

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.
5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.

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March 2, 1995
3:00 p.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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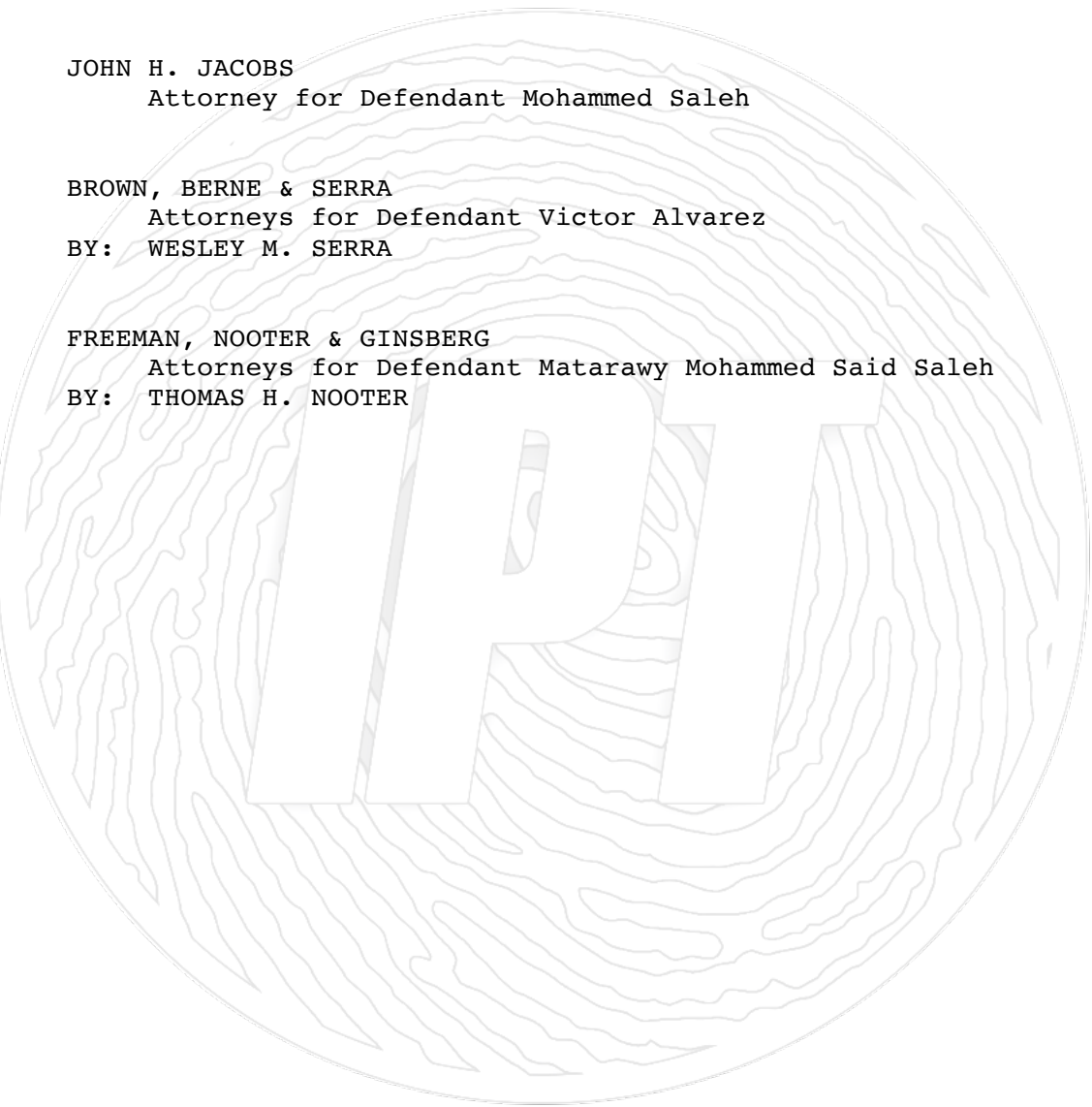
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (In open court; jury not present; defendants not
2 present)

3 MR. McCARTHY: United States versus Abdel Rahman,
4 et al. Good afternoon.

5 MR. McCARTHY: Good afternoon, your Honor.

6 THE COURT: Yes.

7 MS. AMSTERDAM: Your Honor, Mr. Jacobs asked for
8 this conference. He is unable to be here at this time. He
9 has a matter on in the Eastern District. He was here at 2.
10 He stayed as long as he could. I will be substituting as to
11 the narrow focus of this conference. I don't know if any
12 other matters will be taken up. I know that Mr. Jacobs
13 wanted this conference to specifically discuss the redaction
14 of the 3500 material, and I believe that the government was
15 going to supply your Honor with unredacted material for your
16 Honor's review. I am not sure whether your Honor has had an
17 opportunity to do that review.

18 THE COURT: I have had an opportunity to do it.
19 I got from the government -- it didn't have a covering
20 letter and was a little bit of an adventure. I got two
21 categories of material. One consists of three 3500 exhibits
22 that contain redactions. The other is a larger stack of
23 material.

24 Is all of this 3500 material or are only the
25 three exhibits 3500 material?

1 MR. McCARTHY: There was a brief cover letter.
2 It must have gotten mixed up --

3 THE COURT: It didn't come out of the envelope.

4 MR. McCARTHY: There wasn't an envelope. I hand
5 carried it over to the court myself this morning.

6 THE COURT: I am sorry. Here it is.

7 MR. McCARTHY: Here is what I tried to do, your
8 Honor. The 3500 exhibits that I gave your Honor were the
9 ones that actually had redactions, and rather than have to
10 have the court leaf through two different piles, I thought
11 it would be easier if your Honor got the brownouts so that
12 your Honor that your Honor could see through the redactions.

13 THE COURT: Then the larger stack, it turns out,
14 is the 3500 exhibits?

15 MR. McCARTHY: Yes, your Honor.

16 THE COURT: In any event, I have gone through all
17 of it, there was one brownout that I couldn't read at all.
18 First of all, there are a number of duplicate pages, I
19 think, within 3534C. That is the largest.

20 MR. McCARTHY: My understanding of what happens
21 with that, your Honor, is that there are a number of
22 teletypes that we turned over. There is a process that
23 apparently refines teletypes, and what looks duplicative is
24 only largely duplicative, not completely duplicative, and
25 since they slightly change from one to one to one, in an

1 abundance of caution I turned them all over.

2 THE COURT: In any event, the brownouts seemed to
3 be consistent among all the copies, and to the extent I
4 couldn't read a brownout on one copy, I could read it on
5 another. But there is one that I really can't read at all.
6 And I had a question initially about one of the brownouts
7 that then got resolved when I looked at later ones.

8 The bottom line is, I don't see anything within
9 the brownouts that I think has to be turned over. The
10 reason that it doesn't -- there are a variety of reasons.
11 What I would propose to do instead of simply leaving it with
12 that conclusory statement is to go into the robing room with
13 government counsel and put a statement on the record of what
14 it is that I found, the various categories of information
15 that I found in the brownouts and the rationale that I found
16 for the brownouts, so that if somebody has to review this,
17 they would understand why I did it, unless you would simply
18 prefer the conclusory statement that I looked at them and
19 didn't find anything that had to be turned over.

20 MR. LAVINE: Can we have one second, Judge?

21 THE COURT: Sure.

22 MR. LAVINE: Judge, while less may often be more,
23 in this situation we are going to ask you to go into the
24 robing room and put the specific reasons on the record.

25 MS. AMSTERDAM: Before we do that, I have another

1 appearance at 3:30, and I may not stay for your Honor's full
2 discussion as to the reasons. But there are two areas that
3 we were mostly focused on. I want the record to be clear.
4 One area is the area of other trade bomb subjects which were
5 blacked out. In very brief, our argument for getting that
6 is that while the court may think, again, that the enemy of
7 my enemy could be my friend, it could equally be likely that
8 the enemy of my enemy is my enemy, and that is a factual
9 situation for the jury.

10 THE COURT: That doesn't have to do with this.

11 MS. AMSTERDAM: I am looking at one that has El
12 Sayyid Nosair, blacked out, trade bomb subjects, black out,
13 black out, and Omar Abdel Rahman, blackout, Hamas. I assume
14 that there were other names as to who the trade bomb
15 subjects were.

16 THE COURT: I don't think that is accurate. I
17 think those -- I don't know which document it is you are
18 looking at, but the pattern that you have just read suggests
19 not a naming of other subjects but rather a numbering system
20 identifying the previously named subjects, the numbers
21 having been blacked out because not to black them out would
22 indicate the nature of the numbering system in intelligence
23 gathering investigations. That has been blacked out in
24 other contexts, including the FISA wiretaps. That is one of
25 the rationales for not disclosing various items of

1 information in FISA wiretaps.

2 So if you are lying awake nights believing there
3 are other subjects under those blackouts --

4 MS. AMSTERDAM: Could I just hand this up to your
5 Honor, and the only reason I thought that it was a name as
6 opposed to a number --

7 THE COURT: Sure. I have a 6-inch stack of
8 documents. I don't know which one it is you are looking at.

9 MS. AMSTERDAM: I will deal with this matter with
10 Mr. McCarthy separately.

11 THE COURT: Secondly, those don't appear to
12 represent information that the witness disclosed to the
13 government so much as the government's own -- the thought
14 processes of some FBI agent or the classification system or
15 the designations of the files to which this memo was going
16 to be sent. That is not 3500 material.

17 MS. AMSTERDAM: I am not in a position to know
18 whether or not this is a statement of the thought process or
19 this is a statement of a summarization of what the informant
20 told law enforcement agents on that issue.

21 THE COURT: Can I see the page you are looking
22 at?

23 MS. AMSTERDAM: Sure.

24 THE COURT: Which 3500 exhibit was this part of?

25 MR. MCCARTHY: Your Honor, can I make a

1 suggestion?

2 THE COURT: Sure.

3 MR. McCARTHY: I think once we are able to
4 identify which document it is, I will quickly be able to
5 find out whether they are numbers or not. If they are not
6 numbers, I will advise Miss Amsterdam promptly.

7 MS. AMSTERDAM: The category of information that
8 was sought was the identification of the other cases that
9 the informant was working on, and specifically, the
10 background information about those cases, whether or not he
11 was wired in those cases, whether or not he obtained money
12 on those cases, whether or not any of the people that were
13 the targets of his investigation are defendants in this
14 case. We believe that we are entitled to know what other
15 cases this informant was providing information on.

16 MR. McCARTHY: I think, your Honor, that they are
17 certainly entitled to know what he got paid by the
18 government, and we are providing a ledger of every cent this
19 guy ever got from the United States, or the United States
20 government, anyhow. I don't think that they are entitled to
21 know the names of cases. There is nothing in the nature of
22 3500 about that, there is nothing that is in the nature of
23 Brady or Giglio about the name that is assigned by the FBI
24 to a case. I explained to Miss Amsterdam earlier, because I
25 saw that in some of the reports although not others the

1 names of cases were actually given over, and if we did that,
2 we did that.

3 There is a case name which we have not turned
4 over which I declined to turn over, but with respect to El
5 Sayyid Nosair and Omar Abdel Rahman, I made that known to
6 Miss Amsterdam before. I think that is more than they are
7 entitled to know, and I certainly without an order to do so
8 would not identify anything further.

9 THE COURT: There is another -- I will go back
10 there and put that information on the record, I guess, after
11 we finish talking. There were some issues raised in a
12 letter from Mr. Stavis, in which he is asking for a wide
13 variety of material, some of which I thought I had
14 previously dealt with. Specifically --

15 MR. McCARTHY: Item 5?

16 THE COURT: Item 5. I went through a huge stack
17 of transcripts, the ones that were turned over, the ones
18 that were redacted and the ones that were in the
19 government's view irrelevant. I questioned some of them. I
20 went back through my notes on that after I got his letter.
21 I signed an order in April, I think, of last year, directing
22 that the government provide explanations as to certain of
23 them, and they did it. Whatever the result was, it was. I
24 am not going to retrace those steps. There was one
25 conversation, reviewing the notes that I had made at the

1 time that I reviewed what you sent me, that was not covered
2 in that order, and I don't have a record as to whether that
3 one was turned over or not, and if I tell you that -- I
4 think it was tape 41, which had one conversation on it.

5 MR. McCARTHY: Tape 41, the only one I know is
6 Siddig Ali.

7 THE COURT: This is the bootleg case.

8 MR. McCARTHY: Yes, your Honor. There is a tape
9 41, which I know conversation number 1 is Siddig Ali. I
10 don't believe there are any other conversations on that
11 tape, although I could be wrong. The court may just have
12 the wrong number.

13 Your Honor, we will go back and recheck the
14 order.

15 THE COURT: It is in envelope 3 of the three
16 envelopes. I don't expect you to have memorized it.

17 MR. McCARTHY: Thank you.

18 THE COURT: I am simply telling you that is one
19 that I had a question mark next to and it wasn't reflected
20 in the order. Doublecheck that.

21 MR. McCARTHY: Maybe I could bring your Honor up
22 to speed on what we are doing with respect to item 5, which
23 I think surpasses what we were directed to do. Item 5 deals
24 with the conversations with what Mr. Stavis calls the
25 Egyptian intelligence officials, who are Egyptian military

1 intelligence personnel. Your Honor previously directed us
2 to turn over, as I understand it, the conversations but
3 permitted us to redact the names out of the conversations.

4 THE COURT: Right, but you are supposed to
5 disclose enough about them so that the nature of their
6 intelligence unit, although not necessarily the specific
7 unit, could be determined.

8 MR. McCARTHY: Right. What we have done is, to
9 try to ease the logistical difficulties of cross-examining
10 the witness and queuing up tapes which are in a foreign
11 language, what we have done is prepare a set of transcripts
12 which redact out the names, which I have told counsel I will
13 go through with the witness and have him sign off on, so
14 they don't have the problem they have been concerned about,
15 asking him isn't it a fact you said this on the basis of the
16 draft transcript --

17 THE COURT: Having him say no.

18 MR. McCARTHY: Right. By tomorrow I expect that
19 we will have a set of tapes with the names also redacted so
20 that they can verify the transcripts independent. I think
21 that is more than we had to do, but it may make everybody's
22 life easier.

23 MR. JABARA: Your Honor, on this question about
24 what he said that he is going to provide tomorrow on the
25 Egyptian intelligence tapes, unless we have the Arabic

1 originals and have an opportunity to translate those, we
2 cannot really be in a position to prepare to cross-examine
3 Mr. Salem without our own translations of those, and we have
4 not been provided with them. That, my understanding, until
5 tomorrow.

6 MR. McCARTHY: They have been provided with draft
7 transcripts. What I have agreed to do, even though there is
8 no lawful obligation that I do it, is have him review and
9 adopt the transcripts so that they are his statement as
10 opposed to a draft, so that he can be cross-examined. In
11 addition, we have agreed to provide copies of the actual
12 tapes with the names redacted out, so that you will have an
13 independent ability to verify that the transcript is true
14 and accurate besides just the witness saying so.

15 THE COURT: Then there was financial information
16 relating to his payment, specifically checks, expense
17 records and other backup.

18 MR. McCARTHY: Your Honor, in our view, we are
19 going to turn over to the defense what the government has
20 paid, and it will be in the form of -- it has been in the
21 form of a ledger so that they can see each occasion when he
22 was paid money, and they will have a grand total. I don't
23 think there is anything that requires us to get the checks
24 out. I mean, they are entitled to the information and the
25 information is that he was paid a lot of money by the

1 government, and they will be able to know essentially to the
2 penny what it was that he got.

3 THE COURT: Do you think if he was paid with a
4 lot of backup or a little backup or no backup at all, that
5 that is relevant?

6 MR. McCARTHY: No.

7 THE COURT: You don't?

8 MR. McCARTHY: No, your Honor. As long as they
9 know what he was paid?

10 THE COURT: Part of that was supposedly to
11 reimburse him for lost opportunities or funds.

12 MR. McCARTHY: Right.

13 THE COURT: And presumably he had to tell them,
14 or he had to tell you I didn't get, or I lost this job or
15 that job, and this is my proof of it, pay me.

16 MR. McCARTHY: I beg to differ on the last point.
17 What he needed to do, I think --

18 THE COURT: When you say you beg to differ, you
19 just took his word for it?

20 MR. McCARTHY: If it seems to be a reasonable
21 proposal under the actuarial circumstances, I think that
22 that would affect the quantum of proof you would ask for
23 somebody to produce to say this is my lost wages.

24 THE COURT: I am not asking you to justify what
25 you did. All I am telling you is, you ought to be able to

1 show them what you did.

2 MR. McCARTHY: Your Honor is talking about in
3 connection with the --

4 THE COURT: Payments to him.

5 MR. McCARTHY: All payments?

6 THE COURT: Yes.

7 MR. McCARTHY: Your Honor, can I perhaps direct
8 the court's attention to one of the 3500 exhibits?

9 THE COURT: I saw it.

10 MR. McCARTHY: The ledger?

11 THE COURT: Right.

12 MR. McCARTHY: Some of those are straight
13 payments for information, others are expenses. They are not
14 exorbitant amounts of money, in the main.

15 THE COURT: I am not saying that I am going to
16 allow anybody to pick up an American Express bill for
17 October 24 of '91 for \$80 and then require him to give a
18 recitation of what he did on that date.

19 MR. McCARTHY: Can I just be heard a little bit
20 more on that?

21 THE COURT: Sure.

22 MR. McCARTHY: What is material here is what he
23 was paid by the government, and I suppose what his
24 expectations of payment were and how that may affect his
25 bias on the stand.

1 THE COURT: Do you think it is material if he was
2 ripping off the government?

3 MR. McCARTHY: Sure.

4 THE COURT: I do, too. It may be material. If
5 he is ripping them for for all amounts, maybe it is, maybe
6 it isn't. Maybe it is even more material if he was doing it
7 for small amounts.

8 But go ahead.

9 MR. McCARTHY: Our Brady obligation is to provide
10 information that goes to the relevant issue.

11 THE COURT: This is not even a question of Brady.
12 Presumably he is going to testify that he was reimbursed for
13 expenses by the government. That includes a statement that
14 there were expenses incurred that were ordinary and
15 necessary.

16 MR. McCARTHY: Your Honor, I am not going to
17 belabor the point further. Whatever support for the
18 payments we have, I will produce.

19 THE COURT: Fine.

20 Mr. Patel, was there something you wanted to add?

21 MR. PATEL: No, Judge. Just in case it was
22 necessary to jump in, I thought I would get close to the
23 microphone. I will sit down.

24 THE COURT: Did you want to say something to
25 change my mind?

1 MR. JABARA: Not on this issue. I wanted to
2 address the question of the redacted tapes that he is going
3 to provide us tomorrow.

4 THE COURT: Revisit it in what respect?

5 MR. JABARA: We are just not going to have time
6 to get it to our translators --

7 THE COURT: Look. These things have been around
8 for a long time and you come late to the game.

9 MR. PATEL: With respect, your Honor.

10 MR. BERNSTEIN: On the Egyptian intelligence
11 bootleg tapes, these are the ones that Mr. Stavis in
12 particular has raised with the court for many, many, many
13 months. These are the tapes that the government has
14 assiduously avoided putting forward until today. Here is
15 what Mr. McCarthy is saying in fact.

16 THE COURT: How many tapes are we talking about?

17 MR. SERRA: Excuse me, your Honor. I was not
18 aware until three hours ago that there was a conference
19 today.

20 THE COURT: That is all right.

21 MR. SERRA: My count is in the forties.

22 MR. McCARTHY: No, it is more like 21, 22.

23 MR. SERRA: Are you including the arms
24 transportation tapes?

25 MR. McCARTHY: No, I wasn't including that.

1 MR. SERRA: There are two categories of
2 conversations, your Honor, that we have not yet gotten the
3 actual tapes and as the court knows well, the conversations
4 with Egyptian intelligence agents and there were various
5 conversations that involved Mr. Salameh being solicited for
6 various arms transactions. I have a list, your Honor, of
7 the bootleg conversations and one we have gotten transcripts
8 and one we have gotten tapes. For those two combined, my
9 count is in the forties.

10 THE COURT: Understand that all of this is at
11 kind of a secondary level of relevance to the main issue
12 here.

13 MR. SERRA: Your Honor, that may well be correct.

14 THE COURT: It is correct.

15 MR. SERRA: About one of those categories, yes.
16 The arms transportation may be impeachment material and,
17 your Honor may rule, collateral. Perhaps for Mr. Jabara's
18 client and several other defendants, the Egyptian
19 intelligence tapes go directly to the question of bias --

20 THE COURT: It is conceded that he has ties to
21 Egyptian intelligence. It has been discussed --

22 MR. SERRA: Your Honor, I don't believe it has
23 ever been conceded and to my review of the 3500 material the
24 government is not going to concede as we stand here the
25 reason Mr. Salem got involved in this operation in the first

1 place was because of continuing ties to Egyptian
2 intelligence.

3 THE COURT: That is a whole different thing.

4 MR. SERRA: Your Honor, these conversations quite
5 possibly go directly to that.

6 THE COURT: I think I saw all of the same
7 conversations that you saw, and I don't recall anything like
8 that.

9 MR. SERRA: Your Honor, they are in Arabic, and
10 it may well be I am the wrong person to argue this because
11 it seems unlikely that I will cross-examine on this at all.
12 But I have not and no one in my employ or working with me
13 who speaks Arabic has word one word of those conversations.

14 THE COURT: We are going to do it this way. They
15 are going to be made available when they are made available.
16 You want to go through getting them translated, you can go
17 right ahead and do it. When, as and if you should come up
18 with a claim that there is something on those tapes that is
19 material that hasn't been translated accurately in the
20 government's version, I will hear you. I will not delay his
21 appearance.

22 MR. JABARA: The problem is that the government
23 waited until the 12th hour to provide these and now we are
24 going into the Emad Salem next week and we will be expected
25 to cross-examine him.

1 THE COURT: Mr. Jabara, you will be expected to
2 cross-examine him on what it is that you have. You will be
3 in the advantageous position of being able to cross-examine
4 him based on what you have and then being able to have him
5 recalled if you want to have him recalled after you have the
6 tapes translated.

7 MR. JABARA: Fine, thank you.

8 THE COURT: -- and you have a real issue about
9 the translation that you were given. So you are in a better
10 position than you would have been in otherwise.

11 MR. JABARA: Fine.

12 THE COURT: Tax returns. Tax returns are not now
13 and never have been 3500 material. Does anybody dispute
14 that?

15 Hearing no one, that is out.

16 Number 6 is copies of all checks paid by the
17 Egyptian government to Mr. Salem. How is that supposed to
18 come from the United States government? I am looking at
19 you, Mr. Patel, only because you are --

20 MR. PATEL: Your Honor, to answer your question,
21 presumably through Mr. Salem, who may have copies of them.
22 If he has copies of them, we would like them. If he
23 doesn't, he doesn't.

24 MR. McCARTHY: Your Honor, everybody has known
25 that this witness was coming probably since the day of the

1 arrests in this case, and certainly since the openings. Now
2 knowing the sort of logistical nightmare it is to move
3 somebody with these kinds of security considerations, to
4 have him here and then get this on March 1, I think, is
5 unfair and burdensome.

6 I would like to address what is appropriate
7 cross-examination. The government, notwithstanding what has
8 been said behind me, the government doesn't dispute that
9 this man has ties to Egypt and has ties to Egyptian military
10 intelligence. I think we have said that outright before.
11 They have in the world of things that they have been given
12 in this case a plethora of information in which to probe
13 that potential area of bias. This request is excessive. It
14 is not something the government has. It would be something
15 that it would be very difficult, if it exists, and I don't
16 know that it does --

17 THE COURT: Why don't you as a first step ask
18 him.

19 MR. McCARTHY: I will do that.

20 THE COURT: Do you have a little file in your
21 filing cabinet that says checks from the Egyptian government
22 or copies of checks from the Egyptian government?

23 MR. McCARTHY: I represent to your Honor if I had
24 such a file I would have turned it over.

25 THE COURT: I am talking about Mr. Salem.

1 MR. McCARTHY: If he has a file.

2 THE COURT: Fine. Category number 7, the
3 psychological evaluation records concerning Emad Salem's
4 suitability for the Witness Protection Program?

5 MR. PATEL: My understanding, your Honor, is that
6 Mr. Salem has been interviewed by the, I believe it is the
7 United States Marshals Service rather than the Witness
8 Protection Program.

9 THE COURT: Let's say he has.

10 MR. PATEL: And that there would be statements of
11 the witnesses involved, and I would ask that that be
12 provided to us.

13 THE COURT: You mean his statements?

14 MR. PATEL: Exactly, your Honor.

15 THE COURT: In aid of getting into the Witness
16 Protection Program?

17 MR. PATEL: Exactly.

18 MR. McCARTHY: Your Honor, I will review the
19 report that they do.

20 THE COURT: Of any statements by him. Nobody is
21 going to get into some psychological profile of some amateur
22 or professional.

23 MR. McCARTHY: If it is a close call, we will ask
24 the court.

25 I don't want to pressure you for a ruling on an

1 abstraction, but if it turns out that that gets turned over,
2 I would ask the court to make it clear to the jury that that
3 is a routine practice. Everybody who goes into the Witness
4 Protection Program is subject to a psychological evaluation.
5 It's not like he needed to see a psychiatrist on such and
6 such a date because of some singular problem.

7 THE COURT: You can draft up an instruction.

8 MR. McCARTHY: Thank you.

9 THE COURT: What else have we got?

10 MR. PATEL: Can we go off the record for a
11 moment, your Honor?

12 THE COURT: Off the record?

13 MR. PATEL: I don't have a copy of the letter.

14 THE COURT: You want the letter?

15 MR. JABARA: Your Honor, at some point in time I
16 would like to take up with the court, if I may, the Brady
17 and Giglio request that we made and as to which Mr. McCarthy
18 said he would respond. We have not had a response yet and I
19 would like to take it up with the court. It relates
20 directly to our cross-examination of Mr. Salem this coming
21 week.

22 MR. McCARTHY: Your Honor, I reviewed the
23 Brady/Giglio request, which is dated January 16, 1995, and
24 it has a list of essentially five items. The bottom line
25 response is that the government doesn't have anything

1 responsive to --

2 THE COURT: Any of those five items?

3 MR. McCARTHY: The five requests. I have told
4 Mr. Jabara that I would undertake to be sure to follow
5 through on item D, which I will read to your Honor:

6 "Dr. Abdel Rahman received a visa to enter the
7 United States in 1990 from the United States consular office
8 in Khartoum, Sudan. Upon information and belief there may
9 have been correspondence surrounding the issuance of this
10 visa. One or more of the aforementioned agencies," and
11 those are intelligence agencies referred to above, "may have
12 contacted the consulate in that regard. To the extent that
13 this correspondence, including but not limited to written,
14 telephonic, cybernating, is exculpatory, it must be
15 produced."

16 THE COURT: This is the issuance of a visa in
17 1990?

18 MR. McCARTHY: Yes, your Honor.

19 MR. JABARA: Your Honor, as he indicated, there
20 were five categories of material here that we requested.
21 One of them relates to the correspondence from and to Janet
22 Reno concerning whether or not there was sufficient evidence
23 to indict our client in this case.

24 THE COURT: Let me put your mind at ease about
25 that. You are not getting it. Janet Reno's correspondence

1 on whether there was or wasn't sufficient evidence is
2 totally irrelevant to this case. There are 12 folks sitting
3 over there who are going to decide whether there is
4 sufficient evidence or not, and Janet Reno is not among
5 them.

6 MR. JABARA: The second category, your Honor, was
7 the communication between the United States government and
8 the government of Egypt relative to this case, since it is
9 our contention that Dr. Abdel Rahman had been placed in this
10 case as a favor to the president of Egypt and to prop up the
11 regime of Egypt, and Mr. McCarthy is telling me that they
12 have no material to this effect. I don't know what kind of
13 attempt he has made to ascertain that.

14 MR. MCCARTHY: If I know it of my personal
15 knowledge not to be true, I don't think I have to inquire
16 much further; which would have been the same answer to item
17 B about Janet Reno.

18 THE COURT: Yes, Mr. Patel.

19 MR. PATEL: Your Honor, just to answer a
20 question, going back to the beginning of this conference,
21 Ms. Amsterdam showed you a document and you asked her where
22 that was from.

23 THE COURT: Correct?

24 MR. PATEL: I managed to find out.

25 THE COURT: Good. Which one?

1 MR. PATEL: It is item C in Mr. Salem's 3500
2 material.

3 THE COURT: How does he pronounce it?

4 MR. PATEL: Like the cigarettes. At one point he
5 says it Salem.

6 THE COURT: Maybe he was just anglicizing it.

7 MR. PATEL: It is page 63.

8 MR. McCARTHY: Your Honor, your copy isn't
9 paginated. We didn't do that until after we provided it.

10 MR. PATEL: Miss Chu Bates stamped -- thank
11 you -- that exhibit.

12 THE COURT: One second.

13 THE COURT: It won't help to give me a copy
14 because the copy can't be read.

15 MR. McCARTHY: Your Honor, if you give me the
16 brownouts, I might be able to find it faster.

17 THE COURT: Please. I am on 30 and counting.

18 MR. McCARTHY: Sorry.

19 (Pause)

20 MR. PATEL: I apologize, your Honor. I was on
21 the wrong page. The road to hell is paved with good
22 intentions.

23 THE COURT: Which one is it?

24 MR. PATEL: I have given it my best shot, your
25 Honor. I will let someone from the front of the room do it.

1 MR. SERRA: Your Honor, is the court provided
2 with 3534W, which we were provided with this morning?

3 THE COURT: No.

4 MR. SERRA: I don't know what is here, and it may
5 well be that the court will agree with the government that
6 the redactions are legitimate, but one of them has more
7 redactions than in any of the 3500 documents we have been
8 provided. It appears that about 80 percent of one document
9 has been redacted.

10 THE COURT: I saw documents with redactions like
11 that.

12 MR. SERRA: Your Honor, I saw a lot of the
13 documents that had a number of redactions, but 90 percent of
14 them, I think, were Emad Salem's name. In any event, it is
15 Bates stamped 22 and 23 on 3534W.

16 MR. McCARTHY: Your Honor, that is the one I
17 unfortunately left on my desk. I thought I had everything
18 when I came down here. Mr. Serra, God bless him, has picked
19 out the one that I didn't bring down.

20 MR. SERRA: I knew that, Judge.

21 THE COURT: That doesn't locate the document that
22 was bothering Ms. Amsterdam. Is it fair to say you do not
23 have a Bates stamp number for that one?

24 MR. PATEL: That is correct, your Honor. I will
25 keep looking.

1 THE COURT: So I can't tell.

2 MR. McCARTHY: Your Honor, if you want me to go
3 through the brownouts, I am happy to do it.

4 THE COURT: To find it?

5 MR. McCARTHY: Yes.

6 THE COURT: It is a document with what looks like
7 10 categories on it.

8 THE COURT: Why don't you go through them.

9 (Pause)

10 MR. PATEL: It is in D. Looks like page 9 of D.

11 THE COURT: Here it is.

12 Is this the one that has at the top, item 10,
13 begins with the words "Page 2, DE FBI NY 0051"?

14 MR. PATEL: "Unclass."

15 THE COURT: And targets: Islamic fundamentalist
16 terrorist groups. El Sayyid Nosair. And then a brownout?

17 MR. PATEL: Yes, your Honor.

18 THE COURT: Trade bomb, T-R-A-D-B-O-M subjects
19 and then a brownout, and Omar Ahmad Abd Al-Rahman and then
20 brownout and a Hamas?

21 MR. PATEL: Yes.

22 THE COURT: All of those brownouts are numbers.

23 MR. WASSERMAN: Mr. McCarthy has indicated that
24 there are a few pages that came in that were just disclosed
25 to the defense today that your Honor does not have that are

1 unredacted. Is it possible for us to contact your chambers
2 tomorrow?

3 THE COURT: Yes. I have to see the pages first.

4 MR. MCCARTHY: Right after the conference, your
5 Honor.

6 MR. WASSERMAN: Also, I would request to have
7 Mr. David Barrett sit at counsel table during Mr. Emad
8 Salem's examination. He has done to my knowledge 90 percent
9 of the investigation on Mr. Salem, all facets of it. He is
10 in a sense our expert on him.

11 THE COURT: OK.

12 MR. WASSERMAN: Thank you, Judge.

13 THE COURT: You are not going to call him as an
14 expert witness on Mr. Salem?

15 MR. WASSERMAN: No, your Honor.

16 THE COURT: I got a letter with regard to the
17 polygraph evidence.

18 MR. LAVINE: Judge, when I delivered that here at
19 2:00, I didn't know that we were having a conference at 2:00
20 today. I knew we were going to have a conference sometime
21 today because John Jacobs's client told me at the MCC. But
22 I didn't drop it off here today so that you would be able to
23 read it -- it is a matter that I am asking you to consider.

24 THE COURT: I have read it. The government has a
25 copy?

1 MR. McCARTHY: Yes, we do.

2 THE COURT: Will you respond to it in some
3 fashion?

4 MR. McCARTHY: I am prepared to respond to it
5 now.

6 MR. LAVINE: They have had it since 9:00 last
7 night.

8 MR. McCARTHY: I have had it since whenever we
9 sat down here.

10 MR. LAVINE: Judge, there is one more case that
11 may be of interest to the court that I just discovered as we
12 sat here, because Mr. Stavis had done a Westlaw search.
13 There is one more case that I would ask you to consider. I
14 don't know if you want to rule on this right now.

15 THE COURT: I don't.

16 MR. LAVINE: Good.

17 THE COURT: I will tell you one of the principal
18 problems I have with the position you are taking in the
19 letter, is that the usefulness of the polygraph evidence as
20 you describe it in your letter, in some part, goes to the
21 FBI's opinion of Salem. That is classic hearsay, and it
22 wouldn't be any more acceptable to put in evidence that at
23 some point the FBI had doubts about Salem's veracity than it
24 would to have a procession of FBI agents get up here and say
25 they think he is telling the truth. You would object to

1 that, wouldn't you?

2 MR. LAVINE: I would, your Honor.

3 THE COURT: You bet you would. I would sustain
4 it.

5 MR. PATEL: Your Honor, the idea is not to put
6 the polygraph in for the truth of the polygraph --

7 THE COURT: You haven't read his letter, right?
8 Part of his letter argues that it should come in.

9 MR. LAVINE: Judge, if you are going to be
10 inclined to allow us to bring it in for the proof of the
11 results in this situation, then I am not going to stand in
12 your way. But I think that the importance of whatever is in
13 that lengthy letter is that by way of background evidence,
14 the giving of the polygraph does explain and would explain
15 to the jury how Mr. Salem, whatever his name is, and the FBI
16 came to a parting back before the World Trade Center
17 explosion, and there has been a representation in the
18 opening statements to the effect that the parting came about
19 because Mr. Salem did not want to, I believe, testify in
20 court. Based on some of the 3500 material that we have
21 received, there may have been more than just that reason
22 that he didn't want to testify in court which would account
23 for the breakup of this liaison, and from the perspective of
24 background it may be important to go to some extent into it.

25 Judge, also in the letter, I think I had

1 suggested that if you were going to be inclined not to have
2 to deal with this thorny issue of the inherent reliability
3 of the results of the tests, I am not so concerned with the
4 results of the test, I am concerned with the fact that a
5 test was given.

6 MR. McCARTHY: I think he is right.

7 THE COURT: Particularly if you opened on that
8 being the reason.

9 MR. McCARTHY: For more reasons than that. I
10 think that he is correct that it will be necessary to
11 explain a variety of actions that were taken after the
12 polygraphs. I do object, and I think the law of this
13 circuit supports the proposition that the results of the
14 polygraph are not admissible, and I think this case is
15 probably a classic case of why that is.

16 With respect to at least two of the polygraph
17 tests, the person who actually administered the test and saw
18 Salem answer the questions passed him, and only when it went
19 down to headquarters and it got evaluated, the results got
20 changed, one time to inconclusive and another time to
21 deceptive.

22 THE COURT: Right.

23 MR. McCARTHY: I think that the truth-telling
24 issue is for the jury, not for the polygrapher. But I think
25 the fact that he was polygraphed is going to explain a

1 variety of things in the case, or at least it is --

2 THE COURT: I certainly don't want to get in the
3 way of an agreement, so if you agree, why don't you try to
4 work out the limits of -- at least work out the limits of
5 your agreements, since I am here to resolve disagreements,
6 although I suppose there are some things I can't let you
7 agree to. But since the principal role is to resolve
8 disagreements, if there is anything that you disagree about,
9 let me resolve that.

10 MR. LAVINE: Thank you.

11 THE COURT: Anything else? Nothing else. Good.

12 I am reminded of one other thing. Too bad Ms.
13 Amsterdam isn't here. When I excused juror number 6, it was
14 done rather speedily, and at a time when the information I
15 had was that she had gone to the hospital and so on, and we
16 have since learned, principally from her, that she has a
17 gallstone condition and could not have continued to serve.
18 So what started out looking more precipitous than it was
19 turns out to have been the right thing to do. In any event,
20 I want that on the record.

21 MR. McCARTHY: Your Honor, if I may, do you want
22 to give me a couple minutes to get the other report and I
23 can give it all to you at once?

24 THE COURT: And I can go over it right now.

25 MR. McCARTHY: And any questions you have --

1 THE COURT: Understand, and I think defense
2 counsel ought to understand, too, if I am going to state my
3 understanding what the reasons are for the redactions, if
4 there is anything inaccurate, I am going to expect them to
5 correct it, and if they correct it with something that in my
6 mind justifies the redactions, then that is going to be on
7 the record as well. If in my mind it doesn't justify the
8 redactions, I will simply direct that the information be
9 provided. I just want you to understand what is going on in
10 there. It is not simply going to be a monologue, it might
11 be a dialogue.

12 MR. PATEL: Your Honor, we were just discussing,
13 you have given us an explanation that some of these have
14 been redacted because they are numbers, and clearly some of
15 the paragraph redactions or page redactions are more than
16 that. My only question, are you going to give us for the
17 public record some sort of generalized statement of the
18 basis of the redactions? A now or later.

19 THE COURT: I think I prefer to do that later
20 because I don't feel like saying something on the public
21 record that shouldn't be on the public record.

22 MR. PATEL: Exactly. The question was at
23 sometime.

24 THE COURT: I think I probably should, and I
25 will.

1 MR. PATEL: Thank you.

2 THE COURT: Then you will go back and get your
3 other material?

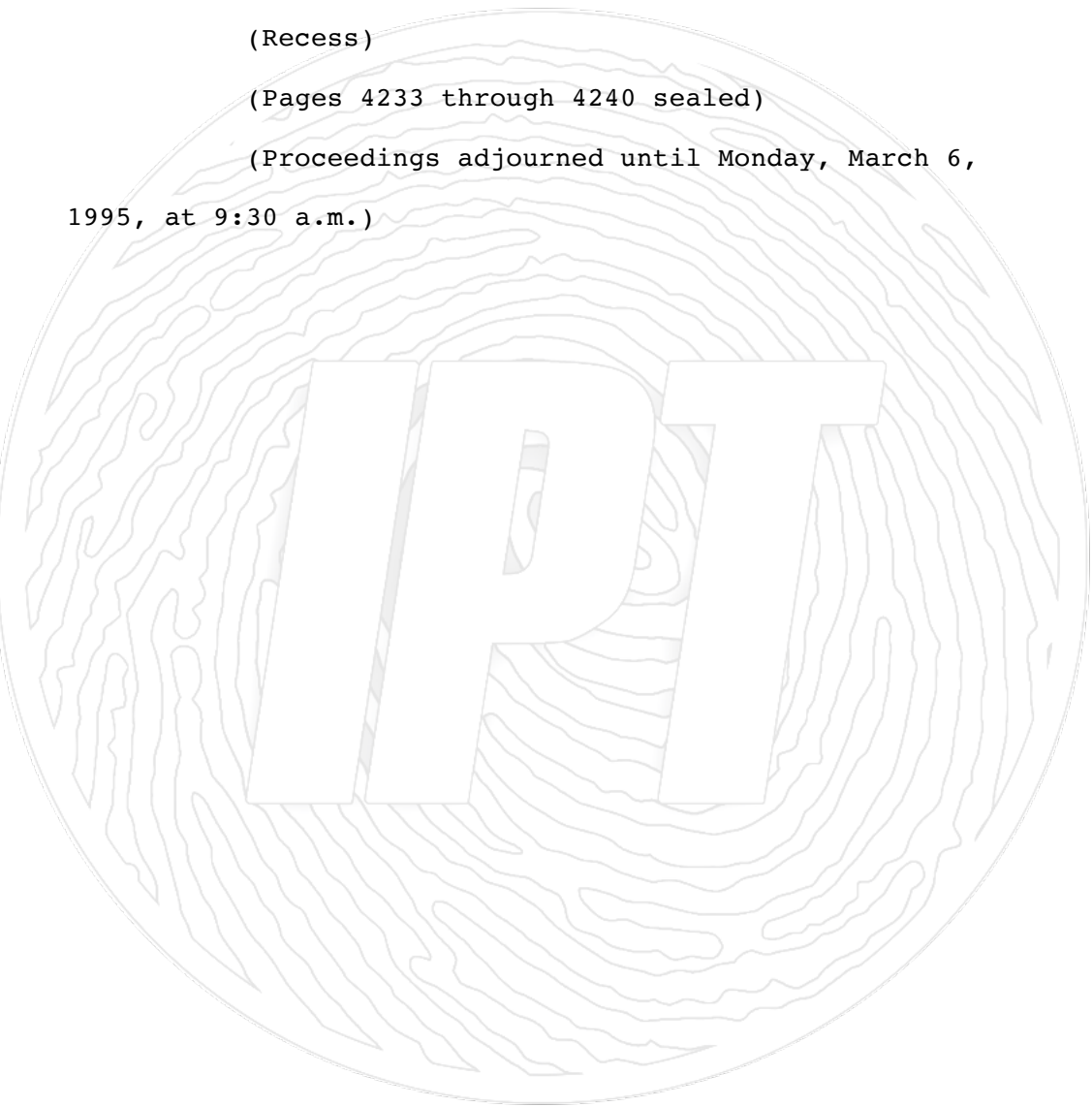
4 MR. McCARTHY: Yes, your Honor.

