. Did you tell him why you were there?

20 A. Of course.

21 Q. What did you tell him?

22 A. We spoke. I presented myself. I asked for his details.

23 Who is, what is he, where was he born, where does he live,

24 what does he do. And then just plain talk. And then we

25 started with the interrogation. And in the course of the

1 conversation, I understood from him that he's an educated
2 person. And he even noted something that I still can recall.
3 That he had translated the Koran from Arabic into English.
4 That is what I can remember.

5 Q. Okay. I'm going to back up. You said that you presented
6 yourself to him. Did you tell him that you were an
7 investigator with the Israeli police?

8 A. Yes, I told him that.

9 Q. And did you tell him why you were there?

10 A. Yes. It is written in the first part of the
11 investigation -- of the investigation.

12 Q. Did you tell him you were there to take a statement from
13 him?

14 MR. DEUTSCH: Objection. Leading.

15 THE COURT: Overruled for the reasons I've already
16 stated.

17 BY THE WITNESS:

18 A. Of course.

19 BY MS. HAMILTON:

20 Q. Did he seem surprised that you were there to take a
21 statement from him?

22 MR. DEUTSCH: Objection. Leading.

23 THE COURT: Overruled.

24 BY THE WITNESS:

25 A. No.

1 BY MS. HAMILTON:

2 Q. When you introduced yourself, what language did you speak
3 with him?

4 A. Arabic.

5 Q. Did you continue to speak in Arabic throughout the course
6 of your interview with him?

7 A. All only Arabic. The whole conversation was conducted in
8 Arabic.

9 Q. Did Muhammad Salah ever request that the interview be in
10 English?

11 A. No. No, he didn't.

12 Q. Throughout the course of the interview, did you understand
13 Muhammad Salah's Arabic?

14 A. Of course.

15 Q. And from what you could tell, did he appear to understand
16 you?

17 A. Yes.

18 Q. Did he ever tell you that he did not understand something
19 you had said?

20 A. No. No.

21 Q. Can you please describe his general demeanor throughout
22 the course of your interview.

23 A. He was calm. He was relaxed. He spoke in a regular
24 manner in the course of the investigation.

25 Q. Was he polite to you?

1 A. Yes. Very.

2 Q. Was he alert?

3 A. Yes.

4 Q. At any point during the interview did he appear sleepy or
5 tired to you?

6 A. No. If he was like that, I would have had documented it
7 in the memorandum, in the memo.

8 Q. In the course of your interview did you offer him anything
9 to eat or drink?

10 A. I offered him to drink or to smoke.

11 Q. And did he take you up on your offer?

12 A. No, he didn't want to.

13 Q. In the course of your interview did you take any breaks?

14 A. No. The whole investigation was about 2 hours.

15 Q. After you introduced yourself, you said that you talked to
16 Muhammad Salah about who he was and some of his personal
17 information, is that right?

18 A. Yes.

19 Q. And I think that you testified you remember him telling
20 you he had translated the Koran into English?

21 A. Yes.

22 Q. Did you write that down in your statement? In a statement
23 that you took?

24 A. No. It's not something that is related to the
25 investigation.

1 Q. How can you remember it now 13 years later?

2 A. This -- it says something unusual. It's not something
3 ordinary. To translate the Koran, it's something that seems
4 to me to be unusual, that's why it's etched in my memory.

5 Q. And when you were speaking about Mr. Salah translating the
6 Koran into English, was this before you started the process of
7 actually writing his statement?

8 A. Yes. Of course.

9 Q. And was this part of making small talk with him before the
10 interview?

11 A. Yes.

12 Q. And what was the point of doing that?

13 A. I do it before every investigation to see who the person
14 is. Who I'm facing, to know who I'm facing.

15 Q. At some point did you determine that he was comfortable
16 enough with you that you could begin the interview?

17 A. Yes. And then I decided to move on to the investigation.

18 Q. Okay. I'd like to direct your attention to the top of
19 page 1 of the statement.

20 And in that first section, does this contain personal
21 information of Muhammad Salah?

22 A. Of course.

23 Q. Did you write that?

24 A. Yes.

25 Q. Where did you get that information?

1 A. From him. The details that he gave me.

2 Q. After the personal information, there's a line for the
3 date and the time, is that right?

4 A. Yes.

5 Q. And does the time reflect the time that you began to take
6 his statement?

7 A. Yes. The beginning.

8 Q. Directing your attention to the paragraph just below that.
9 Is what's written here, does this reflect what you were
10 talking about when you said you presented yourself to him?

11 A. Yes.

12 Q. And part of that says,

13 "In continuation to the statement he made on
14 January 27, 1993"

15 Is that right?

16 A. Yes.

17 Q. Had you reviewed a January 28th statement before you went
18 in?

19 A. No.

20 Q. How did you know about the statement?

21 A. I was told by the interrogator that this was interrogation
22 number 2, and this is why I wrote and told that this is
23 testimony number 2.

24 Q. Did anyone tell you what had been included in the first
25 statement on January 27th?

1 A. No. And it doesn't interest me.

2 Q. Why not?

3 A. Because I came to question him on something new. I'm not
4 interested on what he said before.

5 Q. The rest of the paragraph lists out certain offenses, is
6 that right?

7 A. Those were allegations.

8 Q. And where did those allegations come from? Who told you
9 about those allegations?

10 A. The ISA.

11 Q. Did you actually tell Muhammad Salah, on January 30th,
12 that those were the allegations that were being made against
13 him?

14 A. Absolutely. This is what I read to him. I translated
15 this to him while I was writing it. And at the end of the
16 last line in this paragraph I signed my name. And I asked him
17 to sign that he understood the allegations against him. And,
18 indeed, he did sign in English.

19 Q. Now, you just said you translated this statement. What
20 language is this written statement in?

21 A. It's written in Hebrew.

22 Q. Why is this statement written in Hebrew if the two of you
23 were speaking in Arabic?

24 A. This is the way we wrote it.

25 Q. When you say "we" who --

1 A. We, the police officers, that's the way we write. If he
2 demanded that I write it in Arabic, I would have done it.
3 It's the same to me.

4 Q. When you say "this is the way that we write it," was it
5 standard procedure for the Israeli police to write statements
6 in Hebrew?

7 A. There's no specific guidelines, but at the time we used to
8 write it in Hebrew. We were advised by legal advisor to the
9 government that we need to write it down in the mother tongue
10 of the investigatee. So this is what we were told that the
11 police write it in the mother tongue, but that's only been in
12 recent years.

13 Q. And when you say "recent years," can you estimate how long
14 ago it was that that became the policy?

15 A. About 5 or 6.

16 Q. 5 or 6 years ago?

17 A. Yes. Yes.

18 Q. Did you explain to Muhammad Salah that you were writing
19 the statement in Hebrew and that you would translate it to him
20 in Arabic?

21 A. I -- I did not say -- say that to him. I just translated
22 that to him. And if he insisted, I would have written it in
23 Arabic. To me it's the same.

24 Q. Did he tell you he wanted you to write the statement in
25 Arabic?

1 A. No. If he said so, I would have written it in Arabic.

2 Q. All right. Going back to the statement. The signatures,
3 the first set of signatures that appear, whose signatures are
4 those?

5 A. The signature on the left is mine and -- and the signature
6 on the right, which is in English, is of the interrogee.

7 Q. Who signed first?

8 A. I did. I always do.

9 Q. And whose signature -- did you actually see Muhammad Salah
10 sign this document?

11 A. Yes, I asked him to sign and he did.

12 Q. Okay. The next paragraph, what does this paragraph
13 contain?

14 A. This contains a warning, which we read to every interrogee
15 who is being interrogated under warning. It says he does not
16 have to say anything unless he wants to, but everything he
17 says would be registered by me and can be used against him in
18 a court of law.

19 Q. And did you translate that paragraph into Arabic?

20 A. Yes.

21 Q. And did you then sign?

22 A. I signed and I asked him to sign again.

23 Q. And did you see Muhammad Salah sign again?

24 A. Yes, he signed in front of me.

25 Q. Did he ask you any questions about this warning?

1 A. No.

2 Q. Did you at any point tell him that this statement would
3 not be used against him in court?

4 A. Not at all.

5 Q. Did you demand that he sign this statement?

6 A. I asked him to sign and he signed.

7 Q. Did he hesitate in any way?

8 A. No. If he refused, I would have noted that he refused to
9 sign. For me, it's all the same.

10 Q. What do you mean "for me, it's all the same"?

11 A. If he said he refused to sign, I would have -- I would
12 have written "refused to sign." That was his right.

13 Q. But you said, "it's all the same." What do you mean,
14 "it's all the same"?

15 A. As far as the interrogation is concerned, he has the right
16 not to sign. So either he signs or not sign, to me it is the
17 same. I, as a police officer, have the obligation to read it
18 to him and to ask him to sign. And he has the right to refuse
19 to sign.

20 Q. The next several pages contain a series of statements, is
21 that right?

22 A. Yes.

23 Q. Were those statements made by Muhammad Salah to you?

24 A. This is what is said to me. I wrote it word by word.

25 Q. Is any portion of this document a summary?

1 A. No. It's word by word as he told it to me.

2 Q. Practically speaking, how did you make sure that you were
3 able to accurately write down what he was saying word for
4 word?

5 A. After we signed this, I read it back to him and we
6 continued.

7 Q. Were there times when you asked him to repeat what he had
8 said?

9 A. No. It was a calm conversation. He didn't speak fast.
10 It was easy for me to understand what he was saying.

11 Q. After you informed him of what the allegations were
12 against him and after you gave him the warning, what did you
13 to begin the process of Muhammad Salah giving you this
14 statement?

15 A. He started to tell me what happened since he arrived from
16 the United States in Israel. Who he met with, who he didn't
17 meet. And I wrote word by word what he was telling me.

18 Q. During the course of writing the statement, did you ever
19 look back at the ISA memos that ISA had given you?

20 A. There was no need for it. He was talking.

21 Q. What do you mean by that?

22 A. There was no need for that.

23 Q. Why was there no need?

24 A. It was important to me to hear what he had to say. I was
25 not interested in what was written in those memos. I needed

1 to take his version of the event.

2 Q. Did you ever check to make sure the version of events he
3 was giving you was consistent with what was in the ISA memos?

4 A. There was no need for that. My obligation was to write
5 down everything he was telling me. That was my role.

6 Q. I want to direct your attention on page 1 to lines 24 to
7 26. It says --

8 THE INTERPRETER: Excuse me. Can you repeat?

9 MS. HAMILTON: Page 1, lines 24 to 26.

10 BY MS. HAMILTON:

11 Q. It says,

12 "I don't remember whether he asked me for money then,
13 but they usually ask me for money. Now I remember that
14 he did ask me for money."