5 (Recess)

6 (Pages 4233 through 4240 sealed)

7 (Proceedings adjourned until Monday, March 6,
8 1995, at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

March 6, 1995
9:45 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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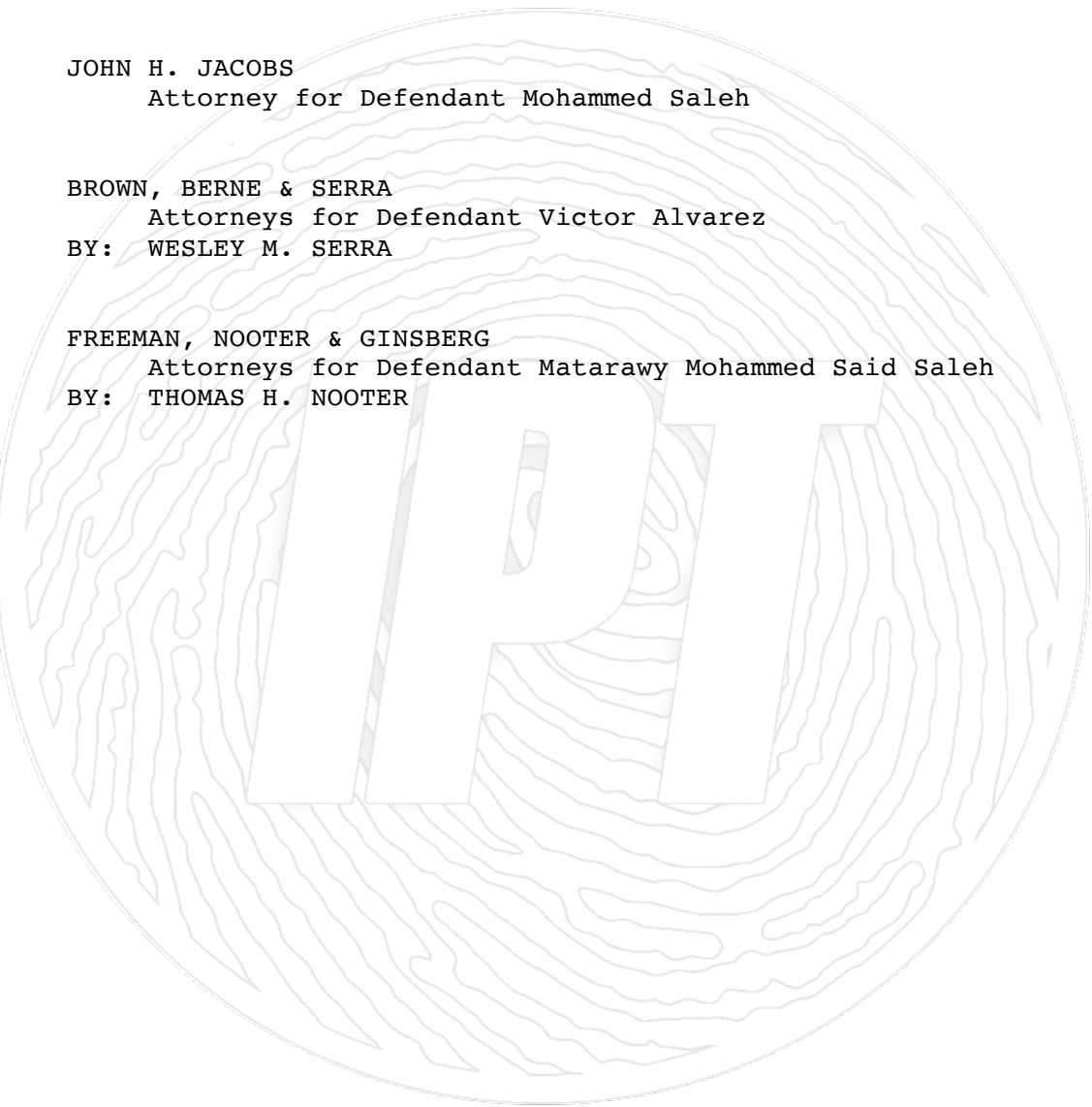
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Pages 4244 - 4245 sealed)

2 (Case called)

3 MS. STEWART: Your Honor, I have a matter that I
4 would like to raise before the jury comes in. There is a
5 bootleg 39-1, a copy of which has been requested for time
6 immemorial. It was finally supplied over the weekend. It
7 is in Arabic. The government intends to offer this tape and
8 play it early on, either today or tomorrow. I believe they
9 will be putting on the person who translated this bootleg
10 39-1. I received it last night at approximately -- it was
11 ready for me, let us say this, probably by 6:00. I got it
12 at about 8:00. I turned it over to someone who would at
13 least go through it, although it is not an official
14 interpreter.

15 THE COURT: How long is it?

16 MS. STEWART: It is a microcassette. It is about
17 maybe 10 pages of transcript. I just don't believe I can
18 cross-examine their interpreter on this particular tape and
19 I don't think it should be played until I can do that. I
20 don't see any reason why it was held up, because it does not
21 appear to be intelligence material. I don't see why we
22 didn't get it earlier. I am happy to hear what the
23 government has to say about that.

24 MR. McCARTHY: Your Honor, 39-1 has been
25 available for a considerable period of time. It is not in

1 the category of conversations of Salem's that were not
2 turned over.

3 THE COURT: When you say available, in what form?

4 MR. McCARTHY: When we had to turn over all of
5 Salem's conversations, which means going back --

6 THE COURT: Way back?

7 MR. McCARTHY: Yes, your Honor. It is true that,
8 as it has been throughout this trial, that transcripts are
9 being finalized right up to the last minute.

10 THE COURT: Transcripts are one thing. The
11 availability of the tape is something else.

12 MS. STEWART: Judge, I can only say in rejoinder
13 that I checked with every other lawyer, including those who
14 get it on disk. Nobody has a copy of this tape -- disk is
15 irrelevant. It is transcript, I am thinking. But I checked
16 with the tapes that are kept in the courthouse. I checked
17 with Mr. Patel, with Mr. Serra. Nobody has a copy of this
18 tape. I know that my client requested it almost the first
19 thing when we came into this case. We had transcripts, but
20 never the tapes.

21 MR. McCARTHY: Your Honor, we turned over the
22 tapes and made all the tapes available to Mr. Ginsberg --

23 THE COURT: When were you planning on putting it
24 in?

25 MR. McCARTHY: I was planning on having the

1 translator authenticate the transcript today, and I figured
2 we would probably get to the tape by tomorrow or Wednesday
3 morning at the latest.

4 THE COURT: I am going to let you put it in.
5 Miss Stewart, you can do one of two things. You can either
6 hold off on cross-examination as to that tape or you can
7 cross-examine on it subject to recall if you find out
8 anything from your translator.

9 MS. STEWART: As the government is well aware,
10 there is a big difference between somebody giving you a
11 quick read-through and pointing out some discrepancies, and
12 having an official interpreter sit down with the thing and
13 go through it by himself without reference to a transcript,
14 without reference to anything --

15 THE COURT: Passing your reference to official
16 interpreter --

17 MS. STEWART: Not official.

18 THE COURT: There aren't any. As I said, that is
19 the option, and my suggestion --

20 MS. STEWART: I would just ask if the government
21 would show us where they ever turned this tape over, where
22 anybody ever signed for it, whether anybody ever had it
23 before yesterday afternoon.

24 THE COURT: It is not a question of whether
25 anybody had it. It is a question of whether it was made

1 available. There is a slew of material that was not picked
2 up in this case that was available. It is not their
3 obligation to forcefeed tapes.

4 MS. STEWART: I know I have requested it since I
5 came into the case.

6 MR. WASSERMAN: Your Honor, I had requested
7 transcript 39-3 Friday night and it is not something that
8 was made available to me.

9 THE COURT: Wait a second. Are you listening to
10 this?

11 MR. McCARTHY: I am trying, your Honor.

12 MR. WASSERMAN: Do you want me to repeat, your
13 Honor?

14 THE COURT: Yes.

15 MR. McCARTHY: I am sorry.

16 MR. WASSERMAN: I first received 39-3, which is a
17 transcript between my client and Siddig Ali and Emad Salem.
18 I asked for tapes of Mr. McCarthy and I was supplied with
19 the tapes this morning. I don't have the Arabic to English
20 problem but I have an area of inquiry as to the source of
21 the tape and the context of where that excerpt fits in on
22 what Emad was doing.

23 THE COURT: That is something that will be
24 answered by testimony. That is not something they are
25 obligated to turn over with the tape. It doesn't come with

1 a genealogy.

2 MR. WASSERMAN: I understand, but to have it
3 first come through now, I have to see where that tape came
4 from --

5 THE COURT: You will find that out when he
6 testifies. Anything else?

7 MS. STEWART: Last but not least on 39, Judge, I
8 know we also got -- and I am talking about having received
9 upwards of about 4,000 pages this weekend to go through and
10 digest in some manner. We received the envelopes that the
11 bootlegs were originally placed in. I just want to inquire
12 of the government, 39, which both Mr. Wasserman and I are
13 claiming and I believe rightfully so, to have only received
14 this weekend, and I am speaking about the tapes, has a Q
15 number on it. To those of us who are somewhat familiar with
16 federal law enforcement practices, this indicates that this
17 particular tape --

18 THE COURT: Was the subject of some sort of test?

19 MS. STEWART: Exactly. It is the only one of the
20 bootleg tapes that has a Q number on it. If it was a report
21 of some kind, whether oral or whatever it was, I think we
22 have a right to know that, since there seems to be a certain
23 degree of at least an aura surrounding this tape.

24 THE COURT: Provided by the letter Q.

25 MR. McCARTHY: I think they also assign Q numbers

1 to enhanced tapes and I think that was enhanced.

2 MS. STEWART: We were not told anything about
3 that. Enhanced tapes are not the same.

4 MR. McCARTHY: Where we made enhanced tapes we
5 turned them over. I didn't know there was an issue until
6 this morning. There is one of literally 1,100
7 conversations. I will do my best to get fast answers for
8 Miss Stewart on the matters that she raised. Other than to
9 say that it was enhanced, I believe that is the reason for
10 the Q number.

11 MS. STEWART: This is the only one among the
12 1,100 that was subjected. There had to have been some
13 reason, and whatever they can provide me, obviously, I want
14 it before we deal with this tape at least.

15 MR. McCARTHY: I think the reason it was enhanced
16 is because it was a tape that has only three conversations
17 on it, and it was readily identifiable as a tape that had
18 conversations on it with defendants as opposed to the vast
19 run of Mr. Salem's tapes, which have a --

20 THE COURT: Let's get to the testimony in this
21 case.

22 LOUIS NAPOLI, resumed.

23 (Jury present)

24 THE COURT: Good morning, ladies and gentlemen.

25 JURORS: Good morning.

1 THE COURT: Sorry for the delay in getting
2 started this morning but we had some issues to resolve and
3 we are set to go ahead.

4 Mr. Napoli, you are still under oath.

5 Mr. Jacobs.

6 CROSS-EXAMINATION continued

7 BY MR. JACOBS:

8 Q Good morning, Detective. How are you?

9 A Good morning. Good.

10 Q Detective, we were talking about tapes. When did
11 you first meet this fellow Salem? About? Month, year?

12 A Late '91, early '92.

13 Q When you met him, had he already been working for
14 the Department of Justice, the FBI?

15 A Mr. Salem?

16 Q Yes.

17 A Yes, he had.

18 Q When you met him, you were part of this Terrorist
19 Task Force at the time?

20 A Yes, I was.

21 Q When you met him, had he already been working for
22 the Terrorist Task Force or another unit, to your knowledge?

23 A No, he was working for another unit.

24 Q What was the name of that other unit?

25 A FCI, as far as I know.

1 Q FCI is the FBI's name for foreign
2 counterintelligence, is that correct?

3 A Affirmative, yes.

4 Q You have been broken off from the police
5 department to work with the Joint Terrorist Task Force, is
6 that correct?

7 A Correct.

8 Q When did you join that unit?

9 A '83.

10 Q So you have had a long career with this Joint
11 Terrorist Task Force, correct?

12 A Correct.

13 Q When you met Salem in late '91, early '92, you
14 started to work on some investigation, is that fair to say?

15 A Yes, correct.

16 Q Were you working with an agent by the name of
17 John Anticev at that time, late '91, early '92?

18 A Yes, I was.

19 Q Would I be correct in stating that Agent Anticev
20 and you were partners? Or am I mischaracterizing?

21 A No, correct.

22 Q You were a team assembled by the Joint Terrorist
23 Task Force to work with Salem, correct? Is that fair to
24 say?

25 A No. We weren't a team that was put together to

1 work with him. He was someone that we had recruited. We
2 were working together --

3 MS. STEWART: Can't hear him, Judge. I am sorry.

4 A We were working together on different issues and
5 we recruited Mr. Salem from another unit, but we weren't put
6 together just to work on Salem.

7 Q In any event, there came a time when Salem begins
8 to work with the Joint Terrorist Task Force, late '91, '92,
9 correct?

10 A Correct.

11 Q And at the time that he begins to work with the
12 Joint Terrorist Task Force, you and Anticev were partners
13 working with him, is that correct?

14 A Correct.

15 Q And there were a lot of other agents working with
16 him as well, I assume, correct?

17 A Correct.

18 Q You testified on direct of Mr. McCarthy Tuesday
19 that one of your duties was the collection and the
20 supervision of the tape recordings, is that correct?

21 A Correct.

22 Q And I assume that there are a lot of other agents
23 involved as well, but that was one of your jobs, correct?

24 MR. McCARTHY: Objection to the form of the
25 question.

1 THE COURT: Sustained.

2 Q One of your functions was the collection and the
3 supervision of the tape recordings, is that correct?

4 A Correct.

5 Q Was that one of Anticev's jobs as well?

6 A Correct.

7 Q Was there some FBI agent by the name of Nancy
8 Floyd working with the Joint Terrorist Task Force beginning
9 in 1991, '92?

10 A No.

11 Q Was she assigned to foreign counterintelligence?

12 A Yes.

13 Q Did there come a time that she joined your group
14 to work with Emad Salem?

15 A She never joined our group, she always stayed
16 with FCI.

17 Q Did Miss Floyd, Agent Floyd, have anything to do
18 with the collection and the supervision of the tape
19 recordings?

20 A No.

21 Q That is to some extent yours and Anticev's
22 responsibility?

23 A Correct.

24 Q In connection with the recordings, you said that
25 there came a time beginning on or about May 7, according to

1 your direct testimony, that he began to officially record
2 consensually monitored tapes, is that correct?

3 A Correct.

4 Q And I think, having been given access to the tape
5 recordings by the government, the first CM1 is May 7, 1993,
6 is that correct?

7 A Correct.

8 Q By the way, if you need to look at it, we have
9 the box right here.

10 Q And the last tape is on or about June 23, 1993,
11 is that correct?

12 A Correct.

13 Q That is the time that the arrest of many of these
14 defendants took place, correct?

15 A Correct.

16 Q In connection with the CM's, I think you have
17 briefly described the process. Let me just go over it
18 again. Nagra tapes, blank tapes were given to Salem on
19 various dates from May 7 to June 23, correct?

20 A Correct.

21 Q He goes out and records the conversations,
22 corrects?

23 A Correct.

24 Q Just to repeat it quickly, there is no agent
25 actually present when he records, correct?

1 A Correct.

2 Q At some point, day after, two days after, three
3 days after, you or one of the other agents pick the tapes up
4 from him, correct?

5 A We pick them up the day after.

6 Q We know for a fact that with respect to my client
7 there is a conversation June 4 that you didn't pick up until
8 June 7, is that correct? So the day after is not correct,
9 is it?

10 A We were there the --

11 MR. McCARTHY: Objection to form.

12 THE COURT: Sustained as to form.

13 Q Is it your testimony that CM1 through 62 was
14 picked up the day after?

15 A Every tape was picked up within 12 to 24 hours
16 after it was taken with the exception of the June 4 tape.
17 Which --

18 MR. McCARTHY: Your Honor, I am sorry, I didn't
19 hear the end of the answer.

20 THE COURT: With the exception of the June 4
21 tape -- would you talk into the microphone.

22 Q Take your time.

23 A Go ahead.

24 Q The June 4 tape -- also I think it is CM30, CM31
25 and CM32, those recordings that you were told were made

1 about June 4, all of those were picked up on June 7,
2 correct?

3 A Correct.

4 Q Am I correct that the manner in which they were
5 handled was as follows: Salem is given a tape envelope, a
6 white envelope with a blank Nagra, correct?

7 A Correct.

8 Q And he is given it by you or Anticev or one of
9 the other fellows, correct?

10 A Correct.

11 Q And there is no entry, no log, no written piece
12 of paper of the serial log, when it is given to him,
13 correct?

14 A Correct.

15 Q He makes the recording, he operates the
16 equipment, correct?

17 A Correct.

18 Q You get it back and entries are made on the white
19 envelope, correct?

20 A Correct.

21 Q By you and Salem, correct?

22 A No. It was made by me and Anticev unless Salem
23 took it off himself, and then he put it in and made
24 notations.

25 Q Then the evidence envelope -- that's this yellow

1 envelope -- is then made out by you and the other agents
2 according to FBI procedures, is that correct?

3 A Correct.

4 Q That is what they call a chain of custody
5 envelope, original tape recording envelope, actual number is
6 504B, correct?

7 A Correct.

8 Q Is that fair to state, that that is the general
9 procedure that was done with the CM's that the government
10 showed you the other day, correct?

11 A Correct.

12 Q I am going to show you CM's 31 and 32, and CM 31
13 and 32 are tapes that involve my client, either 32 or 31,
14 correct?

15 A Correct.

16 (Continued on next page)

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1 Q Is that correct?

2 A Yes, correct.

3 MR. JACOBS: Your Honor, for purposes of the
4 examination, I have premarked copies of the outside
5 envelope, and I could read the numbers that I have
6 designated at this time. Defendant's C would be CM 31, the
7 outside envelope, your Honor.

8 THE COURT: Is that Defendant's Mohammed Saleh C?

9 MR. JACOBS: C. Which would be the outside of CM
10 31. The inside of CM31 is Defendant's D.

11 I had already marked last Tuesday, your Honor, CM
12 32's envelope as Defendant's A, and I have now marked
13 Defendant's E, the inside envelope and the copy of the tape
14 as Defendant's E.

15 THE COURT: Which tape is that?

16 MR. JACOBS: That is 32, your Honor. Defendant's
17 E, that is the outside white envelope and just a copy of the
18 reel.

19 I would offer those four documents, Defendant's
20 C, D, A and E, into evidence at this time.

21 MR. McCARTHY: No objection.

22 THE COURT: C, D, A and E are received without
23 objection.

24 (Defendant Mohammed Saleh Exhibits C, D, A, and E
25 for identification were received in evidence)

1 MR. JACOBS: OK.

2 Q Detective Napoli, at the same time, let me show
3 you this book. Detective Napoli, I am going to show you a
4 five-page summary of the tape chart I call it --

5 MR. JACOBS: And I have premarked, your Honor, as
6 Defense Saleh B. I have shown it to the government and I
7 believe the government has no objection to the introduction
8 of this tape summary chart. I think there might be one
9 question, which we are still checking, but basically the
10 chart is being offered with the government having viewed it
11 and reviewed it.

12 MR. MCCARTHY: I have no objection.

13 THE COURT: All right. The chart, Mohammed Saleh
14 B, is received without objection.

15 (Mohammed Saleh Exhibit B for identification was
16 received in evidence)

17 MR. JACOBS: I think we have also given a copy to
18 each member of the jury.

19 THE COURT: There should be a notebook containing
20 a document called "CM Tape Chart." It is a thin notebook.
21 You will see the heading on the first page.

22 Q Detective, you have it in front of you?

23 A Yes, I do.

24 Q What we have tried to do is, rather than take a
25 few hours going through this, we have sort of summarized

1 various data from the outside envelope and the inside
2 envelopes and the reels so that we don't have to take a few
3 hours to do this in front of the jury.

4 THE COURT: Mr. Jacobs, don't tell us how much
5 time you will save. Just do it.

6 MR. JACOBS: All right, your Honor.

7 Q Let's take a look at CM 1, OK. Do you have it in
8 front of you. Am I correct that this is a recording that is
9 allegedly made on May 7, it is retrieved on May 8, and it
10 has an envelope No. 38732 and a reel No. 38732, matching,
11 correct?

12 A Correct.

13 Q Detective Napoli, am I correct that this is an
14 envelope that was prepared by Agent Anticev, correct?

15 A Correct.

16 Q You don't have any personal knowledge of this,
17 correct?

18 A I was there, but he's the one that did the
19 picking -- the writing.

20 Q So Agent Anticev did the writing, you were with
21 him, correct?

22 A Correct.

23 Q Am I correct that this is the first tape in this
24 series? Correct?

25 A Correct.

1 Q The envelope and the reel match up, correct?

2 Take a look at it.

3 A Yes, correct.

4 Q The next tape is CM No. 2, which is recorded May
5 9 to May 10. Why don't we --

6 MR. JACOBS: Mr. McCarthy, may I just get it out.

7 MR. McCARTHY: Which one?

8 MR. JACOBS: It is 2. Thank you.

9 Q Two is a reel that has no number on it.
10 You may open it up, if you'd like, CM 2. Take a
11 look. Correct?

12 A Correct.

13 Q Did you have anything to do with that particular
14 tape on that date?

15 A I was there. I have a reason why --

16 Q Sure. Tell the jury the reason why you used the
17 plastic tape, not the other type of tape?

18 A OK. Number 1, the Nagra does not have an
19 automatic rewind on it. That is number one. So when the
20 reel was complete, it was sitting not on the reel that it
21 originally came on, it was sitting on a blank reel.

22 Being that there was always a, you know, a rush
23 out of the briefcase, it was much simpler just removing the
24 tape off the Nagra and pushing one, you know, one reel over
25 to the another, which would dislodge it from the original

1 reel. So that is one.

2 Another one would be when it was duplicated, it
3 went from one reel to another. So the reel, the actual
4 metal reel or plastic reel, has been probably changed a few
5 times. It is the tape that remains the same.

6 Q You say the tape remains the same, correct? That
7 is your testimony, right? But you don't know that, correct?

8 A They remained the same when I took it. It
9 didn't -- when I pulled it off the Nagra in the car, it was
10 the same tape. It may have not been on the same reel, you
11 know, to save time, and because you have to do it manually,
12 to bring the tape from one reel back to the other and the
13 reel, you know, this amount of tape takes a while.

14 Q If we look at CM No. 3, a tape made on May 10,
15 retrieved on May 11, the envelope and the reels don't match,
16 correct?

17 A You are doing No. 3?

18 Q Yes, sir. You can put the other ones back. I
19 don't want to confuse you.

20 Would you like to see it?

21 A No, I am just wondering if I am putting it back
22 in the same one.

23 Q Here, give them to me.

24 A Correct. They don't match.

25 Q In other words, somehow on about May 10, you or

1 one of the agents gave him an envelope that had the No.
2 38730 and somehow you got back a reel with a different
3 number, correct? Yes or no?

4 A No, not exactly.

5 Q Well --

6 A No. 1 --

7 Q The question to you is --

8 A I didn't give it to him. It doesn't necessarily
9 mean I gave it to him. I may have loaded the tape on
10 myself. That is what I am trying to say to you.

11 Q All right. The point I am asking you is this:
12 On 38730, whatever was done, a reel came back 38735,
13 correct?

14 A Correct.

15 Q Do you know when you gave or agents gave 38735
16 the reel number, to Salem? Do you have any notation,
17 document that would refresh your recollection?

18 A No.

19 Q Is there any notation where 38731, 38732, 38733,
20 38734, where those tapes are, those reels?

21 A No, no idea.

22 Q They could have had recorded conversations that
23 you never got, correct? Yes?

24 A No, negative. The recorded conversations we
25 received, it may not have come back on the same reel and

1 there were for reasons why I told you. The reels were,
2 like, you know, the tape goes from one reel to another. It
3 is a lot easier and saves a lot more time just to pick it
4 out of the Nagra in that manner, leaving the reel that was
5 originally given to him on the Nagra.

6 Q Agent, would you take a look at the page 5 of
7 this summary.

8 A Five. OK.

9 Q Would you look at the first heading where it
10 says, "Number of serial numbered reels for which envelopes
11 are missing or do not match," that 52 of the tapes that you
12 have in front of you, the numbered reels and envelopes don't
13 match, are you aware of that, sir?

14 A I am aware of it now.

15 MR. McCARTHY: Your Honor, can we make it clear
16 that that is the white envelope inside the --

17 A Yes.

18 MR. JACOBS: Absolutely. Thank you, Mr.
19 McCarthy. Thank you.

20 Q Now, the next column states, "Envelopes for which
21 there are no tapes."

22 Let's look at an envelope that is on one of these
23 tapes, 38696. Do you have any idea where that reel is?

24 A No.

25 Q If I were to tell you that we went through the 62

1 envelopes and tapes and we can't find the reel number, do
2 you know where it is?

3 A No.

4 Q Do you know if Salem recorded my client, for
5 example, or any of the other defendants in this case and
6 didn't turn it over to you? Do you know that, sir?

7 A No, I don't.

8 Q Do you know if he made a recording and gave it to
9 a foreign government? Would you know that, sir?

10 A No, I don't.

11 Q Would you know if he made a recording of my
12 client and threw it in the toilet bowl? Would you know
13 that, sir?

14 A No, I don't.

15 Q So we have six envelopes that we can't find the
16 reels for, correct? Thank you. Is that correct, sir?

17 A If that's what -- if that is what you say. I am
18 not sure.

19 MR. JACOBS: Well, Mr. McCarthy, just so we are
20 clarified I believe the government has agreed that this
21 particular column is correct. I don't want to ask Mr.
22 McCarthy, but I think the government's agreed that it is
23 accurate.

24 MR. MCCARTHY: I stipulate that the information
25 that he put on here is accurate. I don't stipulate that

1 that is all the pertinent information.

2 MR. JACOBS: I didn't say that. I just said what
3 is on the thing is accurate.

4 THE COURT: What is on there is accurate. OK.

5 Go ahead.

6 MR. JACOBS: OK.

7 Q So there are six envelopes that you cannot
8 account for? Six tapes, correct, six reels?

9 A As far as this report is concerned, correct.

10 Q Well, Agent, please correct me if I am wrong,
11 when you went to him, you gave him a white envelope with a
12 matching reel number, correct?

13 A Correct.

14 Q For example, the first one CM 1 matches up
15 perfectly correct, doesn't it, and CM 4 matches perfectly
16 correct, none of the rest do, correct?

17 A Correct.

18 Q I am asking you, can you tell this jury where
19 those six reels of tape are today?

20 A No, I can't.

21 Q The FBI has no accountability for the number of
22 tapes given to Salem, is that correct?

23 A Correct.

24 Q Now, the next column says, "Tapes for which there
25 are no envelopes."

1 Do you see that column?

2 A Correct. I see it.

3 Q For example, Reel No. 38738, there is no matching
4 white envelope that we can find, is that correct, sir?

5 A If it is so stipulated in this report, correct.

6 Q Do you know what happened to those envelopes that
7 we can't find?

8 A Negative, I don't.

9 Q So would it be fair to state, Detective Napoli,
10 that the method that you and Anticev employed in May and
11 June 1993 did not specifically account for specific tapes
12 given to him by any accounting method at all, correct?

13 MR. McCARTHY: Objection.

14 THE COURT: Overruled.

15 Would that be fair to say?

16 THE WITNESS: Could you repeat that?

17 Q Sure. What I am trying to say is: Is there
18 anything you can tell this jury that would account for the
19 number of blank tapes given to this --

20 THE COURT: Mr. Jacobs, may I see you at the side
21 bar.

22 MR. JACOBS: Oh, sure.

23

24

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1 (At the side bar)

2 THE COURT: It is not a ruling, it is a
3 direction. If you are questioning the witness, look at the
4 witness. Do not look at the jury. Please don't do that.

5 MR. JACOBS: Thank you, Judge. No problem.

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1 (In open court)

2 Q Detective, I think the question is: Is there any
3 documentation that you can point to concerning the
4 accountability of the number of blank tapes given to Salem?

5 THE COURT: Mr. Jacobs.

6 MR. JACOBS: I'm sorry. I am looking at my
7 notes.

8 THE COURT: Thank you.

9 Q Is there any accountability for the number of
10 tapes given to Salem?

11 A Yes, we have an accountability on the number of
12 tapes that were given to Salem. As far as tapes retrieved,
13 the only thing we don't have accountability is the actual
14 serial number on the original tape that you are talking
15 about. That's what we are talking about.

16 Q How many did you give him?

17 A Let's see. Like I said, we would keep him
18 supplied with maybe two, possibly three extra tapes. And we
19 didn't do this every day. If we knew that he had two tapes
20 left, then he didn't get any more the next day. If we knew
21 that they ate those two tapes regarding work that, you know,
22 are recorded, then he was given an additional two. It
23 wasn't a free for all as far as, "Here's a box, Emad. Go
24 knock yourself out."

25 Q Is there any record, document that you can point

1 to this jury for the number of tapes you gave him?

2 A No, there's not. The only thing we recorded was
3 when the tapes came back.

4 Q Are you aware that after the arrests of the
5 defendants in this case that at least three blank envelopes
6 and blank Nagras were found in Salem's apartment or house,
7 were you aware of that, sir?

8 A Yes, I am.

9 Q Do you know when those three were given to him,
10 what dates?

11 A No, I do not.

12 Q So he just happened to have in his house blank
13 envelopes and blank Nagras, correct?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 MR. JACOBS: OK.

17 Q Detective, would you look at Defendant's Exhibit
18 C, the outside envelope to 31, please. It is right in
19 there. Thank you. Tell me when you have it in front of
20 you. It is a copy of the chain of custody envelope.

21 MR. JACOBS: Ladies and gentlemen, it's
22 Defendant's C. You wouldn't see it. It says CM 31.

23 A I've got it.

24 Q You've got it. OK.

25 I think you have the original in front of you as

1 well. OK?

2 A OK.

3 MR. JACOBS: It is the next page, ladies and
4 gentlemen, after page 5.

5 Q This is a chain of custody envelope, correct?

6 A Correct.

7 Q This is the required envelope that the FBI has
8 concerning original tape recording evidence, correct?

9 A Correct.

10 Q This is one in particular that involves my client
11 that you filled out, correct?

12 A Correct.

13 Q Looking at the document, it says, "Agent
14 supervision interception," and there is something
15 handwritten, it says, "Detective Louis A. Napoli," correct?

16 A Correct.

17 Q Is that your handwriting?

18 A Yes, it is.

19 Q Is it your testimony that you supervised this
20 recording on June 4, 1993?

21 A Supervised the recording or supervised the
22 receiving of that recording?

23 Q Is it your testimony that you supervised the
24 receiving of it and not the recording itself?

25 A Correct.

1 Q Now, it says "interception." If we look down a
2 few columns, obviously there is a column for Title III,
3 court ordered, that is a wiretap, correct?

4 A Correct.

5 Q A Pfizer is another form of a wiretap, correct?

6 A Correct.

7 Q Then you have the box "Consensual" marked.

8 A Correct. I see it.

9 Q You put the X there?

10 A Yes, I did.

11 Q You list the interception, June 4, 1993, and am I
12 correct --

13 A Correct.

14 Q -- you wrote "Mohammed Ali's home," correct?

15 A Correct.

16 Q You have subsequently learned that that is in
17 error, that this is actually the car tape between Siddig Ali
18 and Salem, correct?

19 A Correct.

20 Q So your entry that you made on or about June 7 is
21 wrong, correct? A mistake?

22 A A mistake.

23 Q It says the date removed from the equipment, I
24 think you have already testified it is June 7, 1993 at 10
25 a.m., correct?

1 A Correct.

2 Q The participants to CM 31 are listed: Emad
3 Salem, Siddig Ali, Mohammed Ali, correct?

4 A Correct.

5 Q That is in error because my client isn't on 31,
6 he's actually on 32, correct?

7 A Correct.

8 Q Then there are some FBI numbers on the right,
9 correct?

10 A Correct.

11 Q Then, of course, the bottom contains the various
12 chain of custody within the FBI, correct?

13 A Correct.

14 Q In other words, it is a routine procedure, every
15 time a member of law enforcement takes out the tape for
16 review or enhancement or examination, it is signed in and
17 out?

18 A Correct.

19 Q Would you take a look at the next page, which was
20 the white envelope that went with it. For the jurors'
21 benefit, it is a copy of that. You have the original in
22 front of you, is that correct?

23 A Correct.

24 Q This is what the white envelope looks like,
25 correct?

1 A Correct.

2 Q There is a copy of the tape itself on the bottom
3 in your book and in the jurors' book, do you see the copy of
4 the tape?

5 A Yes.

6 Q Am I correct that the manufacturer of the
7 envelope, Daniel Technology has a serial number, S/N 38869,
8 correct?

9 A Correct.

10 Q And "MFG" stands for the date that the tape was
11 manufactured, October '91, correct?

12 A Correct.

13 Q And various information is left blank for law
14 enforcement to fill in, correct?

15 A Correct.

16 Q In this particular case, could we look at the
17 second column, it says, "Case No." is that your handwriting?

18 A Yes, it is.

19 Q And that is the FBI case number for this case,
20 correct?

21 A Correct.

22 Q And you didn't put the tape number down or the
23 recorder number down, did you, sir?

24 A No, I didn't.

25 Q So we don't know, for example, and there is no

1 way of knowing what particular equipment -- this was a
2 sample that the government offered into evidence -- but we
3 don't know what particular Nagra he used, correct?

4 A Correct.

5 Q He could have had one the FBI gave him or one he
6 bought, correct?

7 A Correct.

8 Q The Nagra is not a secret piece of equipment, any
9 person can walk into a good electronics store and buy one,
10 correct?

11 A I guess so.

12 Q That has the money. These are pretty expensive,
13 right? Pardon me?

14 A I guess so, yes.

15 Q In other words, this isn't some special FBI
16 equipment that only FBI agents or police can use, correct?

17 A Correct.

18 Q If you got a couple of thousand dollars you could
19 buy one, correct?

20 A I guess so.

21 Q Do you know whether Salem ever went out to a
22 store and bought one of these --

23 THE COURT: Mr. Jacobs.

24 MR. JACOBS: I'm sorry.

25 Q Do you know if he ever bought one of these?

1 Do you know?

2 A No.

3 Q Did he ever tell you he did?

4 A No, he didn't.

5 Q Now, where it says "Location," that's written in
6 on the document, would you take a look at that. It appears
7 to say "Mohammed Ali's apartment upstate." Do you see that,
8 sir?

9 A I see it.

10 Q Would I be correct that that is Salem's
11 handwriting. I'm sorry. Why don't you answer, if you know.

12 A Yes, it probably is.

13 Q Well --

14 A I don't know his handwriting.

15 Q Well, let me ask you this, Detective: When you
16 got the envelope on June 7, did it have that portion filled
17 in?

18 A Yes, it did.

19 Q Pardon me?

20 A Yes.

21 Q Well, when you gave it to him it was blank,
22 correct?

23 A Correct.

24 Q So we can assume that he wrote that?

25 A Yes, yes.

1 Q It says, "Subject: Financing the bomb."

2 Whose handwriting is that?

3 Underneath, it said "Emad" and I guess "Siddig."

4 Do you know who wrote that?

5 A It was probably Emad.

6 Q Where it says, "Investigator," someone wrote
7 "Mohammed Ali" underneath "Detective Louis Napoli," correct?

8 A Correct.

9 Q Would I be correct that the words "Mohammed Ali"
10 were written by Salem, not you?

11 A Correct.

12 Q You obviously wrote Detective Louis Napoli below
13 that, correct?

14 A Correct.

15 Q That is your handwriting, correct?

16 A Yes.

17 Q The word "briefcase" looks like P-R-I-E-F, that
18 is Salem's handwriting?

19 A Correct.

20 Q Obviously those are FBI numbers below that the
21 lab did, correct?

22 A Correct.

23 Q Now, this particular document that is in
24 evidence, the information that is contained on it, let's
25 review it.

1 You don't know if that recording was actually
2 made on June 4, 5 or 6, do you? You are taking the word of
3 Salem on that, correct?

4 A I know that it was done on the 4th because we
5 know what he did the other days, and he didn't go up to
6 Mohammed Saleh's apartment on the 5th and 6th.

7 Q The information that says Mohammed Ali's
8 apartment, that is in error, correct?

9 A Yes, it should have been house. Apartment,
10 house, same thing.

11 Q I'm sorry. I didn't mean to interrupt you.
12 Is the information in error? Isn't it a fact
13 that 31 is a car tape between Siddig Ali and Salem made
14 after the meeting with my client, and you have stated that
15 it is in error?

16 A Correct.

17 Q A mistake?

18 A Correct.

19 Q So when you got the tape back from Salem, the
20 notations he wrote on it were in error, correct?

21 A Correct.

22 Q You adopted the error in your handwriting on the
23 outside envelope, correct?

24 A Correct.

25 Q OK. A mistake was made, correct?

1 A Correct.

2 Q This tape, in fact, CM 31, is a car tape,
3 correct?

4 A Correct.

5 Q Now, the numbers don't match, correct?

6 A Correct.

7 Q The envelope is 38869; the actual tape is 38707,
8 correct?

9 A Correct.

10 Q Do you know when he got the actual tape 38707?

11 A No.

12 Q You made no notations on the white envelope of
13 the date you gave it to him either, did you, sir?

14 A No, I did not.

15 Q Now, would you look at Defendant's Exhibit A on
16 the next page. It is a little hard to read, but let's see
17 if we can go through that the same way.

18 A May I just read it off the original?

19 Q Sure, of course, please do, Detective.

20 A Go ahead.

21 Q Sure. Detective, by the way, you said you knew
22 where he was on the 5th and 6th, but you didn't pick it up
23 from him until the 7th?

24 A Yes. The reason why we didn't pick it up, we met
25 with him on the 5th to retrieve the tapes, but the reason

1 why they weren't retrieved is because for the -- about a
2 period of two weeks Emad had the feeling that, you know, the
3 case was coming to an end, and that he was fearful for his
4 family and his own life and wanted to be introduced to the
5 witness program. We kept putting it off.

6 On the morning of June 5 when we went to retrieve
7 the tapes from the meeting that he had with Salem, which we
8 did indeed see, he told us that unless we introduced him to
9 the witness program he wasn't going to give us the tapes.
10 So then we made arrangements, and that meeting took place
11 with the Marshals Service on Monday. After the meeting,
12 that is when we retrieved the tapes.