15 MR. DEUTSCH: Objection. I don't have any lines on
16 my documents.

17 THE COURT: You want to show him where you are.

18 BY MS. HAMILTON:

19 Q. Is that actually what Muhammad Salah said to you?

20 A. Word by word.

21 Q. So even though he first said that he didn't remember and
22 then changed what he said to what he did remember --

23 A. As he was talking, yes.

24 Q. -- you included both of those things?

25 A. Of course. Whatever he said. I did not write what I

1 wanted to. I just wrote word by word what he was saying.

2 Q. At the bottom of that page, whose signatures are those?

3 A. Again, on the left is my signature, on the right is his
4 signature after I read to him what he said so far.

5 Q. And when you say after you read him, what exactly -- did
6 you read the whole page to him?

7 A. Yes. Of course. Of his version.

8 Q. And had you also stopped every sentence or so to check and
9 make sure what you had written was correct?

10 A. Yes.

11 Q. After you both signed, did you continue writing on page 2?

12 A. Yes.

13 Q. Did there come a point when you needed to correct anything
14 on page 2?

15 A. Yes, there was one line that we had to erase upon the
16 request -- upon his request.

17 Q. And is this --

18 A. I crossed the line and I put my initials on top of it.

19 Q. And is this something that you corrected as you were
20 writing it or when you got to the end of the page?

21 A. As I was writing. While I was writing.

22 Q. I want to direct your attention to line 12 of that page.

23

24

25

1 You said,

2 "He told me that a bunch from Hamas were angry and
3 they are detained and they don't know what is going to
4 happen. And I'm telling you again, they usually ask you
5 for money, so I'm almost sure that they asked me for
6 money."

7 Do you see that?

8 A. Excuse me?

9 Q. Do you see that?

10 A. Yes.

11 Q. Is it exactly what Muhammad Salah told you?

12 A. Absolutely. Yes.

13 Q. And was he actually repeating some of the information that
14 you had already written on page 1?

15 A. Yes. But, again, anything he says I had to write down.

16 Q. When you got to the bottom of the page, did you go back
17 and read that entire page to Muhammad Salah?

18 A. Yes. And I signed and I asked him to sign again. And he
19 did.

20 Q. And when I say "read," I should have asked you, did you
21 translate into Arabic what you had in Hebrew?

22 A. Of course. Word by word. It was translated word by word,
23 and after that I asked him to sign.

24 Q. Did you then continue to write on page 3?

25 A. Yes.

1 Q. And in the course of writing page 3, did you need to make
2 any corrections?

3 A. A small correction.

4 Q. And is --

5 A. One word.

6 Q. And is this at line 8?

7 A. Upon his request, of course. On line 8. Again, I crossed
8 the word and I put my initials on top.

9 Q. And going down to line 15, there's a sentence that starts,

10 "I gave it as I stated in the first statement."

11 Do you see that?

12 A. Yes.

13 Q. And there's a series of information. And despite the fact
14 that Muhammad Salah claimed that he had said this in his first
15 statement, did you write down everything that he said?

16 A. Again, I had the obligation -- I had the obligation to
17 write everything he said. I did not know what he had said
18 before. My obligation was to write what he was telling me.

19 Q. And as you were writing on this page, were you still
20 stopping every line or so to translate back into Arabic to
21 make sure what you had written was correct?

22 A. Absolutely. Absolutely.

23 Q. And when you reached the bottom of page 3, did you
24 translate that entire page, in whole, back to Muhammad Salah
25 in Arabic?

1 A. I translated it. I asked him again to sign and I signed,
2 too.

3 Q. Now, it appears as though the bottom of the page actually
4 stopped mid-sentence. Is that right?

5 A. At the beginning. Two words into the next sentence.

6 Q. Do you remember if you would have written that and then
7 signed or if you would have signed and then continued on with
8 what's written after the number 3?

9 A. No, I only sign after I complete writing on the page.

10 Q. So even though it was at mid-sentence, you would have
11 stopped there?

12 A. Yes. It makes no difference.

13 Q. Did you then continue writing on at page 4?

14 A. Yes.

15 Q. And as with the other pages, did you stop every line or so
16 to translate what you had written in Hebrew back to Arabic?

17 A. Yes.

18 Q. And as you were writing, was there anything that needed to
19 be corrected on page 4?

20 A. Yes, it was a spelling mistake I made in one word and I
21 had to correct it.

22 Q. Directing your attention to line 22.

23 Is there something on there that's written in Arabic
24 and not in Hebrew?

25 A. Yes.

1 MR. DEUTSCH: Judge, I object. I don't have any
2 lines on this document.

3 THE COURT: Okay. Ms. Hamilton will point to you
4 where she's referring to. I think the lines are on the Hebrew
5 document, not on the English.

6 MS. HAMILTON: I'm sorry, Judge. I don't know if I
7 missed the answer.

8 THE COURT: He said "yes," beyond that he didn't say
9 what it was.

10 BY MS. HAMILTON:

11 Q. What is written in Arabic?

12 A. I wrote three words in Arabic, which are very special
13 words. I made sure that I wrote them in Arabic.

14 Q. Why?

15 A. Because those are words that are very hard to translate,
16 that's why I preferred to write them in Arabic.

17 Q. When you reached the bottom of page 4, did you translate
18 the Hebrew into Arabic for Muhammad Salah?

19 A. Yes. Everything that was there.

20 Q. Was there something different about the signatures on page
21 4?

22 A. Yes. After I signed, I asked him if he didn't mind
23 signing in his mother tongue and, indeed, he signed in Arabic.
24 He has a nice handwriting.

25 Q. When you asked him to sign in Arabic, did he hesitate at

1 all?

2 A. No. He signed.

3 Q. Did you then continue on writing to page 5?

4 A. Yes.

5 Q. And as with the other pages, did you stop at every line or
6 so to check and make sure what you had written in Hebrew was
7 accurate?

8 A. Yes.

9 Q. Was there anything you needed to correct on page 5?

10 A. No.

11 Q. At line 18, at the end of the sentence, there's a line
12 written from the end of the sentence to the end of the line.
13 Did you do that?

14 A. This is what I usually do. I draw a line if the sentence
15 ended in the middle of the line so that nobody can add
16 anything to the sentence. This is how I did in previous
17 pages, as well; when needed.

18 MS. THOMPSON: Ms. Hamilton, is the line in the
19 translation?

20 MS. HAMILTON: No.

21 BY MS. HAMILTON:

22 Q. On line 19 there's the word "question" with a colon. Why
23 is that there?

24 A. Because until this point he was telling me his version,
25 whatever happened, everything that happened. And as an

1 investigator, I wanted to know what else happened to the money
2 that he mentioned in his testimony. This is why I mentioned
3 that it was my question. And on the line next to it I wrote
4 an answer and I wrote down everything he said to me.

5 Q. At the end of page 5, there's a sentence that appears in
6 parenthesis. Why is that in parenthesis?

7 A. Because this is where I interjected my comments, that's
8 why I put it in parenthesis. And I asked him to draw
9 something for me in his own handwriting, as it says here, but
10 he said that he was concerned about doing it. He was willing
11 to do it on scratch and I would copy it, that's why I put it
12 in brackets.

13 Q. So it's in brackets because it was not part of the
14 statement that Muhammad Salah was giving you?

15 A. It is not part of it, but it's a continuation of his
16 testimony.

17 Q. Let me ask it a different way. Is it in brackets because
18 these are not his words?

19 MR. DEUTSCH: Objection. Leading.

20 THE COURT: Overruled for the reasons I've been
21 stating all along regarding the translator and the Federal
22 Rules of Evidence don't apply.

23 He may answer.

24 BY THE WITNESS:

25 A. Yes.

1 BY MS. HAMILTON:

2 Q. On page 5, as with the other pages, did you stop every
3 line or so to check to make sure what you had written in
4 Hebrew accurately reflected what had been said in Arabic?

5 A. Absolutely.

6 Q. And when you reached the end of page 5, did you go back
7 and read the page in its entirety to Muhammad Salah?

8 A. Yes. Yes.

9 Q. And did you sign that?

10 A. I signed and asked him to sign. And, indeed, he signed.

11 Q. On page 6, at the top of the drawing, who made that
12 drawing?

13 A. I copied the drawing that the interrogee prepared for me.
14 He did it in Arabic on another page and I copied it in Hebrew
15 into the testimony.

16 Q. Had you asked him to hand write himself on to this
17 statement, the diagram?

18 A. In the testimony, yes, but he said that he was concerned
19 about it and refused to do it.

20 Q. Did you ask him why he was concerned about it?

21 A. No, he said he was concerned.

22 Q. Well, what was your understanding of why he was concerned?

23 MR. DEUTSCH: Objection.

24 THE COURT: Overruled. It's his understanding, if he
25 had one.

1 BY THE WITNESS:

2 A. He was afraid of people.

3 BY MS. HAMILTON:

4 Q. When you say "people" what do you mean?

5 A. People whose names --

6 MR. DEUTSCH: Objection. It's all speculation. Does
7 he know? Did he say it to him? I don't know what it's based
8 on.

9 THE COURT: It's his understanding. You can
10 cross-examine him on it.

11 BY THE WITNESS:

12 A. People whose names he mentioned.

13 BY MS. HAMILTON:

14 Q. Did you actually provide him with paper and pen to draw
15 the diagram on a separate piece of paper?

16 A. Yes, I gave it to him to make the drawing.

17 Q. And after he made the drawing, what, if anything, did you
18 do with it?

19 A. I copy it to the content of the testimony, and I
20 translated what was said in front of him from Arabic into
21 Hebrew.

22 Q. After you copied the drawing and translated the Arabic
23 names into Hebrew, did you then confirm with Muhammad Salah
24 that the drawing you had made was accurate?

25 A. Of course.

1 Q. Did he then explain to you what the drawing meant?

2 A. Yes.

3 Q. And did you write, word for word, what his explanation
4 was?

5 A. Yeah. Unequivocally, yes.

6 Q. At the bottom of page 6 are signatures.

7 A. Yes.

8 Q. Did you read all of page 6 to Muhammad Salah before you
9 asked him to sign?

10 A. Yes.

11 Q. Again, I shouldn't use the word "read." Did you translate
12 what you had written in Hebrew into Arabic and confirmed that
13 it was all correct?

14 A. Of course.

15 Q. Is there anything different about the signatures on page
16 6?

17 A. Here I asked him to sign it in both languages and he did
18 so.

19 Q. Now, on page 6, near the end, there's a sentence that
20 reads,

21 "This is all I have to say."

22 Did Muhammad Salah actually say that to you?

23 A. Yes.

24 Q. And when he said that, did you push him at all to continue
25 making a statement?

1 A. No. Whenever he told me that's all I have, I closed the
2 testimony.

3 Q. Did you ask him anymore questions?

4 A. No. One question was asked and that was it.

5 Q. At any time while you were taking the statement, did
6 Muhammad Salah tell you that he was uncomfortable with the
7 fact you were writing his Arabic statements into Hebrew?

8 A. If he would have said so, I would have moved into Arabic.
9 And I noted it here.

10 Q. What do you mean you noted it here?

11 A. I noted it here in the course of my testimony here today.

12 Q. When you finished writing the statement, what did you do?

13 A. I read it to him, that he approves all that was said, and
14 he approves it or authorizes it by his own handwriting. This
15 is what had happened and then he signed.

16 Q. After he signed, what happened?

17 A. I finished and I asked him to take him back.

18 Q. You say, "I asked him to take him back." Who, who did you
19 ask to take him back?

20 A. I asked the soldier to take him back.

21 Q. Throughout the course of your interview with Muhammad
22 Salah --

23 MR. DEUTSCH: I'm sorry. I didn't hear that
24 question.

25 THE COURT: "Throughout the course of your interview

1 with Muhammad Salah."

2 BY MS. HAMILTON:

3 Q. -- did anyone come into the interrogation room?

4 A. Nobody. Only the two of us were there.

5 Q. Did the soldier then take Muhammad Salah out of the
6 interrogation room?

7 A. Yes.

8 Q. What did you do next?

9 A. I went to the interrogator's room, I took the testimony
10 and the drawing, I gave a copy of it to the interrogators of
11 the ISA, I wrote a memorandum about the events of the
12 investigation, during the investigation, how it was conducted,
13 and I attached it all to the mailbox of the police
14 interrogator.

15 MS. HAMILTON: Your Honor, may I approach?

16 THE COURT: You may. Hand it to the agent. The
17 agent can provide it to him.

18 MS. HAMILTON: I'm going to show you what is marked
19 Government Exhibit Eliyahu Memo.

20 BY THE WITNESS:

21 A. This is the memo I wrote at the conclusion of the
22 investigation in which I indicated how much -- how long I sat
23 with him, and how was the investigation, and he was asked if
24 he needed something and he said no. And I wrote -- this is
25 how I wrote this report, at the conclusion of the

1 investigation.

2 BY MS. HAMILTON:

3 Q. Is that memo in the same or substantially the same
4 condition as when you wrote it?

5 A. Yes. Of course.

6 Q. And is this memo something that you regularly do when you
7 take a statement?

8 A. I usually do it in cases of serious crimes or cases of
9 that nature.

10 Q. What did you do with it after you wrote it?

11 A. I attached it to the testimony in order to attach it to
12 the interrogation or investigation file.

13 Q. And is this memo something that is regularly maintained in
14 the Israeli police files?

15 A. Yes, in the police interrogation or investigation file.

16 MS. HAMILTON: Your Honor, at this time we move to
17 admit Government Exhibit Eliyahu Memo.

18 THE COURT: Any objection?

19 MR. DEUTSCH: No objection.

20 MS. HAMILTON: We also move to admit Government
21 Exhibit Eliyahu Memo Translation SH.

22 THE COURT: Any objection.

23 MR. DEUTSCH: No objection.

24 THE COURT: So admitted.

25

1 (Government Exhibit Eliyahu Memo and Government
2 Exhibit Eliyahu Memo Translation SH were received in
3 evidence.)

4 BY MS. HAMILTON:

5 Q. What was your purpose in writing this memo?

6 A. In such cases I write what happened in order to know how
7 long it took me, if something unusual happened. That's it.

8 Q. Why didn't you include this information in the statement
9 itself?

10 A. Because this is not his version. That's why I wrote it in
11 a separate document.

12 MS. HAMILTON: Your Honor, may I approach?

13 THE COURT: You may.

14 BY MS. HAMILTON:

15 Q. I'm going to show you what's in evidence as Government
16 Exhibit 1/31/93 Salah Photograph.

17 Do you recognize the person in that photo?

18 A. This was the person who was in the interrogation.

19 Q. When you say "this is the person," who is it?

20 A. Muhammad Salah.

21 Q. Does this photo fairly and accurately depict what Muhammad
22 Salah looked like during your interview of him on January 30,
23 1993?

24 A. Yes.

25 Q. Was January 30, 1993, the only time that you saw or spoke

1 to Muhammad Salah?

2 A. That's it. Only once.

3 Q. Was January 30, 1993, the only time you received any
4 information about Muhammad Salah?

5 A. Yes. One time.

6 Q. During the course of your interview with Muhammad Salah on
7 January 30th, did you ever personally threaten to do any of
8 the following to him: Long imprisonment?

9 A. No.

10 Q. Physically harm him?

11 A. No. No.

12 Q. Strip him naked?

13 A. No.

14 Q. Photograph --

15 MR. DEUTSCH: I object. There's no allegations that
16 this man did any of those things. It's a waste of everybody's
17 time in asking him that. We have not alleged that.

18 MS. HAMILTON: Your Honor, there was a general
19 paragraph in the affidavit that goes to all Israeli agents.

20 THE COURT: That's correct. Are you --

21 MR. DEUTSCH: Okay.

22 MS. HAMILTON: I mean, if they want to stipulate that
23 this witness --

24 MR. DEUTSCH: We stipulate that this person didn't do
25 those things.

1 MS. HAMILTON: Anything in the affidavit?

2 THE COURT: Will you stipulate --

3 MR. DEUTSCH: No, I won't. That's fine.

4 THE COURT: That's all right.

5 Go ahead.

6 BY MS. HAMILTON:

7 Q. I believe my last question was, did you threaten to
8 photograph him while he was naked?

9 A. No.

10 Q. Did you threaten to harm his family?

11 A. No. No. No.

12 Q. Did you threaten to blind him?

13 A. No.

14 Q. Did you threaten to maim him?

15 A. No.

16 Q. Did you threaten to have him sexually assaulted?

17 A. No.

18 Q. Did you ever personally actually do any of those things to
19 Muhammad Salah?

20 A. No. No.

21 Q. Did you ever kick him?

22 A. No.

23 Q. Did you ever slap him?

24 A. No. No. No.

25 Q. Did you ever force him to stay awake?

1 A. No. No. No.

2 Q. Did you physically harm him in any way?

3 A. No. No.

4 Q. Did you deprive him the use of a bathroom?

5 A. No. No.

6 Q. Did you deprive him of breaks that he asked for?

7 A. MR. DEUTSCH: Objection. There's no testimony that he
8 asked for a break or he gave him a break.

9 THE COURT: Overruled.

10 BY MS. HAMILTON:

11 Q. Did you refuse any request by him for food or drink?

12 THE COURT: He didn't answer the last question about
13 depriving him of breaks that he asked for.

14 BY THE WITNESS:

15 A. No. I sat with him the whole 2 hours.

16 BY MS. HAMILTON:

17 Q. So you didn't deprive him of any breaks?

18 A. No. No. No.

19 Q. Did you refuse him any request for food or drink?

20 A. No. No.

21 Q. Did you restrain him in any way?

22 A. No.

23 Q. Did you make him sit in a child's chair?

24 A. No.

25 Q. Did you see him sitting in such a chair?

1 A. No. No.

2 Q. Did you subject him to deafening music?

3 A. No. No. No.

4 Q. Did you subject him to extreme temperatures?

5 A. No. No.

6 Q. During the time that you were at the ISA facility in
7 Ramallah on January 30, 1993, did you ever see or hear about
8 another person doing any of those things to Muhammad Salah?

9 A. I? No.

10 Q. Did Muhammad Salah tell you that any of those things had
11 happened to him?

12 A. No.

13 MS. HAMILTON: Nothing further.

14 THE COURT: Cross examination.

15 MR. DEUTSCH: I want the record to show it's 6:30 at
16 night.

17 THE COURT: Are you okay or do you want to come back
18 tomorrow?

19 MR. DEUTSCH: I'm okay because I want to have my
20 witness testify tomorrow. He came 6,000 miles. And he is
21 going to testify here in court or on that I will not be okay
22 about.

23 THE COURT: If you would like to pick up tomorrow
24 morning, I can do that.

25 MR. DEUTSCH: Well, when will my witness be able to

1 testify?

2 THE COURT: Is Mr. Ferguson back in here?

3 MR. SCHAR: Your Honor, Mr. Ferguson is not here.

4 THE COURT: How long do you think the next witness
5 will be?

6 MR. SCHAR: Judge, we're trying to figure out whether
7 we could cut down on things. At most an hour on direct, if
8 possible.

9 Judge, we haven't made any final decisions about
10 calling this witness. I don't want to mislead the Court in
11 saying that there definitely is going to be the second
12 witness.

13 THE COURT: So you may not call him?

14 MR. SCHAR: Maybe not.

15 THE COURT: Mr. Deutsch, the direct testimony --

16 MR. DEUTSCH: Judge, I'm willing to go ahead. I am
17 willing to go ahead. I just want the record to be clear that
18 I have a witness who came 6,000 miles who has been waiting to
19 testify and I do want to make sure that he gets a chance to
20 testify.

21 THE COURT: The direct of this witness was roughly an
22 hour and ten minutes. Do you have an estimation of how long
23 your cross will be?

24 MR. DEUTSCH: I would think it would be about the
25 same.

1 THE COURT: Okay. Let's go until 7:00 o'clock. If
2 at any point between now and 7:00, Mr. Deutsch, you get too
3 tired and you want to stop, please let me know and we'll stop
4 and we'll adjust the schedule tomorrow morning. We'll pick up
5 tomorrow at 8:00 o'clock again.

6 I would like the government to tell me first thing in
7 the morning if you plan on calling the other police officer or
8 not. Okay? So at 8:00 o'clock when you come in--you've heard
9 this witness' direct, you will have heard some cross--I would
10 like you to let me know with certainty if you plan on calling
11 that officer. If not, we'll have a lot more time.