13 Q You keep a diary of your activities, correct?

14 A Yes, I do.

15 Q Is that a copy of your diary?

16 A Yes, it is.

17 Q I think --

18 THE COURT: Does that have an exhibit number?

19 MR. JACOBS: Yes, it is 3597D, your Honor.

20 THE COURT: All right.

21 Q That is a copy of your diary for the months of
22 May and June, correct? Take a look. If you want your
23 original --

24 A No, that's OK. My original is home.

25 Go ahead.

1 Q Is that a copy of your --

2 A Yes, it is.

3 What date do you want me to look at?

4 Q I will tell you in a second.

5 A OK.

6 Q Let's look at the first entry, Monday, May 3.

7 A OK.

8 Q You make an entry of the hours that you work, is
9 that correct?

10 A Correct.

11 Q That is for the recordkeeping for the police
12 department, correct?

13 A Wrong.

14 Q Wrong? Why do you make the entry?

15 A This is my own personal -- this is not my memo
16 book.

17 Q You have a memo book?

18 A Yes, it is. But this is just for my own, this is
19 for my own recollection as far as time worked and what went
20 on that day. It is a calendar.

21 Q In any event, you make a notation when you meet
22 with Emad, correct?

23 A Most of the times I do, yes.

24 Q Most of the times you do, is that your testimony?

25 Not all?

1 A No.

2 Q So on May 3 you made a notation, "Meeting with
3 the source," correct?

4 A Correct.

5 Q That is Emad, correct?

6 A Correct.

7 Q You made a notation on the 6th, correct?

8 A Correct.

9 Q You testified that you met Salem on June 5,
10 correct?

11 A Yes.

12 Q You just said that, sir, correct?

13 A Yes.

14 Q Look at your entry for June 5. Wasn't that your
15 day off, sir?

16 A I didn't have too many of those at that time.

17 Q "RDO"?

18 A Right.

19 Q What does "RDO" stand for? "Regular day off,"
20 police lingo?

21 A Correct.

22 Q When you testified to the jury that you met Salem
23 on June 5, you put in your diary "RDO," regular day off,
24 correct, sir?

25 A Correct.

1 Q Is there a notation on June 5 that you met with
2 him? Yes or no.

3 A I am looking for June 5.

4 Q Sure. Do you want me to show it to you?

5 A Yes, do you have a better one. This is all
6 blotchy.

7 Q Sure, my apologies. No problem.

8 A Thank you.

9 Q I'm sorry.

10 A There is five hours overtime, so I know I worked.
11 Being that he was the only person I was handling, I met him.

12 Q The question, sir, is: Do you have a notation on
13 June 5, 1993 --

14 MR. McCARTHY: Objection.

15 Q -- that you --

16 THE COURT: Sustained.

17 Q Did you make a notation in your book, "Meeting
18 with the source"? Yes or no.

19 A On the 5th?

20 Q Yes.

21 A No, I did not.

22 Q How about on the 7th? Did you make a notation
23 about meeting with the source? Yes or no.

24 A No. It just says, "Meeting with U.S. Attorney
25 and the United States Marshal Service for source

1 protection."

2 Q Getting back to Defendant's A in evidence, the
3 outside envelope, am I correct, Detective Napoli, this is an
4 envelope that you filled out? Correct, sir?

5 A CM 32?

6 Q Sure.

7 A Yes.

8 Q That is the outside envelope?

9 A Yes.

10 Q The information that is contained, where it says
11 "June 4, 1993, car tape," that is in error, isn't it?

12 A Correct.

13 Q The participants in the conversation are listed
14 as Emad Salem, Siddig Ali. There is one person that is
15 missing, correct, that is my client, correct, sir?

16 A Correct.

17 Q That is a mistake that was made by Salem,
18 correct?

19 A Correct.

20 Q Let's look at the white envelope, a copy of it
21 that is in front of you in the book. It says CM 32. It is
22 the last page in your book, Detective.

23 A OK.

24 Q Am I correct, Detective, this is an envelope that
25 you picked up from him?

1 A Correct.

2 Q The information, it says, "New Jersey," whose
3 handwriting is that?

4 A Emad.

5 Q "Subject: Siddig Ali," whose handwriting is
6 that?

7 A It looks like Emad.

8 Q Where it says "Detective Louis Napoli, 67," I
9 assume that is your handwriting, correct?

10 A Correct.

11 Q Then somebody wrote "Emad and Siddig," correct?

12 A Correct.

13 Q Is it your handwriting that is June 4, '93,
14 "Conversation in car, either before going to Yonkers or
15 after," is that your handwriting?

16 A No, that is his.

17 Q That is his handwriting?

18 A That looks like his.

19 Q That information he put down and that was in
20 error as well, correct?

21 A Correct.

22 Q Agent, you received permission from the Federal
23 Bureau of Investigation to conduct these consensually
24 monitored conversations, is that correct?

25 A Correct.

1 Q Was that done in writing to the FBI, to your
2 knowledge, sir?

3 A Yes.

4 Q Was that done after consultation with an
5 Assistant United States Attorney in the U.S. Attorney's
6 Office, to your knowledge?

7 A To my knowledge.

8 Q Was Salem given specific instructions to turn
9 over to the FBI all tape recordings made, sir?

10 A Yes, he was.

11 Q The type of equipment that you gave him, let's
12 see if we can go over it.

13 I am talking about tapes made May 7 to June 23,
14 OK?

15 A OK.

16 Q You gave him a Nagra, correct?

17 A Three of them.

18 Q Three of them, OK.

19 You gave him what other recording equipment?

20 A Well, we didn't give it to him. We did it. We
21 had a cassette recorder and then we had a device which had
22 to be downloaded.

23 Q The cassette recorder, what type of cassette
24 recorder is that, sir?

25 A I was a regular cassette recorder which

1 telephoned -- which recorded a telephone conversation
2 between him and Siddig. It was just a monitored call.

3 Q I'm sorry. What type of machinery was it, a
4 little piece of machinery, you know, six inches or a big
5 piece of --

6 A It was a tape recorder that was used like to
7 dictate memos. It was a small cassette recorder.

8 Q How many of these calls did he use this
9 particular recorder for, for May 7 to June 23, to your
10 knowledge?

11 A Just one.

12 Q Do you know the date of that?

13 A Not off the top of my head.

14 Q Would you look at Defense Exhibit Saleh, the
15 notebook, your red exhibit up there.

16 A What page?

17 Q Look at the front page. Let's start with that.

18 A OK.

19 Q Did this recorder that you gave him have regular
20 sized cassettes or microcassettes, to your knowledge?

21 A It was a microcassette.

22 Q So you have three Nagra's and a microcassette
23 recorder, is that your testimony, sir?

24 A Those were the type of machines that we used,
25 correct.

1 Q Some equipment you say could be downloaded?

2 A Correct.

3 Q To your knowledge, was the microcassette recorder
4 ever used to record a nontelephone conversation?

5 A To my knowledge, no.

6 Q Now, Mr. McCarthy, can I see CM No. 9, please?

7 MR. JACOBS: Your Honor, while they are
8 looking -- oh, do you have it?

9 (Counsel conferred)

10 Q Detective, I am showing you a number of cassettes
11 that are contained in CM No. 9, conversations that were
12 allegedly recorded May 20 to May 21. Do you see that?

13 Take them out of the envelope, please.

14 A 9?

15 Q CM 9.

16 Do you have them, Detective?

17 A I have them.

18 Q Detective, am I correct that CM 9 are several
19 full-sized cassettes?

20 A Yes, they are.

21 Q Can you tell us how he made a tape recording on
22 regular cassettes on about May 19 or 20th. Do you know how
23 that was done?

24 A Yes. This was the device that had to be
25 downloaded into a computer onto cassettes.

1 Q Are you sure about that, detective?

2 A If this --

3 Q Look at the envelope, Detective, so that --

4 A Can you show me the actual CM and what it
5 involved?

6 Q Sure, I would be happy to.

7 A So I can have a better idea of what these were.

8 MR. JACOBS: I think he wants to see that.

9 Sure. I am handing the witness --

10 MR. McCARTHY: Your Honor, can we approach for a
11 moment.

12 THE COURT: Yes.

13 (At the side bar)

14 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: CM 9 is a situation where, as I
3 understand it, a microphone was placed in Salem's car and
4 the FBI and the Joint Terrorist Task Force unsuccessfully
5 attempted by transmitter to make cassette recordings off the
6 microphone. The detective is obviously confused. He thinks
7 it is the cassette tape that was made from the optical disk,
8 41 and 45. I just want to make counsel aware, this is not
9 one where you are going to find that Salem made the tapes.
10 This was an unsuccessful recording off a microphone.

11 MS. AMSTERDAM: It is a successful recording. We
12 have transcripts of it.

13 MR. McCARTHY: No. It is largely unsuccessful.

14 THE COURT: He didn't want you to step on
15 something.

16 MR. JACOBS: OK.

17 MR. McCARTHY: I don't want you to be unfairly
18 misled by my direct. The only equipment that Salem tape
19 recorded was what I elicited on direct. There was one time,
20 I understand, that a car that he was driving up to see
21 Nosair in Attica was a transmitter that the FBI tried to
22 follow him with by investigating means. They tried to
23 record that by transmitter. It was not successful. There
24 was some car noise and --

25 MR. JACOBS: No problem. I appreciate the

1 government telling me.

2 (In open court)

3 MR. JACOBS: Your Honor, I need about 30 seconds
4 to chat with my --

5 Mr. McCarthy, can I get out CM 41 and 45, 66 and
6 67, that are designated digitals, please.

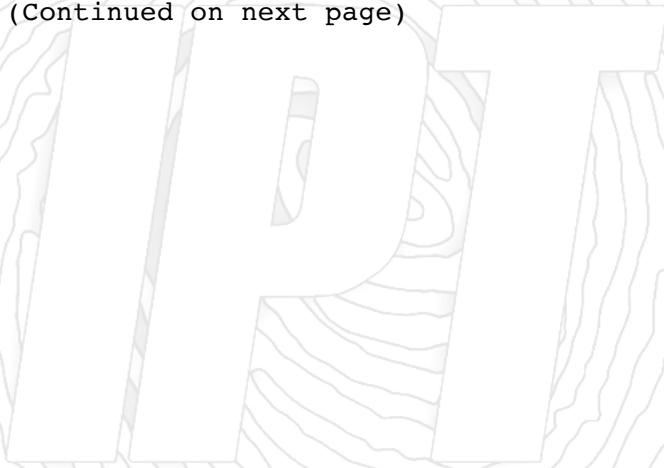
7 I am going to take back 31 and 32 because the
8 detective has too many envelopes.

9 THE WITNESS: Do you need C3?

10 MR. JACOBS: No.

11 (Continued on next page)

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1 BY MR. JACOBS:

2 Q Detective, what I have shown you is 41 and 45,
3 and I think 67. If you would open them up, I would
4 appreciate it.

5 MR. JACOBS: May I proceed, your Honor?

6 THE COURT: Yes.

7 Q Detective, 41 and 45, and I think it is 67,
8 aren't those the optical disks?

9 A Yes, correct.

10 Q In other words, whatever that equipment was on
11 that date, that optical disk was some equipment that the FBI
12 decided to use in this case and you need a computer to
13 restore the conversation, correct?

14 A Correct.

15 Q Would I be correct in stating you have no
16 expertise in that area?

17 A Correct.

18 Q Getting back to CM 9, those cassettes, full sized
19 cassettes, those are not optical disks, correct?

20 A Correct.

21 Q What are they?

22 A These are tape recordings of the trip up to see
23 Mr. Nosair at Attica, and they were monitored from a car.
24 That is what I think were used off the device that you were
25 trying to lead to last week, a Kel or something which is

1 monitored from another vehicle, and I think that is what
2 these are.

3 Q In other words, on at least one occasion in this
4 investigation, you or the FBI working with you used a Kel
5 transmitter or another type of transmitter?

6 A Correct.

7 Q This is how it works: There is some microphone
8 in the vehicle, correct?

9 A Either in the vehicle or on a person.

10 Q And that microphone in the vehicle or on the
11 person has a battery and has a transmitter that transmits to
12 another vehicle, correct?

13 A Correct.

14 Q And by so doing, agents of law enforcement can
15 contemporaneously listen and record the conversation,
16 correct?

17 A Correct.

18 Q That is a device that is routinely used in law
19 enforcement, correct?

20 MR. McCARTHY: Objection to form.

21 THE COURT: Are such devices routinely used?

22 THE WITNESS: Yes, they are.

23 Q In connection with this case, it was only used on
24 that one date, to your knowledge, sir?

25 A Correct.

1 Q As a result of the use, some conversation was
2 recorded, correct?

3 A Correct.

4 MR. JACOBS: Mr. McCarthy, may I have 52, 53 and
5 56, please.

6 Q 52, 53 and 56 that are listed as cassettes in the
7 log. Detective Napoli, if you would take a look at 52, 53
8 and 56 that are cassettes, can you tell us how they were
9 made? Let's take 52. What is 52?

10 A What is 52? It's a cassette.

11 Q Who made it, and can you give us any information
12 on it?

13 A I see a number up here that has a Q on top, 97A.
14 I think the Q's -- I am not sure -- were the safe house
15 tapes, and were recorded in that manner.

16 Q In other words, 52 and 53 are tapes that were
17 recorded not by Salem but by agents in the safe house? Is
18 that your testimony, if you know?

19 A I am not sure but the Q to me means safe house.

20 Q So is it your testimony to the best of your
21 knowledge that 52, 53 and 56 are tapes made not by Salem but
22 by the FBI in the safe house, using some equipment, FBI
23 equipment?

24 A My best recollection, yes.

25 Q But you didn't personally do any of these,

1 correct?

2 A Correct.

3 Q Detective Napoli, you said that the FBI got
4 permission to do these tapes, correct?

5 A Correct.

6 Q When was this permission sought for the first
7 time?

8 A You want a date? A year would be fine. I don't
9 need a specific date.

10 A Immediately following the World Trade Center
11 bombing.

12 Q Isn't it a fact that you and agents sought
13 permission in July 1992, months before the World Trade
14 Center, you sought permission and got permission for Salem
15 to consensually monitor phone calls? Isn't that true, sir?

16 A Yes, we did, but --

17 Q Yes or no.

18 A Yes.

19 Q In other words, when you say that you got it
20 right after the World Trade Center, that wasn't accurate
21 because in fact you got it months after the World Trade
22 Center, didn't you, sir?

23 MR. McCARTHY: Objection to form.

24 THE COURT: Sustained as to form.

25 Q Did you receive permission on or about July 1992

1 from FBI headquarters with the permission of an assistant
2 U.S. attorney to consensually monitor Salem's conversations?
3 Yes or no.

4 A We received permission but he wouldn't sign it,
5 so --

6 THE COURT: Look. He asked you yes or no.

7 THE WITNESS: I am sorry.

8 A Yes, we did.

9 Q And am I correct that Emad Salem refused in July
10 1992 to record tape recorded calls? Yes or no.

11 A Yes.

12 Q Detective, you said that you were supervising
13 Salem in making the tape recorded calls, correct, or body
14 recorders, correct?

15 A Correct.

16 Q Did you become aware of the fact that he was
17 recording conversations with the defendants in this case and
18 not giving them to you before June 23, 1993?

19 A Do you want to rephrase that?

20 THE COURT: Was he aware of it on June 23, 1993?

21 MR. JACOBS: Yes.

22 Q Before the arrests in this case, did you become
23 aware of the fact that he had taped phone calls, body
24 recorders or some taped conversations with defendants in
25 this case that he was not turning over? Yes or no.

1 A No, I was not aware of it.

2 Q Were you aware that he had any taped
3 conversations, be it with law enforcement or anybody, that
4 he was not turning over to the Federal Bureau of
5 Investigation and did you know that before June 23?

6 A No --

7 MR. McCARTHY: Objection to --

8 THE COURT: No, I will allow it. It is before
9 June 23.

10 MR. JACOBS: That is correct, sir.

11 A No, I did not.

12 Q Did you ever have a conversation with Agent
13 Anticev, where Agent Anticev indicated to you that Salem was
14 making tapes that were not going to be used in evidence in a
15 criminal case? Did Anticev ever tell you that, sir?

16 A No.

17 Q Have you subsequently learned that he had such
18 conversations with Anticev, sir?

19 A Yes, I have.

20 Q And you learned that Anticev instructed him to
21 make calls or tape recordings that were not going to be used
22 in evidence, correct, sir?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Could you come to a convenient break point in the

1 next five minutes.

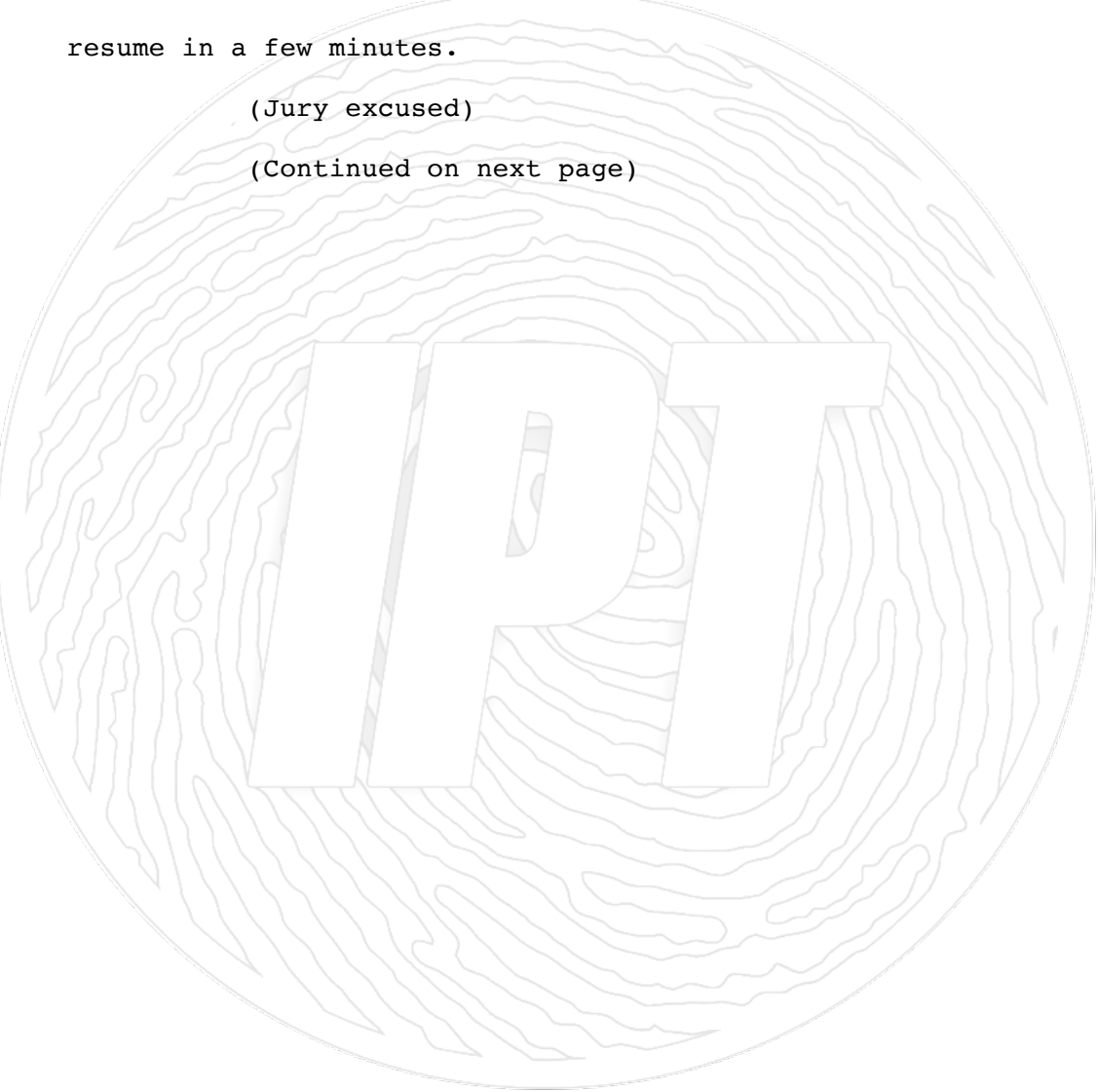
2 MR. JACOBS: That would be convenient.

3 THE COURT: Ladies and gentlemen, we are going to
4 take a short break. Please leave your notebooks and other
5 materials behind. Please don't discuss the case. We will
6 resume in a few minutes.

7 (Jury excused)

8 (Continued on next page)

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1 (In open court; jury not present)

2 MR. JACOBS: Your Honor, may the witness step
3 out. I would like to clarify a question and answer with
4 your Honor.

5 THE COURT: Can we do it at the side?

6 MR. JACOBS: We can do it here, or at the side.

7 THE COURT: All right. Why don't you come up to
8 the side.

9 (At the side bar)

10 MR. JACOBS: Your Honor, I thought the witness
11 when I asked the question, did he subsequently learn that
12 Anticev had instructed Salem to make calls that were not
13 going to be used in evidence, he said yes.

14 MS. AMSTERDAM: He did.

15 MR. JACOBS: The reporter doesn't have that
16 answer. I thought I heard a "yes" quite clearly so did all
17 my colleagues. I don't know what the government's
18 recollection is.

19 THE COURT: He said yes.

20 MR. JACOBS: Fine.

21 THE COURT: All right.

22 MR. JACOBS: That is it, thank you.

23 (In open court)

24 (Jury present)

25 CROSS-EXAMINATION (continued)

1 BY MR. JACOBS:

2 Q Detective Napoli, concerning the taping that you
3 were supervising, did you ever have a conversation with Emad
4 Salem where you asked that he turn over all tapes that he
5 had in his possession?

6 A No.

7 Q Were you aware before June 23, 1993 that he had
8 private tapes that he was making?

9 A No, I was not.

10 Q Were you ever informed that he had tapes against
11 the FBI that he was going to turn over to CNN?

12 Were you aware of that?

13 A No, I was not.

14 (Counsel conferred)

15 Q Detective Napoli, did you ever have a
16 conversation with Emad Salem before June 23, 1993 where he
17 said he had his own tapes? Yes or no.

18 A No, not to my recollection.

19 Q Did he ever tell you that he had, you yourself,
20 that he had hundreds of tapes? Yes or no.

21 A No.

22 MR. JACOBS: May I approach the witness, your
23 Honor.

24 THE COURT: Yes.

25 MR. JACOBS: What number am I up to?

1 THE COURT: F.

2 Q Let me show you F and G for identification.

3 Would you look at F and G for identification,

4 Detective Napoli, and read those to yourself, please.

5 Take your time. Let me know when you're

6 finished, Detective.

7 Q Have you read those two pieces of paper?

8 A Yes, I have.

9 Q Detective Napoli, subsequent to June 23, 1993,
10 have you been continued to be assigned to the --

11 THE COURT: Mr. Jacobs.

12 Q -- to the Joint Terrorist Task Force?

13 MR. JACOBS: I'm sorry, your Honor.

14 Q To the Joint Terrorist Task Force, have you been
15 assigned there?

16 A Yes, I have.

17 Q Have you reviewed the so-called bootleg tapes,
18 the tapes that were recovered by the Department of Justice
19 after June 23, 1993?

20 A Yes, I have.

21 Q Have you reviewed tapes where your voice is
22 contained having conversations with Emad Salem before June
23 23, 1993?

24 A Yes.

25 Q Have you heard a tape where you are speaking to

1 Emad Salem and Emad Salem tells you he has hundreds of
2 tapes? Yes or no.

3 A I must have read the transcripts. I didn't
4 actually listen to the tapes.

5 Q Do you have a recollection that sometime between
6 June 23 and an earlier date, during the time that you were
7 supervising this man's taping, that he told you he had
8 hundreds of tapes?

9 Did you ever have such a conversation with Emad
10 Salem?

11 A Yes, I did, I guess.

12 Q When Emad Salem told you before June 23, 1993
13 that he had hundreds of tapes, that didn't surprise you, did
14 it, sir?

15 A No, because it just wasn't in the same context of
16 the tapes that we were taking.

17 Q In the context of the tapes that you were taking,
18 did you inquire of him, "Hey, Emad, what are those hundreds
19 of tapes about"?

20 When you had the conversation with him, weren't
21 you talking about the defendants in this case?

22 MR. McCARTHY: Objection to form.

23 THE COURT: Sustained. Do you want to ask him
24 one question?

25 MR. JACOBS: Sure.

1 Q Were you talking at the time that Emad Salem told
2 you he had hundreds of tapes about somebody named
3 Abouhalima? Yes or no.

4 A Yes.

5 THE COURT: He said yes.

6 A Yes.

7 Q And Abouhalima is a co-conspirator in this case,
8 correct, sir? Yes or no.

9 A No, he isn't, is he?

10 MR. McCARTHY: Stipulated, your Honor.

11 MR. JACOBS: I will rephrase it, your Honor.

12 THE COURT: It is stipulated.

13 MR. JACOBS: OK. Stipulated.

14 Q By the way, this was in the context when you were
15 also talking about Mr. El-Gabrownny at the same time, isn't
16 that correct, sir?

17 Do you want to look at the page again?

18 A No, go ahead. Yes.

19 Q When he said he had hundreds of tapes, did you
20 make an inquiry as to what those tapes were?

21 A The tapes that I believed them to be were --

22 THE COURT: The question called for a yes or no.

23 Did you make an inquiry. Yes or no?

24 THE WITNESS: No, I did not.

25 Q Did you have a conversation with him at the same

1 time where you were asking him to get in touch with this
2 fellow Abouhalima and Emad told you, "I can go back to my
3 tapes." Did you have such a conversation with him?

4 A Yes.

5 Q What were his tapes? When he said "my tapes,"
6 what was he referring to?

7 A OK. Emad was with these individuals numerous
8 hours of the day. Emad had once told us, he says, "Listen,
9 I can't remember everything that is said in a 12-hour span.
10 Do you mind if I make my own recordings" -- not
11 recordings -- "my own notes from recordings."

12 I said, "If you hand us over tapes, we have to
13 hand them in." Apparently, those are the tapes that I was
14 taking them to be were his own personal notes.

15 Q His own personal notes with the defendant
16 El-Gabrowny?

17 THE COURT: Mr. Jacobs, will you please move back
18 from the microphone and stop shrieking into it.

19 Q Are you saying that these were his own personal
20 tapes with some of the defendants in this case, sir?

21 A I don't know what they were. As far as we were
22 concerned -- as far as we knew that, he needed some help
23 remembering the day. He was using, he may have been using
24 some sort of tape recording to jot down different items that
25 happened during the day, so when he was being debriefed by

1 us he could give us a better fuller package.

2 Q Where is the full package of those hundreds of
3 tapes?

4 A They are in our 302s.

5 Q They are in what?

6 A The 302, when we debriefed him. And the tapes
7 that you have, that's where they are. They are in the CMs.

8 Q We have 62 CMs, sir.

9 I am asking you, did you ever recover the
10 hundreds of tapes that he was making?

11 A No.

12 Q Do you know if those hundreds of tapes contain
13 conversations of the defendants in this case, sir?

14 A Some of them do.

15 Q You don't know where they are now, of
16 conversations with defendants in this case, sir?

17 MR. McCARTHY: Objection to form.

18 THE COURT: Overruled. Do you know where they
19 are?

20 THE WITNESS: The ones that are were recovered, I
21 know where they are. If there is any others -- if there are
22 any others, I don't know. Other than the ones that were
23 recovered, I don't know where they are.

24 Q Do you know whether he spoke to my client on June
25 8, June 9, June 10, made a recording, and didn't give it to

1 you? Would you know that, sir?

2 A No, I would not.

3 Q Could those hundreds of tapes contain
4 conversations with my client?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q Were you aware, sir, that he was tape recording
8 law enforcement officials before June 23, 1993?

9 A No.

10 Q Is it your testimony that Agents Floyd and
11 Anticev never told you before June 23 that he was taping
12 agents?

13 A No, no one told me.

14 Q You have learned that after June 23 in fact law
15 enforcement have located non-CM tapes, so-called personal
16 tapes that contained some conversations with the defendants
17 in this case, correct, sir?

18 A Correct.

19 Q In other words, Mr. El-Gabrownny, you located
20 tapes of him that were in his home after the arrests in this
21 case that he never gave the FBI, correct?

22 A Correct.

23 Q Tapes of the sheik that he kept in other places
24 that he never gave to the FBI, correct?

25 A Correct.

1 Q How many of my client, sir, do you know?

2 A I don't.

3 Q These tapes of El-Gabrownny and the sheik were not
4 authorized by the Federal Bureau of Investigation, were
5 they, sir?

6 A Other than the CMs, no.

7 Q So he was violating the instructions that you
8 gave to him and was tape recording on his own --

9 MR. McCARTHY: Objection.

10 THE COURT: Was he violating instructions that
11 you gave to him by tape recording on his own?

12 MR. JACOBS: That is the question. Thank you,
13 your Honor.

14 A Yes.

15 Q When you answered the following question and
16 answer on your direct testimony by the government, page
17 4148:

18 "Q Was that tape recording --

19 MR. McCARTHY: May I have a moment, please, to
20 get it?

21 MR. JACOBS: Sure. Andy, tell me when you are
22 ready.

23 MR. McCARTHY: 41 --

24 MR. JACOBS: 4148, I think I have line 12.

25 Q So when you were asked the question by the

1 government on your direct testimony:

2 "Q Was that tape recording done under the
3 supervision of the task force?"

4 You said, "Yes, it was." That wasn't a
5 completely accurate answer, was it, sir?

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q Were tape recordings made in connection with this
9 case --

10 MR. McCARTHY: Your Honor, I would object, or I
11 would ask Mr. Jacobs to start at line 4 instead of line 12.

12 THE COURT: Well --

13 MR. JACOBS: I will rephrase the question, your
14 Honor.

15 THE COURT: Why don't you just move on to
16 something else.

17 Q The tape recordings that were recovered after the
18 arrest, do you know the dates that they were recovered and
19 where they were recovered from?

20 A I know they were recovered from his apartment,
21 but I don't remember the dates.

22 Q Did you ever find a diary -- when I say "you,"
23 Detective, I mean the task force -- a diary where he kept a
24 record of a number of the tapes?

25 A To my recollection, no.

1 Q All these, I will call them bootleg tapes or
2 personal tapes, all of these weren't recovered on June 23,
3 over the last few months, some of --

4 MR. McCARTHY: Objection to the form of the
5 question.

6 THE COURT: Sustained.

7 Q Were they all recovered on June 23?

8 A No.

9 Q What other dates were personal tapes recovered
10 on?

11 A I don't know.

12 Q They weren't in all one place, were they, sir?

13 A I wasn't part of the search, I don't know.

14 Q Did anybody contact CNN to see what they had?

15 A Not me.

16 Q Anybody contact the Egyptian government and see
17 what they had?

18 A Not me.

19 Q Anybody contact his relatives and see what they
20 had?

21 A Nope.

22 Q As you sit there now, Detective, concerning my
23 client, can you assure this jury that you have every court
24 recording ever made of my client?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 MR. JACOBS: I have nothing further, your Honor.

3 THE COURT: Mr. Stavis?

4 MR. STAVIS: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. STAVIS:

7 Q When you were testifying last week, Mr. Jacobs
8 asked you a question about a transmitting device.

9 Do you recall that question?

10 A Yes.

11 Q That would be last Tuesday, which was February
12 28, correct?

13 A Correct.

14 Q A transmitter is something where you can listen
15 to a conversation as it is occurring, correct?

16 A Correct.

17 Q In law enforcement there is a certain kind of
18 transmitter called a Kel transmitter, correct?

19 A Correct.

20 Q When Mr. Jacobs asked you about that last
21 Tuesday, you said that no Kel transmitter was used in that
22 case, isn't that what you said?

23 A On his person, correct.

24 Q You were wrong --

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Did you testify here this morning about the use
3 of a Kel transmitter?

4 A Not on his person. I think it was put in the
5 car. It was put in the vehicle. And I don't even know --
6 it was something similar to a Kel.

7 Q It was used in his car?

8 A Affirmative.

9 Q Did you tell Mr. Jacobs last week on Tuesday that
10 no transmitting device had been used?

11 A Correct. On his person. I mean, I don't
12 remember us putting a Kel on him, you know, like a Kel
13 device other than the Nagra.

14 Q Let's talk about this Kel transmitting device
15 that was used. It was used on May 20 and May 21 of 1993, is
16 that correct?

17 A Kel?

18 Q Yes.

19 A Can I see the CMs?

20 Q Excuse me?

21 A Can I see the CMs that you have got from those
22 dates, and I can tell you a lot better.

23 MR. STAVIS: May I approach the witness, your
24 Honor.

25 THE COURT: Yes.

1 A This is the trip up --

2 Q There is no question before you.

3 Was a transmitting device of some kind used on
4 May 20 and May 21 of 1993?

5 A Yes.

6 Q That was used in a vehicle, is that correct?

7 A To my recollection, yes.

8 Q Emad Salem -- withdrawn.

9 Was the transmitting device on Mr. Salem's person
10 or was it in his car?

11 A To my recollection, it was in the car.

12 Q The car that Mr. Salem used for that trip, who
13 supplied him with that car?

14 A I think we rented it.

15 Q Where did you rent it from?

16 A I don't remember the rental agency, but we rented
17 it off one of the rental agencies.

18 Q Did you rent the car specifically for that trip?

19 A Yes, we did.

20 Q Other than that, Mr. Salem had his own car,
21 right?

22 A Correct.

23 Q So you rented the car.

24 At what time prior to the trip did you put this
25 transmitting device in the rented car?

1 A Just before, that morning.

2 Q Who did that?

3 A The techs.

4 Q Excuse me?

5 A The techs. The technical section of the FBI.

6 Q Were you present when that occurred?

7 A When they installed it?

8 Q Yes.

9 A No.

10 Q Did the techs install a Nagra recording device in
11 the rented car before the trip up to Attica?

12 MR. McCARTHY: Objection. Rule 801.

13 THE COURT: He said he wasn't there when it was
14 done. Sustained.

15 Q Do you know whether there was --

16 MR. McCARTHY: Same objection.

17 MR. STAVIS: Let me finish the question.

18 THE COURT: Same ruling.

19 Q Did you meet with Emad Salem or did you speak
20 with Emad Salem after he came back to Attica?

21 A Yes, we did.

22 Q Did you discuss with him or receive from him a
23 Nagra tape recording?

24 A If he took Nagras, yes, we did. If he recorded
25 it, we took it.

1 Q Do you know whether he recorded it or not?

2 A I think we do have some from his briefcase, but
3 off the top of my head, I am not sure.

4 Q His briefcase was in the car?

5 A He took it with him.

6 Q On the trip to Attica?

7 A Yes.

8 Q In the rented car?

9 A Yes.

10 Q In his briefcase was a recording device, is that
11 your testimony?

12 A Yes, exactly.

13 Q There were tapes that were made by Mr. Salem from
14 the device in his briefcase during that trip, is that
15 correct?

16 A I am not sure, but I -- I would have to look at
17 the CMs. I would say yes.

18 Q You will say yes?

19 A No, I am not going -- do you want to show me the
20 CMs and then I can tell you for sure. Can you give me the
21 CMs that we have recovered from that day so that I can look
22 at them?

23 MR. STAVIS: May I approach the witness.

24 A That is the only one?

25 THE COURT: Yes.

1 A Then he didn't record it off his briefcase.

2 MS. STEWART: I didn't hear that, Judge.

3 THE COURT: He said if there is only one, he
4 didn't record using the device in his briefcase.

5 Q Just a few minutes ago when you said that he did
6 you were wrong, is that correct?

7 A If he did what?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q You testified before when Mr. Jacobs was asking
11 you questions that there was a car that followed along with
12 the rented car that Emad Salem was in on the way up to
13 Attica.

14 A Correct.

15 Q Who was in that car?

16 A I have no idea. There were some agents. I don't
17 know their names. It wasn't me.

18 Q Was it Agent Anticev?

19 MR. McCARTHY: Objection, Rule 602.

20 THE COURT: Sustained.

21 Q After Mr. Salem returned from Attica, did you
22 discuss with him and the agents what they heard during the
23 car ride up to Attica?

24 A Yes.

25 Q Which agents did you discuss that with --

1 A I didn't discuss --

2 Q -- Detective?

3 A I didn't discuss anything with the agents --

4 Q I haven't finished my question yet.

5 A None.

6 Q Which agents did you discuss that with, Detective
7 Napoli?

8 A None, none.

9 Q After Mr. Salem came back from Attica, were you
10 at all curious about what had occurred during his trip?

11 MR. McCARTHY: Objection, scope.

12 MR. STAVIS: He could answer that yes or no. I
13 will ask him to answer it yes or no.

14 MR. McCARTHY: That wasn't the nature of my
15 objection, your Honor.

16 THE COURT: I know. Sustained.

17 Q After Mr. Salem returned from his trip to Attica,
18 did you take any tapes from him?

19 A Not -- no. Not to my recollection. I think
20 those came by via surveillance.

21 Q What --

22 A That CM that you have there came by via the
23 surveillance crew.

24 Q The surveillance crew. What is a surveillance
25 crew?

- 1 A A surveillance unit is used to surveil someone.
- 2 Q Excuse me?
- 3 A A surveillance unit is a group of people employed
4 to surveil someone, follow someone.
- 5 Q When you say "surveillance crew," are you
6 referring to the other car that was following Mr. Salem in
7 his rented car up to Attica?
- 8 A Correct.
- 9 Q The trip up to Attica takes about nine hours, is
10 that correct?
- 11 A Correct.
- 12 Q Have you made that trip before?
- 13 A Never.
- 14 Q It takes about nine hours to come back, is that
15 correct?
- 16 A Correct.
- 17 Q That is 18?
- 18 A 18.
- 19 Q In between that 18 hours of traveling, Mr. Salem
20 was in Attica prison, is that correct?
- 21 A Correct.
- 22 Q Did you discuss with Mr. Salem when he returned
23 what had occurred in Attica prison?
- 24 A Correct.
- 25 Q Did he give you any tape recordings of what

1 occurred in Attica prison?

2 A No, he did not.

3 Q So the tape -- withdrawn.

4 The transcript that you looked at is only from
5 the 18 hours of traveling to and from Attica, is that
6 correct?

7 A Correct.

8 Q There is nothing from inside Attica, no tape
9 recording from inside Attica, isn't that correct?

10 A Correct.

11 MR. STAVIS: I have no further questions, your
12 Honor.

13 THE COURT: Mr. Ricco, representing
14 Mr. El-Gabrownny. Go ahead.

15 CROSS-EXAMINATION

16 BY MR. RICCO:

17 Q Good morning, sir.

18 A Good morning.

19 Q Mr. Jacobs asked you some questions about your
20 supervision of the CMS?

21 Do you recall those questions?

22 A Yes, I do.

23 Q The FBI has procedures that it follows for
24 taping, isn't that right?

25 A Correct.

1 Q In simplest terms, the purpose of those
2 procedures is to protect and preserve the integrity of what
3 it is you are recording, isn't that correct?