12 I think you said your direct of Kattab you anticipate
13 to be an hour and a half to 2 hours?

14 MR. DEUTSCH: 2 hours, yes.

15 THE COURT: All right.

16 CROSS EXAMINATION

17 BY MR. DEUTSCH:

18 Q. Sir, you got a call at 4:00 a.m. on Saturday morning from
19 the Shaba'K, didn't you?

20 A. No.

21 Q. Do you remember being interviewed by Mr. Ferguson and
22 Mr. Schar on September 23, 2002? Those are the two U.S.
23 Attorneys in this case.

24 THE INTERPRETER: On the 22nd or 23rd?

25

1 BY MR. DEUTSCH:

2 Q. September 23, 2002.

3 A. Yes.

4 Q. And do you remember telling them that you were telephoned
5 at approximately 4:00 o'clock a.m. and asked to take a
6 statement of an arrestee?

7 A. They called me an evening beforehand and asked me to come
8 early in the morning to take the testimony.

9 Q. So you're saying that you didn't tell them that you were
10 telephoned at approximately 4:00 a.m. and asked to take a
11 statement, right?

12 A. No, an evening beforehand it was. It was Friday evening.

13 Q. Okay. And your superior officer is Mr. Suleiman, right?

14 A. No.

15 Q. Well, do you recall being interviewed by two FBI agents
16 named Peters and Resnick on March 15, 2000?

17 A. Maybe. I don't remember.

18 Q. But you remember telling them that after you took this
19 statement you later briefed your superior, Meron Suleiman?

20 A. I have -- I have a boss. It's not Mr. Suleiman. It's the
21 interrogation officer, and this is Yhak Rahamin (phonetic.)
22 He was my boss at the time.

23 Q. So you're saying you never told the FBI that you briefed
24 your superior, Meron Suleiman? Is that your testimony?

25 A. I spoke with my boss. He directed me to take the

1 testimony the day before and I reported to him at the end of
2 the testimony.

3 Q. All right. So do you know where--if know--where the FBI
4 got the name "Meron Suleiman" as your superior?

5 A. He's not my superior. He's not my boss.

6 Q. Okay. You knew that Mr. Suleiman was the lead
7 investigator for the Israeli police, did you not?

8 A. He was an investigator of the terrorist action.

9 Q. And you knew he was the one that had been working on this
10 case, correct?

11 A. I didn't know.

12 Q. Well, in September 23, 2002, do you remember telling
13 Mr. Schar and Mr. Ferguson that Meron Suleiman lived too far
14 north of the location of the interview, and, therefore, you
15 were asked to take the statement, because even though he was
16 the lead investigator he lived too far away.

17 A. I said that the interrogator was not available, that is
18 why I was asked to take the testimony.

19 Q. Which interrogator, sir?

20 A. Meron Suleiman.

21 Q. So you knew that Mr. Suleiman was the lead investigator on
22 this case when you were called on the phone to come take the
23 statement?

24 A. No, he was one of the investigators that investigates
25 terrorist crimes.

1 Q. Did you tell the FBI that you were called to take this
2 particular statement because the lead investigator for the
3 Israeli police, Meron Suleiman, lived too far?

4 MS. HAMILTON: I just want to object. This is not
5 impeaching his testimony. He was the lead investigator for
6 this case.

7 THE COURT: Overruled. You may answer.

8 THE INTERPRETER: Can you repeat the question.

9 BY MR. DEUTSCH:

10 Q. Did you tell the FBI on an interview on September 23,
11 2002, that you were called to take this particular statement
12 because the lead investigator for the Israeli police, Meron
13 Suleiman, lived too far north of the location of the
14 interview?

15 A. I said that what my officer told me is that Meron is not
16 available and they asked me to take the testimony.

17 Q. What officer told you that?

18 A. I said that the officer of investigations or interrogation
19 it's Yhak Rahamin.

20 Q. He's an Israeli national police officer?

21 A. He was then the police officer in Ramallah.

22 Q. And when did he tell you that, sir?

23 A. On Friday evening.

24 Q. So are you saying that it was him that called you and told
25 you to come take a statement?

1 A. Yes.

2 Q. Did you tell the FBI, on March 15, 2000, that you were
3 called by Shaba'K agents requesting your assistance in the
4 interview of Muhammad Salah who was being held at Ramallah
5 prison?

6 A. I was called by the investigation officer of the police as
7 a result of a request by the Shaba'K.

8 Q. Are you saying that you were not called by the Shaba'K
9 agents to come to the prison?

10 A. No, by my -- my officer of investigation.

11 Q. So you're saying the FBI wrote it down wrong? Is that
12 your testimony? If you know.

13 A. Maybe. Maybe it's a mistake in the translation.

14 Q. Oh, were they interviewing you -- what language were you
15 talking to them in?

16 A. There was an interpreter.

17 Q. So you were talking in Hebrew to them and they were
18 questioning you in English?

19 A. Yes, I spoke in Hebrew apparently it was interpreted into
20 English.

21 Q. Oh, so when you're questioning somebody in a language not
22 your own, mistakes are made, is that right?

23 A. Maybe.

24 Q. Now, you knew very well when you laid eyes on Mr. Salah
25 that he did not speak or understand Hebrew, isn't that right?

1 A. Yes.

2 Q. And I think you testified that if he demanded that you
3 wrote his statement in Arabic, you would do it, isn't that
4 correct?

5 A. Of course.

6 Q. And then later on you said if he insisted that he write
7 the statement in Arabic, you would do that?

8 A. Of course. I did it from time to time when people asked
9 me to do so.

10 Q. Did you ever tell him, "look, sir, I see you don't
11 understand Hebrew or read Hebrew, would you like me to take
12 statement in Arabic"?

13 A. No.

14 Q. You waited for him to demand it, right?

15 A. No, I didn't wait, but if he would have asked me I would
16 have done it. For me, it would have been the same.

17 Q. Well, sir, you said 4 or 5 years ago there is some rule
18 that says you have to write the statement in the mother
19 tongue, right, of the prisoner?

20 A. We got a directive through the police.

21 Q. Well, were you familiar with the Supreme Court opinion of
22 1969 requiring you to write statements in the mother tongue of
23 the detainee?

24 A. 1969?

25 Q. I'm sorry. 1999.

1 MR. BLOOM: '69.

2 MR. DEUTSCH: '69. I'm sorry. That's what I said
3 originally.

4 BY THE WITNESS:

5 A. No, I'm not aware of that.

6 BY MR. DEUTSCH:

7 Q. Well, were you ever instructed that for accuracy -- strike
8 that.

9 You know how to write Arabic, right?

10 A. Of course.

11 Q. You could have written that statement in Arabic, correct?

12 A. Yes.

13 Q. And if you wrote it in Arabic, Mr. Salah could have read
14 it and understood it, correct?

15 A. Yes.

16 Q. But you didn't do that, did you?

17 A. Because I wasn't asked to.

18 Q. Did you tell him he had a right to have it done that way?

19 A. No. That was the custom then. And whoever would have
20 asked me to, I would have done it, so...

21 Q. Now, you left your home early in the morning on Saturday
22 and drove to the Ramallah interrogation center, is that right?

23 A. Yes.

24 Q. And you then first -- when you first arrived you were
25 briefed by someone from Shaba'K about Mr. Salah and the prior

1 interrogations, correct?

2 A. No. About previous interrogations, no.

3 Q. Well, again, on September 23rd, 2002, did you tell the FBI
4 during the briefing,

5 "Eliyahu was told who the interviewee was and what he
6 had admitted to thus far."

7 Were you told that by the Shaba'K, what he had
8 admitted to thus far?

9 A. No.

10 Q. So, again, are you saying that the FBI got it wrong when
11 they interviewed you?

12 MS. HAMILTON: Objection. Speculation.

13 THE COURT: Sustained.

14 BY MR. DEUTSCH:

15 Q. Is it a mistake because of the translation?

16 MS. HAMILTON: Objection. Speculation.

17 THE COURT: Sustained.

18 BY MR. DEUTSCH:

19 Q. Well, you were given, were you not, copies of all the
20 memos that were written by the ISA concerning all the things
21 that they say Mr. Salah said before you got there, right?

22 A. Yes.

23 Q. And do you recall, as you sit here, how long he had been
24 in detention by the time you came to take his statement?

25 A. No.

1 Q. Well, was -- how many memos did you review, sir?

2 A. I reviewed the last memorandum that was given to me.

3 Q. You say you only interviewed one memorandum?

4 A. I think it contained two pages.

5 Q. Are you saying that's the only document you reviewed, sir?

6 A. That's it.

7 Q. Did you -- -- do you recall the name of the person from
8 the Shaba'K that briefed you?

9 A. I said that at the beginning, I don't remember whether it
10 was Haim or Nadav.

11 Q. Do you know Haim and Nadav?

12 A. I recognize their faces.

13 Q. Have you work with them before?

14 A. Yes.

15 Q. Okay. And you often collaborate with Shaba'K agents in
16 the taking of statements, correct?

17 MS. HAMILTON: Objection. Argumentative.

18 "Collaborate"?

19 THE COURT: Sustained.

20 MR. DEUTSCH: That's argumentative?

21 BY MR. DEUTSCH:

22 Q. You often cooperate with them in taking statements,
23 correct?

24 A. I've already responded before and I said that whenever I'm
25 asked to come and take testimony I do it.

1 Q. Okay. And when the Shaba'K ask you to come you come, is
2 that right?

3 MS. HAMILTON: Objection. There is no testimony
4 Shaba'K asked him to come.

5 THE COURT: Overruled. He can answer, if he can.

6 BY THE WITNESS:

7 A. I don't work for the ISA.

8 BY MR. DEUTSCH:

9 Q. You were also told by Haim or Nadav that the Prime
10 Ministry of Israel was waiting for the results of the
11 investigation and that you needed to get his statement as
12 quickly as possible, correct?

13 A. Yes.

14 Q. You knew this was real important because the Prime
15 Minister of Israel was waiting to get this statement, that's
16 what they told you, right?

17 A. Yes.

18 Q. And what else did they tell you about why this was so
19 important, sir, besides the fact the Prime Minister was
20 waiting for it?

21 A. That's it.

22 Q. Well, you knew this was an extraordinarily important case,
23 correct?

24 A. I knew it was an unusual case because it was a United
25 States citizen.

1 Q. Well, have you ever taken a statement of a United States
2 citizen before?

3 A. No.

4 Q. Did they tell you why the Prime Minister would be waiting
5 for such a statement?

6 A. No. They said he was waiting.

7 Q. You didn't want to disappoint the Prime Minister of
8 Israel, did you?

9 A. It has nothing to do with disappointing him or not. I had
10 to take his testimony, and I did.

11 Q. You wanted to take the testimony that was helpful to the
12 Prime Minister, didn't you?

13 A. Unequivocally no.

14 Q. Well, you indicated -- and also you wanted to assist the
15 Shaba'K in getting the statement, correct?

16 A. This is my job, to take testimony. I am a police officer.
17 My boss called me, too, and told me to go and get his
18 testimony.