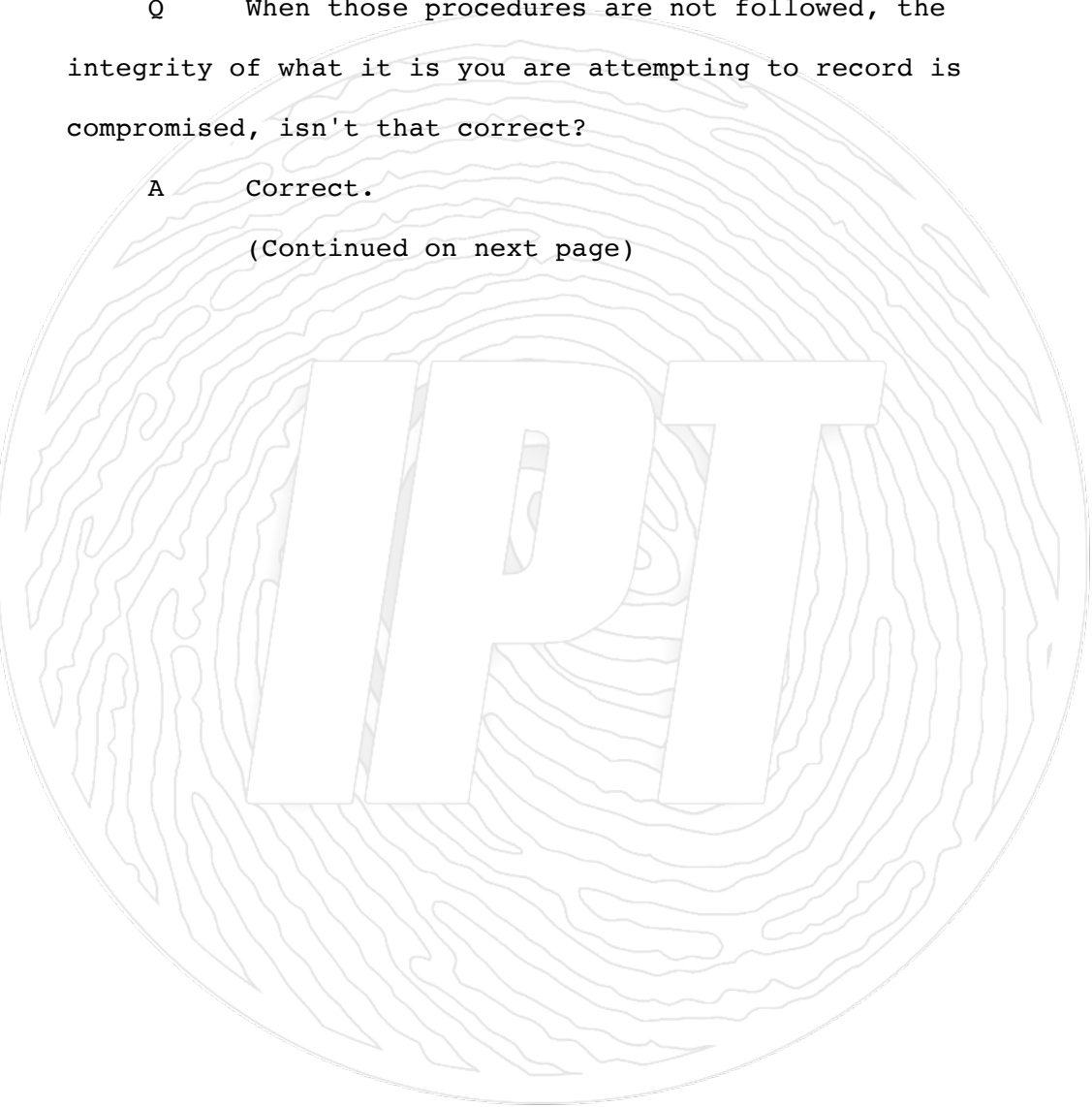
4 A Correct.

5 Q When those procedures are not followed, the
6 integrity of what it is you are attempting to record is
7 compromised, isn't that correct?

8 A Correct.

9 (Continued on next page)

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1 Q And as an agent, as an experienced agent, you are
2 concerned with the integrity of the proceedings, aren't you?

3 A Yes, I am.

4 Q Because when they are not followed, all of the
5 hard work that you have done can be compromised, isn't that
6 correct?

7 A Correct.

8 Q And in this case, Agent Napoli, isn't it fair to
9 say that you took many steps to preserve the integrity of
10 what it is you were recording? Isn't that correct?

11 A Correct.

12 Q And you took many steps to supervise the
13 activities of Mr. Salem, isn't that correct?

14 A Correct.

15 Q Indeed, you constantly reminded him that he was
16 not in Egypt, isn't that correct?

17 A Correct.

18 Q And you told him that in this country there are
19 procedures that have to be followed, isn't that correct?

20 A Correct.

21 Q And he was constantly pulling against you, isn't
22 that right?

23 A Correct.

24 Q He wanted to do it his way, isn't that right?

25 A At times, yes.

1 Q And in fact after this case, all the defendants
2 were arrested and you had an opportunity to discover these
3 bootlegs, you had discovered that in fact he had in fact
4 done it his way, isn't that correct?

5 A To a certain point, yes.

6 Q One of those ways is that you discovered that
7 Mr. Salem was recording your conversations with him, isn't
8 that correct?

9 A Correct.

10 Q You found that not only was he recording the
11 telephone conversations with you, but you also discovered
12 that he even wore a tape recorder on you, isn't that
13 correct?

14 A On himself.

15 Q On himself, recording you and Agent Anticev,
16 isn't that right?

17 A Right.

18 Q And by doing so, he exposed the integrity of the
19 FBI, isn't that correct?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q Well, in doing so, he recorded conversations with
23 you that you would not have normally otherwise had with him
24 had you known you were being recorded, isn't that correct?

25 A Conversations that he recorded I would have had

1 anyway, because they were debriefings and handling him. So
2 conversations would have taken place anyway.

3 Q Those were your conversations with him.

4 A Correct.

5 Q How about the other agents' conversations with
6 him that you had an opportunity to review?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q Have you had an opportunity to review recorded
10 conversations that Emad Salem recorded of your partner John
11 Anticev?

12 MR. McCARTHY: Objection. Relevance.

13 THE COURT: Sustained.

14 Q You discussed the fact that Emad Salem recorded
15 conversations, correct?

16 A Correct.

17 Q That were not authorized?

18 A Correct.

19 Q Some of those conversations included, if you
20 know, conversations with John Anticev?

21 A Correct.

22 Q Some of those conversations included, if you
23 know, conversations with Nancy Floyd, isn't that correct?

24 A Correct.

25 Q And that is an agent who wasn't even working on

1 this case, isn't that right?

2 A She was working on it. She was working on it but
3 not to the degree that John and I were.

4 Q Did she, if you know, supply Mr. Salem with any
5 of these tapes?

6 MR. McCARTHY: Objection.

7 Q If you know?

8 THE COURT: Sustained.

9 Q During the period that you were supervising the
10 tape recording process that Mr. Jacobs asked you about, do
11 you know whether or not tapes other than those that you
12 testified to were provided to Mr. Salem?

13 A No, not to my knowledge.

14 Q To your knowledge, do you know if any other
15 agents provided him with tapes?

16 A No.

17 Q You indicated that Mr. Salem recorded two
18 conversations by microcassette, that you know of.

19 A Microcassette?

20 Q Using a microcassette recorder?

21 A I think there was only one with a microcassette.

22 Q That is only one conversation that you know of?

23 A Yes, and it wasn't recorded by him. It was
24 supervised by us. It was just a confirmation of a call
25 between him and Siddig Ali. We were there taping the

1 telephone conversation that we used the microcassette on.

2 Q I think you indicated this morning to the jury
3 that you provided Mr. Salem with a microcassette recorder.

4 A We were there on the phone and he used it but we
5 supervised it. Right after the phone call, we took the
6 equipment back.

7 Q I am going to ask you to take a look at what has
8 been premarked as Government's Exhibit 630A through 649.

9 Having had an opportunity to look at those
10 exhibits, is it fair to say that Mr. Salem recorded many
11 conversations by the use of a microcassette recorder?

12 A Correct, yes.

13 Q More than one?

14 A Yes.

15 Q However, those recordings were not with your
16 authority or approval, isn't that correct?

17 A Correct.

18 Q He did that on his own, his own way?

19 A Correct.

20 Q He also used the standard cassettes, isn't that
21 correct?

22 A I guess he did.

23 Q Take a look at, if you will, Government's Exhibit
24 630A -- excuse me, your Honor. Take a look at Government's
25 Exhibit 620A.

1 Having had an opportunity to look at those
2 exhibits, Mr. Salem recorded conversations using 120 and 90
3 audiocassette tapes, isn't that correct?

4 A Correct.

5 Q Now I am going to ask you to take a look at an
6 exhibit -- we will call it El-Gabrowny A, your Honor.

7 Agent Napoli, earlier when I started my
8 questions, I had asked you whether or not you were aware if
9 any other agents had provided Mr. Salem with tapes, and you
10 said you were not.

11 A I was not.

12 Q I have given you an opportunity to review a
13 recorded conversation between you and Mr. Salem.

14 A Correct.

15 Q That, again in fairness to you, that conversation
16 was not recorded under your authority, isn't that correct?

17 A Correct.

18 Q In that conversation Mr. Salem asked -- you are
19 having a conversation with him, are you not, about tapes,
20 isn't that correct?

21 A Correct.

22 Q And Mr. Salem says he is out of 120's, isn't that
23 correct?

24 A Correct.

25 Q And you say I'll get you some?

1 A Correct.

2 Q So is it fair to say that you did provide tapes
3 to Mr. Salem?

4 A The 120, we never gave him cassettes. The only
5 thing we gave him were the reels.

6 Q What is it then when he says I'm out of 120's and
7 you said I'll get you some? What are you going to get him?

8 A Off the top of my head I don't know what he
9 needed the 120's for at this time. But, you know, we never
10 used 120's, you know, the cassette 120's, I mean, that we
11 were dealing with. Safe house tapes, stuff like that, which
12 he would have nothing to do with, I mean, there would be no
13 need for him to have.

14 Q But isn't it true that he was using 120's?

15 A Yes.

16 Q And he was also low on cash, isn't that correct?

17 A Cash?

18 Q Yes, money, at least so he used to say he was.

19 MR. McCARTHY: Objection.

20 THE COURT: Did he ever tell you that he was
21 short on cash?

22 THE WITNESS: Yes, he told us a couple times that
23 he was short on cash.

24 Q And you were providing him tapes to help defray
25 his expenses, isn't that correct?

1 A Correct.

2 MR. RICCO: I have no further questions. Thank
3 you very much, your Honor.

4 THE COURT: Mr. Bernstein, representing Amir
5 Abdelgani.

6 CROSS-EXAMINATION

7 BY MR. BERNSTEIN:

8 Q Detective Napoli, I am trying to get some
9 something clarified about the equipment given Mr. Salem.
10 You gave him three Nagra machines, correct?

11 A Correct.

12 Q Earlier at various times in your testimony you
13 have indicated that he was given a cassette or microcassette
14 recorder. Have you said that at least? Just yes or no,
15 sir.

16 A Yes.

17 Q Would it be fair to say that you didn't mean to
18 say that you gave him a cassette or microcassette recorder?

19 A Correct.

20 Q What you meant to say was that at some point in
21 time in the investigation, with the Bureau's direction, you
22 had him use a cassette or microcassette recorder?

23 A Correct.

24 Q So that the jury should understand that only
25 three machines were ever given to him by the FBI.

1 A Correct.

2 Q And those three machines were all Nagra devices?

3 A No. One was a Nagra, one was a microcassette --
4 yes. No, there was three Nagras, one device which had to be
5 downloaded which is not a Nagra, and a microcassette which
6 was used on that one occasion.

7 Q When you use the word "give," talking about
8 giving things --

9 A Give, just the three Nagras and the device.

10 Q He was never given a cassette or microcassette
11 recorder?

12 A Correct.

13 Q Let me just show you what has been marked
14 Government's Exhibit 305A. At different times in your
15 testimony you have indicated that the microcassette recorder
16 that you used with him but never physically gave him to
17 possess outside of your offices was used on one occasion, to
18 the best of your knowledge, to make a consent phone call
19 monitored by Agent Anticev, correct?

20 A Correct.

21 Q Is that what is contained in 305A?

22 A Yes, it is.

23 Q So he never was given any equipment to go out and
24 record on with his own tapes, other than Nagras, by you?

25 A Correct.

1 MR. BERNSTEIN: Thank you, sir. No further
2 questions.

3 MR. NOOTER: Your Honor, I have a few questions.

4 THE COURT: Mr. Nooter, representing Wahid Saleh.
5 Go ahead.

6 CROSS-EXAMINATION

7 BY MR. NOOTER:

8 Q Detective, you testified that generally speaking
9 Mr. Salem was only given two or three Nagra reels at a time,
10 is that correct?

11 A He was given the ones to fill the machines that
12 he had. That was three. And he was given an extra two,
13 tops three, for the day.

14 Q So he might have had as many as five at any one
15 time?

16 A Correct.

17 Q On certain dates -- if you need to look at the
18 chart that was introduced by Mr. Mohammed Saleh's lawyer you
19 can. On certain dates you received tapes back from him that
20 might be four, five, six or even seven -- let me say six
21 cassettes or Nagra recordings that were all made on one day
22 according to Mr. Salem, is that correct?

23 A Correct.

24 Q As far as what order those tapes were made, it
25 was Mr. Salem who would provide that information, is that

1 correct?

2 A Correct.

3 Q When those tapes were handed over, CM numbers
4 were assigned at that time, is that correct?

5 A Correct.

6 Q Were those numbers fairly arbitrarily assigned or
7 was an effort made to determine the chronological order in
8 which those tapes were made?

9 A There was an effort made for chronological order.

10 Q There was an attempt?

11 A There was an attempt.

12 Q Sometimes it was not always accurate, though, is
13 that correct?

14 A Right.

15 Q You reviewed the tapes and transcripts and you
16 know that some tapes were out of order, so to speak, is that
17 right?

18 A Correct.

19 Q According to the chart in the Mohammed
20 Saleh Exhibit on page 4, three of the CM recordings were
21 recorded on June 24, 1993. Did you notice that?

22 A Yes, correct.

23 Q You didn't recover those recordings yourself, is
24 that correct?

25 A No, I did not.

1 Q That is the date, is it not, that Mr. Salem ended
2 his role as an undercover informant, is that right?

3 A Yes, correct.

4 Q Indeed that ended at something shortly after 1:00
5 a.m. the morning of the 24th, is that right?

6 A Correct.

7 Q So if those three cassettes take more than about
8 an hour and 20 minutes, they must cover material that were
9 from some earlier date, is that correct?

10 MR. McCARTHY: Objection.

11 THE COURT: Overruled.

12 A Yes, correct, it could have gone into the 23rd.

13 Q Have you reviewed those cassettes -- I should say
14 those reels -- and those transcripts?

15 A Yes, I have.

16 Q And it is fair to say that they go on for as many
17 as six, seven hours, isn't that true?

18 A They were quite lengthy. I don't know how many
19 hours.

20 Q Certainly more than an hour and 20 minutes,
21 something like that, is that correct?

22 A Correct.

23 Q And the information that they were recorded on
24 June 24 was provided by Mr. Salem when he handed in those
25 tapes on the 25th, is that correct?

1 A I don't think he handed them in. I think they
2 were taken out of the car and from the safe house. He
3 didn't hand us anything because he was taken out of there in
4 cuffs.

5 Q So somehow or other they were recovered on the
6 25th and somebody decided that they had been recorded on the
7 24th, is that correct?

8 A Correct.

9 Q Procedurally, was Mr. Salem directed to make the
10 tapes by making one, completing it, and then starting
11 another, completing it, before putting a third reel into the
12 machine?

13 A The majority of times, yes, unless he thought he
14 was out of tape, and then he changed it.

15 Q Are you familiar with any instance where that
16 happened?

17 A There were a couple of times, not to be exact. I
18 remember he said that he had to change the tapes a couple
19 times because he thought they may have run out or he thought
20 he left it on too long or stuff like that.

21 Q So what you are saying is, we could have a tape,
22 say CM 64, that goes for a period of time, then other CM's
23 are made and then a continuation is made on, let's say, CM
24 64?

25 A Do you want to rephrase that?

1 Q Let me break it down. Are you saying that there
2 were times when Mr. Salem might have used a portion of one
3 tape, taken it out of the machine, used some other tapes,
4 and then put the earlier one back in to record further?

5 A No.

6 Q That never happened?

7 A No, not to my knowledge.

8 Q Is it true that Mr. Salem on occasion would
9 announce the date and time at the beginning or sometimes at
10 the end of a tape?

11 A Yes, correct.

12 Q And that of course is helpful in defining when
13 the tapes might have been made, is that correct?

14 A Not always, because he didn't have the right date
15 sometimes.

16 Q Exactly my point. You had to rely on what he
17 might have to say, is that correct?

18 MR. McCARTHY: Objection.

19 THE COURT: Overruled.

20 A Sometimes he wasn't correct with the dates.

21 THE COURT: That was the question after. Why
22 don't you just pose another question.

23 Q In other words, the information that he himself
24 sometimes put on the tape by saying today is Tuesday, June
25 19, or something, at 10:00 in the morning, was sometimes

1 itself wrong?

2 A Correct.

3 Q And the information that you put on the envelopes
4 about when the dates and times the tapes were made was also
5 sometimes wrong, is that correct?

6 A Correct.

7 Q And that is because he gave you wrong
8 information, is that correct?

9 A No. A couple times, like the one, I forgot the
10 date, I think it was June 6, I put June 7, that was just
11 trying to, you know, get out of, you know, the hurrying of
12 getting tapes into the thing and get out. Because we did
13 all this in the street.

14 Q So that was your --

15 A My hurrying that caused that.

16 Q On that particular day, that was your error?

17 A Right.

18 Q You testified about one cassette that turned out
19 to be marked with a Q number. Do you recall that?

20 A Yes.

21 Q And you said that the Q number cassettes were
22 made in the safe house, to your knowledge, is that correct?

23 A Correct.

24 Q And these were made by FBI agents, not by
25 Mr. Salem, is that right?

1 A Correct.

2 Q Therefore there were -- if you know, were there
3 times when video recordings were made simultaneously with
4 cassette recordings, cassette audios?

5 A Correct.

6 Q Do you know whether that happened on the night of
7 June 23 going into June 24, shortly before Mr. Salem's
8 efforts ended?

9 A If they were in the safe house, yes, they did.

10 Q They would have had a cassette as well as the
11 videotapes, is that right?

12 A Right.

13 Q If you know, is that because sometimes the
14 videotapes had to be changed, leaving a gap between where
15 one tape ended and another tape started?

16 MR. McCARTHY: Objection. Foundation.

17 MR. NOOTER: I said "if you know."

18 THE COURT: Not enough. When you come to a
19 convenient break point in the next five minutes.

20 MR. NOOTER: Yes.

21 THE COURT: Thanks.

22 Q Did you ever see a cassette that was marked Q27?

23 A I probably probably have.

24 Q Do you have any idea where it is now?

25 A No.

1 Q If there is a transcript for something called
2 Q27, does that mean there was probably a cassette from which
3 a transcript was made?

4 A It should.

5 (Continued on next page)

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1 MR. NOOTER: I have no further questions, your
2 Honor. Thank you.

3 THE COURT: Ladies and gentlemen, we are going to
4 break for lunch. Please leave your notes and other
5 materials behind. Please don't discuss the case. Have a
6 pleasant lunch. We will resume at 2:00.

7 (Jury excused)

8 MR. JABARA: Your Honor, we proceeded out of
9 order today. We still need to cross-examine this witness
10 after lunch.

11 MR. SERRA: I have a brief cross also, your
12 Honor.

13 MR. LAVINE: A couple of us back here.

14 THE COURT: Simply because Mr. Nooter represents
15 the last defendant in the indictment does not mean that his
16 was the last cross-examination. I understand that.

17 MR. JACOBS: Miss Amsterdam is doing my redirect.

18 THE COURT: Good.

19 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted, 2:10p.m.

Louis Napoli, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: Who is next?

Mr. Jabara, for Dr. Abdel Rahman. Go ahead.

CROSS-EXAMINATION

BY MR. JABARA:

Q Good afternoon, Detective Napoli.

A Good afternoon.

Q Essentially, these tapes that you would pick up from Mr. Emad Salem were made between May 7, 1993 and June 23, is that correct?

A Correct.

Q When Mr. Salem started taping for you in the beginning of May of 1993, did he tell you at that time that he had hundreds of tapes at home?

A No, he did not.

Q When Mr. Salem would provide these tapes to you, he would come down to your office, is that it?

A No. We'd meet him out in the street, and some of tapes we would take out of the Nagras ourselves. The only tapes that he would give us would be the ones that were

1 finished, like if he used more than the three machines that
2 he had, that he had to change, those were the ones that he
3 did, was the ones that he changed.

4 Q This always occurred out on the street?

5 A Correct.

6 Q At some prearranged location?

7 A Correct.

8 Q Would this always occur early in the morning?

9 A No, sometimes in the afternoon, sometimes in the
10 evening.

11 Q On any given week during that two-month period,
12 how many times a week would you say that you would meet with
13 him to pick up tapes?

14 A Between six and seven times a week.

15 Q So almost on a daily basis, is that correct?

16 A Correct.

17 Q Out of those times that you picked up tapes from
18 him, how many times were those where the tape was provided
19 to you already in the envelope?

20 A Quite a few occasions, but I don't --

21 MR. McCARTHY: Objection. Could we just clarify
22 which envelope, your Honor?

23 THE COURT: Do you want to clear that up?

24 Q The tapes were sometimes provided to you in white
25 envelopes, is that correct, by Mr. Salem?

1 A Correct.

2 Q Sometimes you removed the tape yourself from the
3 Nagra, is that correct?

4 A Correct.

5 Q Of the times that they were provided to you in
6 the white envelope, how many occasions would that have been
7 over that two-month period?

8 A A few times. I can't -- ten, eleven, I don't
9 know the exact number. Quite a few times.

10 Q Then would you remove the tape from the envelope
11 and check the tape at that time?

12 A Yes, I would remove it to see, you know, the tape
13 was wrapped around the cylinder, and then place it back in,
14 write on it, and bring it into the office.

15 Q When you arrived at the office, did you then at
16 that time provide it to the recording department
17 immediately, or how long a period of time elapsed between
18 the time that you arrived at the office and the time you
19 provided it to the recording department?

20 A No. We would put it in the evidence folder, you
21 know, and then bring it right up to the recording
22 department, if they were open, if it wasn't like the
23 weekend. If not, they were kept in the safe and then
24 brought up on Monday.

25 Q You would put it into an evidence folder after

1 you got it into the office?

2 A Yes. Those manila envelopes where all the
3 signatures are on.

4 Q Then you would take it immediately to the
5 recording department. How many copies would they make?

6 A As many as they thought were necessary to work
7 on.

8 Q You don't know?

9 A No.

10 Q In any case, when did you retrieve the original
11 of the tape from the recording department?

12 A The original was sent to another individual who
13 was in charge of that and putting them into a file and
14 listing them. That didn't come back to me.

15 Q It didn't come back to you from the recording
16 department?

17 A No, they did not.

18 Q Did you get a copy of the original back from the
19 recording department?

20 A No. That was also handled by him. He would then
21 get the copies and send them to the translator.

22 Q Did there ever come a time when you saw either a
23 summary of that tape or a translation of that tape?

24 A Yes.

25 Q When was that, after you had taken it to the

1 recorder?

2 A As soon after -- that they would translate it
3 into English, then they would come back to us and we would
4 read them.

5 Q How long would that take as a rule?

6 A A week at the earliest, sometimes longer.

7 Q Let's go back to the times when you are picking
8 up these tapes from Mr. Salem on the street.

9 When you picked them up from him on the street,
10 would you have a conversation with him?

11 A Yes.

12 Q Would he tell you something about what he thought
13 was in the tapes?

14 A He would tell us what the events of the day that
15 he had recorded were about.

16 Q You would sit and have a conversation with him,
17 is that correct?

18 A Correct.

19 Q Were you by yourself when you would pick them up?

20 A No, most of the times I was with my partner, John
21 Anticev, and sometimes I was by myself and sometimes with
22 other agents.

23 Q How long would these meetings take when you would
24 pick up the tape?

25 A Depending on his time schedule, sometimes we

1 didn't talk, sometimes it was rush, rush, just get the tapes
2 and go, and sometimes it could have lasted an hour.

3 Q Sometimes it would last a whole hour?

4 A Correct.

5 Q He would tell you what was on the tape, is that
6 correct?

7 A Correct.

8 Q Would you talk back to him and tell him anything
9 during those conversations or would you just listen?

10 A No. It was a back and forth dialogue.

11 Q At that time you would then give him more tapes,
12 is that correct?

13 A Correct.

14 Q Would you fit the Nagra yourself on that
15 occasion, or would you just give him the tape?

16 A No, I would fit them myself.

17 Q Detective Napoli, the first time that you would
18 see any kind of translation or summary of these tapes would
19 be when it came back from the translator, is that correct?

20 A Correct.

21 Q After it came back from the translator, would you
22 then meet with -- number one, did Emad Salem listen to these
23 tapes before he would give them to you?

24 A Not to my -- no, because they were still on the
25 machine.

1 Q The ones that were not on the machine, do you
2 have any knowledge as to whether he listened to them?

3 A I have no idea.

4 Q Did he ever come into your office and listen to
5 any of them?

6 A Yes. He did come in on certain occasions where
7 we were trying to make sure that the tape came out because
8 the conversation was that pertinent that he listened to them
9 in front of us on the reel-to-reel.

10 Q What was the purpose for him coming in? Would
11 you please --

12 A Just to see if the tape had come out.

13 Q What do you mean by "come out"?

14 A I mean if it was clear, what was on the tape,
15 because he felt that there are -- sometimes regarding one
16 day, regarding the actual conversation with the sheik, there
17 was a lot of noise in the kitchen where this thing was going
18 on, and he just wanted to make sure that it came out. He
19 was very apprehensive that it came out. So when he gave us
20 the tape we went into the office, we played it, and, as soon
21 he heard actual voices that could be distinguished and could
22 be translated, he was happy. So then we just gave it to the
23 individual who was in charge of duplicating, and that was
24 it.

25 Q Would he ask for this opportunity to come in and

1 listen to them, or would you ask him to come in?

2 A No, on that time he asked.

3 Q Were there times when you asked him to come in?

4 A There might have been, but not that I can recall.

5 Q Were there other times that he came in and

6 listened to the tapes in your office?

7 A Yes. I think so.

8 Q How many --

9 A Very few, there weren't that many.

10 Q How many would you say there were all together?

11 A Possibly two or three times.

12 Q On those other occasions did he ask to come in or
13 did you ask him to come in?

14 A No, he asked to come in. Because he was, just
15 wanted to know that his work wasn't wasted, you know, that
16 what was recorded was actually there.

17 Q In all the time that he went into your offices
18 and listened to these tapes, you are saying you never
19 requested him to come in and listen to them, is that
20 correct?

21 A Correct.

22 Q Once you received the translation back from the
23 translator, would you then again meet with Emad Salem with a
24 copy of the transcript of this translation?

25 A No, we would not.

1 Q Did you ever meet with Agents Floyd and Anticev
2 with Emad Salem with copies of these translations?

3 A No, we never took the CMS or transcripts out to
4 Emad.

5 Q But did you meet with him in your office?

6 A Yes. We did.

7 Q With copies of these translations?

8 A Possibly, yes.

9 Q How many times would you meet with him in your
10 office with copies of these translations?

11 A Two or three -- the only time he came in was the
12 few times that we had him come in that he wanted to listen.
13 So --

14 Q I am talking about when he --

15 MR. McCARTHY: Objection to cutting off the
16 witness's answer, your Honor.

17 THE COURT: Sustained.

18 MR. JABARA: All right.

19 Q Did you ever --

20 MR. McCARTHY: Your Honor, could the court ask --

21 THE COURT: Would you complete your answer.

22 Do you want to complete your answer?

23 THE WITNESS: The only times that he came in were
24 the times, the two or three times that he came in that he
25 wanted to listen to the tapes. That was the only time that

1 he actually came into the office. Otherwise, we met him out
2 on the street. He never came in after he first started. It
3 was too dangerous.

4 Q Did you ever meet with him anyplace with copies
5 of translations in your possession?

6 A No.

7 Q Didn't you just testify --

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q Were there any times that you met with Emad Salem
11 outside the office that did not involve the dropping off of
12 tapes?

13 A During that period of time?

14 Q Yes.

15 A Yes. A couple of times we met him when he was
16 apprehensive about a certain meeting that he was going to
17 and wanted to discuss some strategy in regards to -- like he
18 didn't know what was about to happen and he was afraid.

19 Q What type of strategy?

20 A Well, sometimes, like at one time I think he was
21 going to meet with Mr. Hampton-El, and it was a rush type of
22 thing, and he was afraid for his life because he didn't have
23 an idea why he would have to meet him in such a rush. So we
24 would go out and talk to him.

25 Q Did Emad Salem work on the transcripts of any of

1 these tapes, to your knowledge?

2 A Not before June 24 he didn't.

3 Q After June 24 did he work on any of the
4 transcripts?

5 A Yes, he did.

6 Q After June 24, did you provide him with copies of
7 these tapes that he had given you?

8 MR. McCARTHY: Objection, scope.

9 A Yes --

10 THE COURT: Sustained.

11 Q Detective Anticev, will you be available to
12 return here and testify?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 MR. JABARA: I have nothing further, your Honor.

16 MS. STEWART: May we approach, please?

17 THE COURT: No.

18 MS. STEWART: May I be heard later, then?

19 THE COURT: Yes. Mr. Serra?

20 I'm sorry. Ms. Amsterdam, representing Fares
21 Hallafalla. Go ahead.

22 CROSS-EXAMINATION

23 BY MS. AMSTERDAM:

24 Q Good afternoon, Detective Napoli.

25 A Good afternoon.

1 Q How many years have you worked for law
2 enforcement?

3 A 27.

4 Q 27. Do you know roughly how many years your
5 partner, Mr. Anticev, has worked for law enforcement?

6 A I think seven.

7 Q Seven?

8 A I think. I am not sure.

9 Q Emad Salem, Emad Salem was a paid informant,
10 correct?

11 A Correct.

12 Q He was recruited by the FBI?

13 MR. McCARTHY: Objection, scope.

14 THE COURT: Sustained.

15 Q He was hired and paid by the FBI, was he not?

16 MR. McCARTHY: Objection, scope.

17 MS. AMSTERDAM: Your Honor, it is a foundation
18 question. It will become clear. It is not outside the
19 scope, I can represent to the court.

20 THE COURT: All right.

21 A The question?

22 Q Would it be a fair statement to say that Salem
23 was hired and paid and supervised by the FBI?

24 A For this --

25 Q For this case?

1 A Yes, he was.

2 Q Would it be a fair statement to say that in the
3 context of this case you were his boss, for want of a better
4 word?

5 A In a way, yes.

6 Q You testified this morning that there came a time
7 on June 5, 1993, when you went to Emad Salem and asked him
8 to give you the tapes that he had made with Mohammed Saleh,
9 do you recall that?

10 A Yes.

11 Q At that time, this morning you indicated that
12 Emad Salem refused to return the tapes to you, correct?

13 A Correct.

14 Q And that he made certain demands and told you
15 that in the absence of those demands being met he would not
16 return the tapes, correct?

17 A Correct.

18 Q As a result you left without those tapes,
19 correct?

20 A Correct.

21 Q Would it be a fair statement to say that
22 Mr. Salem had an unusual amount of control over this
23 investigation for an informant?

24 MR. McCARTHY: Objection to form.

25 THE COURT: I will allow it. Go ahead. If you

1 can answer it, you can answer it?

2 A Not really.

3 Q Is it usual for an informant to make demands and
4 refuse to turn over evidence to the FBI agent who is
5 supervising him?

6 A Well, can I answer that without a yes or no?

7 Q Well, first can you answer it with a yes or no?

8 A Not really.

9 Q Go ahead.

10 A OK. First, this -- his wanting to be brought to
11 the witness program had been going on for quite a few weeks,
12 and we had been putting him off and putting him off and
13 putting him off. He was getting -- the deeper he got into
14 this investigation the more he got stressed and was worried
15 about his family's safety and he kind of felt that, you
16 know, we were pushing him off, that we were pushing his
17 family's safety. And this is what he told us that morning.

18 He said he was fearful of these people. He was
19 afraid for his family, and he wanted to meet with someone to
20 assure him that his family's safety, you know, was going to
21 be taken care of after this was over. And, until we assured
22 him of that, he was not going to give us the tapes.

23 Q So he held you in a sense hostage?

24 MS. AMSTERDAM: I did not do that, sorry. It was
25 the voice of God. I don't know how to work this.

1 THE COURT: You just lift it up and push the peg
2 in.

3 (Pause)

4 MS. AMSTERDAM: I'm sorry, your Honor.

5 THE COURT: All right.

6 MS. AMSTERDAM: I apologize, could you read the
7 last question back.

8 (Record read)

9 A No, not really.

10 Q Well, let me ask you this: Have you worked with
11 other informants before in your 27 years?

12 A Yes, I have.

13 Q Has an informant ever refused to turn over
14 evidence in an investigation and you allowed the person to
15 refuse to do that, has that ever happened to you before?

16 A Yes. There were all different type of scenarios
17 involved, but yes, it's happened. He would have turned the
18 tapes over to us that day --

19 THE COURT: There is no question pending.

20 Q Wait a second. You are saying he would have
21 turned the tapes over that day if you met his demands --

22 A Exactly.

23 Q -- correct?

24 So, in effect, if you did not meet his demands,
25 he was threatening to either destroy or withhold giving the

1 tapes to you, correct?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q You were not going to get those tapes, according
5 to Mr. Salem, on June 5, 1993 unless you met his demands,
6 correct?

7 A Correct.

8 Q Now, you stated on direct that most of the tapes
9 were picked up within one day, with the exception of the
10 tapes with Mr. Mohammed Saleh, correct?

11 A Correct.

12 Q In addition to that, just so the record is
13 clear -- you can refer to the chart -- tapes 57, 58, 59 and
14 60 were actually recorded, all four of them, on June 21 and
15 not retrieved until June 23, is that correct?

16 A It could be. I haven't seen then, yes.

17 Q You might as well take out the notebook anyway,
18 it's by you. I am referring to the CMS for 57 through and
19 including 60.

20 A Correct.

21 (Continued on next page)

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1 Q So on those four instances, there was an
2 additional one-day lapse, correct?

3 A Correct.

4 Q Regardless of whether or not the time lapsed
5 between the actual recording of the conversation and the
6 time you picked up the tape, regardless how long a period of
7 time that was, you have no personal knowledge as to what if
8 anything the informant did with the tapes during that period
9 of time, correct?

10 A Correct.

11 Q Even if you had retrieved it two hours later, you
12 would not have known what he had done with them during that
13 two-hour period of time, if anything, correct?

14 A Correct.

15 Q This morning in answer to a question by
16 Mr. Stavis, you indicated that if the informant had recorded
17 a conversation, you took, you meaning the agency, took
18 control of it, correct?

19 A Correct.

20 Q Wouldn't it be a fairer statement to say that if
21 the conversation was recorded and the informant told you
22 about it, then you took custody of it? Correct?

23 A Can you rephrase that?

24 Q This morning you said that if any conversation
25 was recorded by the informant, the agency took control of

1 that tape recording.

2 A Correct.

3 Q Isn't it a fact that you depended upon the
4 informant to tell you whether or not he recorded a
5 conversation? Correct?

6 A Not really. We knew that he was going to
7 meetings and, you know, we knew that he was going to record.
8 So it wasn't, you know, his -- and he would let us know
9 beforehand, like I'm going here, so we knew that we were
10 expecting recordings.

11 Q He would go to meetings that would last the
12 better part of a day, correct?

13 A Correct.

14 Q And in many instances, you may get back a
15 three-hour Nagra that is the result, according to the
16 informant, of the conversation of that whole day, correct?

17 A Correct.

18 Q If there had been more recordings of that day and
19 he did not tell you, it stands to reason that you would not
20 know, correct?

21 A Correct.

22 Q You have indicated that you have worked on other
23 cases where you have used informants, correct?

24 A Correct.

25 Q And that is a common procedure with the FBI.

1 There is nothing unusual about working with informants,
2 right?

3 A Right.

4 Q And there are many instances in which informants
5 instead of working for money are actually trying to get a
6 reduced criminal sentence, correct?

7 A Correct.

8 Q As a result, there are certain procedures that
9 can be used to ensure the integrity of the taping procedure,
10 right?

11 A Correct.

12 Q And there are instances where the agent will
13 actually put a body wire on an informant, send the informant
14 to meet with the target, have the informant come back, and
15 the agent physically removes the tape machine from the
16 person, correct?

17 A Correct.

18 Q That would ensure that the tape recording could
19 not be tampered with.

20 A Correct.

21 Q Additionally, there are Nagra machines like the
22 one that we have seen as an example that do not have a
23 stop/start button, right?

24 A I wouldn't know, but correct.

25 Q In that particular instance you would presumably,

1 once it was on you could ensure the integrity of the
2 recording because the informant would not be able to turn it
3 on and turn it off and start it and select which portions of
4 conversations to record, right?

5 A Correct.

6 Q In addition, there are times in which law
7 enforcement is actually able to overhear the conversation at
8 the same time it is going on, right?

9 A Correct.

10 Q That is done in part, sometimes, to protect the
11 informant, to make sure that nothing happens to the
12 informant where his or her life might be in danger, right?

13 A Correct.

14 Q And it is also done sometimes because there is an
15 immediacy to get the information that is being overheard, in
16 terms of preparing for the case, right?

17 A Correct.

18 Q But it also has the effect of ensuring that the
19 recorded conversation cannot be tampered with because a
20 recording is being made simultaneous to when the
21 conversation is taking place.

22 A Correct.

23 Q None of those procedures were employed with this
24 informant, correct, with the exception of the aborted
25 problem with the car taping in CM 9?

1 A And the safe house tapes.

2 Q And the safe house tapes. But the rest of the
3 CM's when he met with people individually, none of the
4 procedures that I have outlined were used, correct?

5 A For safety reasons, correct.

6 Q For the safety of whom?

7 A Of him, because the monitor --

8 THE COURT: She didn't ask you why.

9 Q One of the procedures I described was actually
10 listening to the conversation as it was going on, to ensure
11 the safety of the informant. We just went through that.
12 Correct? Didn't I just ask you about that, sir?

13 A Can I explain it?

14 Q Didn't I just ask you about that?

15 A Yes, you did.

16 Q And there are instances in which conversations
17 are overheard simultaneously to when they are being
18 conducted to ensure that nothing happens to the informant,
19 correct?

20 A Correct.

21 Q If you want to make sure in a dangerous
22 situation, with drugs and guns, for example, that the
23 informant doesn't get physically hurt, you may in fact
24 monitor the conversation so that you will be able to race in
25 and save him should he be in danger, correct?

1 A Correct.

2 Q And you testified here today that Mr. Salem was
3 extremely concerned about his physical safety and the safety
4 of his family, right?

5 A Correct.

6 Q And yet no such precaution was taken, correct?

7 A For that reason.

8 Q Thank you. Additionally, you have stressed that
9 all efforts were made within reason to minimize the amount
10 of time between the actual recording and the retrieval --

11 MR. McCARTHY: Objection.

12 MS. AMSTERDAM: I am sorry. Was there an
13 objection?

14 MR. McCARTHY: Yes, "stressed."

15 THE COURT: Sustained. Would you rephrase it.

16 Q Would I be correct in stating that one of the
17 reasons to minimize the time lapse between when the
18 recording takes place and when the recording is actually
19 retrieved by the agency would be, one of the reasons would
20 be to minimize the amount of time that something could
21 happen to the tapes, either inadvertently or deliberately?

22 A Correct.

23 Q I mean, if you leave them with an informant for a
24 month, for example, there could be a fire, there could be a
25 theft, and important evidence could be lost, right?

1 A Correct.

2 Q Similarly, if they are left with an informant for
3 a period of time, the possibility of them being tampered
4 with is increased just because of the access to the tape,
5 correct?

6 A Correct.

7 Q You stated, did you not, sir, that you are aware
8 that Mr. Salem did recordings prior to the May 7 inception
9 of the consensual monitor tapes?

10 A Correct.

11 Q Those recordings were not done with equipment
12 that you gave Mr. Salem, right?

13 A Correct.

14 Q Have you ever been to Mr. Salem's apartment?

15 A Yes, ma'am.

16 Q Isn't it a fact that Mr. Salem's apartment, he
17 had all sorts of recording equipment?

18 A Not to my knowledge, not that I saw other than,
19 you know, just radio and stereotape of stuff.

20 Q Did you see cassette decks?

21 A No.

22 Q Did you see patch cords that connect cassette
23 player to cassette player?

24 A No.

25 Q Did you see any cassettes themselves there?

1 A Not to my knowledge. I wasn't there to check to
2 see if he had them. We just went to talk.

3 Q Didn't he in fact have multiple machines in his
4 apartment?

5 A Not to my knowledge.

6 Q Did he in fact have stereo recorder?

7 A Did he have stereo recorder?

8 Q A stereo recorder.

9 A I don't know.

10 Q Isn't it a fact that he had more than one
11 answering machine?

12 A Again, I don't know.

13 Q Isn't it a fact, sir, that he had a wide range of
14 electronic recording equipment?

15 A I don't know.

16 Q As you sit here today, you are aware, are you
17 not, that there are hundreds of conversations that were
18 recorded not at the direction of the FBI?