19 Q. Have you ever had another case in which the ISA agents,
20 before they send you in to take a statement, tell you that the
21 Prime Minister was waiting for it?

22 A. No.

23 Q. Now, you testified that it took 2 hours to take the
24 statement, correct?

25 A. A little over 2 hours.

1 Q. Well, do you recall telling Mr. Schar and Mr. Ferguson,
2 September 23, 2002, that it took 4 to 8 hours to take the
3 statement?

4 A. I may have been wrong in my estimate.

5 Q. And do you remember --

6 A. But according to the report, it only took 2 hours.

7 Q. Do you recall, on March 15th of 2000, telling FBI agents
8 Peters and Resnick that it took approximately 4 to 5 hours to
9 take the statement?

10 A. I don't recall.

11 Q. Now, is there any rule that you have as INP -- strike
12 that.

13 It was your job to take down what Mr. Salah said word
14 for word, right? That's what you testified to.

15 A. Correct.

16 Q. It was important to be as accurate as possible, correct?

17 A. Yes.

18 Q. Is there any rule that prohibited you from taking a tape
19 recorder in there and taping his statement?

20 A. I don't know.

21 Q. Was there any rule that prohibited you from making a
22 videotape of the statement?

23 A. I don't know.

24 Q. Would you agree with me that a tape recording of a
25 statement would have been more accurate than something in a

1 language not the detainee's that you took down based on how
2 you translated what he said?

3 A. I don't know.

4 Q. Now, you indicated early on in your testimony that there's
5 a difference between -- you take statements in criminal cases
6 and in non-criminal cases, correct?

7 A. Yes.

8 Q. And this is considered by you to be a non-criminal case,
9 correct?

10 A. No. This is a security issue.

11 Q. Okay. So that's a separate category of cases, correct?

12 A. It's a different offense but the same interrogation.

13 Q. And there's separate treatment of security detainees than
14 regular criminals, isn't that right?

15 A. Not when you're interrogating someone under -- under
16 warning.

17 THE COURT: Excuse me.

18 Does the witness have water? I don't know if that's
19 your water or not.

20 Is that yours?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 (Brief pause.)

24 BY MR. DEUTSCH:

25 Q. Well, the security detainees are treated differently in

1 custody, are they not, than regular criminals?

2 MS. HAMILTON: I'm going to object as to vague.

3 Treated by whom? By him? By Israeli police?

4 THE COURT: Overruled. He can answer, if he can.

5 BY THE WITNESS:

6 A. Are you asking from my experience?

7 BY MR. DEUTSCH:

8 Q. I'm asking you based on your experience whether security
9 detainees are treated differently in custody while they're
10 detained than regular criminals?

11 A. I don't know how they treat them.

12 Q. Well, have you read any of the human rights reports from
13 Betsalem on how they're treated?

14 A. No.

15 Q. Have you heard that detainees are subjected to sleep
16 deprivation and sensory isolation?

17 A. I did not read any report.

18 Q. Did you inquire of Mr. Salah whether he had been
19 mistreated prior to taking the statement from him?

20 A. I did not need to ask him. If he had a problem, it was
21 his -- he would have come to me and told me.

22 Q. So if he wanted to have a statement, he had to insist upon
23 the statement in Arabic, correct?

24 A. If he insisted I would have done it willingly.

25 Q. Okay. And he also has to actually tell you whether or not

1 he has complaints. You don't ask him, correct?

2 A. That's how I understand it.

3 Q. Did it ever occur to you, sir, that maybe if you take the
4 statement, it would be more accurate, and did you inquire
5 whether you could take the statement?

6 THE INTERPRETER: Excuse me? Can you repeat? I did
7 not understand.

8 THE COURT: That was compound.

9 MR. DEUTSCH: Yeah, it was. It was.

10 BY MR. DEUTSCH:

11 Q. Did ever make any inquiry whether or not you could take
12 the statement of Mr. Salah?

13 A. No, I never asked.

14 Q. Now, how much training have you had in the Arabic
15 language, sir?

16 A. This is my mother tongue.

17 Q. Okay. So you write it --

18 A. I graduated from high school in that language. I do a
19 crossword puzzle in Arabic.

20 Q. Okay. So I would take it you would have no problem
21 writing out Mr. Salah's statement in Arabic as he said it to
22 you?

23 A. This is what I told him.

24 Q. But rather than do that, he said it to you in Arabic and
25 then you translated it into Hebrew and then wrote it down, is

1 that correct?

2 A. As he was giving me the testimony, word by word.

3 Q. Now, do you have the Hebrew document in front of you, sir?

4 A. Yes.

5 Q. Can you see on the bottom of the first page it says he
6 signed it SAL according to the translation?

7 A. It's a signature. I don't know what he wrote on the
8 signature.

9 Q. Well, is it his name spelled out, S-a-l-a-h?

10 A. No.

11 Q. It just says S-a-l, correct?

12 A. On top it says "Muhammad" and this is the way he signed
13 it.

14 Q. And that's on page 1 it says S-a-l, correct? The bottom
15 of page 1?

16 A. There are several letters. I cannot tell you what it
17 says.

18 Q. Okay. How about the bottom of page 2, can you tell me
19 what that signature says?

20 A. Again, it's a signature consisting of several letters.

21 Q. Okay. Is it S-a-l? Can you tell?

22 A. Other than the first letter, which is "S," I cannot tell
23 you what it says.

24 Q. Now, you tell him that he -- you give him some warnings,
25 right? Before you ask him to give a statement, is that

1 correct?

2 A. Yes.

3 Q. In the statement before you it says that you informed him
4 that he was still under warning in continuation with the
5 statement he made on January 27, 1993, is that correct?

6 A. Yes. I was told that he gave a previous statement and I
7 noted on top of the first page that this is interrogation
8 number 2.

9 Q. Well, did you just say "you're still under warning" or did
10 you give him an actual warning?

11 A. I told him that he was still under investigation -- under
12 interrogation with warning. That's in the first part. In the
13 second part I read the warning to him.

14 Q. Okay. And according to this statement you said,

15 "You are not obligated to say anything unless you
16 wish to do so, but anything you say will be documented by
17 me and might be used as evidence against you in a court
18 of law."

19 right? That's what you were told to tell him?

20 A. Yes. And that's what he signed.

21 Q. Because you go to court and you testify about these
22 statements, correct?

23 A. Absolutely.

24 Q. And isn't it true if he refuses to say anything to you or
25 give a statement, that's evidence against him in a court of

1 Israeli law?

2 A. Against him?

3 Q. Yeah. If he exercises the right to remain silent in front
4 of you, you can go in and testify that he refused to provide
5 you with information, correct?

6 A. There is a correction that was issued later by the
7 Ministry of Justice in Israel. I think that it says that if
8 you prefer to remain silent, it can be prejudice.

9 Q. So did you tell him that? If he remained silent his
10 silence will be used against him in a court of Israeli law?

11 A. I think that this correction was made later, not while I
12 was interrogating him.

13 THE COURT: Mr. Deutsch, before you go on. It's 7:00
14 o'clock.

15 MR. DEUTSCH: I'm almost done, Judge.

16 THE COURT: Okay.

17 MR. DEUTSCH: I mean, I don't want to keep everybody
18 here past 7:00 o'clock.

19 MR. SCHAR: Judge, the government is willing to stay.
20 And, in fact, we still have the other witness who, if we go
21 just a little bit longer, we may be able to finish tonight, as
22 well.

23 THE COURT: I didn't get a 4 and a half hour break
24 today. I've been going with a Section 4 hearing. I'll go a
25 little bit longer, but not a whole lot. If you're almost

1 done, keep going for a little bit longer, but I'm done by
2 7:15. I'm trying to do everything I can to accommodate you
3 but, like I said, I didn't get a 4 and a half hour break,
4 so ...

5 BY MR. DEUTSCH:

6 Q. Now, does the statement that you took from Mr. Salah
7 indicate, other than at the bottom of one of the pages--and I
8 guess it's page 5, or some part of page 5--does it indicate
9 the questions you asked him?

10 A. This was the only question I had and this was the only
11 question I asked him.

12 Q. So he just came in there and started talking to you in
13 Arabic, right?

14 A. Yes. I spoke to him in Arabic and he spoke to me in
15 Arabic.

16 Q. Now, you testified on direct that you took the ISA memos
17 into the room with you when you were questioning Mr. Salah, is
18 that right?

19 A. Yes.

20 Q. And what was the date of the memo that you took in with
21 you?

22 A. I don't remember.

23 Q. What did the memo say that you took in with you?

24 A. In general terms, who we met with, what he did, something
25 about money.

1 Q. Doesn't that memo fairly track what is in this statement
2 that you took from him? Did you compare the two?

3 A. No, I wrote this one down to keep. I took it with me in
4 the event that he decided to exercise his right to remain
5 silent, I would have asked him questions based on it. This is
6 the reason why I take it in with me.

7 Q. Okay. Now, you indicated that you didn't see any cuts or
8 bruises on Mr. Salah, is that right?

9 A. Yes. Of course.

10 Q. And you don't know how long he had been in custody, in
11 detention, at the time you saw him, right?

12 A. No, I have no idea.

13 Q. You didn't examine his body for cuts and bruises, right?

14 A. From what I could see outward, looked okay.

15 Q. Hands and face, right?

16 A. Of course. I do not tell people to take their clothes off
17 when I interrogate them. That's not my role.

18 Q. And did you actually get close enough to smell him?

19 THE INTERPRETER: He said as close from me. "As far
20 as you are from me," pointing at me.

21 BY MR. DEUTSCH:

22 Q. Did it appear to you he had an opportunity to bathe in the
23 last 10 days?

24 A. I have no idea. I didn't even know how long he was in
25 detention at the time.

1 Q. In fact, you had never laid eyes on Mr. Salah before that
2 day, right?

3 A. Never.

4 Q. You didn't know how he looked before he was arrested,
5 correct?

6 A. No.

7 Q. So you really couldn't tell whether or not he was
8 suffering from any sensory or sleep deprivation, could you,
9 sir?

10 A. Yes, but if I saw him sleepy during my interrogation, I
11 would not have been able to work with him.

12 Q. So if he fell asleep while you were talking with him, you
13 would note that in your report?

14 A. I would have been obligated to write it.

15 Q. And, of course, you have seen, in the past when you were
16 interrogating some arrestees, evidence of bruises and
17 mistreatment, right?

18 A. I never saw anybody like that.

19 Q. Well, did you tell Mr. Ferguson and Mr. Schar that you had
20 taken a few reports of mistreatment during interviews and have
21 documented some complaints and advised them that it usually
22 occurs when the IDF makes arrests? Do you remember telling
23 them that?

24 A. I don't recall.

25 Q. Do you remember telling them that you had -- most of the

1 injuries that you had witnessed came from gung-ho young
2 soldiers from the arrest or from the arrestees resisting
3 arrests?

4 A. I don't -- I don't remember.

5 Q. Is that true? Have you observed gung-ho soldiers causing
6 bruises on arrestees?

7 A. No.

8 Q. So that would have been not true if -- if that's put in
9 there by Mr. Schar and Mr. Ferguson, that's not true, is that
10 your testimony?

11 A. I don't remember what was said then, but here and now this
12 is what I'm saying, I never saw anything like that.

13 Q. So, then, you don't have any experience observing
14 mistreatment on interrogees or detainees or prisoners?

15 A. I said that I encountered such incidents with criminal
16 detainees who maintained that they were beaten up and will
17 report that to the Minister of Justice.

18 Q. Have you ever referred to the IDF military as gung-ho
19 young soldiers?

20 A. A soldier is a soldier.

21 Q. Well -- strike that.

22 THE COURT: Mr. Deutsch, I'm about to end for this
23 evening. You could pick up again tomorrow, if necessary.

24 MR. DEUTSCH: Okay.

25 THE COURT: Okay. The witness is excused for the

1 evening.

2 What time do you want to start tomorrow, Mr. Deutsch?

3 MR. DEUTSCH: I'd like to start at 7:00, if we can,
4 to get our witness on.

5 THE COURT: Mr. Deutsch, you're on cross examination.

6 MR. DEUTSCH: I'm happy to start as early as the
7 Court is willing to, Judge.

8 THE COURT: Mr. Ferguson, Mr. Schar reported to the
9 Court earlier that you may not be calling the other witness in
10 this case, the other police officer. Do you know what your
11 intention is at this point? I have asked for an answer by
12 8:00 o'clock tomorrow morning, but if you have a definitive
13 answer. I'll give you a minute.

14 This witness can step down. And I'll let the agent
15 know what time you need to be here tomorrow.

16 (Witness temporarily excused.)

17 (Brief pause)

18 THE COURT: If you don't have a definitive answer,
19 that's fine.

20 MR. FERGUSON: We'll give one. No.

21 THE COURT: Okay.

22 MR. FERGUSON: No other Israeli witness.

23 THE COURT: Okay.

24 MR. BLOOM: May I do something in three seconds
25 that --

1 THE COURT: Wait. I'm not done with Mr. Deutsch yet.
2 This is their last.

3 MR. DEUTSCH: I don't have much more.

4 THE COURT: Do you want to start at 7:45? Do you
5 want to start at 8:00? Do you want to start at 7:30?

6 MR. DEUTSCH: 7:45 is fine. We'll finish this
7 witness and then we'll be able to put our witness on, is that
8 right?

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REDACTED PURSUANT TO CIPA

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THE COURT: Okay. I will let you know in the morning, based on our discussions, if it's appropriate.

12

13

Anything else from me, Mr. Deutsch?

14

15

So, yes, you should have your witness ready. I don't know how much longer you're going to be on cross. I don't

16

know if the government is going to do redirect. My guess is,

17

given the scope, if they do, we should be done with this

18

witness by 9:00 at the latest. I'm guessing. And then I'll

19

hear whatever else needs to be heard on Nadav, and at that

20

point we'll proceed with your witness since the government is

21

not calling the other police officer.

22

MR. DEUTSCH: Okay. So we'll start --

23

THE COURT: 7:45 with this officer.

24

Yes, Mr. Bloom?

25

MR. BLOOM: A quick two-page letter for Mr. Ferguson

1 and Mr. Schar requesting certain materials that we need for
2 the hearing. And I have a copy for the Court.

3 THE COURT: Okay. See you tomorrow morning at 7:45.

4 MR. BLOOM: 7:45. Thank you.

5 THE COURT: All right.

6 (Adjournment taken from 7:20 o'clock p.m. to 7:45
7 o'clock a.m. on March 14, 2006.)

8

9 * * * * *

10 I, BLANCA I. LARA, DO CERTIFY THAT THE FOREGOING IS A
11 CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
12 ABOVE-ENTITLED MATTER.

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Blanca I. Lara

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Blanca I. Lara

Date

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CLERK, U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 03 CR 978
)
Plaintiff,))
vs.))
MUHAMMAD HAMID KHALIL SALAH,) Chicago, Illinois
) March 14, 2006
Defendant.) 7:45 o'clock a.m.

VOLUME NINE
EXCERPT OF PROCEEDINGS - SUPPRESSION HEARING
BEFORE THE HONORABLE AMY J. ST. EVE

APPEARANCES:

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Also Present:

S/A DAVID BRAY, FBI
S/A BRADLEY BENAVIDES, FBI
S/A JILL ROBISON, FBI
MR. ELI, Legal Adviser
MS. NETA, Legal Adviser
MR. ALON, Security Adviser
MS. AYELET LEVY, Israeli Ministry
of Justice
MS. MERAV ROZENBLUM, Interpreter
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* * * * *

PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

1 THE COURT: You may be seated.

2 Good morning.

3 MR. DEUTSCH: Good morning.

4 THE COURT: Are you ready to continue --

5 MR. DEUTSCH: Yes.

6 THE COURT: -- with cross-examination?

7 Would you bring in the witness, please.

8 (Witness Hezi Eliyahu enters courtroom.)

9 THE COURT: Good morning.

10 You may be seated.

11 HEZI ELIYAHU, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

12 THE COURT: Let me remind you that you are still
13 under oath.

14 THE WITNESS: Okay (in English).

15 CROSS-EXAMINATION - Resumed

16 BY MR. DEUTSCH:

17 Q. Mr. Witness, would it be fair to say that you met with the
18 Shaba'k agent for about 30 minutes prior to meeting with
19 Mr. Salah?

20 A. Definitely. I met him before I sat down with Mr. Salah.

21 Q. And would the length of your interview had been about 30
22 minutes?

23 A. I cannot say precisely.

24 Q. Well, do you recall telling Agents Peters and Resnick in
25 March of 2000 that you spent approximately 30 minutes with

1 Shaba'k agents prior to seeing Salah?

2 A. I don't remember.

3 Q. Well, would that seem to be about the right time based on
4 your recollection?

5 A. Maybe.

6 Q. Okay.

7 Did you take written notes of your briefing with the
8 Shaba'k agent?

9 A. No.

10 Q. But you did review an interview memo that was prepared by
11 the agent, right?

12 A. Definitely.

13 Q. And did you take notes on that memo that you reviewed?

14 A. Not even one letter.

15 Q. Okay.

16 And would it make sense that the memo you reviewed
17 was to the one prior to the -- the latest one prior to the
18 time of your interview with Mr. Salah?

19 MS. HAMILTON: Objection. Calls for speculation.

20 MR. DEUTSCH: Well --

21 THE COURT: Overruled.

22 He can answer, if he can.

23 BY THE WITNESS:

24 A. Can you repeat the question, again, please?

25 BY MR. DEUTSCH:

1 Q. Well, you were trying to -- in order -- the purpose of
2 reviewing the memo was to get up to speed as to what Mr. Salah
3 was telling the Shaba'k agents, right?

4 A. Yes, in order to know in general terms.

5 Q. Right.

6 And could you show him 1-28-93 Memo prepared by Nadav
7 in Hebrew?

8 THE COURT: Do you have that exhibit, Ms. Hamilton?

9 MS. HAMILTON: I would need to pull out the logs and
10 have the witness -- or one of the -- I could have --

11 MR. DEUTSCH: While you look for it, let me -- oh.

12 (Brief pause.)

13 THE COURT: This is the 2:00 p.m. one, I assume, you
14 are referring to?

15 MR. DEUTSCH: Yes, that's right, Judge.

16 Can I approach the witness?

17 THE COURT: Hand it to the agent. The agent will
18 give it to the witness.

19 (Document tendered.)

20 BY MR. DEUTSCH:

21 Q. Can you briefly just peruse that and tell me whether or
22 not that was the memo that you reviewed?

23 THE COURT: For the record, the witness is looking at
24 Government Exhibit 1-28-93 2:00 p.m.

25 (Brief pause.)

1 BY THE WITNESS:

2 A. Maybe. I am not sure.

3 BY MR. DEUTSCH:

4 Q. Okay.

5 Do you have the statement that you --

6 MR. DEUTSCH: Well, strike that for a second.

7 BY MR. DEUTSCH:

8 Q. Did Mr. Salah bring in any written notes into the
9 interview room that he referred to when he was talking to you?

10 A. No.

11 Q. So, you didn't have any notes and Mr. Salah didn't have
12 any notes, correct?

13 A. No.

14 Q. Okay.

15 Do you have the statement that you took from
16 Mr. Salah in Hebrew?

17 (Brief pause.)

18 MS. HAMILTON: Your Honor, I'm going to hand the
19 agent Government Exhibit 1-30-93 Salah Statement.

20 THE COURT: Okay.

21 The agent can provide that to the witness.

22 (Document tendered.)

23 BY MR. DEUTSCH:

24 Q. Now, I'm going to direct your attention to your statement
25 on the bottom of Page 2. Can you go to the bottom of Page 2.

1 (Brief pause.)

2 BY MR. DEUTSCH:

3 Q. Do you see that? Are you at the bottom of Page 2, sir?

4 A. Yes.

5 Q. There's a list of nine Arabic names; is there not?

6 A. Yes.

7 Q. It starts with Ttaha -- T-t-a-h-a -- Sharihi --

8 S-h-a-r-i-h-i, right?

9 A. Yes.

10 Q. And the last name is Ahmad Rafiq, right?

11 A. Yes.

12 Q. Okay.

13 Now, I want you to direct your attention to the memo
14 that you reviewed but didn't take notes on -- that's also in
15 front of you -- which is January 28th; and, ask you to look at
16 the page which starts with the letter "C," which is the third
17 page of my translated memo.

18 MS. HAMILTON: Your Honor, I'm only going to object
19 to the extent that Mr. Deutsch said that this witness said he
20 reviewed that document. He said he can't remember if he did.