19 A Right.

20 Q And as you sit here today, do you have any
21 knowledge as to how many conversations were recorded and not
22 turned over to the FBI?

23 A No, I don't.

24 Q At the time that you were working on this case,
25 was it the only investigation that you were working on?

1 A No. We were finishing up on trade bomb. I had
2 something to do with that -- but no, other than that it was
3 this investigation.

4 MS. AMSTERDAM: Your Honor, would you mind if I
5 took some water?

6 THE COURT: No, not at all.

7 MS. AMSTERDAM: I apologize.

8 Q So with the exception of trade bomb, this was
9 clearly the most significant investigation you were working
10 on?

11 A True.

12 Q And perhaps in addition to trade bomb the only
13 other investigation you were working on.

14 A Correct.

15 Q And I would venture to say it is next to trade
16 bomb the most significant case that you personally have
17 worked on.

18 A Correct.

19 Q The tapes that we have talked about here in the
20 white envelopes by Daniels, Daniels is the manufacturer, am
21 I correct?

22 A Yes.

23 Q And when the tapes come to you, you or the
24 agency, they come in the envelope with the matching serial
25 number Nagra reel in it, correct?

1 A Correct.

2 Q Isn't it a fact that the tape, the Nagra tapes
3 themselves -- let me back up for a second. Nagra is the
4 company that invented this type of equipment?

5 A Correct.

6 Q And Daniels is the manufacturer of this type of
7 Nagra, correct?

8 A Of the reels.

9 Q Right. It's like using the word Kleenex, which
10 is actually a brand name for a tissue?

11 A Correct.

12 Q So when we say Nagras, it is a brand name but we
13 are describing that reel?

14 A Correct.

15 Q The ones that were used in this case were
16 manufactured by Daniels, the company, correct?

17 A The tapes -- what you are saying is, Nagra is, I
18 guess you can use the same type of tape on a Kel, maybe
19 place, you know, the receiver someplace else. I think
20 Nagra, but I am not sure, is the method of receiving the
21 transmission, which is from a mike directly to the tape.

22 Q The green plastic or the gray plastic reels that
23 we talked about this morning, those are actually
24 manufactured by Nagra itself, are they not?

25 A I don't know. I don't know.

1 Q Isn't it a fact that when the Daniels envelopes
2 come to you, they are not purchased by the agency one at a
3 time, they come in lots, correct?

4 A Correct.

5 Q And they come numerically numbered sequentially,
6 correct?

7 A I guess so, correct.

8 Q And the bulk of the CM's in this case have tapes
9 that are in the 38,000 series, correct? You can refer to
10 the chart.

11 A Yes, correct.

12 Q There is one tape, however, one reel, however,
13 which corresponds to CM 43, which is in the 21,000 series.
14 Do you see that?

15 A Yes, I do.

16 Q Do you have any personal knowledge as to when
17 that tape was sold by the company Daniels?

18 A No, I don't.

19 Q Would it surprise you to learn that that tape was
20 sold --

21 MR. McCARTHY: Objection.

22 MS. AMSTERDAM: I will withdraw that question.

23 Q That tape is the only one in the 21,000 series,
24 correct? It's the only one in the 20,000 series.

25 A As far as I can see, yes.

1 Q And as I have said before, the bulk of these
2 tapes are in the 38,000 series, correct?

3 A Correct.

4 Q You kept no ongoing list as to which reels were
5 given to the informant, right?

6 A Correct.

7 Q So you have no crossreference as to, for example,
8 when 21,000 was given to him.

9 A Correct.

10 Q Did you keep any list, forgetting about the days
11 for a moment, when they were given, did you just keep a list
12 of which cassettes you gave?

13 A No, we did not.

14 Q This morning you indicated that there was an
15 explanation as to why some of the cassettes did not match
16 the -- I will rephrase that. There was an explanation as to
17 why some of the reels did not match the envelopes. Do you
18 recall?

19 A Yes, I do.

20 Q And you had stated that when they were played,
21 when the wheel was actually played, sometimes, for the sake
22 of time, they were not rewound but actually left on the reel
23 onto which they were -- what's the word?

24 A Correct.

25 Q Wound. Thank you.

1 A Correct.

2 Q Do you know how long it takes to rewind a reel?

3 A It takes a couple minutes and you can't go fast
4 because you don't want to tangle the tapes. So it's a
5 tedious type of easy turning.

6 Q In general, it takes one to two minutes, does it
7 not?

8 A Correct.

9 Q So let me get this right. So there could have
10 been an instance where you had tape number 1, serial number
11 1, for example, and you wound it onto reel number 2, right,
12 and for expedience sake you did not wind it back onto the
13 original reel, correct?

14 A Correct.

15 Q Then you have reel number 2 and you put it in an
16 envelope?

17 A Correct.

18 Q Then the next reel comes in, number 3, and you
19 have reel number 3 and empty number 1 and you may rewind 3
20 onto number 1, correct?

21 A Correct.

22 Q So you have an empty number 3 and number 1 now
23 has that tape on it, correct?

24 A Correct.

25 Q That would explain, would it not, how certain

1 reels actually ended up in wrong envelopes, would it not?

2 A Correct.

3 Q I presume you are not saying, however, that you
4 or any other agent actually threw away an empty reel, right?

5 A Correct.

6 Q You did not do that, right?

7 A No.

8 Q So even if things were wound onto different
9 reels, we should have a match in general between reels and
10 envelopes.

11 A Not necessarily, because it was, the process
12 again was done when it went into the office. So now they go
13 from 2 onto 14 or whatever they had in the office.

14 Q But we have just established, did we not, that
15 reels were not thrown away, were they?

16 A Exactly.

17 Q So in the end, regardless how they were wound or
18 rewound, in the end you really should have most of the reels
19 and most of the envelopes, even if they are in the wrong
20 place, should you not?

21 A The way you are explaining it, yes.

22 Q Yes.

23 A Yes.

24 Q The answer is yes, correct?

25 That would not, however, explain, this

1 explanation would not explain why there were envelopes that
2 had no reel whatsoever, would not explain that, would it?

3 A No.

4 Q And it would not explain why there were envelopes
5 that had no matching reel whatsoever, would it?

6 A Yes, that part it would, because, like I said,
7 not only was it done in that process when we exchanged the
8 reel, when the tape was brought into the office and was put
9 on the reels that they had in the office for duplication, it
10 was done again. So by the time the actual tape got off a
11 reel, it could have been onto three or four different, those
12 pieces of plastic reels. The tape would remain consistent,
13 it is just the plastic disk that it went around that
14 changed.

15 Q But if you assume that the informant is not
16 throwing out any reels and the Bureau is not throwing out
17 any reels, regardless where the actual tape ends up, you
18 should have a reel for each envelope, should you not?

19 A Not necessarily, because the Bureau is not
20 just -- they weren't just working on our case. So they
21 would take one reel here -- the reel that you are talking
22 about may be in some OC case someplace, because when they
23 duplicated it, they may have left that reel on the machine
24 and took the one they recorded on and that's the one you
25 wound up with. And the 2 or 3 which they didn't throw away

1 like you are saying may have wound up in an OC case and is
2 in an envelope in some OC case.

3 Q You have these plastic Nagras, for want of a
4 better word, that do not have a serial number and then you
5 have the Daniels that do have a serial number, right?

6 A Right.

7 Q Isn't it a fact that the reason Daniels numbers
8 these things with serial numbers and provides corresponding
9 envelopes is to ensure the entire integrity of the taping
10 process, is it not?

11 MR. McCARTHY: Objection. Rule 602.

12 Q If you know.

13 THE COURT: Sustained.

14 Q I mean, isn't it a fact, Detective, that in a
15 properly run investigation, you take the Nagra that is
16 number 1 and you put it in the envelope number 1, and then
17 at the end if there is any discrepancy whatsoever you can
18 say the serial number matches the envelope, the integrity of
19 the process is preserved? Isn't that the way it is supposed
20 to go?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained, sustained.

23 Q Even assuming for a moment, sir, that reels could
24 be lost, let's get to the issue of envelopes. Is there any
25 explanation that you have as to how you could have returned

1 to you six envelopes without a matching reel?

2 A If he had the envelopes, like he had a busy day
3 where there are more than three cassettes being taken, and
4 he put them in the wrong envelope and labeled them wrong,
5 that's how you can explain that one wound up in one and one
6 wound up in the other.

7 (Continued on next page)

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1 Q That is not my question. If you give him five
2 envelopes, 1, 2, 3, 4, 5, and you get back 1, 2, 3, 4, you
3 get that with tapes, regardless what the serial numbers are,
4 and then the fifth envelope, right, comes back without a
5 tape, the envelope comes back to the Bureau but there is no
6 corresponding tape, it would not be explained by this reel
7 to reel problem, would it, sir?

8 MR. McCARTHY: Objection.

9 THE COURT: May I see counsel at the side
10 briefly.

11 (AT the side bar)

12 THE COURT: Ms. Amsterdam, you are consistently
13 asking questions that assume a large number of things, some
14 of which are not in evidence. If you want to argue this at
15 some later time then argue it at some later time, but the
16 questions aren't getting anyplace.

17 MS. AMSTERDAM: All right.

18 MS. STEWART: Judge, could we be heard on the
19 other issue, the one that we --

20 THE COURT: No, not now, you may not.

21 (In open court)

22 (Continued on next page)

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1 BY MS. AMSTERDAM:

2 Q Detective Napoli, referring to the page 5 of
3 Mohammed Saleh A Exhibit, it is a fair statement, is it not,
4 that there are six envelopes which the Bureau had returned
5 to them for which there are now no corresponding tapes,
6 correct?

7 A This is one envelope. This is CM --

8 Q No, page 5. I am sorry, sir. It is the last
9 page of the chart.

10 A I am sorry, go ahead.

11 Q I am sorry, sir. Isn't it a fair statement to
12 say that there are six envelopes which were returned to the
13 Bureau for which the Bureau has no knowledge as to what
14 happened to the corresponding tape? Correct?

15 A The CM 22 we are talking about?

16 MS. AMSTERDAM: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 Q Under the first heading, sir, where it says
20 envelopes for which there are no tapes, it is a fair
21 statement to say that six envelopes were given to Mr. Salem
22 and returned by him to the agency, and the agency cannot
23 account for what happened to the six matching reels,
24 correct?

25 A Correct.

1 Q And it is also a fair statement to say that there
2 are 11 reels that were given to Mr. Salem and returned to
3 the Bureau for which the Bureau cannot account for the
4 corresponding envelopes, right?

5 A Correct.

6 Q In connection with the chart that you have, pages
7 1 through 4, I will ask you, just for expedience I am going
8 to ask you some questions and tell you where on the chart
9 you can find the answer. All right?

10 A OK.

11 Q There are envelopes in the 38,000 series, so I
12 will just say the last three numbers, like 38,001, I will
13 just say 1. In the entire 38,000 series, starting with 727,
14 which is at CM -- do you see that, the envelopes?

15 A Yes.

16 Q Sequentially, let me go through and ask you if
17 there are envelopes that follow sequentially. 727 at CM 4?
18 Do you see that?

19 A Yes.

20 Q 728 at CM 22? Do you see that?

21 A Yes.

22 Q 729 at CM 13?

23 A Yes.

24 Q 730 at CM 3?

25 A Yes.

1 Q 731 at CM 20?

2 A Yes.

3 Q 732 at CM 1?

4 A Yes.

5 Q 733 at CM 21?

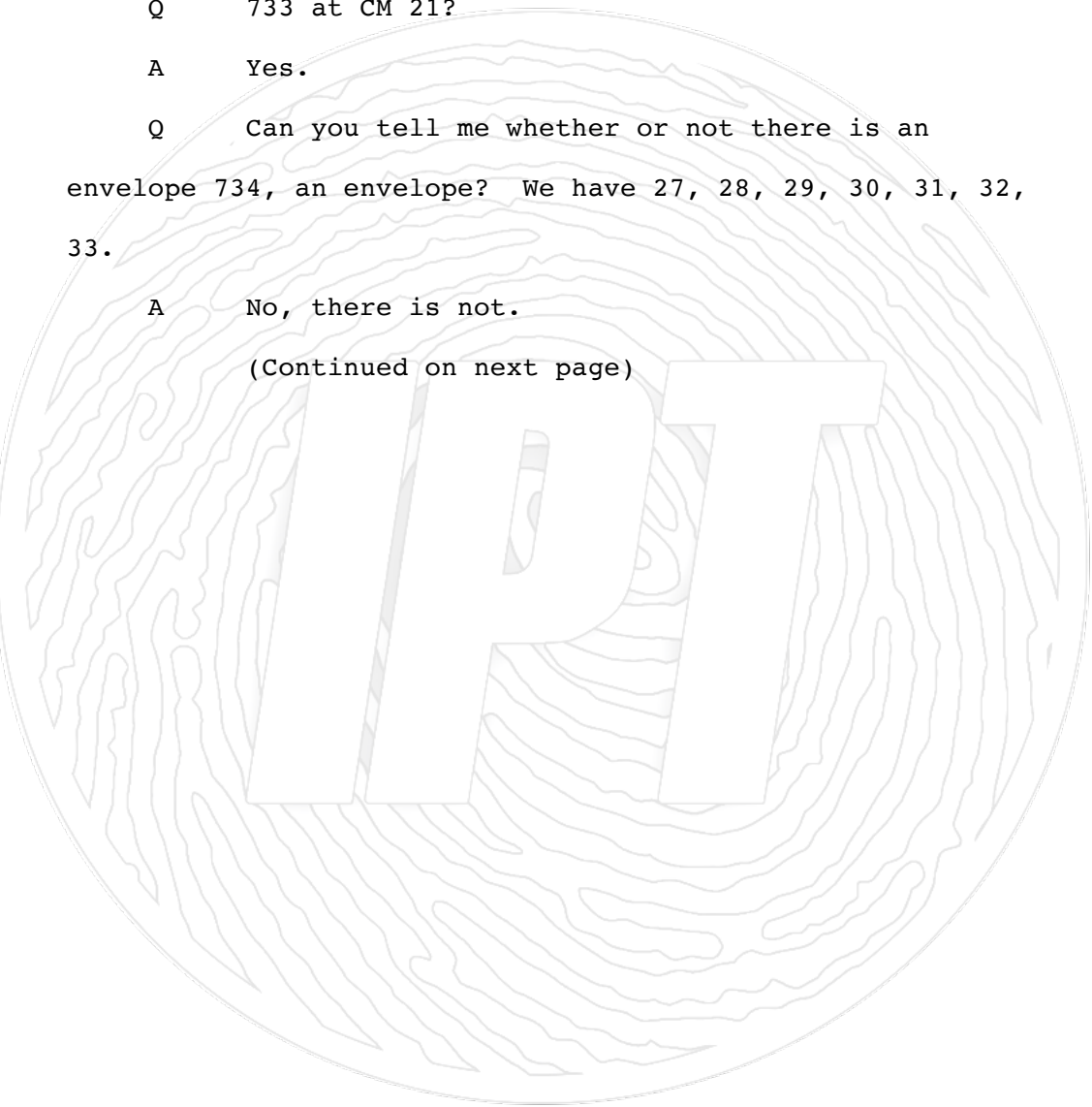
6 A Yes.

7 Q Can you tell me whether or not there is an
8 envelope 734, an envelope? We have 27, 28, 29, 30, 31, 32,
9 33.

10 A No, there is not.

11 (Continued on next page)

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1 Q But we do know that there is an actual tape at
2 720, at CM 20 that matches that number, correct?

3 A Correct.

4 Q So far sequentially we have 727, 728, 729, 730,
5 731, 732, 733 and then no 734, correct?

6 A Correct.

7 Q Afterwards, it is 735, CM 2, we have an envelope?

8 A Correct.

9 Q At 736, CM 12 we have an envelope, correct?

10 A Correct.

11 Q Next in order, 737, is there an envelope for
12 that?

13 While you are looking, you can look for 738, if
14 you see either 737 or 738.

15 A No, there is none for either.

16 Q But there is a reel 737, which is at CM 32,
17 correct?

18 A Correct.

19 Q A reel for 738 at CM 10, right?

20 A Correct.

21 Q Then, 739 at 7A?

22 A Correct.

23 Q 740 at 7B?

24 A Correct.

25 Q So sequentially we have 727, 28, 29, 30, 31, 32,

1 33. Then we are missing the envelope for 34. We have 35,
2 36; we are missing 37 and 38; and then we have 39 and 40,
3 correct?

4 A Correct.

5 Q Any personal knowledge as to what happened to
6 those envelopes?

7 A None.

8 Q Staying in the 38,000 series, but moving into the
9 850s, again we have tape 853, envelope 853 at CM 44, right?

10 A Correct.

11 Q Envelope 854 at CM 27?

12 A Correct.

13 Q Envelope 855 at CM 28?

14 A Correct.

15 Q Envelope 856 at CM 26?

16 A Correct.

17 Q 857 at CM 37?

18 A Correct.

19 Q 858 at CM 39?

20 A Correct.

21 Q 859 at CM 36?

22 A Correct.

23 Q 860 at CM 35?

24 A Correct.

25 Q 861 at CM 30?

1 A Correct.

2 Q 862 at CM 32?

3 A Correct.

4 Q 863 at CM 55?

5 A Correct.

6 Q Would you check the chart and see if you have

7 either an envelope or tape for 864, 865 or 866.

8 A No, neither reel nor envelope.

9 Q Then moving ahead in 867, CM 34, --

10 A Yes.

11 Q 868, CM 33?

12 A Correct.

13 Q 869, CM 31?

14 A Correct.

15 Q So we have 53, 54, 55, 56, 57, 58, 59, 60, 61,

16 62, 63, no 64, no 65, no 66, 67, 68, 69, correct?

17 A Correct.

18 Q Do you have any personal knowledge as to what

19 happened to the envelope or reel for 864, 865 or 866?

20 A No, I don't.

21 Q Turning for a moment, sir, to the column with the

22 reels, starting again in the 38,000 series.

23 Isn't it a fact that we have a reel for,

24 sequentially, 853 at CM 47?

25 A Correct.

1 Q And 854 at CM 30?

2 A Correct.

3 Q At 855, in order, do you see any indication that
4 we have a reel for 855?

5 A No, there isn't any.

6 Q But there is an envelope for 855 at CM 28,
7 correct?

8 A Correct.

9 Q So at least we can establish that there once was
10 a reel with 855 as a serial number, 38,855, correct?

11 A Correct.

12 Q But you have no knowledge as to what happened to
13 that reel, correct?

14 A Correct.

15 Q Going on in the series, 856, the reel is at CM
16 37, correct?

17 A Correct.

18 Q 857 at CM 48?

19 A Correct.

20 Q 858 at CM 40?

21 A Correct.

22 Q 859 at CM 38?

23 A Correct.

24 Q 860 at CM 64?

25 A Correct.

1 Q 861 at CM 44?

2 A Correct.

3 Q 862 at CM 36?

4 A Correct.

5 Q 863. Would you indicate whether or not there is
6 a reel for that, sir, and at the same time you can check 64,
7 65 and 66. 63 through 66.

8 A We are looking for reels, right?

9 Q Reels, yes, please.

10 A No, there aren't any.

11 Q But at 863 there is an envelope for that at CM
12 55, correct?

13 A Correct.

14 Q So, again, presumably we know that there was a
15 corresponding reel for that?

16 MR. McCARTHY: Objection to the form.

17 Q Do we not?

18 THE COURT: Sustained.

19 Q Let me rephrase it.

20 Did you ever give Mr. Salem any blank envelopes?

21 A Not to my recollection.

22 Q So if you gave him an envelope of 38,863,
23 presumably it had a reel in it that matched it, correct?

24 A Correct.

25 Q In 864, 865 and 866, there are neither reels nor

1 envelopes, correct?

2 A Correct.

3 Q At 867, there is a reel at CM 39?

4 A Excuse me, I didn't hear you.

5 Q At 867 there is a reel at CM 39?

6 A Correct.

7 Q At 868 there is a reel at CM 34?

8 A Correct.

9 Q And at 869 there is a reel at 33?

10 A Correct.

11 Q So sequentially we know that there are reels for
12 853, 854, none for 55, then 56, 57, 58, 59, 60, 61, 62, none
13 for 63, or 64 or 65 or 66, but there were reels for 67, 68,
14 and 69, correct?

15 A Correct.

16 Q The last group of CMs I would have you look at,
17 sir --

18 MS. AMSTERDAM: Could I have the envelope for CMs
19 15 through 19. May I just have a moment, your Honor.

20 (Pause)

21 Q The actual metal reels that are contained in
22 these envelopes, many of them have scratched into them your
23 initials, do they not?

24 A Yes, they do.

25 Q So --

1 THE COURT: Do you mean the tapes or the reels?

2 MS. AMSTERDAM: The reels, the physical metal.

3 Q They have etchings on some of them into the
4 metal, do they not?

5 A Yes, they do.

6 Q Was that a standard course of conduct done in
7 this investigation or in any investigation, to etch one's
8 initials into the reel?

9 A Well, it was just, you know, I etched my initials
10 so I would know that that was the reel that at least was on
11 the Nagra when I gave it to him.

12 Q So if the actual tape of the Nagra was
13 transferred to another reel, correct, the reel that it came
14 from should have your initials, correct?

15 A Correct.

16 Q Is it your testimony that in a Nagra where your
17 initials would be etched onto it that somebody else in the
18 Bureau might have used that Nagra for another case?

19 A No, I am not saying that. It could have just
20 been used for duplication purposes.

21 Q If it was used for duplication purposes, sir, in
22 any other case, wouldn't that have destroyed the integrity
23 of that case because it would have been your initials on the
24 Nagra?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Are there any Nagras in this case which have any
3 other agents' not connected to this case initials on them?

4 A Are there any another reels?

5 Q Yes.

6 A Yes. My partner must have etched his initials on
7 them.

8 Q Other than agents that worked on this case, do
9 any of the physical wheels here in court have anybody else's
10 initials on them, an agent that didn't work in this case?

11 A No.

12 Q No?

13 A No.

14 Q So it would appear, would it not, that the
15 process of transferring tape to reel and reel to tape did
16 not result in any tapes coming from outside of this
17 investigation with initials on them, correct?

18 A Correct.

19 Q Sir, you know -- perhaps you don't. But do you
20 know that I represent Fares Khallafalla in this case?

21 A Yes, I do.

22 Q Do you know the first time Mr. Khallafalla was
23 recorded in a conversation that was authorized by the FBI to
24 be recorded?

25 A Not off the top of my head the exact date.

1 Q If I showed you transcripts, would that refresh
2 your recollection?

3 A Yes, it would.

4 MS. AMSTERDAM: May I approach the witness, your
5 Honor.

6 THE COURT: Yes.

7 Q Would it be a fair statement that the first time
8 Mr. Khallafalla was recorded in connection with this case,
9 an authorized recording, is represented by CMS 18 and 19 and
10 occurred on May 27, 1993?

11 A Well, as far as these CMS are concerned, he's on
12 here. I don't know what is on CMS 1 through 17. I don't
13 know if he, you know, also comes up on any of those. As far
14 as the one that you have in front of me, yes, he is on it,
15 but I am not -- you know, I would have to look at 1 through
16 17 to see if he's come up, you know, in any of those.

17 Q Mr. McCarthy, do you have the other transcripts
18 here?

19 MR. MCCARTHY: We will stipulate, your Honor.

20 THE COURT: He's offered to stipulate that is the
21 first one.

22 MS. AMSTERDAM: Thank you, Mr. McCarthy.

23 Q That is on May 27, 1993, correct?

24 A Correct.

25 Q CM 19 reflects the first recording in what is now

1 called the safe house, the FBI wired garage in Queens?

2 A Correct.

3 Q CM 18 is the recording of the car ride back from
4 the Queens safe house that same night, correct?

5 A Correct.

6 MS. AMSTERDAM: May I approach the witness, your
7 Honor.

8 THE COURT: Yes.

9 Q I show you what has been previously marked as
10 Government Exhibit 316A, which is CM 15; 317A, which is CM
11 16; 318A, which is CM 17; 319A, which is CM 18; and 320A,
12 which is CM 19.

13 Those five CMs were retrieved, were given by the
14 informant to agent Michael Ernst, correct?

15 A Correct.

16 Q Was he an agent assigned to work in this case?

17 A Yes, he was.

18 Q Was he under your supervision and direction, or a
19 partner?

20 A Excuse me.

21 Q Were you his supervisor --

22 A No.

23 Q -- or were you coequals?

24 A Coequals.

25 Q Are those the only reels, to the best of your

1 knowledge, that Agent Ernst took custody of?

2 A To my knowledge, yes.

3 Q I ask you to open up each of these envelopes,
4 and, starting with CM 15, could you show the jury what is
5 in -- just hold it up.

6 Would I be correct in saying that there is a
7 metal reel covered by a piece of paper, correct?

8 A Correct.

9 Q But there is no official envelope there, correct,
10 the white Daniels envelope, correct?

11 A Correct.

12 Q And CM 15, the serial number on that is 38,681?

13 A You mean on the reel?

14 Q 681.

15 A Correct.

16 Q Put that aside for a moment. Would I also be
17 fair in stating that that CM is blank, that reel is blank?

18 A So says the note.

19 Q OK. Put that aside for one moment.

20 THE COURT: Ms. Amsterdam, would you come to a
21 convenient break point in the next five minutes.

22 MS. AMSTERDAM: I would rather stop here than
23 have to stop in the middle of the next section. That is my
24 last part.

25 THE COURT: OK. Ladies and gentlemen, we are

1 going to break for a short time. Please leave your notes
2 and other materials behind. Please don't discuss the case
3 and we will resume shortly.

4 THE WITNESS: Your Honor, just leave these here?

5 THE COURT: Yes.

6 (Jury not present)

7 THE COURT: You may step down.

8 (Witness excused)

9 THE COURT: Ms. Stewart, there was something you
10 wanted to be heard about.

11 MS. STEWART: Yes, Judge. It was my
12 understanding from Mr. Jacobs, who unfortunately isn't here
13 right now, that the government had agreed that if we would
14 limit our examination of Detective Napoli to those issues
15 which dealt with this tape specifically and not the
16 remainder of the investigation that he would be available to
17 be recalled.

18 THE COURT: I am sure he will. I will direct
19 them to bring him back. I think we talked about that. That
20 is not a matter to be taken up in front of the jury.

21 MS. STEWART: The only question was, the jury may
22 speculate as to why we are not asking questions about the
23 investigation. There was a throw-away question just to say
24 will you be available later on. He would say yes, and they
25 would say, oh, he will be back again.

1 THE COURT: Then they would speculate on why you
2 asked it. The notion that the jury would speculate on how
3 come there aren't more questions being asked I think is
4 unlikely.

5 MS. STEWART: They may be wondering why there are
6 only questions being asked about tapes.

7 THE COURT: Because that is all he testified to
8 on direct. I think they can stand the suspense. I really
9 do.

10 MS. STEWART: OK.

11 THE COURT: In any event, we will get him back
12 for you if you need him. See you in a little while.

13 (Recess)

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1 (Jury not present)

2 THE COURT: Before we get the witness?

3 MR. STAVIS: Yes, your Honor. During the break
4 the prosecutors were playing a portion of the Meir Kahane
5 tape. I think it is Government's Exhibit 5 but I am not
6 exactly sure. Government's Exhibit 5. I had previously
7 played that same portion of the tape. It is the end of the
8 tape. If your Honor will recall, during -- I don't recall
9 whose cross-examination it was. I had asked under Rule 106
10 to play the entire tape. I believe that the government is
11 going to be seeking later this afternoon to play the end
12 portion of the tape again. That is the portion of the tape
13 that I had played to the jury on my cross-examination of Mr.
14 Gottesmann. Since there are other portions of the tape
15 where you can see things other than Rabbi Kahane, I would
16 just ask again, your Honor, under Rule 106, if the
17 government plays the last portion of the tape again, that I
18 be permitted to play the remainder of the tape.

19 MR. FITZGERALD: The limited purpose of the offer
20 is to have the jury compare photographs of Mohammad Salameh
21 and Bilal Alkasi, and have the jury make their own
22 comparison. It would take about two minutes of tape time.

23 THE COURT: The application is denied. Bring in
24 the jury.

25 (Witness resumed)

1 (Jury present)

2 THE COURT: Go ahead, Ms. Amsterdam.

3 MS. AMSTERDAM: Thank you, your Honor.

4 BY MS. AMSTERDAM:

5 Q Detective Napoli, the last area I want to go over
6 with you are the CM's 15 through 19. Do you have them
7 before you, sir?

8 A Yes.

9 Q Just to reiterate, CM 18 is Mr. Khallafalla and
10 Mr. Amir Abdelgani on the way back from the safe house?

11 A Correct.

12 Q And CM 19 is Mr. Khallafalla and Mr. Amir
13 Abdelgani for the first time in the safe house, correct?

14 A Correct.

15 Q And CM's 15 through 19 were all recovered or
16 taken from Mr. Salem by Michael Ernst, correct?

17 A Correct.

18 Q CM 15, which is the envelope you opened first,
19 that contained the blank tape and no envelope.

20 A Correct.

21 Q CM 16, would you open that, sir. That has a
22 Nagra tape with no envelope, right?

23 A Correct.

24 Q And the serial number on that is 38,682?

25 A Correct.

1 Q And the one on 15 was 38,681, correct?

2 A Correct.

3 Q Leaving that out for a moment, would you open the
4 next envelope, CM 17. CM 17 has a metal tape in it, a Nagra
5 tape, correct?

6 A Correct.

7 Q And no Daniels white envelopes, right? No
8 manufacturer's envelope with it, right?

9 A Correct.

10 Q And it is wrapped also in a white envelope,
11 right?

12 A Correct.

13 Q And that tape CM 17 was discontinued, the
14 recording was discontinued, right?

15 A It says disconnected.

16 Q Disconnected.

17 Q The recording was disconnected, and there is no
18 transcript of that, correct?

19 A Correct.

20 Q And the serial number on that is the next in the
21 sequence, 38,683.

22 A Correct.

23 Q The next envelope, CM 18, CM 18 is the drive back
24 from the safe house. That has a Nagra but no envelope,
25 right?

1 A Correct.

2 Q And that Nagra is 38,685.

3 A Correct.

4 Q So before you on CM's 15, 16, 17 and 18, you have
5 sequentially serial numbers 38,681, 82, 83 and then 85,
6 right?

7 A Correct.

8 Q Referring to the chart, Mohammed Saleh's A, would
9 you tell me whether or not you have either an envelope or a
10 tape for the intervening number, 38,684.

11 A No, I don't.

12 Q But you do have, sir, a, continuing in the
13 series, 685, which we have just gone over, CM 18, and a 686
14 at CM 22, correct?

15 A Correct.

16 Q And a 687 at CM 28, correct?

17 A Correct.

18 Q So in that series you are missing just 684,
19 correct?

20 A Correct.

21 Q Sir, going back to the chart, CM 17 immediately
22 preceding the first trip safe house is made the same day,
23 May 27, correct? May 27, 1993?

24 A Correct.

25 (Continued on next page)

1 Q And retrieved the next day, May 28, 1993,
2 correct?

3 A Correct.

4 Q That is the tape that was discontinued, correct?

5 A CM 17?

6 Q Yes.

7 A Correct.

8 Q Then CM 18, which is the trip back from the safe
9 house made on the 27th, retrieved on the 28, right?

10 A Correct.

11 Q At the safe house, CM 19, made on the 27th,
12 retrieved on the 28th, correct?

13 A Correct.

14 Q Does the government have any recording of the
15 trip to the safe house?

16 A If it is not in the CMs, no.

17 Q Is there any recording of Mr. Khallafalla or
18 Mr. Abdelgani when they first met the informant?

19 A Well, if they were stipulated that the first time
20 they came on was CM 18, then this would be -- no, there
21 wasn't.

22 Q No recording of that, correct?

23 A To my recollection, no.

24 Q Yet you do have a tape from that very same day
25 where the tape was discontinued, correct?

1 A Correct.

2 Q In the sequence from 15 through 18, you have no
3 serial number 38684, correct?

4 A Correct.

5 Q As you sit here today, sir, do you have any
6 personal knowledge from hearing tapes and reviewing
7 transcripts as to what occurred during the first meeting on
8 route to the safe house between the informant and my client,
9 Mr. Abdelgani?

10 MR. McCARTHY: Objection.

11 Q I will rephrase that.

12 Is there any recording of that client?

13 A Apparently not.

14 Q Do you know whether or not the informant
15 destroyed that conversation?

16 A No, I do not.

17 Q As an agent who has worked with informants
18 before, would it be a fair statement in saying that you
19 would consider the first meeting between a target and the
20 informant to be among the crucial items that you would want
21 recorded?

22 MR. McCARTHY: Objection.

23 THE COURT: I will allow it.

24 A Yes.

25 MS. AMSTERDAM: You would. I have no further

1 questions.

2 THE COURT: Ms. London, representing Tarig
3 Elhassan.

4 CROSS-EXAMINATION

5 BY MS. LONDON:

6 Q Good afternoon, Detective Napoli.

7 A Good afternoon.

8 Q Detective Napoli, you have told us that the Nagra
9 tapes work on a reel-to-reel basis, correct?

10 A Correct.

11 Q For the purposes of recording there are two
12 independent reels, correct?

13 A Correct.

14 Q Therefore, there is no protection mechanism built
15 in -- withdrawn.

16 Do you know the term "overrecording"?

17 A When you record over something? Is that what you
18 are talking about?

19 Q Yes.

20 A Yes, like recording over something that's already
21 been recorded.

22 Q Right.

23 A That is the way I -- go ahead.

24 Q So there is no protection against overrecording
25 when you use a Nagra, is that correct?

1 A No, there isn't.

2 Q Are you familiar with the term write-protect
3 tabs?

4 A No, I am not.

5 Q Are you aware that cassettes -- withdrawn.

6 A cassette which is recorded on is an individual
7 unit, correct?

8 A Correct.

9 Q Where, even though there may be a reel-to-reel
10 function, the two reels are within one sealed unit, correct?

11 A Correct.

12 Q Do you know if cassettes have an overrecording
13 protection?

14 A I think some of them do.

15 Q Did you know if the cassettes used by the FBI in
16 this case had that overrecording protection capacity?

17 A The cassettes used?

18 Q Correct.

19 A I have no idea what kind of cassettes we used.

20 Q Then it would be fair to say that you never
21 instructed Mr. Salem to activate the overrecording
22 protection function in a cassette after he had made a
23 recording?

24 A Correct.

25 Q Did you always give Mr. Salem new cassettes?

1 A Yes.

2 Q Did you always give him new Nagra tapes?

3 A We didn't give him cassettes. He was only given
4 Nagra tapes because that is what he used, and at one point
5 we used a micro for a telephone conversation and at another
6 point we used a different type of device, but we never gave
7 him cassettes.

8 Q When you gave him Nagra tapes did you always give
9 him new tapes?

10 A Brand-new tapes.

11 Q You never gave him used tapes?

12 A Exactly.

13 Q In the course of the several weeks that Mr. Salem
14 had the three Nagras, how many times did you check those
15 Nagras to make sure they were functioning correctly?

16 A Every time we would change the tapes we would
17 check to see that they were functioning. When we put the
18 new batteries in, we would check in the beginning to see if
19 it was running.

20 Q Are there any light indicators on the Nagra
21 cassettes to indicate whether they are functioning
22 correctly?

23 A Not the ones that were in the vehicle there
24 weren't.

25 Q You have listened to the CM tapes in this case,

1 correct?

2 A The actual tapes?

3 Q Yes.

4 A No, I haven't because they are in Arabic. I just
5 read the transcripts.

6 Q So in reading transcripts, would it be fair to
7 say that there are many conversations where the transcript
8 begins in mid-conversation, in the middle of a dialogue?

9 A No, not really.

10 Q It would be your testimony that every transcript
11 begins at the beginning of a conversation?

12 MR. MCCARTHY: Objection.

13 A Not all of them, but there weren't that many.

14 Q But there are transcripts which begin in the
15 middle of a conversation, is that correct?

16 A Correct.

17 Q There are transcripts which end in the middle of
18 a conversation, isn't that correct?

19 A Correct.

20 Q Were you present with Mr. Salem when he was given
21 instructions on how to record?

22 A Yes, I was.

23 Q Were you present with Mr. Salem when he was given
24 instructions on what he should be looking to record?

25 A What do you mean by "what he should be looking to

1 record"?

2 Q Would it be fair to say that Mr. Salem was given
3 instructions to direct, to steer the conversation in certain
4 directions, isn't that fair to say?

5 A No, it is not. It never was.

6 Q Were you present at meetings with Mr. Salem when
7 reviews of conversations that had been recorded were gone
8 over with him?

9 A Reviewed?

10 Q When tape recordings which he had made were later
11 reviewed with him?

12 A No, I was never at any of the -- never at any of
13 those meetings.

14 Q To your knowledge, did such meetings take place?

15 A Yes, they did.

16 MS. LONDON: I have no further questions.

17 THE COURT: Thank you.

18 Mr. Lavine, representing Fadil Abdelgani.

19 MR. LAVINE: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. LAVINE:

22 Q Good afternoon, Detective.

23 A Good afternoon.

24 Q You had mentioned that the three recording
25 devices were the microcassette recorder, some sort of a

1 digital recording device, and the Nagra, is that correct?

2 A Correct.

3 Q Can you describe the digital recording device to
4 the jury.

5 A What do you mean by "describe"? How it works
6 or --

7 Q What does it look like? Not how does it work.
8 What does it look like?

9 MR. McCARTHY: Objection.

10 THE COURT: I will allow it. Go ahead.

11 A It looks like a --

12 MR. McCARTHY: Your Honor, may we approach on
13 this.

14 MR. LAVINE: May I ask another question?

15 THE COURT: Fine.

16 Q Could you describe the size of that apparatus.

17 A Oh, OK. It is about a quarter of an inch thick,
18 about 12 inches long by an inch and a half, two inches wide.

19 Q So it would be fair to say that it was larger
20 than the microcassette recorder?

21 A Yes.

22 Q The microcassette recorder was Mr. Salem's own
23 machinery, is that correct?

24 A You mean the one that we recorded the telephone
25 conversation?

1 Q Yes.

2 A No, that was one of our dictaphones. One of the
3 dictaphones that we have in the office I think was used in
4 recording that telephone conversation.

5 Q Was that left with --

6 A No, it was.

7 Q -- Mr. Salem that day?

8 A No, it was not.

9 MR. LAVINE: Excuse me, one moment.

10 Q Do you know of your own knowledge that Mr. Salem
11 had other microcassette recorders?

12 A No, I do not.

13 Q In your dealings with Mr. Salem, when he would
14 describe to you meetings that he had pertinent to this case,
15 did he ever tell you that he had recorded some conversations
16 and that the device that he had used to record these
17 conversations was in his trousers, in his slacks or in his
18 pants?

19 A No, not to us he didn't.

20 Q To your knowledge -- withdrawn.

21 When you were with him and you made the tape of
22 the conversation by using the microcassette recorder, was an
23 auditory jack used to connect the recording device to the
24 telephone?

25 A I think it was.

1 Q Is that a little sort of a plug type of device
2 that fits on the listening portion of the telephone and then
3 gets connected to the recorder?

4 A Correct.

5 MR. LAVINE: Excuse me, one moment, your Honor.

6 Your Honor, may I approach the witness.

7 THE COURT: Yes.

8 Q Detective, on the reel itself, on the Nagra reel,
9 the metal or the plastic reel, what would account for the
10 presence of Mr. Salem's initials on a reel?

11 A The presence of it was probably later on maybe
12 when he was doing the tapes. I am only guessing. It could
13 be maybe that he finished them.

14 THE COURT: Don't guess. If you know, tell us.

15 THE WITNESS: I don't know.

16 THE COURT: If you don't, don't guess.

17 THE WITNESS: I don't know.

18 Q Directing your attention to CM 50 --

19 A This one?

20 Q Do you have the envelope that that came from, the
21 big envelope?

22 MR. LAVINE: Your Honor, I believe we have a
23 stipulation -- well, let me withdraw that.

24 Q I am showing you Government Exhibit 353A for
25 identification. Is this an envelope that reflects that you

1 received its contents?

2 A Yes, it does.

3 MR. LAVINE: Your Honor, we have a stipulation, I
4 believe, to the effect that Government Exhibit 353A
5 containing CM 50 was one of the items received by Detective
6 Napoli from Mr. Salem and was inadvertently left out of
7 those items which were listed on February 28.