21 THE COURT: I will note that objection.

22 BY MR. DEUTSCH:

23 Q. Can you look at that memo, sir, and see -- look at letter
24 C in the memo, which is on my third page of the memo.

25 (Brief pause.)

1 BY MR. DEUTSCH:

2 Q. Do you see that, sir?

3 A. Yes.

4 Q. And there's a list of nine names in that memo; isn't it,
5 sir?

6 A. Yes.

7 Q. And the names in the memo and the names in the statement
8 are the identical names in the identical order; aren't they,
9 sir?

10 A. I have to check.

11 (Brief pause.)

12 BY THE WITNESS:

13 A. Yes.

14 BY MR. DEUTSCH:

15 Q. Okay.

16 Now, I'm going to direct your attention to the bottom
17 of Page 4 of your statement. I -- yeah.

18 (Brief pause.)

19 BY MR. DEUTSCH:

20 Q. Do you see that, sir? There's a list of eight names
21 there?

22 A. Yes.

23 Q. And the first name on that list is Faed -- F-a-e-d --
24 Aghar -- A-g-h-a-r -- from Nablus, right?

25 Well, the name is there -- Faed Aghar -- right, on

1 your list? The first name?

2 A. Yes.

3 Q. And the last name on the list is another man from the
4 Modmas family, right?

5 A. Yes.

6 Q. Now, I'm going to direct your attention to the memo that
7 was prepared by Nadav on 1-28, and it's Page 6 in my
8 translated document. And there's a heading which says, "The
9 Plan to Appoint Imams in Mosques" and there's a list?

10 A. Yes.

11 Q. And can you compare the names on that list and the order
12 of the names on that list in the memo to the names on your
13 list and the order of the names on your statement.

14 (Brief pause.)

15 BY THE WITNESS:

16 A. Yes, I looked at it.

17 And?

18 BY MR. DEUTSCH:

19 Q. And are they identical?

20 A. There's a -- they are similar, but there's an additional
21 name, No. 8. It says, "and also for Abu Obadah."

22 Q. Okay.

23 But the order of the names are similar; are they not?

24 A. Yes.

25 Q. Do you think it was coincidental that Mr. Salah came into

1 a room with no notes and gave you, essentially, 17 names in
2 the exact same order that you put in your statement that was
3 in the memo that he gave to Mr. Nadav?

4 MS. HAMILTON: Objection.

5 THE COURT: Sustained.

6 BY MR. DEUTSCH:

7 Q. Well, comparing those -- the memo that was prepared by
8 Nadav and the statement that you took from Mr. Salah --
9 there's a striking similarity between the names that were
10 given and the order of those names, correct?

11 So --

12 A. Yes, there is. But here, it says that all of them are
13 from Nablus and this is not mentioned in the statement. And,
14 as I said, there was an additional name, a name that does not
15 appear.

16 Q. Is it your understanding that Mr. Salah repeated in the
17 exact order 17 names he gave to you, sir?

18 MS. HAMILTON: I'm going to object. Repeated -- it's
19 vague. Repeated from, what?

20 MR. DEUTSCH: Well, that's a good question.

21 THE COURT: Overruled.

22 He can answer, if he can.

23 BY THE WITNESS:

24 A. No. I don't know.

25 BY MR. DEUTSCH:

1 Q. Are you saying that you did not take notes or written
2 memorandum from the Nadav memorandum and included it in your
3 statement that you say Mr. Salah gave to you?

4 A. I did not copy anything. Whatever was told to me by
5 Mr. Muhammad Salah I wrote down.

6 Q. And, basically, you wrote down exactly what -- almost
7 exactly what -- Investigator/Interrogator Nadav wrote down in
8 a memo that you reviewed prior to your interview with Mr.
9 Salah, correct?

10 MS. HAMILTON: Objection. He already testified he
11 doesn't remember if he reviewed that memo.

12 THE COURT: Sustained.

13 BY MR. DEUTSCH:

14 Q. After comparing your -- the statement that you took with
15 the memo that Nadav wrote, are you still testifying that you
16 did not review that memo?

17 MS. HAMILTON: Objection. That was not his
18 testimony. He said he doesn't remember.

19 THE COURT: He can clarify.

20 You may answer.

21 BY THE WITNESS:

22 A. Can you remind me the question, please?

23 BY MR. DEUTSCH:

24 Q. Yeah.

25 You've had an opportunity to compare the statement

1 that you took from Mr. Salah with the memo that Nadav wrote on
2 January 28th, correct? You had that opportunity, right?

3 A. I did not compare. Whatever was written in the testimony
4 was told by him. And, again, it is not my business what is
5 written in this memo.

6 Q. Well, why did you read a memo before you did the
7 interr- -- take your statement -- if it wasn't your business
8 what was in a memo?

9 A. I read in general, in order to know what it was about.

10 Q. So, it was your business what was in the memo, correct?

11 A. It is my business; but, once I start taking testimony, it
12 doesn't interest me anymore.

13 Q. My question to you, sir, is: You've had a chance to
14 refresh your recollection by looking at the Nadav memo of 1-28
15 this morning, correct?

16 A. I already replied and said that I read it before I entered
17 the room and started the interrogation.

18 Q. We're trying to establish if this is the memo -- the 1-28
19 Nadav memo is the one -- you read before you came into the
20 room.

21 A. Again, I repeat, I don't remember. I'm not sure.

22 Q. After looking at the memo and seeing the similarities of
23 that memo to the statement you took, does it refresh your
24 recollection if that was the memo that you reviewed?

25 A. Even now I'm not sure.

1 Q. Well, the fact that there's two lists in the Nadav memo of
2 Arabic names totalling 17 names and they're in the exact same
3 order that appear in your statement, does that refresh your
4 recollection as to what memo you reviewed?

5 MS. HAMILTON: Objection. Asked and answered.

6 THE COURT: You can answer.

7 BY THE WITNESS:

8 A. What's the question, again?

9 THE COURT: Do you want me to read it back?

10 MR. DEUTSCH: Yes, please.

11 (Whereupon, the record was read by the Court.)

12 BY THE WITNESS:

13 A. Again, I repeat, these names were mentioned to me by the
14 suspect during the interrogation.

15 BY MR. DEUTSCH:

16 Q. Now, look at the last page of your --

17 MR. DEUTSCH: Strike that.

18 BY MR. DEUTSCH:

19 Q. Look at the Nadav memo on Page 6. There's a diagram in
20 that memo, isn't there?

21 THE COURT: Is it Page 6 or Page 8?

22 MR. DEUTSCH: Well, I'm referring him now to the
23 Nadav --

24 THE COURT: I understand.

25 MR. DEUTSCH: Oh, I'm sorry. You're right. You're

1 right. Page 8.

2 THE COURT: It is Page 6 of his. Page 8 of the
3 Nadav.

4 BY MR. DEUTSCH:

5 Q. There's a diagram in the Nadav memo, correct?

6 A. I see it, yes.

7 Q. And there's a diagram in the statement that you took,
8 correct?

9 A. Correct.

10 Q. And those diagrams are very similar; are they not?

11 A. They're as similar as east and west.

12 Q. All right.

13 Are they a diagram of the alleged communication or
14 drop system?

15 A. It says here that this is a system of dead drops, but this
16 is not what it says in my drawing.

17 Q. What does it say in your drawing?

18 A. In my diagram, it says the development of the events
19 starting from Abu Ahmad all the way to a military commander by
20 the name of Abu Sai'b, and division into cells of people and a
21 flow through London, Jordan and the United States.

22 Q. Well, let me direct you to the statement you took from
23 Mr. Salah. According to the statement on Page -- the bottom
24 of Page 5 -- it says, "I would also like to tell you that
25 Hamas operates in the Gaza area -- " "also like to tell you

1 that Hamas operates in the Gaza area, conduct communications
2 among themselves by means of a dead drop -- " in parentheses:
3 "(Another person in order to prevent the people from
4 collapsing)."

5 Do you see that? That's on the bottom of Page 5.

6 A. Correct. I see it.

7 Q. And I direct your attention to the Nadav statement, which
8 is on Page 8, and it says, "The subject points out that Hamas
9 operatives in the Gaza area connect each other through a dead
10 drop in order to prevent the collapse of the whole network.
11 The following is a drawing which the subject drew describing
12 the method of communication."

13 Basically, he drew a drawing for Nadav, which you
14 didn't take notes on and you didn't remember; and, then, you
15 came into it a room and he drew a drawing for you, right?

16 A. It is not the same drawing. They're not even similar.
17 How can I have copied it?

18 Q. Well --

19 A. I said yesterday --

20 Q. -- both drawings --

21 THE COURT REPORTER: Excuse me.

22 MR. DEUTSCH: Sorry.

23 THE COURT: Wait. Let him finish.

24 MR. DEUTSCH: Sorry. Sorry.

25 BY THE WITNESS:

1 A. I already said yesterday that he copied it by hand on a
2 piece of paper. So, how can Nadav?

3 BY MR. DEUTSCH:

4 Q. The drawings can be compared by anyone that wants to look
5 at them; but, in the top of the drawing, other than it says
6 "the suspect Abu Ahmad," the top of the drawing says "Abu Ali"
7 and "Abu Ali" is in the top of both drawings, correct?

8 Sir, the question is --

9 THE COURT: Wait. Mr. Deutsch, let him finish.

10 MR. DEUTSCH: Well, I don't think he's answering it
11 because he doesn't know.

12 THE COURT: But how do you know? How do you know if
13 he is answering it? He is in the middle of speaking in
14 Hebrew. Unless you have picked up Hebrew in the last 75 hours
15 --

16 MR. DEUTSCH: I have not.

17 THE COURT: -- we have been in court.

18 MR. DEUTSCH: I have not.

19 THE COURT: Let him finish, please.

20 MR. DEUTSCH: Okay. I'm sorry.

21 BY THE WITNESS:

22 A. In this drawing here, the Nadav's memo, it says that Abu
23 Ali is the first one.

24 BY MR. DEUTSCH:

25 Q. Okay.

1 A. And in the drawing that I copied from what the suspect
2 wrote down, it says that Abu Ahmad is the first --

3 Q. Who is --

4 A. -- and, after him, Abu Ali.

5 Q. Who is Abu Ahmad; do you know?

6 A. Muhammad Salah is called Abu Ahmad. That was his
7 nickname.

8 Q. Okay.

9 So, he's put himself -- the drawing that you took had
10 him at the top of the chart, right?

11 A. It is not in my drawing. It's in the suspect drawing that
12 he drew and I copied.

13 Q. The drawing that's in the statement that you took, putting
14 aside the fact that the suspect's name is at the top, the
15 first name is "Abu Ali" in both drawings, correct?