8 THE COURT: All right. That can be accepted as
9 proved. Go ahead.

10 Q Will you put the tape back in the little white
11 envelope. I am directing your attention to the envelope
12 itself. This envelope indicates, does it not, that you
13 received it from Mr. Salem?

14 A Yes.

15 Q On which date?

16 A 6/20.

17 Q Does it indicate what time you received it?

18 A 7:30 a.m.

19 Q Does it indicate on which day the interception
20 was made?

21 A 6/19.

22 Q Meaning that whatever is on this tape was
23 recorded supposedly, so far as you know -- let me say as far
24 as you know was recorded on June 19, 1993?

25 A Correct.

1 Q Does it list as well the identity of the people
2 or persons intercepted?

3 A Yes, it does.

4 Q I have to look on with you, sorry.

5 Does it list Emad?

6 A Yes.

7 Q Is this your writing, by the way?

8 A No.

9 Q Do you know whose writing that is?

10 A Probably Emad's.

11 Q Would the writing be -- well, let me withdraw
12 that.

13 Does it list Siddig?

14 A Yes, it does, but it is crossed out.

15 Q Does it list a name Fares?

16 A Yes, it does.

17 Q Does it list another name crossed out?

18 A Yes.

19 Q Z-A-I-D?

20 A Z-A-I-D.

21 Q Does it list also a crossed out name Tarig?

22 A Tarig, yes.

23 Q Does it list a name that is not --

24 MR. McCARTHY: Objection, Rule 613.

25 THE COURT: Overruled.

1 Q Does it list one final name, Detective?

2 A Yes, it does.

3 Q Is that name Mohammed?

4 A Let me see.

5 Q Sure.

6 A Yes, it does.

7 Q Thank you very much.

8 A You're welcome.

9 Q Put that back.

10 Detective, earlier today you mentioned something
11 about Salem needing another cassette recorder or some sort
12 of recorder to assist him in remembering things.

13 A Correct.

14 Q What did you mean by that?

15 A Well, being that Mr. Salem would be with these
16 people, for a long period of time, he had come over to us,
17 you know, while debriefing him, even before we had
18 consensual monitoring and said, "I just can't remember this.
19 Can I tape record this?"

20 We told him, "No way. We don't have consent for
21 you to tape record this."

22 He said, "I need something to help me."

23 I said, "Well, if you want on to get a cassette
24 during intervals and breaks, go out and spit out, you know,
25 what you actually talked about, this way at the end of the

1 evening you will be able to bring it back, you can do
2 something like that.

3 Q So then would it be fair to say that you
4 suggested that he get his own cassette recorder to make his
5 own notes on that recorder at the end of the day to help him
6 recall?

7 A It was a suggestion.

8 Q Detective, did you also mention earlier today
9 that you had told him that if he was to hand over tapes to
10 you or give tapes to you that you were in turn bound or
11 obligated to hand them over to the FBI?

12 A Correct.

13 Q Can I ask you, was that before, if you remember,
14 or was that after the World Trade Center?

15 A That would go to when we first had him back in
16 '92.

17 Q When you told him that, that if he gave you tapes
18 you had to turn them over, was that before or after the
19 World Trade Center?

20 A We told him before the World Trade Center that if
21 he recorded anything, it would have to be brought in as
22 evidence.

23 Q Detective, is it also your testimony that you
24 never told Mr. Salem to withhold any tapes from you, did
25 you?

1 A No, I did not.

2 MR. LAVINE: Thank you, Detective.

3 THE COURT: Anything else Mr. Lavine?

4 MR. LAVINE: No, your Honor. That is it.

5 THE COURT: All right.

6 Mr. Serra, representing Mr. Alvarez.

7 MR. SERRA: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. SERRA:

10 Q Good afternoon, Detective.

11 A Good afternoon.

12 Q Detective, do you still have CM 50 up there.

13 I believe Mr. Lavine was referring to it with
14 you.

15 A Yes, I do.

16 Q OK. Detective, I believe Mr. Jacobs briefly
17 spoke to you about it this morning, you kept during May and
18 June of 1993 a brief diary of your own, is that right?

19 A Correct.

20 Q That diary contained things like the hours of the
21 tours that you would work on particular days, is that right?

22 A Correct.

23 Q It would contain your RDOs?

24 A Correct.

25 Q "RDO" being police shorthand for regular day off,

1 what the rest of us who work Monday through Friday might
2 call weekends, is that right?

3 A Correct.

4 Q That diary also contained overtime, is that
5 right?

6 A Correct.

7 Q You got paid for overtime, isn't that right?

8 A Correct.

9 Q If you worked overtime on an RDO, on a regular
10 day off, you would put in for that overtime and be paid, is
11 that right?

12 A Correct.

13 MR. SERRA: May I approach, your Honor.

14 THE COURT: Yes.

15 (Continued on next page)

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1 Q Let me show you CMs 48 through 51, Government
2 Exhibits 351A, 352A, 354A, and by any chance is CM 51 353A?

3 A No.

4 Q It isn't, OK.

5 May I see, please, CM 50. Thank you.

6 I'm sorry, Detective, I believe CM 50 is 353.

7 A OK.

8 Q OK. Why don't I take the rest back.

9 Detective, I have placed in front of you, please
10 verify, I have placed in front of you CM 48 through CM 51,
11 is that correct?

12 A Correct.

13 (Continued on next page)

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1 Q And those, all four of those exhibits you
2 recovered from Emad Salem, is that correct?

3 A Correct.

4 Q And on the same date, June 20, 1993, is that
5 right?

6 A Correct.

7 Q Do you have a copy of your diary with you on the
8 stand as we speak?

9 A No. It was over here.

10 Q I have one for you. Showing you 3597D, first of
11 all, Detective, is that the diary that you have just been
12 referring to that contains, briefly, your hours and your
13 overtime and your RDO?

14 A Yes, it does.

15 Q Referring you to the week of June 14, do you have
16 that in front of you?

17 A Go ahead.

18 Q Detective, first of all, are we looking at the
19 same page, June 14 through June 20?

20 A Yes.

21 Q 1993, is that right?

22 A Yes.

23 Q You have markings, hours of one description or
24 another for six out of the seven days that week, isn't that
25 right?

1 A Correct.

2 Q And the one day that you have no hours whatsoever
3 marked is June 20, is that right?

4 A Correct.

5 Q Referring you to the week before that, the week
6 of June 7, do you have that before you?

7 A Yes.

8 Q Isn't it true, Detective, that you made an entry
9 of hours of one sort or another every day, in other words,
10 you worked seven days that week and you so noted in your
11 diary?

12 A Correct.

13 Q And that includes RDO's and that includes
14 overtime, is that correct?

15 A Correct.

16 Q Referring you to the week of June 21, do you have
17 that before you?

18 A Go ahead.

19 Q You wrote down there, you have an entry, hours,
20 on June 21, June 22, June 23 and June 24 and June 25, is
21 that correct?

22 A Correct.

23 Q So isn't it true, Detective, that for the period
24 from June 7 of 1993 until June 25 of 1993, there is
25 precisely one day which your diary indicates you put in no

1 hours, isn't that right?

2 A June 20.

3 Q June 20, the day that you tell us you got those
4 items before you from Emad Salem, is that right?

5 A Correct.

6 MR. SERRA: I have nothing further.

7 THE COURT: Anyone else? No. Any redirect?

8 MR. McCARTHY: Yes, your Honor.

9 THE COURT: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. McCARTHY:

12 Q Detective Napoli, earlier this afternoon you were
13 read some long series of numbers by Miss Amsterdam. Do you
14 recall that?

15 A Yes.

16 Q She would ask you, she would read off four or
17 five or six numbers in a row and note that there were two
18 numbers missing and then go on and read several more.

19 A Correct.

20 Q The missing numbers, do you know of your own
21 personal knowledge as you sit here whether they had anything
22 to do with this particular case as opposed to some other
23 case?

24 A No.

25 Q Do you know whether the FBI had other

1 investigations going during 1993?

2 A I am sure they did.

3 Q You were asked some questions about Kel
4 transmitters and body recorders. Do you recall that?

5 A Yes, I was.

6 Q Can you tell us why, if at all, a Kel transmitter
7 was not practical for this investigation?

8 A The reason why a Kel transmitter wasn't practical
9 in this investigation is because you have to be in close
10 proximity, you know, to actually record everything. So if
11 your target is, say, like in a car, OK, especially in the
12 city with all the buildings that we have, the vehicle that
13 would be doing this recording would have to be sometimes as
14 close as two cars away. Emad was with these people
15 sometimes in car drives of up to four, five hours. So it
16 was dangerous for him and dangerous for our investigation to
17 have a car directly behind within a distance of two cars
18 away at that amount of time.

19 Also, when he was inside a location, a lot of
20 these locations were occupied by people belonging to this
21 sect, and to have an agent or somebody walk in with a
22 recorder is ludicrous. So that is the reason why we used
23 the Nagra instead of the Kel. It was for his safety and
24 also for the preservation of our case.

25 Q What about body recorders?

1 A Excuse me.

2 Q What about body recorders, that is, Nagras that
3 are affixed to the body instead of --

4 A Body recorders are also dangerous to him because
5 he would be searched. There are a lot of times where you
6 will get to see in the CM's where he is listed as an
7 informant, as a spy, and this dialogue between him and these
8 other people went on quite frequently. So for us to put a
9 body recorder on him while this kind of dialogue was going
10 on was, again, dangerous to him because if it was found, God
11 only knows what would have happened.

12 Q You were asked some questions about CM 9, which
13 was the CM for the trip up to Attica. Do you recall that?

14 A Yes, I was.

15 Q I think you told us that you were aware of how
16 long it took to get to Attica --

17 A About eight hours.

18 Q Can you tell us, please, how long the Nagra tapes
19 that you were using -- withdrawn. Can you tell us, please,
20 how long the Nagra tapes that were equipped to the Nagras
21 that you were using were in duration?

22 A The ones that we were using the duration, the
23 longest, I think, was three hours and 10 minutes. That was
24 the longest.

25 Q So the car that you equipped was equipped with

1 two Nagras?

2 A Yes.

3 Q So that would have been for a maximum of six
4 hours and 20 minutes of conversation, assuming that Salem
5 was not able to change the tapes?

6 A Correct.

7 Q I wonder if you might step down. Why don't you
8 assume that position at the microphone -- if that is all
9 right with the court.

10 THE COURT: Go ahead.

11 Q Before I proceed, let me ask you, the one time
12 that a transmitter was used, that is, on CM 9, how did the
13 quality work out on that one?

14 A It was very bad, because they were afraid of
15 getting closer.

16 Q Detective, I have handed you a Nagra. I wonder
17 if you might hold it up to the jury. It has, as you can
18 see, one Nagra tape that has a serial number on it, and then
19 it has what we call a catch reel, is that correct?

20 A Affirmative.

21 Q I wonder if you might just start the reel.

22 A It's going.

23 Q Let me hold onto it for a moment. As this is
24 turning, am I correct that the Nagra reel with the serial
25 number, the spool of tape is going on to the catch reel

1 without the serial number?

2 A Correct.

3 Q Let's assume for the moment that you have a
4 successful electronic surveillance in that you are able to
5 record three hours of tape.

6 A Correct.

7 Q Where is the tape going to be at the end of that
8 exercise?

9 A It is all going to be on the to the catch reel.

10 Q Assuming that you have an extraordinarily
11 successful electronic surveillance, that you are able to
12 capture three hours and 10 minutes of tape and then the
13 informant has an opportunity to replace the reel -- are you
14 with me?

15 A Yes.

16 Q Can you tell us, please, whether it would be
17 easier to rewind the reel back onto the tape that had the
18 original serial number or back onto the container that had
19 the original serial number, or simply pluck out the reel
20 that has caught all of the tape?

21 A No. It would be easier to take this reel out,
22 put that one, this would now become the catch reel and put
23 it over to this location and load a new reel containing the
24 tape to be used.

25 Q What if you were in a big hurry and you needed a

1 new catch reel. Am I correct that the one with the original
2 serial number would be empty at this point?

3 A Correct.

4 Q Is it not so that this one, that is, the original
5 reel with the serial number when you started out could be
6 moved over into the catch reel position?

7 A Exactly. That is what I said.

8 Q And then a new reel would be substituted with a
9 new serial number?

10 A Exactly.

11 Q Thank you. Can you take that back to the witness
12 stand.

13 Detective Napoli, can you tell us, please, the
14 conditions under which you would retrieve the tapes from
15 Salem.

16 A A lot of the times the conditions, it had to be
17 done real quickly, because, number one, we were out in the
18 street. About 98 percent of these removals were done out in
19 the street where there were people walking around and people
20 driving by. It had to be done real quickly so that we can
21 get the evidence, give him new tapes in the vehicle, close
22 it all up and get him on his way.

23 Q Am I correct that the Nagra that I have given you
24 back that has the reel that was sitting in front of the jury
25 a moment ago contains roughly half the tape on one reel and

1 half the tape on the catch reel?

2 A Yes, it does.

3 Q Can you please display to us how you rewind one
4 of these things?

5 A To rewind one of these things, you would press
6 this button, which would release this little -- I am going
7 to put my glasses on. You would press this button here
8 which would release this little lever. Then you would have
9 to pick this up like so and you would have to manually turn
10 the reels like this. As you can see, if you go too fast it
11 gets caught and you tangle, and you ruin the conversation.
12 So it has to be done at this type of speed.

13 Q If we were to sit here and watch you rewind it
14 when it is half expended rather than fully expended, can you
15 give us some idea about how long it would take you?

16 A It would take a good five minutes, I would say,
17 to do it carefully without wrecking anything, if not longer.

18 Q What if you had three tapes and you were standing
19 out, say, on the West Side Highway or something?

20 A Like it was always done. It would take a period
21 of 10 to 15 minutes.

22 Q You were asked some questions, a number of
23 questions about whether the serial numbers on the Nagras
24 match the serial numbers on the tapes. Do you recall that?

25 A Yes, I was.

1 Q Can you tell us again, what locations --
2 withdrawn -- what areas about Salem were equipped with Nagra
3 recorders?

4 A We had two in the vehicle and one in the
5 briefcase.

6 Q Am I correct that sometimes when a Nagra comes in
7 new, the catch reel will be plastic rather than a metal coil
8 with a serial number?

9 A Correct.

10 MR. JABARA: Objection, your Honor. That is
11 leading the witness.

12 THE COURT: It is.

13 MR. McCARTHY: I will stop.

14 THE COURT: Good.

15 Q Detective Napoli, I am showing you 301A for
16 identification, and I think this will go faster if we get
17 the chart out.

18 MR. McCARTHY: Ladies and gentlemen, I am
19 directing the witness's attention to page 1 of the chart.

20 Q 301A is the May 7?

21 A Correct.

22 Q Which CM is that, sir?

23 A It is CM 1.

24 Q Looking at the chart, can you tell us whether it
25 is a match or not, that is, whether the envelope and the

1 Nagra serial number are the same?

2 A Yes. The envelope and the reel are the same.

3 Q CM 1 was the first CM?

4 A Correct.

5 Q Let me direct your attention to the next CM. By
6 the way, can you determine whether looking at this envelope,
7 that is, 301A, whether this is a CM which relates to the
8 briefcase or the car?

9 A That it was taken out of the -- no, I can't. No,
10 there is nothing on there.

11 Q How about 302A?

12 A No.

13 Q 302A is the one with the plastic, is that
14 correct?

15 A Correct.

16 Q According to the chart.

17 Would you take out 302A. That is the one that is
18 on the plastic?

19 A Yes, it is.

20 Q 301A is on the metal and it has the same serial
21 number?

22 A Correct.

23 Q Can you make a determination based on the fact
24 that CM 1 has the same serial number that it started with in
25 the envelope and the fact that CM 2 is on the plastic,

1 whether at some point in time you got the original catch
2 reel from the briefcase Nagra?

3 A Yes, being that this is the second one, this was
4 probably the one that was switched over, like I showed you
5 before --

6 MR. JABARA: Objection, your Honor. He is
7 speculating.

8 THE COURT: Overruled.

9 Q You can continue your answer.

10 A This one is the one that was put over to the
11 catch reel from the first time we used it --

12 MR. BERNSTEIN: Objection as to "probable," your
13 Honor.

14 THE COURT: May I see counsel at the side.

15 MR. McCARTHY: Your Honor, I will move on to
16 something else, if you would.

17 THE COURT: Yes, I would.

18 MR. McCARTHY: I just need a moment, your Honor.
19 I am sorry.

20 Q Detective Napoli, did there come a time in the
21 investigation that Mr. Salem began taping in the car?

22 A Yes, there was.

23 Q Do you know whether 307A and 307B are the first
24 two car tapes? I am sorry. I think I have put 308 in front
25 of you. Why don't you take out 307A, if you would, and just

1 tell us what kind of reel it is.

2 A Plastic.

3 Q Let me direct your attention back to page 1 of
4 the chart. Again, on the questions that you were asked
5 regarding whether the serial numbers on the tapes match the
6 serial numbers on the envelopes, OK? Could you compare for
7 me, please, the serial number on CM number 2 with CM number
8 3?

9 A The serial number on the envelope CM number 2 is
10 38735, and the identification number on the reel for CM
11 number 3 is 38735, which is the exact next one.

12 Q How about comparing CM 3, the reel, with CM 6,
13 the envelope?

14 A CM 3, the reel, is 38735, and the envelope on
15 which one?

16 Q I am sorry. I have made an error. Let me direct
17 your attention to CM 3, the envelope, and ask you to match
18 that to CM 6, the reel.

19 A CM 3, the envelope identification is 38730, and
20 on CM 6, you said?

21 Q Yes, sir.

22 A The reel is 38730.

23 Q 4 is a match, is that correct, that is, the reel
24 and the envelope match?

25 A Correct.

1 Q Let me direct your attention down to 7A and ask
2 you to match the envelope on 7A to the reel on CM 14.

3 A The identification number on 7A is 38739 on the
4 envelope and on 14 on the reel the identification number
5 there is 38739.

6 Q Let's just do one more. How about 7B? Would you
7 compare the envelope, please, on 7B with the reel on CM 14.

8 A On 7B, the envelope's identification number is
9 38740 and it is likewise on CM 11 on the reel, 38740.

10 Q Do you know if we went through the chart whether
11 many of the serial numbers on the reels would match the
12 serial numbers on the envelopes or others of the CM's?

13 A Yes, I am sure they do.

14 Q Detective Napoli, how many CM's at a time did you
15 say Mr. Salem would have extra?

16 A We gave him no more than two or three, three
17 tops.

18 Q Detective Napoli, did Mr. Salem know the exact
19 date and time when the arrests in this case were going to
20 occur?

21 A No, he did not.

22 Q During cross-examination you were shown some of
23 the tapes that were removed from Mr. Salem's house. Do you
24 recall that?

25 A Yes.

1 Q Let me show you Government's Exhibit 669A, 670A
2 and 671A. Starting with 669A, can you tell us what that is?

3 A It is a reel from a Nagra.

4 Q Would you open up the chart, Mr. Jacobs's chart,
5 please. Directing your attention to page 5 of the chart,
6 the column marked envelopes, for which there are no tapes?

7 A Right.

8 Q Do you see the top envelope on the right-hand
9 column?

10 A Yes.

11 Q Would you match, please, the top envelope on the
12 right-hand column to the serial number on the tape that was
13 contained in Government's Exhibit 669A.

14 A OK. The identification number on the envelope
15 where there are no tapes is 49797, and the identification
16 number on the Nagra tape of Exhibit 669A is 49797.

17 Q Finally, showing you 670A for identification ask
18 and 671A for identification, starting with 670, that is a
19 Nagra tape, is that correct?

20 A Yes, it is.

21 Q Can you read for us into the record, please, the
22 number of the reel.

23 A The identification number on the reel is 49799.

24 Q That one comes in a little white envelope?

25 A Yes, it does.

1 Q Can you read to us the serial number on the
2 envelope?

3 A The serial number on the envelope that coincides
4 with the reel, 49790.

5 Q Do you know whether this is a blank tape?

6 A No, I don't know.

7 Q Directing your attention now to 671A, can you
8 read, please, the serial number on the reel?

9 A Serial number on the reel is 49800.

10 Q How about on the little white envelope?

11 A On the little white envelope that coincides with
12 the reel, 49800.

13 MR. McCARTHY: Thank you, Detective. Thank you,
14 your Honor.

15 THE COURT: Mr. Jabara.

16 MR. JABARA: Yes, if we could go in the same
17 order.

18 THE COURT: Mr. Stavis, representing Mr. Nosair.

19 RE-CROSS-EXAMINATION

20 BY MR. STAVIS:

21 Q When Emad Salem used his car in this
22 investigation, he had two Nagras in the car and one in the
23 briefcase, correct?

24 A Affirmative, yes.

25 Q That is three Nagras?

1 A Correct.

2 Q And they run about three hours and 10 minutes
3 each?

4 A Correct.

5 Q So in his car he has the capacity for nine hours
6 of taping on Nagras, correct?

7 A Correct.

8 Q Mr. Salem didn't want to use his car to go up to
9 Attica, did he?

10 A No, he did not.

11 Q He wanted to use a rented car to go to the
12 Attica, correct?

13 A Correct.

14 Q And because he wanted to use a rented car to go
15 to Attica, the decision was made to use a transmitter, is
16 that correct?

17 A Correct.

18 Q And the transmitter would pick up whatever
19 happened in the car, correct?

20 A Correct.

21 Q But it didn't work too good, did it?

22 A No, it did not.

23 Q We are left with CM 9 has about six pages of
24 transcript?

25 A Correct.

1 Q Once Mr. Salem got to Attica, he was inside of
2 Attica for three hours, correct?

3 A I don't know. I don't have any idea how long he
4 was there.

5 Q He was there about three hours, is that fair to
6 say?

7 A Fair to say.

8 Q That is one Nagra tape, correct?

9 A You can't bring anything into Attica.

10 Q You can't bring anything into Attica?

11 THE COURT: Don't answer the question behind the
12 question. Just answer the question. The question was, that
13 is one Nagra tape.

14 THE WITNESS: Correct.

15 Q One Nagra tape to record what went on inside
16 Attica prison, is that correct?

17 A One tape.

18 Q But there is no tape of that meeting, correct?

19 A No.

20 MR. STAVIS: I have no further questions, your
21 Honor.

22 THE COURT: Mr. Ricco representing Mr.
23 El-Gabrownny. Go ahead.

24 RE-CROSS-EXAMINATION

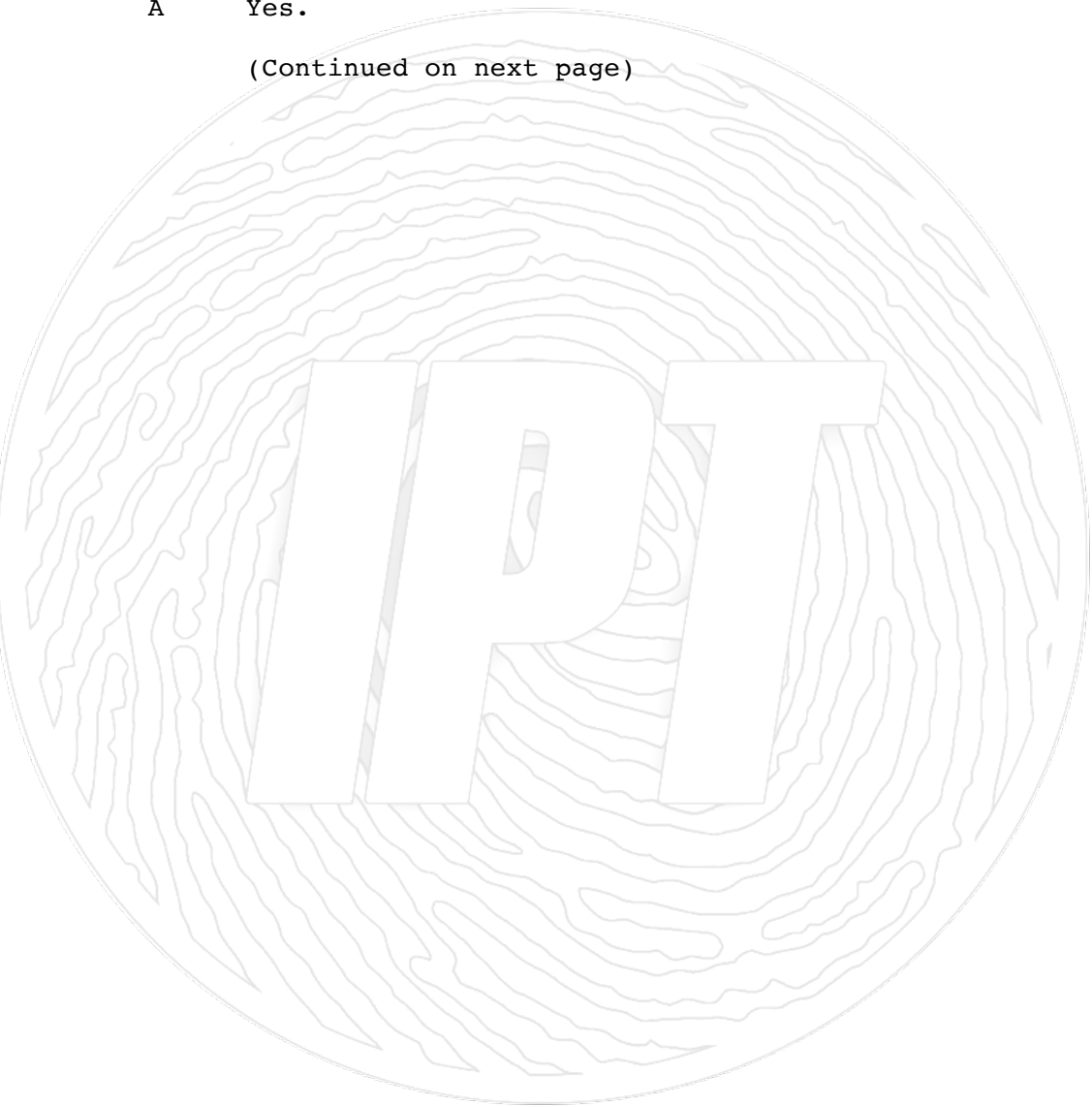
25 BY MR. RICCO:

1 Q Mr. McCarthy asked you a series of questions
2 about a selection of the way in which you would record and
3 you talked about the danger. Do you recall those questions
4 Mr. McCarthy asked you?

5 A Yes.

6 (Continued on next page)

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1 Q The danger sometimes is objective, you can
2 determine what the danger is, isn't that correct?

3 MR. McCARTHY: I am sorry. I didn't hear the
4 question.

5 Q Sometimes you can objectively determine whether
6 or not your confidential informant is in danger, isn't that
7 correct?

8 A Correct.

9 Q But in most situations your assessment of whether
10 or not a person is in danger or not is based on what they
11 tell you, isn't that right?

12 A Not necessarily.

13 Q Not necessarily, but in some situations, yes,
14 isn't that correct?

15 A Some, yes.

16 Q Is it your testimony that it was in this
17 situation that Mr. Salem was telling you that he was in
18 danger?

19 A Which situation?

20 Q In the investigation in this case?

21 A Yes. Constantly.

22 Q He was in constant danger.

23 That is what he told you?

24 A No, that is what he told me, and that is what I
25 derived from what he was doing, what was coming back, the

1 locations that he was entering. Where there was no -- I
2 mean, it was -- there was no safety zone in a lot of these
3 locations that he was entering. It wasn't like being
4 outside in the park. A lot of these locations were homes
5 where there were nothing but a lot of these people who were
6 close to the subjects that are now there lived. So to bring
7 someone in close that we can actually get transmissions
8 received that would -- you know, it was dangerous.

9 Q Isn't it a fact that your office had to tell
10 Mr. Salem to stop acting like a big leader?

11 Didn't you have to tell him that?

12 A At times.

13 Q You had to tell him to back off because he was
14 the leader, isn't that correct?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q We are talking about the danger that he says he
18 was in. Isn't it a --

19 MR. McCARTHY: Objection.

20 THE COURT: Just ask a question.

21 Q Isn't it a fact that your office had to tell
22 Mr. Salem to stop playing the role of a leader?

23 A Correct.

24 Q Isn't that right?

25 A Correct.

1 Q Because he was holding press conferences, isn't
2 that right?

3 A No. It wasn't because he was holding press
4 conferences.

5 Q He was acting like a leader, isn't that correct?

6 A In the initial start, yes.

7 Q You had to tell him to stop playing that role?

8 A Correct.

9 Q This is the same person who was in danger, isn't
10 that right?

11 A Correct.

12 Q Mr. McCarthy asked you questions about how long
13 it takes you to change the tape if you are standing on the
14 West Side Highway. I think you gave him an answer. I think
15 you said maybe ten or 15 minutes, right?

16 A That is to change all of them.

17 Q Isn't it a fact that the changing of the tape
18 depends on the circumstances that you are in, isn't that
19 right?

20 A No. The tape's still going to take 10, 15
21 minutes. I mean -- do you want to try? You can only unreel
22 this thing to a certain speed, you can't go any faster. It
23 is not an automatic rewind like you would have on a VCR.

24 Q Well, he is not exposed to any danger if he is
25 changing the tapes in his apartment, isn't that correct?

1 A No.

2 Q So, therefore, his exposure that he would have in
3 switching tapes depends on the circumstances, isn't that
4 right?

5 A I don't understand what you mean by
6 "circumstances."

7 Q If he changed his tape in the living room at the
8 end of the day, we have to assume there is no danger, isn't
9 that correct?

10 A Exactly.

11 Q If he is changing the tape, as Mr. McCarthy says,
12 in the middle of the West Side Highway, there might be a
13 little danger there?

14 A Correct.

15 Q Or might not, it all depends on the
16 circumstances, isn't that correct?

17 A Correct.

18 Q Now, one remaining question: Isn't it a fact
19 that you never told Mr. Salem what to record?

20 A We never told him what to record?

21 Q Subject matter.

22 A No, we told him to record pertinent information.

23 Q Did you tell him, if they start talking about
24 something, turn the tape off. You never did that, did you?

25 A Oh, yeah. If they started talking about -- of

1 course, you have to remember Trade Bomb was on, and we
2 didn't want any attorney conversations or anything regarding
3 the trial strategy that was going on with the Trade Bomb
4 case recorded.

5 Q The way you resolved that issue --

6 THE COURT: "Trade Bomb" is the World Trade
7 Center case?

8 THE WITNESS: Yes, it is.

9 Q The way you resolved that issue was not to tell
10 him to turn the tape off, and the way you resolved that
11 issue, is it not, you told Mr. Salem to stay away from the
12 lawyers' meetings and stop attending them, isn't that
13 correct?

14 A Yes. We told him not to attend any of them.

15 Q "Don't go to the meetings," isn't that right?

16 A Correct.

17 Q You told him, "If you so happened to have
18 overheard something, keep it to yourself. We don't want to
19 hear about it," isn't that right?

20 A Correct.

21 Q Back to the subject matter. Did you ever tell
22 Mr. Salem what subject matter to record?

23 A We told him to record anything that was criminal
24 in nature.

25 Q Does that mean that Mr. Salem has the option of

1 turning the tape off or on based on what he determines is
2 criminal in nature?

3 MR. McCARTHY: Objection, scope.

4 A He had the option --

5 THE COURT: Go ahead.

6 A He had the option of turning the Nagra off when
7 he thought that the conversation was going nowhere and for
8 the preservation and saving of the tape, I mean as far as
9 time.

10 Q Is it fair to say, then, during the course of
11 this investigation you instructed Mr. Salem to record all
12 the conversations that were criminal in nature?

13 A Yes.

14 MR. RICCO: No further questions. Thank you,
15 your Honor.

16 THE COURT: Mr. Nooter?

17 MR. NOOTER: I have nothing, your Honor.

18 THE COURT: Anybody else.

19 MS. AMSTERDAM: I have some questions.

20 THE COURT: Ms. Amsterdam.

21 MS. AMSTERDAM: May I just have the Nagra for a
22 moment, please.

23 RE-CROSS-EXAMINATION

24 BY MS. AMSTERDAM:

25 Q Detective Napoli, I am going to hand you the top

1 of the Nagra machine.

2 Would it be a fair statement to say that there
3 are directions on the inside cover that tell you how to
4 reload, rewind and load the machine?

5 A Yes.

6 Q Don't those directions indicate that you should
7 remove the plunger, take off the brakes in rewinding the
8 machine?

9 A Yes.

10 Q I give you back the Nagra, sir.

11 In demonstrating to the jury how slowly it takes
12 to rewind the Nagra, isn't it a fact that the brakes were
13 on, the plunger was in?

14 A Hold on. Correct.

15 Q Incorrect?

16 A Correct.

17 Q Correct. So if you take the plunger out,
18 deactivate the brakes, you can rewind the machine a lot
19 quicker than you demonstrated to the jury, isn't that
20 correct?

21 A Correct.

22 Q Would you like to see Mr. Ginsberg rewind this
23 tape?

24 A Sure.

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 He can watch Mr. Ginsberg some other time. Do
3 you want to do it?

4 THE WITNESS: Without wrecking the tape.

5 MS. AMSTERDAM: I have no expertise here, but I
6 will give it to somebody to do it.

7 MR. McCARTHY: Objection.

8 THE COURT: The objection is sustained.

9 Q Sir, your point was that they couldn't rewind
10 this tape because it was a matter of time expediency --

11 MR. McCARTHY: Objection to the form of the
12 question.

13 Q -- and he would be engaged for 15 minutes on the
14 West Side Highway, correct?

15 THE COURT: Sustained.

16 Q Isn't it a fact that if you remove the plunger,
17 you can rewind these tapes in one minute, sir?

18 A I doubt it.

19 Q Presumably, sir, the West Side Highway is not the
20 only place that the FBI can meet with their informants,
21 correct?

22 A Correct.

23 Q Mr. Emad Salem had an apartment on West 86th
24 Street in Manhattan, did he not?

25 A Yes, he did.

1 Q There was nothing preventing you from meeting him
2 in the apartment on West 86th Street, correct?

3 A That would be absurd.

4 Q That would be absurd?

5 A Because, number one, I was known from the World
6 Trade Center, and for me to enter his apartment building
7 would be absolutely absurd.

8 Q How about a restaurant, how about a coffee --

9 A You can do it a lot of places.

10 Q How about your office?

11 A No.

12 Q He wouldn't have been in danger there, would he?

13 A Of course, he would have. That would mean that
14 he would have to be coming into our building.

15 Q You indicated before that he couldn't wear a body
16 wire because a Kel would have to be in close proximity,
17 correct?

18 A The Kel would be on him.

19 Q The Kel would be on him, but in order to monitor
20 it the agents would have to be in close proximity, right?

21 A Right.

22 Q You said that many of these tape recordings were
23 made in a car and it was difficult to monitor, correct?

24 A No, there was only one, I think --

25 Q Many of the conversations took place in a car?

1 MR. McCARTHY: Objection.

2 MS. AMSTERDAM: I will withdraw the question.

3 THE COURT: Why don't you let him finish the
4 answer.

5 Q I said the question incorrectly, but --

6 THE COURT: All right. Do you want to pose the
7 correct one.

8 Q Isn't it correct that many of the conversations
9 in this case took place, according to you, in his car,
10 correct?

11 A Correct.

12 Q So because the car was moving, it would be
13 difficult to monitor those conversations, right?

14 A Correct.

15 Q A fair number of these conversations, however,
16 took place in a Emad Salem's apartment, correct?

17 A No.

18 Q No. There were no conversations recorded in Emad
19 Salem's apartment?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q Were there any conversations recorded in Emad
23 Salem's apartment?

24 THE COURT: The original question was "a fair
25 number." Do you want to stick with that or do you want to

1 abandon it for a new one?

2 MS. AMSTERDAM: I will take it.

3 Q Were there a fair number of conversations
4 recorded there?

5 A No, there weren't.

6 Q Were there some conversations recorded there?

7 A Some.

8 Q It would not have been impossible, would it, to
9 have had an overhearing, a monitoring device in close
10 proximity to those conversations, would it?

11 A No, it wouldn't have.

12 Q I will start with a fair number. A fair number
13 of these conversations took place in Siddig Ali's house,
14 correct?

15 A Correct.

16 Q Siddig Ali lived in Jersey City?

17 A Correct.

18 Q I presume that there are times that the FBI will
19 have a van outside and it will be recording --

20 MR. McCARTHY: Objection.

21 Q -- conversations as they are going on.

22 MR. McCARTHY: Is that a question?

23 THE COURT: Is that a question?

24 MS. AMSTERDAM: Yes.

25 Q I would presume, am I correct, that the FBI at

1 times records conversations which are taking place in a
2 house in a van that they have set up outside the house for
3 surveillance?

4 A Correct.

5 Q That was not done here, correct?

6 A No, it wasn't.

7 Q So it wasn't impossible to use a Kel?

8 A No, it was just stupid.

9 Q Just stupid. Stupid for you, right?

10 A No, it was stupid for this case, being that I
11 was --

12 Q Not stupid for my client however, Mr. Napoli.

13 THE COURT: Sustained and stricken. Ms.
14 Amsterdam, can I see you at the side, please, with other
15 counsel.

16 (Continued on next page)

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1 (At the side bar)

2 (Discussion off the record)

3 THE COURT: Those comments were all off the
4 record.

5 MS. AMSTERDAM: I apologize.

6 THE COURT: No, you don't. I don't play the game
7 that way. Do you want to stop here?

8 MS. AMSTERDAM: Today, yes.

9 THE COURT: Good. Could you also, if you are
10 going to continue this tomorrow, as long as I have everybody
11 here, please not go, "humph" when you get a favorable answer
12 or an answer you think is favorable.

13 MS. AMSTERDAM: OK. I'm sorry.

14 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I told you when
3 we go up to the side, we don't simply go up there to tell
4 jokes. Actually, occasionally we do. This was one of the
5 occasions. We are going to break for the day. Please don't
6 discuss the case. Please leave your notes and other
7 materials behind. Have a pleasant evening.

8 Don't read or hear anything related to this case
9 and we will see you tomorrow. Good night.

10 (Jury not present)

11 THE COURT: You may step down.

12 (Witness excused)

13 THE COURT: I think in conclusion it would be
14 fitting to ask Mr. Jacobs' colleague if she could convey the
15 Court's thanks to Mr. Jacobs that his chart saved us hours
16 of tedious cross-examination. I will see you tomorrow.

17 (Proceedings adjourned to Tuesday, March 7, 1995
18 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x
March 7, 1995
9:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

1 MARY JO WHITE
United States Attorney for the
2 Southern District of New York
BY: ANDREW McCARTHY
3 PATRICK FITZGERALD
ROBERT KHUZAMI
4 Assistant United States Attorneys

5
6 ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
7 Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

8
9 ROGER STAVIS and
ANDREW PATEL
10 Attorneys for Defendant El Sayyid Nosair

11 ANTHONY RICCO
12 Attorney for Defendant Ibrahim A. El-Gabrowny

13 KENNETH D. WASSERMAN
14 Attorney for Defendant Clement Hampton-El

15 STEVEN M. BERNSTEIN
16 Attorney for Defendant Amir Abdelgani

17 VALERIE C. AMSTERDAM
18 Attorney for Defendant Fares Khallafalla

19 KELLMAN & LONDON
Attorneys for Defendant Tarig Elhassan
20 BY: JOYCE E. LONDON

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APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER

INTERPRETERS:

Arabic: Fouad Kheir
Haziz Ismail
Mohsen Shawarby

Spanish: Nancy Festinger
Mirta Hess
Denia McGuire
Candido Valderrama

1 (Trial resumed)

2 Louis Napoli, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 THE JURY: Good morning.

6 THE COURT: Detective Napoli, you are still under
7 oath.

8 Ms. Amsterdam, do you have anything else?

9 MS. AMSTERDAM: Yes, your Honor. I have some
10 brief additional questioning.

11 RE-CROSS-EXAMINATION (continued)

12 BY MS. AMSTERDAM:

13 Q. Good morning, Detective Napoli.

14 A. Good morning.

15 Q. As we concluded yesterday, you had indicated that
16 it was less than clever to have a van set up outside a
17 location to monitor conversations as they were occurring,
18 correct?

19 A. Correct.

20 Q. However, there were times when the FBI actually
21 did have a van set outside a location to do photographic
22 surveillance, is that not correct?

23 A. Correct.

24 Q. In fact, there were vans set up at Fourth and
25 Atlantic Avenue where a photographic surveillance was taken

1 of some of the defendants in this case, is that correct?

2 A. That was prior to the case.

3 Q. Pardon?

4 A. That was prior.

5 Q. I mean, during the course --

6 A. No, i don't think so. I think it was prior.

7 Those photos, I think, were taken prior.

8 Q. There was surveillance outside of Mohammed
9 Saleh's house during the conversation, photographic
10 surveillance, correct?

11 A. Correct.

12 Q. There was photographic surveillance from a van
13 outside of Siddig Ali's house on numerous occasions, there
14 are photographs of him coming out of the house getting into
15 Mr. Salem's car, correct?

16 A. Not that I recall.

17 Q. But there was photographic surveillance from vans
18 at various times?

19 A. Yes.

20 Q. So it wasn't a stupid idea to have vans for
21 photographic surveillance; it was just a stupid idea to have
22 vans to do monitoring, correct?

23 A. Well, for monitoring --

24 Q. Correct?

25 A. Correct.

1 Q. You said that it was also less than clever to
2 wear a body wire because a body wire might be discovered
3 and, therefore, expose any informant to harm, would that be
4 a fair statement?

5 A. Fair.

6 Q. Isn't it a fact that during the entire course of
7 this investigation, to your knowledge, the informant was
8 never patted down by any defendant or co-conspirator in this
9 case? Do you understand what I mean by a "pat down"?

10 A. Correct.

11 Q. You indicated yesterday, I believe, that there
12 were conversations -- withdrawn.

13 You indicated yesterday that one of the reasons
14 for concern was that there were rumors that Mr. Salem was an
15 informant working for the FBI, right?

16 A. Not rumors, fact.

17 Q. Well, that there was suspicions within the
18 community that he might be an informant, that was one of the
19 reasons for additional safety precautions being taken?

20 A. Correct.

21 Q. There were also rumors within the community, as
22 evidenced by the tape recordings here, that Mr. Siddig Ali
23 was an informant in this case, correct?

24 A. Correct.

25 Q. At no time during the course of this

1 investigation, to your knowledge, was Mr. Siddig Ali ever
2 patted down and checked for a body wire, correct?

3 MR. McCARTHY: Objection. Rule 601.

4 THE COURT: Sustained.

5 Q. Indeed, the decision was made that he would carry
6 this Nagra machine inside his briefcase as opposed to
7 wearing a body wire?

8 MR. McCARTHY: Objection to form, "he."

9 Q. Withdrawn.

10 It was decided, was it not, that the informant
11 would carry a Nagra within the informant's briefcase as
12 opposed to wearing a body wire?

13 A. Correct.

14 Q. That was a decision made by you and other agents
15 at the FBI, correct?

16 A. Correct.

17 Q. In order for the informant to be recording, the
18 briefcase has to be in some proximity to where the
19 conversation is occurring, right?

20 A. Correct.

21 Q. He can't leave the briefcase in the car and have
22 a conversation in the house and have the Nagra pick up that
23 conversation?

24 A. Correct.

25 Q. It has a limited range, right?

1 A. Correct.

2 Q. So that would mean, if I am correct, that in
3 order to record conversations, the informant had to have the
4 briefcase with him at all times?

5 A. Correct.

6 Q. Was any concern given to the fact that that in
7 and of itself might raise suspicions and place the informant
8 in some danger?

9 A. No, because they didn't mind --

10 THE COURT: She didn't ask you why; she asked you
11 whether.

12 THE WITNESS: No.

13 Q. No?

14 In fact, there were times that in the tape
15 recording that the informant actually has to excuse himself
16 to go use the rest room, to go to the bathroom, right?

17 A. Correct.

18 Q. In that situation that left him with the
19 alternative of either taking the briefcase with him into the
20 bathroom or leaving the briefcase unattended?

21 A. Correct.

22 Q. So there were clearly risks in proceeding in this
23 manner, were there not, risk of discovery?

24 A. Correct.

25 Q. Additionally, sir, are you aware that there are

1 recording devices that operate through cellular phones that
2 would be capable of being monitored anywhere and would not
3 require the agents to be within two car lengths of the
4 subject?

5 MR. McCARTHY: Objection to the form.

6 THE COURT: I will allow him to testify about
7 whether he is aware of any such device.

8 A. I am aware.

9 Q. That was not employed in this situation, right?

10 A. Right.

11 Q. Had monitoring actually occurred simultaneous to
12 the conversation, we would not have had conversations that
13 started midstream, correct?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q. CM32, the Mohammed Saleh conversation, starts in
17 the middle, correct?

18 MR. McCARTHY: Objection, scope.

19 THE COURT: Sustained.

20 Q. In any event, sir, isn't it a fact that the
21 Bureau could have employed alternative methods for recording
22 conversations which would have minimized the possibility or
23 at least the opportunity for tampering?

24 A. Correct.

25 Q. Sir, moving on to something else, yesterday you

1 indicated that there was a partial explanation for the
2 mismatch of the serial number on the envelope and the serial
3 number on the tape?

4 A. Correct.

5 Q. You demonstrated during redirect with Mr.
6 McCarthy how you could take the first reel and wind it on to
7 the second reel, right?

8 A. Correct.

9 Q. And that without rewinding the reel what you
10 would then have is the informant giving you the second reel,
11 right?

12 A. Correct.

13 Q. You went through several of the examples in the
14 chart, and it would appear that at the beginning of the
15 investigation that CM1, for example, matches -- you have a
16 reel in an envelope which is exact. And CM4 matches -- you
17 have a reel and an envelope that match.

18 Mr. McCarthy elicited, did he not, on redirect
19 that there are instances at the beginning where the envelope
20 is given to you, for example, in CM2 --

21 MR. MCCARTHY: Objection on the form of the
22 question.

23 Q. -- and then the very next day --

24 THE COURT: Ms. Amsterdam, would you ask a
25 question, please.

1 Q. The very next day --

2 MR. McCARTHY: Objection.

3 Q. -- the reel is returned to you?

4 THE COURT: Sustained.

5 Q. All right. One of the examples that Mr.

6 McCarthy --

7 MR. McCARTHY: Move to strike.

8 THE COURT: Ms. Amsterdam, ask him a question.

9 Q. I would ask you to look at CM7A, which was one of
10 the examples that Mr. McCarthy reviewed yesterday.

11 A. On this thing?

12 THE COURT: Do you mean look at the chart?

13 MS. AMSTERDAM: Yes, on the chart.

14 A. OK.

15 MR. McCARTHY: May I have just a moment, please?

16 MS. AMSTERDAM: I'm sorry, Mr. McCarthy.

17 MR. McCARTHY: OK. Thank you.

18 Q. On 7A you stated yesterday on redirect that the
19 envelope, 38739 was retrieved on May 19?

20 A. Correct.

21 Q. You also stated, did you not, that the reel for
22 38739 was retrieved -- and I direct your attention to
23 CM14 -- on May 25, correct?

24 A. Correct.

25 Q. In this particular instance, the reel is not

1 retrieved for -- correct my math if I am wrong -- until six
2 days later?

3 A. Correct.

4 Q. And there are intervening -- one, two, three,
5 four, five, six reels that are returned during that period
6 of time, correct?

7 A. Correct.

8 Q. There were only three Nagra machines, correct?

9 A. Correct.

10 Q. If Mr. McCarthy's hypothesis was correct --

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. -- and if his --

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained. Ms. Amsterdam, may I see
16 you at the side bar?

17 (Continued on next page)

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1 (At the side bar)

2 THE COURT: If you want an adjournment for some
3 reason, I would appreciate it if you would ask for it rather
4 than simply killing time.

5 MS. AMSTERDAM: I only have five more minutes.
6 But Mr. McCarthy's point yesterday --

7 THE COURT: Keep it up and we are going to sit
8 Fridays.

9 MS. AMSTERDAM: I want to state for the record
10 that I am not asking any of these questions in an attempt to
11 kill time.

12 THE COURT: Thank you.

13 MS. AMSTERDAM: That I have a life, and, if I was
14 going to kill time, this would not be the way I would choose
15 to do it.

16 (Continued on next page)

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1 (In open court)

2 Q. Let me direct your attention, Detective, to one
3 last example. The envelope on CM35, which was recovered on
4 June 9, 1993 is Serial No. 38860, is it not?

5 A. Yes, it is.

6 Q. The reel in that case was not recovered until
7 June 25, CM64, is that correct?

8 A. Correct.

9 Q. So 16 days transpired between those two?

10 A. Correct.

11 Q. In addition, sir, Mr. McCarthy showed you what is
12 marked as Government Exhibits 669A, 670A, 671A, which
13 contain Nagra tapes that were recovered in the informant's
14 apartment after the arrest of many of the defendants in this
15 case, correct?

16 A. Correct.

17 MS. AMSTERDAM: May I approach the witness, your
18 Honor.

19 THE COURT: Yes.

20 Q. Yesterday, sir, I believe that you indicated that
21 Serial No. 49797 was recovered, Nagra Reel No., 49797 was
22 indeed recovered from the informant's apartment after the
23 conclusion of the bulk of the investigation of this case?

24 A. Correct.

25 Q. That was one of the missing envelopes indicated

1 on this chart, is it not, sir?

2 A. Correct.

3 Q. That Nagra, however, was recovered in an envelope
4 indicated by the Serial No. 38864, was it not, the envelope?

5 A. Yes, the envelope has 38864.

6 Q. There was no reel ever recovered for that serial
7 number, was there?

8 A. I don't recall.

9 Q. If it is not on the chart, it wasn't recovered?

10 A. If it is not on the chart, it wasn't recovered.

11 MS. AMSTERDAM: One moment, your Honor.

12 Q. Additionally, Detective Napoli, yesterday on
13 redirect you indicated that there was concern for being
14 spotted in areas that were out in the open, such as the West
15 Side Highway, if one were to stand there rewinding the tape,
16 correct?

17 A. Correct.

18 Q. The informant, however, had the ability to rewind
19 the tapes himself, did he not?

20 A. Yes, he did.

21 Q. In fact, on many occasions he did rewind the
22 tapes himself and he gave them to you in envelopes already?

23 A. Correct.

24 Q. So if there was a concern about being viewed in
25 public rewinding the tape, wasn't one possible solution

1 simply for the informant to rewind the tapes before he gave
2 them to you?

3 A. It would have, but we tried to --

4 Q. The answer is yes?

5 A. Yes.

6 Q. You also stated, I believe that it was in your
7 words "ridiculous" for the informant to have come to your
8 office to do the rewinding there, right?

9 A. Correct.

10 Q. But there were many times that the informant
11 actually came to FBI headquarters, did he not?

12 A. Before.

13 Q. The FBI headquarters has an underground garage?

14 A. Which is closed on weekends.

15 Q. But it has an underground garage, doesn't it,
16 which is open during the week?

17 A. Correct.

18 Q. There were times that the informant actually
19 specifically requested that you pick him up in the black car
20 with the tinted windows to take him to FBI headquarters,
21 right?

22 A. Correct.

23 Q. So it was possible to take him to FBI
24 headquarters to rewind the tape, was it not?

25 A. Correct.

1 Q. You also indicated in your words that it was
2 "ridiculous" to have gone to the informant's home to rewind
3 the tapes, correct?

4 A. Correct.

5 Q. However, wasn't there at least one occasion when
6 the informant went to Agent Nancy Floyd's home?

7 A. I don't know.

8 Q. In addition, sir, you testified on redirect, I
9 believe, that part of the reason that there was concern over
10 the picking up of the Mohammed Saleh tape was that the
11 informant had been concerned for his safety, was that not
12 true?

13 A. Correct.

14 Q. That he had made demands to go into the Witness
15 Protection Program?

16 A. Correct.

17 Q. Wasn't it your testimony on direct that the
18 informant in fact had indicated to you that he believed that
19 the investigation was coming to an end in the beginning of
20 June?

21 A. Correct.

22 Q. One of the issues that was not resolved at that
23 time was how much money the informant was going to get,
24 correct?

25 MR. McCARTHY: Objection, scope.

1 THE COURT: Sustained.

2 Q. When you stated that the reason that you left
3 without taking the tape was because Mr. -- did you state
4 that the reason that you left without taking the tape was
5 because the informant had concerns about the witness
6 relocation program that had not yet been addressed?

7 A. Correct.

8 Q. Wasn't there another reason that you left without
9 the tape?

10 A. No.

11 Q. Isn't it a fact that he had made demands about
12 money and that those money demands were not met?

13 A. No.

14 Q. Isn't it a fact that he told --

15 MR. McCARTHY: Objection to form, unless she
16 clarifies when.

17 MS. AMSTERDAM: At the beginning --

18 THE COURT: You are talking about that particular
19 occasion, I assume.

20 MS. AMSTERDAM: On that particular occasion.

21 A. No.

22 Q. Wasn't one of the issues as to why he wouldn't
23 give you the tape because his demands for the million
24 dollars had not yet been met?

25 A. No.

1 Q. That is your testimony?

2 A. That is my testimony.

3 Q. Lastly, sir, Mr. McCarthy asked you some
4 questions on redirect about the sequence of tapes.

5 A. Yes.

6 Q. You indicated, I believe, on redirect that there
7 was the possibility that other investigations may have used
8 tapes within a certain sequence, is that your testimony?

9 A. Correct.

10 Q. This was the biggest case, I believe that you
11 testified that you had ever worked on, right?

12 MR. McCARTHY: Objection.

13 I will withdraw the objection.

14 THE COURT: Go ahead.

15 A. One of, yes.

16 Q. Wasn't it important to you to preserve the
17 integrity of the taping process?

18 A. Yes.

19 Q. Wasn't it important to you to preserve the
20 accountability of the taping process?

21 A. Yes.

22 Q. When you say that other agents may have taken
23 some of those tapes in your sequence, that's total
24 speculation, is it not?

25 MR. McCARTHY: Objection.

1 Q. You do not know of any instance when any agent
2 actually took one of those tapes in sequence, do you?

3 A. No.

4 Q. When we are missing a tape in sequence, you have
5 no knowledge as to where that tape is, do you?

6 A. Correct.

7 MR. McCARTHY: Objection. Assumes a fact not in
8 evidence.

9 THE COURT: Overruled.

10 A. I don't know.

11 Q. You have no knowledge?

12 A. I don't know.

13 Q. All right.

14 Lastly, sir, in dealing with the sequence that I
15 pointed out to you yesterday, on 15, 16, 17, and 18,
16 sequence 38684 is missing, do you recall that conversation?

17 A. Yes.

18 Q. You have no knowledge personally as to what
19 happened to that tape?

20 A. No, I don't.

21 Q. You don't know whether or not another agent in
22 your division took that tape?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Q. As you sit here today --

1 MR. McCARTHY: Objection.

2 THE COURT: We don't know what the question is
3 going to be.

4 Q. As you sit here today, sir, you don't know
5 whether or not Emad Salem was actually issued that tape and
6 simply failed to return it, do you?

7 MR. McCARTHY: Now that the question is out --

8 THE COURT: Sustained.

9 I am going to remind the jurors, yet again, that
10 the evidence is the answers the witness gives, not the
11 questions the lawyers ask. Go ahead.

12 Q. Just to conclude, sir --

13 MR. McCARTHY: Objection to form.

14 MS. AMSTERDAM: Withdrawn, Mr. McCarthy.

15 THE COURT: Oh, come on.

16 Folks, this shouldn't happen until late in the
17 day.

18 MS. AMSTERDAM: I am not good at late, and I am
19 not on good at early. I'm sorry. But I am great at about
20 11:30.

21 Q. Sir, in answer to the questions to Mr. McCarthy
22 about sequence, your answer as to another agent having
23 possibly taken those tapes is an answer based on total
24 speculation --

25 THE COURT: Sustained.

1 Q. -- is it not?

2 THE COURT: Sustained.

3 MS. AMSTERDAM: Thank you.

4 THE COURT: Anyone else. Mr. Wasserman?

5 RE-CROSS-EXAMINATION

6 BY MR. WASSERMAN:

7 Q. Good morning, Detective.

8 A. Good morning.

9 Q. Yesterday you were asked the question, Detective
10 Napoli, did Mr. Salem know the exact date and time when the
11 arrests in this case were going to occur and you answered,
12 no, he did not.

13 Is that your testimony?

14 A. Yes, it is.

15 Q. Is it a fact that you and John Anticev were the
16 two agents who had the management handling, if you will, of
17 Emad Salem so that on a daily basis or on a continuing basis
18 you were in contact with him, is that correct?

19 A. Correct.

20 Q. In connection with that, you were in contact with
21 him on June 23, were you not?

22 A. Yes, I was.

23 Q. Didn't you have a conversation on June 23 with
24 him where you asked him if he was going to call out the
25 troops tonight, CM62?

1 A. If he was going to call out the troops?

2 Q. Yes.

3 A. Or was I going to call out the troops?

4 Q. Would it refresh your recollection if I showed
5 you a copy of it?

6 A. Yes, please.

7 MR. McCARTHY: Objection.

8 THE COURT: I will allow him to show him a copy.

9 MR. WASSERMAN: One second, your Honor, please.

10 Q. If you would look at the top here.

11 A. This?

12 Q. Yes, just read down the page to yourself.

13 Do you recall this conversation?

14 MR. McCARTHY: Your Honor, may I just get a look
15 at what's being shown.

16 MR. WASSERMAN: This is the government's --

17 THE COURT: Which exhibit, Mr. Wasserman?

18 MR. WASSERMAN: It is not marked as an exhibit.

19 I will have it marked for identification Hampton-El A. It
20 is Government's 62, updated 2/21/95.

21 Q. Do you recall that conversation?

22 A. Yes.

23 Q. That's you in this conversation, correct?

24 A. No, you are talking about where it says --

25 Q. In here, in a prior draft it's referred to as

1 "unidentified special agent."

2 Is that you or John Anticev?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q. Do you know who that agent is?

6 MR. McCARTHY: Objection.

7 THE COURT: I will let him answer if he knows.

8 MR. McCARTHY: Your Honor, may we approach on
9 this, please?

10 THE COURT: Yes.

11 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: I am not being shown what is being
3 shown to the witnesses. I have had no notice that this is
4 going on. More importantly, based on a court order that
5 these draft transcripts would not be used for any other
6 purpose other than trial preparation, we turned over all of
7 our draft transcripts from the nearly 18 to 19 months prior
8 to the time the trial started. This is not the first time
9 in the trial that the draft transcripts, which were turned
10 over pursuant to a court order which limited their use, are
11 being used in trial with the witnesses. I don't know that I
12 am going to object to it, but if I knew ahead of time that
13 it was going to happen --

14 THE COURT: First off, it can be used to refresh
15 recollection. But I don't want it to go any further than
16 that. I don't want any purported evidence stuck into
17 questions.

18 MR. WASSERMAN: It may be necessary, Judge, if I
19 may, to ask him questions concerning what the substance of
20 the conversation was, whether he knew the substance of the
21 conversation. He is saying that it was not his
22 conversation. So I am following up and asking him if he
23 knows --

24 THE COURT: The only way that he knows is if
25 somebody told him. That is hearsay. Let's get on with

1 this. If it is not his conversation, you are not going to
2 use it. If it is not his conversation, you are not going to
3 use it. Is there anything you don't understand about that?

4 MR. WASSERMAN: Yes, if I may, just, I am really
5 asking for guidance. I am not trying to test your patience.

6 THE COURT: You just got it.

7 MR. WASSERMAN: If he is the one who has
8 transmitted the message to Emad, whether it is his
9 conversation or not, I can ask him whether that was his
10 understanding. I can ask him that.

11 THE COURT: You can ask him whether he
12 transmitted a message to Emad about when the arrests were
13 going to take place.

14 MR. WASSERMAN: Yes.

15 THE COURT: You can ask him that question.

16 MR. McCARTHY: If I may, while we are here, so I
17 don't have to do this again, if they are going to use the
18 draft transcripts -- I mean, there are about 2,000
19 conversations in this case. I can't possibly be prepared,
20 given the space constraints that we have, to get my hands on
21 everything that is going to be shown to a witness.

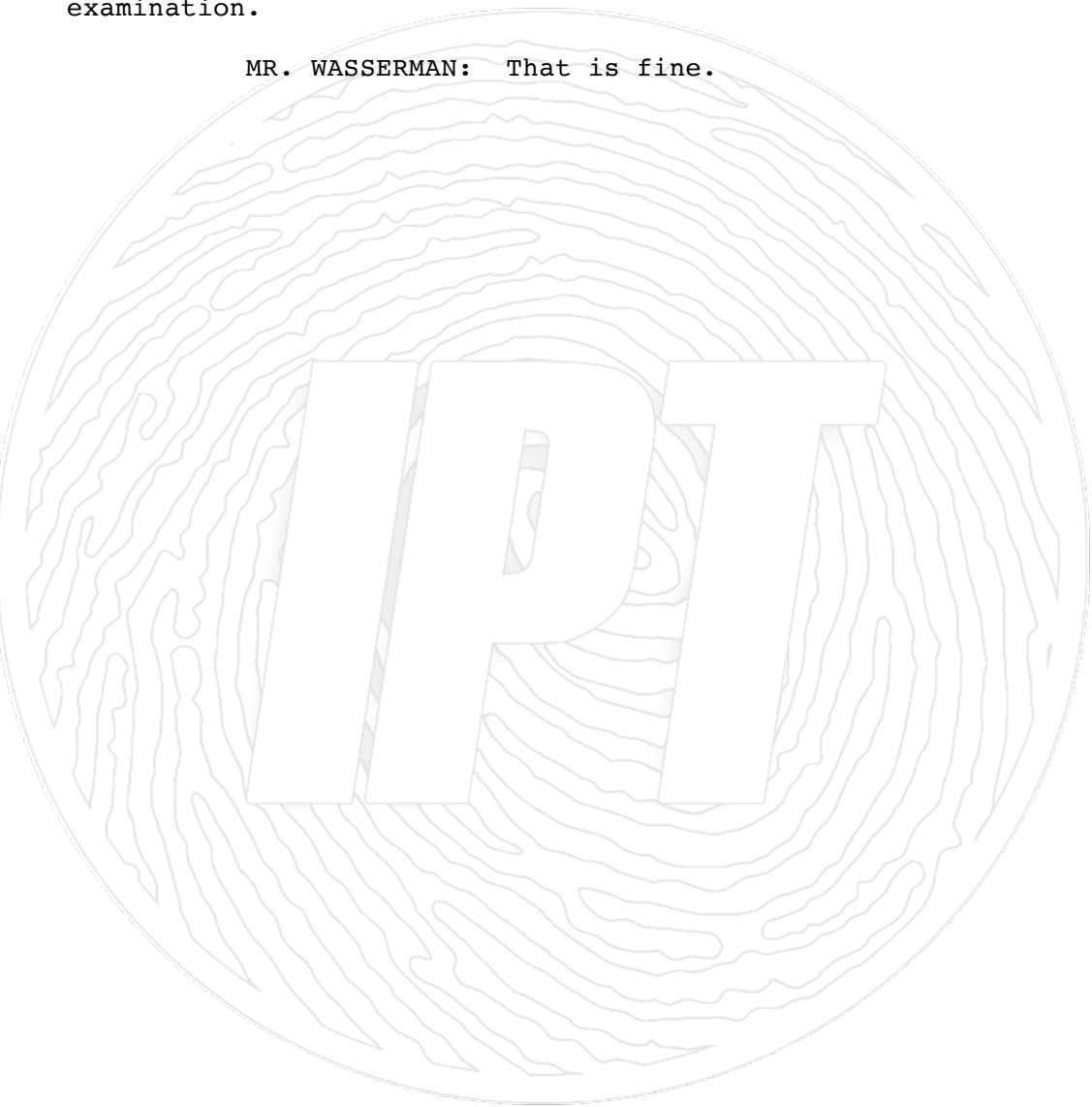
22 I would like to know, if they are going to use
23 our drafts in a way that was not contemplated when the court
24 order was sought and given, if they could tell me what
25 drafts they are going to use.

1 MR. SERRA: This is something that really should
2 be discussed in the presence of all counsel, and not just
3 this subset.

4 THE COURT: Let's just get through with this
5 examination.

6 MR. WASSERMAN: That is fine.

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1 (In open court)

2 BY MR. WASSERMAN:

3 Q. Would it be fair to say that you cannot recall
4 that it was not your conversation, that it would have been
5 John Anticev's?

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q. Do you know who had contact with --

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained. Get off on onto something
11 else.

12 MR. WASSERMAN: If I may.

13 THE COURT: Mr. Wasserman, you can ask the
14 question that we talked about at the side bar, no other.

15 Q. To your knowledge, did anybody tell Emad Salem
16 when the arrests were going to take place on June 23?

17 A. No.

18 Q. To your knowledge, did Emad Salem ask to be told
19 when the arrests were going to take place?

20 A. Yes, he did ask.

21 Q. Who did he ask?

22 A. Me.

23 Q. He asked you. Did he ask you over the phone?

24 A. Yes, he did.

25 Q. What did you tell him?

1 A. I told him there was no arrest planned and don't
2 worry about it, just get back to work.

3 Q. You did not tell him that you would let him know?

4 A. Yes, I told him if and when there was, I would
5 let him know.

6 Q. So what you are testifying to is that you did
7 make a promise to tell him when the arrests would take
8 place, right?

9 MR. McCARTHY: Objection.

10 Q. Correct?

11 A. Correct.

12 Q. And that as of the time of the conversation with
13 him on June 23, a decision had not been made, is that
14 correct?

15 A. I don't understand that.

16 Q. You had a conversation with him on the evening of
17 June 23 --

18 A. I understand that.

19 Q. And you promised to tell him when the arrests
20 would take place, correct?

21 A. Correct.

22 Q. Is it your testimony that at the time that you
23 had that conversation, did you know when the arrests would
24 take place?

25 A. Yes, I did.

1 Q. You did know?

2 A. I did know.

3 Q. Did you subsequently inform Emad Salem that the
4 arrests were going to take place?

5 A. No, I did not.

6 Q. So it came as a surprise to him?

7 A. Yes, it did.

8 MR. WASSERMAN: Thank you.

9 THE COURT: Any other cross-examination?
10 Redirect?

11 MR. MCCARTHY: No, thank you, your Honor.

12 THE COURT: You are excused. Thank you.

13 MR. FITZGERALD: Your Honor, the government calls
14 Bryant Semenza.

15 THE COURT:

16 Excuse me. Can I ask counsel not to talk or pass
17 papers while somebody is being sworn. Thank you.

18 BRYANT SEMENZA,

19 called as a witness by the government,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FITZGERALD:

23 Q. Would you also spell your first name.

24 A. Yes. B-R-Y-A-N-T.

25 Q. Tell the jury what you do for a living?

1 A. I am a supervisory deputy, United States Marshal.

2 Q. For how long have you been employed by the
3 Marshals Service?

4 A. Approximately 10 years.

5 Q. Let me approach you with what has been premarked
6 for identification as Government's Exhibits 5E and 5F.

7 Looking at 5E first, do you recognize what that is?

8 A. Yes, I do.

9 Q. Do you recognize who is in that picture?

10 A. Yes, I do.

11 Q. Who is it?

12 A. This is the photograph of Mohammad Salameh.

13 MR. FITZGERALD: Your Honor, I would offer
14 Government's Exhibit 5E.

15 MR. STAVIS: I have no objection, your Honor.

16 THE COURT: 5E is received without objection.
17 (Government Exhibit 5E received in evidence)

18 Q. Would you look at 5F.

19 A. Yes.

20 Q. Can you tell us, do you recognize the person
21 depicted in that photograph?

22 A. Yes, I do.

23 Q. Who is it?

24 A. This is Bilal Alkaisi.

25 Q. Is that a fair and accurate picture of

1 Mr. Alkaisi?

2 A. Yes, it is.

3 MR. FITZGERALD: Your Honor, I offer 5F.

4 MR. STAVIS: No objection, your Honor.

5 THE COURT: 5F is received without objection.

6 (Government's Exhibit 5F received in evidence)

7 Q. Now let me approach you with what have been
8 marked as 384C and 384D. Looking at 384C for
9 identification, do you recognize the person in the
10 photograph in the middle of the photograph, wearing a blue
11 jean jacket and glasses?

12 A. Yes, I do.

13 Q. Can you tell us for the record what his name is?

14 A. His name is Nidal Ayyad.

15 Q. Looking at the same photograph, what appears to
16 be a black pillar or structure to the right and to the right
17 of that is a person with a beard. Do you recognize that
18 person?

19 A. Yes, I do.

20 Q. What is his name?

21 A. That is Mohammad Salameh.

22 Q. Can you take a pen, and looking at 384C1 for
23 identification, which is a xerox photograph of the same
24 photo, the person with the glasses wearing the blue jeans
25 jacket, would you write his name above. And on the same

1 photograph, the person with the beard to the right of the
2 pillar, if you could write his name to the right.

3 And just one last photograph, 384D. Do you see a
4 person in eyeglasses and a blue jean jacket in the middle of
5 the photograph?

6 A. Yes.

7 Q. Who is that?

8 A. That is Nidal Ayyad.

9 Q. Turning to 384D-1, a xerox of the same
10 photograph, if you could just write his name above the arrow
11 on that photograph.

12 MR. FITZGERALD: Your Honor, I have no further
13 questions of this witness.

14 THE COURT: Cross, Mr. Stavis?

15 MR. STAVIS: Yes, your Honor.

16 CROSS-EXAMINATION

17 BY MR. STAVIS:

18 Q. Mr. Semenza, we have met before, haven't we?

19 A. Yes.

20 Q. We have spoken before?

21 A. That is correct.

22 Q. Almost about every day, right?

23 A. About almost every day.

24 Q. You are working here in court most days, aren't
25 you?

1 A. That is correct.

2 Q. That is also part of your duties as a United
3 States Marshal?

4 A. Yes, that is one of them.

5 Q. When was the first time you met Mohammad Salameh?

6 A. Back in 1993.

7 Q. How many times have you seen him?

8 A. During the World Trade Center bombing trial,
9 approximately every day.

10 Q. When did that trial take place?

11 A. That took place in 1993, the later part, around
12 September.

13 Q. The trial lasted approximately how long?

14 A. Till 1994, approximately April, 1994.

15 Q. Did you have any occasion to see Mr. Salameh in
16 1989?

17 A. No.

18 Q. How about in 1990?

19 A. No.

20 Q. How about in 1991?

21 A. No.

22 Q. And '92?

23 A. No.

24 Q. This photograph that is Exhibit 5E in evidence.

25 A. Yes.

1 Q. When was this photograph taken?

2 A. I am not certain.

3 Q. Do you have any idea?

4 A. No, I am not certain.

5 Q. Do you have any idea where this photograph was
6 taken?

7 A. No.

8 Q. Had you ever seen this photograph before today?

9 A. Yes.

10 Q. How about the photograph 5F in evidence? Do you
11 know when this photograph was taken?

12 A. No, I do not.

13 Q. Do you know where it was taken?

14 A. No.

15 Q. You were shown two other photographs that you
16 testified about, Government's Exhibits 384C and D.

17 A. Yes, that is right.

18 Q. Were you present when those photographs were
19 taken?

20 A. No, I was not.

21 Q. Do you know precisely when those photographs were
22 taken?

23 A. No, I do not.

24 MR. STAVIS: May I approach the witness, your
25 Honor, with Government's Exhibits 384C and D?

1 THE COURT: Yes.

2 Q. The man toward the middle of the photograph, you
3 have identified him as Nidal Ayyad, is that correct?

4 A. That is correct.

5 Q. To Mr. Ayyad's right and your left there is
6 another gentleman, isn't that correct?

7 A. Yes.

8 Q. And he has a beard?

9 A. Yes.

10 Q. Take a look at my client Mr. Nosair. Do you know
11 Mr. Nosair?

12 A. Yes, I do.

13 Q. You have seen him before, haven't you?

14 A. Yes.

15 Q. Does this person over here look like Mr. Nosair?

16 A. No.

17 Q. Approximately how tall is Mohammad Salameh?

18 A. Approximately 5,8, 5,9. Mohammad Salameh.

19 Q. Mohammad Salameh? How many times have you seen
20 Mohammad Salameh?

21 A. Every day.

22 Q. Like 100 times, right?

23 A. That is correct.

24 Q. He is 5 foot 8?

25 A. 5 foot 8, 5 foot 9, approximately.

1 Approximately.

2 Q. Couldn't be 5 foot 3, could he?

3 A. No.

4 Q. And you are sure of that?

5 A. Approximately.

6 Q. You are approximately sure?

7 A. Yes.

8 Q. Is Mohammad Salameh a big, strapping guy?

9 A. No.

10 Q. A little -- no. You wouldn't say he is a little
11 guy, would you?

12 A. He is slender built.

13 Q. Would it be fair to say that he is scrawny?

14 A. Slender built.

15 Q. Real thin?

16 A. Thin.

17 Q. Real thin?

18 A. I would say.

19 Q. But he is 5 foot 8 or 5 foot 9?

20 A. I would say roughly, yes.

21 Q. So you would say that he is about average height?

22 A. About average, yes.

23 Q. You wouldn't characterize him as being short,
24 would you?

25 A. I am 5,7, so that's short.

1 Q. The hundreds of times that you saw Mr. Salameh,
2 you being 5 foot 7 and he being 5 foot 8 or 5 foot 9, he is
3 taller than you, isn't he?

4 A. Slightly taller, yes.

5 MR. STAVIS: I would ask your Honor if I could
6 approach the witness with Government's Exhibits 207, 207A,
7 218, and 218A in evidence, and I would ask if the jury can
8 look at those exhibits in their binders.

9 THE COURT: They don't have those binders handy.
10 The jurors do not have those binders here. Do you want the
11 witness to step down?

12 MR. STAVIS: Yes, please, your Honor.

13 Q. Mr. Semenza, I am showing you what has been
14 marked as Government's Exhibit 207. If you are looking at
15 it from the jury, there is a man on the right-hand side of
16 the photograph. Do you see that man?

17 A. Yes.

18 THE COURT: Mr. Semenza, you are going to have to
19 talk into the microphone when you answer, because otherwise
20 the interpreters can't hear you.

21 THE WITNESS: OK.

22 THE COURT: Thank you.

23 Q. Can you identify that man in the right-hand side
24 of the photograph as the jury is looking, their right, this
25 man right over here?

1 A. It appears to be Mohammad Salameh.

2 Q. Drawing your attention to Government's Exhibit
3 207A, where it says Mohammad Salameh under him, do you see
4 that?

5 A. Yes, yes, I do.

6 Q. Would that be Mohammad Salameh?

7 A. As I said, it appears to be Mohammad Salameh,
8 yes.

9 Q. And he is speaking to a man in that picture,
10 Government's Exhibit 207?

11 A. Yes.

12 Q. Does he appear to be taller than that man or
13 shorter than that man?

14 A. I can't tell in this photograph. There is a
15 vehicle blocking the feet there. I don't know if this man
16 in the doorway is standing on a pedestal or Mr. Salameh is
17 standing off the curb. I am uncertain. There is a vehicle
18 in the way.

19 Q. Do you see a pedestal anywhere in this photograph
20 Government's Exhibit 207?

21 A. It's a doorway. If it steps up, I am uncertain.

22 Q. Do you know if anybody was wearing elevator
23 shoes, anything like that?

24 A. I do not know.

25 Q. Not that I know.

1 Q. I am now showing you Government's Exhibit 218.

2 Do we see any pedestals or anything like that in that
3 photograph, Mr. Semenza?

4 A. No, we do not.

5 Q. Drawing your attention to this man as the jury is
6 looking at it on the far right, do you see that man?

7 A. Yes, I do.

8 Q. Does that man appear taller than everyone else or
9 shorter than everyone else?

10 A. The man to the right or left?

11 Q. I will withdraw that question. Can you identify
12 the man on the far right of the photograph?

13 A. Yes. That is Mohammad Salameh.

14 Q. Does that man appear to be taller than everyone
15 else or shorter than everyone else?

16 A. He appears to be shorter.

17 Q. Any pedestals around in this picture, Mr.
18 Semenza?

19 A. No.

20 Q. Thank you. Mr. Semenza, when were you first
21 asked to be a witness in this trial?

22 A. Yesterday.

23 MR. STAVIS: I have no further questions, your
24 Honor.

25 THE COURT: Anyone else, cross? No. Any

1 redirect?

2 MR. FITZGERALD: Yes, briefly, Judge.

3 THE COURT: Go ahead.

4 REDIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Mr. Semenza, as you sit here today, do you know
7 where the photograph of Mohammad Salameh that you
8 identified, the single picture, came from?

9 A. Where it was taken?

10 Q. Yes.

11 A. No, I do not know where it was taken.

12 Q. Let me show you what we will mark for
13 identification as Government's Exhibit 5G. I ask you to
14 look at 5G and compare it to 5E.

15 MR. STAVIS: I have an objection, your Honor.

16 THE COURT: Overruled.

17 Q. How does the photograph in 5G compare with the
18 photograph in 5E?

19 MR. STAVIS: Objection, your Honor. 5G is not in
20 evidence.

21 THE COURT: Overruled.

22 A. Barring the difference in size, they are
23 identical.

24 Q. Size of the photograph?

25 A. That is correct.

1 Q. If you look at --

2 MR. FITZGERALD: Your Honor, if I could ask the
3 jurors to look at 5E, they are in the books for today, the
4 exhibits that begin 5 to 26. That will be Government's
5 Exhibit 5E.

6 Q. Looking at 5E, Mr. Semenza, is that the
7 photograph of Mohammad Salameh?

8 A. Yes, it is.

9 Q. Is the background color for that photograph blue?

10 A. Yes, it is correct.

11 Q. If you look at Mr. Salameh's right ear, is there
12 a little imperfection on the photograph -- on the left side
13 of the photograph, is there a little black spot?

14 A. Yes.

15 Q. If you can compare that to the photograph in 5G,
16 is that little imperfection there as well?

17 A. Yes, it is.

18 Q. Can you tell us what 5G is?

19 A. 5G --

20 MR. STAVIS: Objection, your Honor.

21 THE COURT: Overruled.

22 A. 5G is a New York State driver's license
23 identification card.

24 Q. And it has that photograph 5E on it in a smaller
25 size?

1 A. Yes, it does. It is a picture ID.

2 Q. Can you tell us the name on the driver's license?

3 A. Mohammed A Salameh.

4 Q. Does the driver's license list a height?

5 A. Yes, it does.

6 Q. What is that height?

7 A. 5, 9.

8 Q. Had you seen that driver's license before you
9 came into court today?

10 A. No, I did not.

11 MR. FITZGERALD: Nothing further.

12 THE COURT: Mr. Ricco representing Mr.
13 El-Gabrowny.

14 MR. FITZGERALD: If I may interrupt, I forgot to
15 offer 5G.

16 MR. RICCO: Your Honor, I just wanted to voir
17 dire on 5G. May I approach the witness?

18 THE COURT: Yes, you may.

19 VOIR DIRE EXAMINATION

20 BY MR. RICCO:

21 Q. 5G is a New York State driver's license, isn't
22 that correct?

23 A. That is correct.

24 Q. Standard license?

25 A. Standard license.

1 Q. Nothing unusual about it other than it's a little
2 tattered, right?

3 A. What I can see of it right now.

4 Q. The license has different information on it.
5 Some of it you testified to, right?

6 A. That is correct.

7 Q. One is his height, isn't that correct?

8 A. That is correct.

9 Q. Also, the driver's license -- withdrawn.

10 MR. RICCO: This is not a driver's license. You
11 have the wrong one. Your Honor, technically --

12 THE COURT: You want to come up?

13 MR. RICCO: Yes.

14 (Discussion off the record at the side bar)

15 MR. FITZGERALD: Your Honor, I will confirm on
16 the record that Mr. Ricco is correct. 5G is titled
17 identification card, being for New York State. 5H is the
18 driver's license.

19 THE COURT: Which is what you are marking now, or
20 designating now?

21 MR. FITZGERALD: Yes. I am designating the
22 driver's license as 5H and the document that was 5G remains
23 5G, but we will clarify that as an identification card.

24 MR. RICCO: Your Honor, I will voir dire on both
25 at the same time.

1 THE COURT: Go ahead.

2 BY MR. RICCO:

3 Q. If we go back to 5G this time, it is an
4 identification card, right?

5 A. That is correct.

6 Q. Basically that is a document that is issued by
7 the New York State Department of Motor Vehicles for people
8 who need identification similar to a driver's license but
9 they don't have a driver's license, isn't that correct?