16 A. Yes.

17 Q. Okay.

18 And, then, there's a line from the name "Abu Ali" to
19 "Abu Mujahid" -- M-u-j-a-h-i-d -- and it says, "Security
20 Commander," right?

21 A. Yes.

22 Q. And those are the same in both drawings, correct?

23 A. Yes. But there are more details, which do not appear,
24 that there are different.

25 Q. Okay.

1 Let me ask you something, sir. Was it your idea to
2 ask Mr. Salah to draw a picture of the dead drop
3 communication?

4 A. Definitely. It says here. I wrote it down in my
5 statement in parentheses on Page 5.

6 Q. And what prompted you, sir, to ask him to make that kind
7 of drawing?

8 A. It came up during the interrogation when I asked him to
9 draw the whole system for me, to show me how it works.

10 Q. So, you -- on your own, without any kind of prior
11 information -- just decided that he should make a drawing of
12 the dead drop communication?

13 A. It came up during the interrogation.

14 Q. And is it your testimony that prior to asking him to do
15 that, you never saw that -- a drawing that was contained in
16 the Nadav memo of 1-28-93?

17 A. I cannot answer "Yes" or "No." I do not remember.

18 Q. Now, you did testify yesterday that the drawing that
19 Mr. Salah made was on a separate sheet of paper, correct?

20 A. Correct.

21 Q. And you copied it into -- you copied that drawing into --
22 the statement, right?

23 A. I copied it in my own writing and I translated the names
24 from Arabic into Hebrew into the statement.

25 Q. The statement that you say Mr. Salah drew on a separate

1 piece of paper, where is that, sir?

2 A. It was remained with the material of the interrogation in
3 the interrogation file.

4 Q. You didn't attach it to your statement?

5 A. It was remained with the statement so that it could be put
6 together in the interrogation file.

7 Q. Did you physically give it to somebody?

8 A. I said yesterday that I left the whole statement at the
9 police's interrogator -- in the facil- -- at the police's
10 interrogators' mailbox in the facility. I left the testimony,
11 my memo, the drawing.

12 Q. So, you just left it in a mailbox marked, what?

13 A. The police's interrogators' mailbox.

14 Q. Was it a specific mailbox of a specific interrogator or
15 just a general mailbox?

16 A. It is for all the interrogators. There is no specific
17 person.

18 Q. Okay.

19 Now, had you been to the Ramallah interrogation
20 center prior to this visit?

21 A. Yes.

22 Q. And, by the way, this visit took place on the Sabbath --
23 Saturday; did it not?

24 A. Correct.

25 Q. And was that unusual for the interrogators' center to be

1 active on a Sabbath?

2 A. I don't know. I don't work there.

3 Q. Well, had you ever been there before on a Sabbath?

4 A. No.

5 Q. Did that seem unusual to you to be called there on a
6 Saturday?

7 A. I don't know. I have no idea. They called me and I went.

8 Q. When you took the statement from Mr. Salah, you were
9 brought to a room where Mr. Salah was already present,
10 correct?

11 A. I said yesterday that I went to the room and, then, I
12 asked for them to bring him in. I was sitting down and he was
13 brought to me.

14 Q. Do you recall telling the FBI on March 15th, 2000, that
15 after the briefing, you went into an interview room where
16 Salah was waiting?

17 A. No. I went to the room and I asked for the subject to be
18 brought in.

19 Q. So, this information is incorrect taken down by the FBI,
20 right?

21 A. Again, maybe it's a mistake in the translation.

22 Q. The interrogation -- the room is an interrogation room?
23 Do you know that to be a fact?

24 A. Yes, it's a regular room. It's a regular office.

25 Q. Okay.

1 And is there cells outside the room where people can
2 be housed?

3 A. I have no idea.

4 Q. What about a bathroom? Is there a bathroom in the room?

5 A. No.

6 Q. Is there a bathroom outside the room, if you know?

7 A. I have no idea.

8 Q. Well, you testified yesterday that the interview took two
9 hours, and then I confronted you with prior statements to the
10 FBI that it took four to eight hours.

11 At any time during the interview did Mr. Salah or you
12 need to use the bathroom?

13 A. No.

14 I would like to explain, again, that it was --
15 according to my memo, it was -- two hours and ten minutes.

16 Q. When you talked to the FBI in 2000, did you review your
17 memo before you gave an interview?

18 A. No, I did not.

19 Q. Did you -- after the interview, did you -- go back and
20 look at your memo to make sure you had given accurate
21 information to the FBI?

22 A. No.

23 Q. And, then, two years later you were interviewed by Mr.
24 Schar and Mr. Ferguson and some more FBI, correct?

25 And you told them --

1 A. Yes.

2 Q. And you told them the interview took four to eight hours
3 then, correct?

4 A. Maybe.

5 Q. Did you look at your memo before your second interview?

6 A. If I would have looked at it, I would have told him the
7 exact time to the second. Maybe I said the general total, the
8 total time that I invested in it from the time I left my house
9 to the time I returned to my house.

10 Q. You also testified yesterday that although you were told
11 that the Prime Minister was interested in the case and he was
12 waiting for your statement, you didn't change your behavior as
13 a result of that, correct?

14 A. Absolutely not. It doesn't concern me. What concerns me
15 is what the interrogee had said.

16 Q. Do you remember telling Mr. Schar and Mr. Ferguson and the
17 FBI in September of 2002, that the prime minister's interest
18 led him to be more patient during the interview?

19 A. It led who?

20 Q. You.

21 A. I'm patient with everyone.

22 Q. So, when the FBI or Mr. Schar or Mr. Ferguson prepared
23 this report of the interview and said that it led you to be
24 more patient because of the Prime Minister's interest, that
25 was incorrect?

1 MS. HAMILTON: Objection.

2 THE COURT: Sustained.

3 BY MR. DEUTSCH:

4 Q. Are you testifying that you never told anyone from the
5 U.S. government that you -- because of the interest of the
6 Prime Minister, you -- changed your behavior in taking the
7 statement?

8 A. My behavior did not change, neither for good or bad.

9 Q. Now, Mr. Suleiman. We talked about him yesterday.

10 Was he not your superior, sir?

11 MS. HAMILTON: Objection. Asked and answered.

12 THE COURT: Sustained.

13 BY MR. DEUTSCH:

14 Q. Did you tell the FBI --

15 MR. DEUTSCH: Well, strike that.

16 BY MR. DEUTSCH:

17 Q. Did you talk or brief Mr. Suleiman after you took the
18 statement from Mr. Salah?

19 MS. HAMILTON: Asked and answered.

20 THE COURT: We have been through this.

21 MR. DEUTSCH: We have?

22 BY MR. DEUTSCH:

23 Q. Well, did you tell the FBI that you briefed Mr. Suleiman?

24 MS. HAMILTON: Objection. Asked and answered.

25 MR. DEUTSCH: I don't remember doing that.

1 THE COURT: He can answer that.

2 MR. DEUTSCH: Of course, it was quite late and --

3 THE COURT: You were the one who wanted to stay --

4 MR. DEUTSCH: -- I was sleep deprived.

5 THE COURT: -- later, Mr. Deutsch. So, do not --

6 MR. DEUTSCH: Okay. Let me --

7 BY MR. DEUTSCH:

8 Q. Were you -- did you know that after you took the statement
9 that Mr. Suleiman was scheduled to conduct another interview
10 with Mr. Salah?

11 A. No. Besides Mr. Suleiman, there were other interrogators.

12 Q. Well, did you tell the FBI in 2000 that you later briefed
13 your superior, Mr. Suleiman, concerning the statements
14 provided by Salah because Suleiman was scheduled to conduct
15 another interview of Salah?

16 A. No.

17 Q. So, that's not true, then?

18 A. I don't know what is written, but I did not report to
19 Mr. Suleiman. I reported to my head of interrogation, which
20 is Mr. Yitzhak Rahamin. And I've already stated it yesterday.

21 Q. Is Mr. Suleiman an equal colleague of the same level in
22 the organization?

23 A. He was an ordinary interrogator, and I was a senior
24 interrogator.

25 Q. So, you were actually senior to him?

1 A. Yes, I'm more senior.

2 Q. Would you agree with his testimony that you act under the
3 orders of the GSS and follow the executive actions required by
4 the GSS?

5 THE INTERPRETER: "Executive orders," you said?

6 BY MR. DEUTSCH:

7 Q. He testified, Page 359 sub-trial, "We act under the orders
8 of the GSS and execute the actions required by the GSS."

9 Do you agree with that?

10 A. I did it?

11 Q. No, I'm asking -- this is what Mr. Suleiman testified to.

12 A. The Israeli police only works under its own orders, under
13 its own rules. We do not work under the orders of the ISA.
14 We are a totally independent unit.

15 Q. Is it fair to characterize Mr. Suleiman as the lead
16 investigator for the Israeli police?

17 MS. HAMILTON: Objection. Asked and answered.

18 THE COURT: Sustained.

19 BY MR. DEUTSCH:

20 Q. Are you familiar with the state comptroller report about
21 the uses of brutality by the Israeli National Police?

22 A. I'm not aware. Of Israeli police, I'm not aware.

23 Q. You're not aware of a report that documented acts of
24 brutality by the Israeli National Police, sir?

25 A. I never heard of such a thing in my life.

1 Q. Okay.

2 MR. DEUTSCH: I have no further questions.

3 THE COURT: Any redirect?

4 MS. HAMILTON: No, your Honor.

5 THE COURT: Okay.

6 Thank you. You may step down.

7 This witness is excused.

8 (Witness excused.)

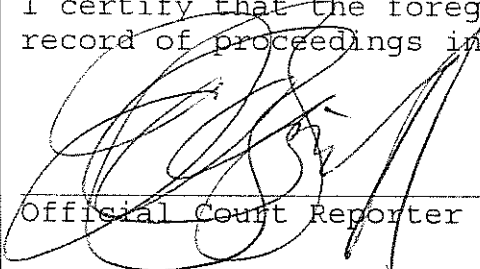
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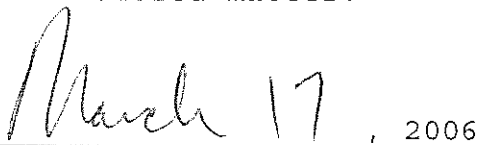
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11 I certify that the foregoing is a correct excerpt from the
12 record of proceedings in the above-entitled matter.

12

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14 
Official Court Reporter


March 17, 2006

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