10 A. That is correct.

11 Q. That document has information on it like height
12 and weight, address, and an issuance date, isn't that
13 correct?

14 A. That is correct.

15 Q. You testified earlier about the height that was
16 set forth on this card.

17 A. That is correct.

18 Q. And there is also other information that is on
19 this card. For example, the person who is depicted in the
20 photograph identified themselves as Mohammad Salameh, isn't
21 that correct?

22 A. That is correct.

23 Q. And they gave an address, isn't that correct?

24 A. That is correct.

25 Q. That address is 36-05 30th Street, apartment 6,

1 Long Island City, New York, isn't that right?

2 A. That is correct.

3 Q. You don't know whether or not that is his address
4 or not, that is just the address that appears on the card,
5 isn't that correct?

6 A. That is correct.

7 Q. And the issuance date of this card is?

8 A. February 6, 1992.

9 Q. When we look at 5H, 5H is a New York State
10 driver's license, isn't that correct?

11 A. That is correct.

12 Q. And that person identified themselves as?

13 A. Mohammed A. Salameh.

14 Q. This time he put his address -- well, the address
15 that appears on the driver's license is what?

16 A. 57 Prospect Park Southwest, apartment 4C,
17 Brooklyn, New York.

18 Q. And his height is still?

19 A. 5, 9.

20 Q. The date of the issuance of this New York State
21 driver's license?

22 A. Is October 5, 1992.

23 Q. The signatures on the bottom of the document, do
24 they appear the same to you? More or less?

25 A. More or less, yes, they do.

1 Q. Mr. Fitzgerald asked you some questions about
2 this and I want to be clear about something. The
3 information that is provided on here, like the address and
4 the height and weight, you are not able to tell us whether
5 or not that is his actual address, can you?

6 A. No, I cannot.

7 MR. RICCO: I have no further questions. Thank
8 you very much.

9 MR. STAVIS: I have one further question.

10 THE COURT: On voir dire?

11 MR. STAVIS: No.

12 THE COURT: Mr. Ricco, do you have a position
13 with regard to --

14 MR. RICCO: No objection to G and H.

15 THE COURT: Mr. Stavis?

16 BY MR. STAVIS:

17 Q. Did you see that driver's license prior to
18 testifying here today?

19 A. No, I did not.

20 MR. STAVIS: No further questions.

21 THE COURT: G and H are received without
22 objection, 5G and H.

23 (Government's Exhibits 5G and 5H received in
24 evidence)

25 MR. FITZGERALD: Nothing further.

1 THE COURT: You are excused.

2 MR. FITZGERALD: The government calls Detective
3 Thomas Corrigan.

4 THOMAS F. CORRIGAN,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FITZGERALD:

9 Q. Detective Corrigan, let me approach you with what
10 has been received in evidence as Government Exhibit 5 and
11 what has been marked for identification as Government's
12 Exhibits 5C and 5D. Have you seen 5C and 5D prior to
13 cupping coming to court today?

14 A. Yes, sir, I have.

15 Q. And have you reviewed Government's Exhibit 5?

16 A. The videotape?

17 Q. Yes.

18 A. Yes, sir.

19 Q. 5C and 5D, is it fair to say, are photographs, is
20 that correct?

21 A. That is correct, sir.

22 Q. Have you compared those photographs with the
23 video that is Government's Exhibit 5 in evidence?

24 A. Yes, sir, I have.

25 Q. Can you tell us whether or not 5C and 5D is still

1 shots, fair and accurate still shots of what appears at
2 moments in time in the video?

3 A. Yes, they are fair and accurate.

4 MR. FITZGERALD: Your Honor, I would offer
5 Government's Exhibits 5C and 5D.

6 MR. STAVIS: May I have a voir dire, your Honor?

7 THE COURT: Yes, you may.

8 MR. STAVIS: May I approach, your Honor?

9 THE COURT: Yes.

10 VOIR-DIRE EXAMINATION

11 BY MR. STAVIS:

12 Q. Good morning. Are you the one who made the still
13 photos, 5C and 5D?

14 A. No, sir, I am not.

15 Q. Were you present when these still photos 5C and
16 5D were made?

17 A. No, sir, I wasn't.

18 Q. Do you know when the still photos 5C and 5D were
19 made?

20 A. No, sir.

21 Q. Did you have an opportunity to analyze
22 Government's Exhibit 5 -- that's the video -- frame by
23 frame?

24 A. I analyzed it frame by frame during the time
25 period that these photo shots were taken. If you are asking

1 me if I reviewed the whole tape frame by frame, the answer
2 is no.

3 Q. Are you able to tell us what frames 5C and 5D
4 come from?

5 A. Which frame numbers?

6 Q. Yes.

7 A. No, sir.

8 MR. STAVIS: I have an objection, your Honor.

9 THE COURT: If it goes to weight it is overruled.
10 5C and 5D received.

11 (Government's Exhibits 5C and 5D were received in
12 evidence)

13 MR. FITZGERALD: Your Honor, if I could ask the
14 jurors to turn their attention to Government's Exhibits 5C
15 and 5D, which should be in that same book, the 5 through 26
16 exhibit book.

17 BY MR. FITZGERALD:

18 Q. Detective Corrigan, in 25C if I could direct your
19 attention to the person in the middle with a beard and what
20 appears to be a brown jacket on and some, what appears to be
21 a white set of papers or something like that, have you
22 reviewed that person in the photograph to the video to see
23 what he is doing at this time?

24 A. Yes, sir, I have.

25 Q. Can you tell us where he is going, which

1 direction?

2 A. If you look from the podium looking towards the
3 back of the ballroom, he is moving from the right towards
4 the left.

5 Q. If I could ask you to look at Government's
6 Exhibit 5D, the other photograph, and if you look at the far
7 right there is a woman with a red hat, and above her there
8 is a very dark picture of a man standing. Do you see that
9 person?

10 A. Yes, sir.

11 Q. When you review the video, what does the man
12 standing above the woman with the red hat do?

13 A. What happens is, he rises up, turns towards the
14 middle of the -- towards from the right to the left, same
15 from the podium, looking from the podium towards the back of
16 the ballroom. He turns from the right to the left and
17 starts to move towards the middle of the ballroom. At that
18 point the video gets cut off.

19 MR. FITZGERALD: Your Honor, at this time I would
20 like to play that portion of Government's Exhibit 5, and
21 invite the jurors' attention first to the man in the brown
22 jacket in 5C, and ask them to compare the man in the brown
23 jacket in 5C with the person depicted in Government's
24 Exhibit 5E, which Deputy Marshal Semenza just identified.

25 Your Honor, I think we are about to begin to play

1 the video, and invite people's attention to the man in the
2 brown jacket in 5C as compared to the person depicted in 5D.

3 (Videotape played)

4 MR. FITZGERALD: You can stop it there and rewind
5 it.

6 Your Honor, if we could now replay that same
7 portion again and invite the jurors' attention, to compare
8 the person in 5D, the man standing above the woman with the
9 red hat, and compare that person with the photograph in 5F
10 Deputy Marshal Semenza just identified.

11 (Videotape played)

12 (Continued on next page)

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1 MR. FITZGERALD: If I could just ask Mr. Liguori
2 to play it and stop at the person in the brown jacket.

3 (Videotape played)

4 MR. FITZGERALD: I have nothing further, Judge.

5 MR. STAVIS: Your Honor, I would ask that the
6 jury be given Government's Exhibit 5E, Government's Exhibit
7 207, Government's Exhibit 218, and Government's Exhibit 5 --
8 which one is that?

9 MR. FITZGERALD: F this will be. F.

10 No objection, Judge. I would just like to look
11 at them.

12 THE COURT: Do you want to come up for just a
13 minute.

14 MR. STAVIS: Yes, your Honor.

15 (Continued on next page)

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1 (At the side bar)

2 THE COURT: If you want them to have 207 and 318
3 in front of them, then we are going to have to get the
4 books. I would suggest we take a break. If you want to do
5 something in front of the jury, you can. It is your choice.

6 MR. STAVIS: I was going to circulate these
7 photographs to the jury.

8 THE COURT: And have them look at them one by
9 one?

10 MR. STAVIS: Yes, and pass them and then have
11 them look at the whole videotape -- not the whole videotape,
12 your Honor, the end portion.

13 THE COURT: The portion that he played?

14 MR. STAVIS: Yes. Perhaps we should take the
15 break and get them the books.

16 THE COURT: Let's take the breaks and get the
17 books and then they can do it individually. OK?

18 MR. STAVIS: OK.

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20 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, we are going to
3 take a short break. Please don't discuss the case. Leave
4 your notes and other materials behind, and we will resume in
5 a few minutes.

6 (The jury was excused)

7 THE COURT: You may step down.

8 (The witness was excused)

9 (Recess)

10 (Jury not present)

11 THE COURT: Yes.

12 MR. KHUZAMI: Your Honor, just a brief
13 application regarding matters other than what the witness is
14 testifying about. With respect to the testimony of
15 Detective Solowsky, counsel for the government and counsel
16 for Mr. Nosair I think have agreed that they will withdraw
17 their objection to the testimony and the testimony will
18 remain as is. The Court should probably give some
19 instruction because I believe we left it that you indicated
20 to them that you would instruct --

21 MS. STEWART: I can't understand him, Judge.

22 THE COURT: What he said is that he and counsel,
23 that is government counsel and counsel for Mr. Nosair have
24 reached agreement that the testimony of Detective Solowsky
25 can stay as it was.

1 I guess the question is when it is appropriate
2 for me to instruct the jury on that and how to do it.

3 MR. KHUZAMI: In terms of timing, we would also
4 request after the conclusion of Detective Corrigan's
5 testimony to be permitted to read three stipulations between
6 the government and Mr. Nosair. That might be an appropriate
7 time.

8 THE COURT: Fine.

9 MR. KHUZAMI: I believe the record was left that
10 you indicated you would instruct them as to what weight, if
11 any, to give Detective Solowsky's testimony. Perhaps
12 nothing more than telling them that he should treat it as
13 the testimony of any other witness would be appropriate.

14 MR. PATEL: Your Honor, I would ask you to
15 consider, as to Detective Solowsky, that it may not be
16 necessary, at this time, to give any instruction at all.
17 They heard the testimony at that time, and your Honor
18 advising that you would inform them later as to how much and
19 what they could consider. I assume you will do that at the
20 end of the case. I am not sure that any special instruction
21 is needed.

22 THE COURT: I think we have spent more time than
23 it is going to take me to tell them about this. Why don't I
24 just tell them if anybody was wondering about Solowsky's
25 testimony, it remains in the record, and they may consider

1 it when it comes time for them to consider the other
2 evidence in the case.

3 MS. STEWART: Your Honor.

4 THE COURT: Yes.

5 MS. STEWART: Before Mr. Salem comes into the
6 courtroom, there is a matter I would like to take up with
7 the court before he is brought in.

8 THE COURT: Is this something you want to take up
9 privately or you want to take it up here?

10 MS. STEWART: In court.

11 THE COURT: How close are we to that?

12 MR. MCCARTHY: Soon.

13 THE COURT: Soon. All right.

14 Since you are on your feet, why don't you tell me
15 what it is.

16 MS. STEWART: We would request that Mr. Salem be
17 sworn using the Koran. We have some case law with regard to
18 that.

19 THE COURT: We don't use any scripture here at
20 all.

21 MS. STEWART: In this case, Judge, since the
22 government has conceded in its opening that Mr. Salem lied
23 under oath once before, and since, as I understand it, the
24 rule -- that is why I want to do it in advance, the rule
25 provides for -- let me get it right.

1 THE COURT: I also invite your attention to Rule
2 610, but go ahead.

3 MS. STEWART: Yes, Judge. There is a tension
4 between 610 and Rule 603. But 603 does say that in a form
5 calculated to awaken the witness' presidents conscience and
6 impress the witness with the duty to do so, tell the truth.

7 We would submit and we would ask for a voir dire
8 of the witness as to whether he has any objection to
9 swearing on the Koran.

10 MR. McCARTHY: I think they can cross-examine on
11 that, your Honor, but he is not any less prosecutable if he
12 takes the oath as it's been administered to every witness.
13 I think it is sort of late in the day for this. The guy is
14 about to hit the stand in a matter of minutes to an hour.

15 THE COURT: I suppose there are some things that
16 wouldn't get done if it weren't for the last minute.

17 MR. McCARTHY: I mean, Ms. Stewart supports her
18 argument saying there is case support for it.

19 MS. STEWART: I will give you the case.

20 MR. McCARTHY: Here I am minutes before the guy
21 is supposed to get on the stand, and I am going to hear for
22 the first time that there are cases about whether he ought
23 to be sworn using the Koran.

24 MS. STEWART: I still have three intelligence
25 tapes in Arabic to be translated, so we shouldn't get into

1 this kind of a conflict.

2 THE COURT: Do you have a copy of the case?

3 MS. STEWART: It is U.S. v. Kalaydjian, a Second
4 Circuit case. It is a West law printout.

5 THE COURT: That is all right. As long as it is
6 in English.

7 (Pause)

8 THE COURT: I don't understand how you can base
9 an argument on this. I am going to give this to the
10 government, but -- let me give the case to the government.
11 As I read it, it cuts against your position.

12 MS. STEWART: But it does also, in dicta at
13 least, say if the witness were voir dired on this issue
14 outside the presence of the jury -- it is an issue similar
15 to, I think, any person that one might believe might not
16 understand the oath and clearly Mr. Salem didn't understand
17 the oath, as Mr. Khuzami said in his opening statement. He
18 took an oath to tell the truth, and, I am quoting Mr.
19 Khuzami, and he lied then.

20 THE COURT: That doesn't say he didn't understand
21 it.

22 MS. STEWART: Well, he didn't understand
23 something.

24 THE COURT: No, he understood it, and, to use the
25 the neologism, he blew it off. He lied, right?

1 MS. STEWART: My position is he would not blow
2 off the Koran.

3 THE COURT: I am sure he wouldn't -- actually, I
4 don't know whether he would or not. I don't know the man.
5 But Rule 603 says no. I don't read this case to say yes.

6 MS. STEWART: I am not asking to inquire into his
7 religious beliefs, I would merely ask him if he had an
8 objection to swearing on the Koran.

9 THE COURT: But that necessarily would entail an
10 examination of his religious beliefs, the Koran being a book
11 associated with those beliefs.

12 MS. STEWART: That is the only question I would
13 want to ask him. It is a yes or no answer.

14 THE COURT: You are saying all you want to get
15 him is a little bit pregnant, and the answer to that is no.
16 I would like to give the case to the government to make sure
17 that I am reading it right. I think I am. But let me hand
18 it down and let them look at it.

19 MR. JACOBS: Judge, may the report reflect that I
20 am back.

21 THE COURT: Excuse me?

22 MR. JACOBS: I'm back.

23 THE COURT: Oh, good.

24 MR. JACOBS: I thought Detective Napoli would
25 still be here, Judge, I was hoping he would be.

1 (Pause)

2 THE COURT: Mr. McCarthy?

3 MR. McCARTHY: Your Honor, I'm sorry. I have
4 looked through the case quickly. I don't think it supports
5 Ms. Stewart's position.

6 MS. STEWART: I am afraid I can't hear Mr.
7 McCarthy, Judge.

8 MR. McCARTHY: I'm sorry. I have looked through
9 the case, at least I have skimmed through it. I don't think
10 it supports Ms. Stewart's position. I think it is just a
11 ploy actually to set up some cross-examination which the
12 case probably, if it was the authority that applied here,
13 wouldn't permit.

14 MS. STEWART: I am losing him again, Judge.

15 MR. McCARTHY: I apologize. In any event, we
16 would object. I don't see any reason why Salem should be
17 sworn any differently than any other witness in the case.

18 THE COURT: He will be sworn in the same way.
19 On another subject relating to him, the two-page
20 psychological evaluation that you gave me.

21 MR. McCARTHY: Yes, your Honor.

22 THE COURT: The following portions of that are
23 going to be turned over. Do you by chance have it?

24 MR. McCARTHY: I don't have it in front of me,
25 your Honor, but I will get it at lunchtime.

1 THE COURT: All right. First off, it is a
2 document that is less than two pages, but on the first page
3 there is a section headed "Prognosis," the part beginning
4 with the sentence, "Emad has two children."

5 MR. McCARTHY: Yes.

6 THE COURT: Through the remainder of that
7 paragraph and into the next paragraph, ending with the
8 words, "jewelry business."

9 MR. McCARTHY: I'm sorry, your Honor.

10 THE COURT: Ending with the words "jewelry
11 business" are to be turned over. That omits the last
12 sentence of that paragraph and everything else. Everything
13 else is evaluative and need not be turned over.

14 MR. McCARTHY: I understand, your Honor.

15 THE COURT: OK.

16 MR. WASSERMAN: May I be heard briefly on that?
17 We have received as 3500 material a previous
18 psychological examination of Emad Salem, in which he tested
19 as an 81 IQ. If there is an IQ test in his evaluation by
20 the marshal, I would ask that it be turned over.

21 MR. McCARTHY: Your Honor knows what is in the
22 report.

23 THE COURT: I know what is in the report. That
24 is all I have seen is the two-page report. I am not going
25 to direct that any IQ tests be turned over.

1 MR. WASSERMAN: Not even for the point of
2 comparing it to what he had tested two years ago?

3 THE COURT: Let's shorten this right now. No.
4 OK? Good. Let's continue. Let's get the jury.

5 MS. AMSTERDAM: I'm sorry. I just want to make
6 sure that it is clear that your Honor understands what
7 Mr. Wasserman's point was. It wasn't because we wanted to
8 establish that he had an 81 or a 95 or a 103 IQ. There is a
9 suggestion that he may have tricked the person giving the
10 test and got an 81 IQ in aid of some other litigation that
11 he was doing.

12 THE COURT: This was earlier on?

13 MS. AMSTERDAM: Yes.

14 THE COURT: Suffice it to say there is nothing in
15 here that suggests any evaluation indicating that he has an
16 81 IQ.

17 MS. AMSTERDAM: I didn't want your Honor to think
18 that it was simply for purposes of --

19 THE COURT: I am glad you clarified it, but I
20 will tell you that there is nothing in the evaluative
21 section of the report that suggests that he has a subnormal
22 intelligence. Nothing.

23 MS. AMSTERDAM: Thank you, your Honor.

24

25 (Continued on next page)

1 THOMAS CORRIGAN, resumed.

2 (Jury present)

3 THE COURT: Mr. Stavis?

4 CROSS-EXAMINATION

5 BY MR. STAVIS:

6 Q. Detective Corrigan, you testified concerning 5C
7 and 5D. May I just ask you if I could have copies of that
8 because I don't have that in front of me.

9 MR. STAVIS: Are these in the jurors' books?

10 MR. McCARTHY: Yes.

11 MR. STAVIS: I would ask if the jury could open
12 up to 5C and D.

13 THE COURT: OK. 5C and D.

14 Q. Were 5C and D made in the FBI laboratory?

15 A. Not in the laboratory. I believe they were made
16 in the audio-visual room at 26 Federal Plaza.

17 Q. Do you know whether the FBI laboratory had
18 anything to do with 5C and 5D?

19 A. They might have, but I am not sure.

20 Q. I would ask if the witness could come off the
21 stand. I want to show him --

22 THE COURT: Remember to use the microphone.

23 MR. STAVIS: Yes, your Honor.

24 You are here already. OK.

25 THE COURT: Why doesn't the witness stand in the

1 center of the jury box. There is a microphone there that
2 you can use. Turn it toward you.

3 Q. Detective Corrigan, I am showing you 5D and 5F.
4 On 5D, on the jury's far right-hand side, there
5 appears to be the form of a man there, do you see that?

6 A. Yes, sir.

7 Q. Now, that picture is pretty dark, isn't it?

8 A. Yes, sir, it is.

9 THE COURT: Excuse me, when you answer him, could
10 you also talk into that microphone. Just move it around.

11 THE WITNESS: I'm sorry, your Honor.

12 Q. That man over there in 5D, on the jury's far
13 right-hand side, his image is fairly dark, isn't it?

14 A. That's correct, sir.

15 Q. Comparing that man on 5D with the man in picture
16 5F, OK --

17 A. Yes, sir.

18 Q. -- if you look at them, does the man in 5D appear
19 to have a nose?

20 A. No, sir.

21 Q. Does the man in 5F have a nose?

22 A. Yes, sir.

23 Q. Does the man in 5D appear to have any eyes?

24 A. It looks like sockets, but they look dark, sir.

25 Q. But we can see the man's eyes in 5F?

1 A. Yes, sir.

2 Q. Anything else that we could see from the face or
3 ears of 5F in comparison with 5D?

4 A. It appears that he has a beard.

5 Q. That is about it, right?

6 A. That's correct, sir.

7 Q. OK please resume your seat.

8 (The witness resumed the stand)

9 Q. Detective Corrigan, any photograph is made up of
10 something called pixels, is that correct?

11 A. I wouldn't know that, sir.

12 Q. When you take a photograph, it's made up of
13 little dots, and then if you blow it up, you can see more of
14 those dots and that's how you lose some of the image,
15 correct?

16 MR. FITZGERALD: Objection, your Honor.

17 THE COURT: I will let him answer if he knows.

18 A. I don't know anything about photography, the
19 developing of photography, I should say.

20 Q. Are you aware of a computer program known as
21 Video Capture?

22 A. I don't know that name. It might be another name
23 that I know it as.

24 Q. That is where you take a video and you put the
25 entire video on a computer, correct?

1 A. That's correct, sir.

2 Q. Then the computer takes the video and then from
3 the computer you can make a still photograph of a certain
4 frame, is that correct?

5 A. That's correct, sir.

6 Q. Then you can take that frame -- withdrawn.
7 That frame then has a separate computer file,
8 correct?

9 A. I wouldn't know that, sir.

10 Q. You can take that frame off of the computer and
11 then you can enhance that frame, is that correct?

12 A. I wouldn't know, sir.

13 Q. Do you know if you can make by computer -- I will
14 be a little less technical.

15 A. Yes, please.

16 Q. Can you take a computer and can you make a
17 picture lighter?

18 A. Yes, sir, you can.

19 Q. Can you take a computer and can you make a
20 picture darker?

21 A. Yes, sir, you can.

22 Q. Can you take a computer and make a picture
23 sharper?

24 A. Yes, sir, you can.

25 Q. Was that done in this case?

1 A. I don't know, sir.

2 Q. Detective Corrigan, when were you first asked to
3 testify about Exhibits 5C and 5D?

4 A. Approximately four or five days ago, sir.

5 Q. Four or five days ago?

6 A. Yes, sir. That's correct.

7 Q. Which U.S. Attorney advised you that you would be
8 testifying in four or five days?

9 A. Mr. Fitzgerald.

10 Q. At the time Mr. Fitzgerald showed you these
11 photographs, 5C and 5D, taken off the video?

12 A. I had seen those photographs previous to that,
13 but, yes, I saw them again four or five days ago.

14 Q. You looked at the video at that time?

15 A. I have been watching that video for a while now,
16 sir. So I reviewed it again probably four or five days ago,
17 as I did last night. But I probably saw that video, I don't
18 know, maybe nine or ten, eleven months ago.

19 Q. But four or five days ago when you first learned
20 that you were going to be testifying, you looked at the
21 video again, correct?

22 A. Yes, sir.

23 Q. And the pictures?

24 A. That's correct, sir.

25 Q. You discussed your testimony with Mr. Fitzgerald

1 at that time, didn't you?

2 A. Yes, sir, I did.

3 MR. STAVIS: Your Honor, at this time I would ask
4 the jury to open up their old, old notebooks to Government's
5 Exhibit 207 and 218. If they can wipe the dust off of
6 those, I would ask if we can cue up the end of videotape
7 Government's Exhibit 5. Let's start with Government's
8 Exhibit 207, if you could all turn to Government's Exhibit
9 207.

10 (Videotape played)

11 MR. STAVIS: Wait. We have to move back from
12 here.

13 Are we at 207? I would now ask the jury to focus
14 their attention on the man in the right-hand corner on
15 Government's Exhibit 207 and I would ask you to "roll 'em."

16 (Videotape played)

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1 MR. STAVIS: You can stop there, rewind. Can you
2 stop, rewind and freeze the frame when you come to that man
3 in the brown coat and the brown beard who is depicted in
4 Government's Exhibit 5C.

5 May I approach the witness, your Honor?

6 THE COURT: Yes.

7 MR. STAVIS: Keep this screen.

8 Q. Detective Corrigan, Government's Exhibit 207, you
9 previously testified that the man in the right of that
10 photograph is Mohammad Salameh, correct?

11 A. That is correct, sir.

12 MR. STAVIS: Thank you. Can we rewind? I would
13 ask the jury to flip over the pages of the old, old notebook
14 to Government's Exhibit 218.

15 May I approach the witness, your Honor?

16 THE COURT: Yes.

17 Q. Detective Corrigan, I am showing you Government's
18 Exhibit 218. You previously identified the man in the far
19 right as Mohammad Salameh, is that correct?

20 A. That is correct, sir.

21 Q. Does he appear to be shorter than the other
22 people in that photograph?

23 A. Yes, sir, he does.

24 MR. STAVIS: I would now ask the jury to direct
25 their attention to the man on the far right, the short man

1 on the far right identified as Mohammad Salameh, and I would
2 ask that you run the film from start until finish.

3 (Videotape played)

4 MR. STAVIS: I would ask you to stop the tape and
5 rewind, if you would be so kind, and then play it again and
6 focus in on that man with the brown jacket and freeze that
7 frame.

8 I have no further questions of this witness, your
9 Honor.

10 THE COURT: Anyone else? No? Any redirect?

11 MR. FITZGERALD: No, Judge.

12 THE COURT: You are excused.

13 (Witness excused)

14 MR. KHUZAMI: At this time the government
15 requests permission to read three stipulations.

16 THE COURT: Ladies and gentlemen, these are
17 agreements between the government and the defense as to
18 certain facts or certain testimony, and you are to accept
19 the matters provided in these stipulations as if they had
20 been proved in testimony at trial, and give them whatever
21 weight you think they deserve.

22 Go ahead.

23 MR. KHUZAMI: It is hereby stipulated and agreed
24 by and among the United States of America and El Sayyid
25 Nosair, by their respective counsel, that Government's

1 Exhibit 36 contains keys found in a pocket of the pants cut
2 away from El Sayyid Nosair prior to his being taken by
3 ambulance to Bellevue Hospital --

4 THE COURT: I am sorry. Which exhibit is that?

5 MR. KHUZAMI: 36 -- to Bellevue Hospital on
6 November 5, 1990. The parties agree that the keys are
7 admissible. The parties further stipulate that those keys
8 are not the keys that fit the 1983 Oldsmobile, New Jersey
9 license plate number FMR22X, which was registered to Mr.
10 Nosair on November 5, 1990.

11 2. Government's Exhibit 24, the medical records
12 of Irving Franklin, includes a one-page diagram given to
13 Detective Maximo Guerra, G-U-E-R-R-A, of the New York Police
14 Department, by Dr. Robins, R-O-B-I-N-S, of Bellevue Hospital
15 on November 5, 1990, which indicates the trajectory of the
16 bullet that passed through Mr. Franklin's leg that evening.
17 The parties agree that the diagram is admissible.

18 Lastly, Nosair Defense Exhibit HH is a
19 certificate of incorporation for the Afghan Refugee Services
20 center, dated November 18, 1987. The parties agree that the
21 certificate is admissible.

22 Thank you.

23 THE COURT: Just to clear up one other matter,
24 after Detective Solowsky testified, I told you that we would
25 consider at a later time how much of his testimony you could

1 consider. I will tell you that all of his testimony can be
2 considered and that you can obviously evaluate it when it
3 comes time for you to evaluate the evidence in this case,
4 which will be at the end of the case.

5 MR. McCARTHY: Your Honor, the government calls
6 Gamal Abdel-Hafiz.

7 GAMAL ABDEL-HAFIZ,
8 called as a witness by the government,
9 having been duly sworn, testified as follows:

10 MR. McCARTHY: May I?

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MR. McCARTHY:

14 Q. Mr. Abdel-Hafiz, good morning.

15 A. Good morning.

16 Q. You previously testified in this proceeding?

17 A. Yes, sir.

18 Q. I am showing you, sir, Government's Exhibits 388T
19 and 388 for identification. Before I do that, why don't you
20 remind the jury of what it is that you do for a living.

21 A. I am a translator for the Federal Bureau of
22 Investigation.

23 Q. Let me show you first 388T. Do you recognize
24 that document?

25 A. Yes, sir, I do.

1 Q. How are you able to recognize it?

2 A. With my initial on it.

3 Q. Can you tell us what 388T is?

4 A. It is a transcript for a videotape by Sheik Omar
5 Abdel Rahman.

6 Q. You saw a videotape with some speech of Sheik
7 Omar Abdel Rahman?

8 A. Sheik Omar Abdel Rahman, yes.

9 Q. Is 388 the videotape from which you made the
10 transcript?

11 A. Yes.

12 Q. Is 388T a fair and accurate translation of the
13 Arabic in the speech that you saw on the videotape that is
14 388 by Sheik Omar Abdel Rahman?

15 A. Yes, sir.

16 Q. Mr. Abdel-Hafiz, I am now placing before you
17 Government's Exhibit 641-1, a tape, and Government's Exhibit
18 641-1T. Showing you first 641-1T, do you recognize that
19 item?

20 A. Yes, I do.

21 Q. What do you recognize it to be?

22 A. To be a transcript of a translation of a tape, an
23 audiotape.

24 Q. Which audiotape?

25 A. Number 41-1.

- 1 Q. 41-1, which is marked 641-1 for identification?
- 2 A. Yes.
- 3 Q. Are your initials on 641-1?
- 4 A. Yes, sir.
- 5 Q. And on the transcript also --
- 6 A. And on the transcript.
- 7 Q. Let me just finish the question for the record.
- 8 The transcript that is marked 641-1T?
- 9 A. Yes.
- 10 Q. Is 641-1T a fair and accurate translation of the
- 11 cassette tape that is 641-1?
- 12 A. Yes, sir.
- 13 Q. Did you recognize the voices on that tape?
- 14 A. Yes, I did.
- 15 Q. Whose voice did you recognize?
- 16 A. Emad Salem's voice and Siddig Ali's voice.
- 17 Q. I am now showing you Government's Exhibits 369
- 18 and 369T. Can you tell us what 369T is?
- 19 A. 369T, that is a transcript of a translation for a
- 20 videotape that was made by Emad Salem --
- 21 MS. AMSTERDAM: I am sorry. Could you use the
- 22 microphone.
- 23 Q. Mr. Abdel-Hafiz, either this microphone or that
- 24 one, could you speak directly into it.
- 25 A. 369T is a transcript of a translation of a

1 videotape that was made by Emad Salem and Siddig Ali in the
2 Lincoln and Holland Tunnel.

3 Q. Let me show you 369. Do you recognize that?

4 A. Yes, I do.

5 Q. How do you recognize that?

6 A. With my initial on it.

7 Q. What is 369?

8 A. It is the videotape, 369T.

9 Q. Does the transcript that is 369T reflect a fair
10 and accurate English translation of the Arabic conversation
11 contained on the cassette that is 369?

12 A. Yes, sir, it does.

13 Q. Next, Mr. Abdel-Hafiz, let me show you cassette
14 tapes that are marked Government's Exhibits 301E for
15 identification and a transcript which is marked 301T for
16 identification. Have you reviewed the cassettes that are
17 marked 301E for identification?

18 A. Yes, I have.

19 Q. How do you know that?

20 A. With my initial on them.

21 Q. For the record, am I correct that there are
22 underlined portions of the transcript that is marked 301T
23 for identification?

24 A. Yes.

25 Q. They are on page 7, page 19 -- I am sorry, I

1 skipped. Page 7, page 16, page 19 and page 47, is that
2 correct?

3 A. Yes, that is correct.

4 Q. Mr. Abdel-Hafiz, did you review the underlined
5 portions on those pages?

6 A. Yes, I have.

7 Q. Do the underlined portions represent a fair and
8 accurate English translation of the Arabic that is spoken in
9 those portions of the transcript?

10 A. Yes, it does.

11 Q. Let me ask you finally about a series of
12 exhibits, or actually two exhibits, marked 32E and 32T.
13 First, have you reviewed the cassettes that are marked 32E?

14 A. Yes, I have.

15 Q. How do you know that?

16 A. With my initials on the tapes.

17 Q. Have you reviewed the underlined portions of the
18 transcript marked 333T?

19 A. Yes, I have.

20 Q. For the record, I believe those are on pages 9
21 and 51 -- thank you, Mr. Jacobs. Page 16 also. Have you
22 reviewed the underlined portions of those pages?

23 A. Yes, sir, I have.

24 Q. Do the underlined portions represent a fair and
25 accurate English translation of the Arabic which is spoken

1 at those times?

2 A. Yes, sir, it does.

3 MR. McCARTHY: Your Honor, at this time I would
4 offer into evidence Government's Exhibits 641-1T and -- I am
5 sorry. I withdraw that. I am offering into evidence at
6 this point Government's Exhibits 388T and 388.

7 MS. STEWART: May I have a brief voir dire,
8 Judge?

9 THE COURT: Yes, you may.

10 VOIR-DIRE EXAMINATION

11 BY MS. STEWART:

12 Q. Good morning once again.

13 A. Good morning, ma'am.

14 Q. I believe you testified in response to Mr.
15 McCarthy that 388T is a transcript in English that you made
16 of a videotape of Sheik Omar addressing a conference, is
17 that correct?

18 A. Yes, ma'am, that is correct.

19 Q. When you translated that videotape, at the very,
20 very end of the lecture, if you would look at your
21 transcript before you --

22 A. Yes, ma'am.

23 Q. You ended your transcript by saying "End of
24 lecture," is that right?

25 A. Yes.

1 Q. Isn't it true that at the end of the lecture an
2 800 number was given for people to order this videotape if
3 they wanted a copy of it?

4 MR. McCARTHY: Objection.

5 A. By whom?

6 Q. On the videotape itself, did it not give an 800
7 number?

8 A. Yes.

9 Q. If someone wanted to order this video?

10 THE COURT: This is not voir dire.

11 MS. STEWART: It is something that he left out.

12 THE COURT: No, it is not something that he left
13 out. It is not voir dire on the accuracy of the
14 translation.

15 MS. STEWART: It is. It is something that he
16 left out, I think. If you want me to do it on cross, then,
17 I will be happy to.

18 THE COURT: The exhibit has been offered.

19 MR. McCARTHY: We press the offer of the exhibit,
20 your Honor.

21 THE COURT: Miss Stewart?

22 MS. STEWART: No objection, Judge.

23 THE COURT: 388 and 388T are received.

24 (Government's Exhibits 388 and 388T received in
25 evidence)

1 MR. McCARTHY: Your Honor, I at this time offer,
2 subject to connection at a later time, 641-1T and 641-1,
3 369T and 369.

4 MR. JACOBS: Objection.

5 THE COURT: Those are the ones that you are
6 offering?

7 MR. JACOBS: Objection.

8 MR. McCARTHY: Should I finish reading the list?

9 MR. JACOBS: I am sorry.

10 THE COURT: Yes.

11 MR. McCARTHY: 301T and 301E, and 333T and 333E,
12 again subject to connection.

13 THE COURT: 332 or 333?

14 MR. McCARTHY: 333, your Honor. It is CM 32.
15 That is the confusion.

16 THE COURT: I am sorry. I thought it was called
17 32E.

18 MR. STAVIS: I wish to reserve a hearsay
19 objection to Government's Exhibit 641. At such time as it
20 is introduced I will have something further to say.

21 MR. JACOBS: Your Honor, I have a number of legal
22 objections that I prefer not to mention in front of the
23 jury. I object to this coming in in front subject to
24 connection, in light of the examination of Detective Napoli.
25 I would like to be heard on these matters. I don't want to

1 say it in front of the jury.

2 MR. McCARTHY: Your Honor, I can withdraw the
3 offer at this time. It is not necessary to pursue at this
4 time.

5 THE COURT: Understand that as far as the
6 accuracy of the translation is concerned, anybody who has
7 any cross is going to do it now. You understand that.

8 MR. JACOBS: That is not --

9 THE COURT: That I understand. But do you
10 understand what I just said?

11 MR. JACOBS: Yes, your Honor.

12 THE COURT: Good.

13 MR. JACOBS: Can I just approach with Mr.
14 McCarthy one second?

15 THE COURT: Yes.

16 (At the side bar)

17 THE COURT: I just don't want somebody leaping
18 out from a potted palm later on and saying I didn't have a
19 chance to cross-examine on the translation.

20 MR. JACOBS: With respect to CM 32 and the
21 transcript, the government and I have agreed that there is
22 one line in dispute and I have requested from the government
23 that this witness provide us with the Arabic. The
24 government has agreed to do that and have him subject to
25 recall rather than have him figure it out in front of the

1 jury, things like that. Other than that, I have no
2 examination of the witness on the rest of 32. However,
3 there are some sounds of crumbling paper that still appear
4 on the transcript. I believe the government is going to
5 take that out.

6 Just so we are clear, we have made a legal
7 objection on the voir dire and on cross-examination to these
8 CM's. We continue to press the legal objection, and we cite
9 the appropriate authority, that the government has not laid
10 the proper foundation for the admissibility of any CM at
11 this point. There is no question that the connection is
12 there. I just want to let your Honor know, I don't think
13 any defense lawyer disputes the fact that my client is on a
14 tape on something obviously to do with the charges. That is
15 not the issue. Can they properly authenticate pursuant to
16 Second Circuit authority these tapes?

17 MR. STAVIS: As long as we are up here, my
18 objection was to those portions of Government's Exhibit 641
19 in which Mr. Salem is relating to Mr. Siddig Ali what Mr.
20 Nosair had previously said.

21 THE COURT: I assume the theory is in
22 furtherance, and I will hear you at the appropriate time.

23 MR. McCARTHY: It can't be, because it is Salem's
24 statement, but we can discuss it. I just didn't want you to
25 have a misimpression of the nature of the offer.

1 (In open court)

2 THE COURT: Subject to the discussion at the
3 side, the proffered exhibits are received.

4 (Government's Exhibits 641-1 and 641-1T, 369 and
5 369T, 301E and 301T, 333E and 333T, 369 and 369T received in
6 evidence)

7 MR. McCARTHY: I have no further questions.
8 Thank you.

9 THE COURT: Anything else?

10 MR. McCARTHY: Nothing from the government.

11 THE COURT: Cross. Miss Stewart.

12 MS. STEWART: Yes, Judge.

13 CROSS-EXAMINATION

14 BY MS. STEWART:

15 Q. Where we left off. When you were translating
16 this videotape, did you notice at the very end that there
17 was an 800 number given?

18 A. Yes, but it was not given by the sheik.

19 Q. No, but it was on the videotape for people who
20 saw this tape if they wanted to order another copy, is that
21 right?

22 A. Yes, ma'am.

23 MS. STEWART: No other questions, Judge. Thank
24 you.

25 THE COURT: Anyone else? Ms. London,

1 representing Tariq Elhassan. Go ahead.

2 CROSS-EXAMINATION

3 BY MS. LONDON:

4 Q. Good morning, sir.

5 A. Good afternoon.

6 Q. Good afternoon. Sir, you have testified here
7 this morning that you did the translation for Government's
8 Exhibit 369T, is that correct?

9 A. Which is?

10 Q. The video from the Lincoln/Holland Tunnel.

11 A. Yes, ma'am.

12 Q. Sir, are you familiar with a Arabic word hadduta,
13 spelled H-A-D-D-U-T-A in English?

14 A. Yes, ma'am.

15 Q. Does that word have an English equivalent?

16 A. It can have English equivalent of a tale.

17 Q. A fairy tale?

18 A. A fairy tale.

19 Q. So if you were acting as a translator, the word
20 hadduta would translate in English as fairy tale, is that
21 correct?

22 A. Not when it is used out of context.

23 Q. Did you make the determination whether this was a
24 context or out-of-context situation?

25 A. My determination at the time I was translating,

1 it was made that this was not used in the context that it
2 was supposed to be used.

3 Q. Did you receive any instructions from anyone not
4 to translate this word?

5 A. No, ma'am.

6 Q. When an Arabic word is used out of context and
7 you translate, as a translator, have you ever written the
8 English equivalent but put it in quotation marks to indicate
9 an out-of-context situation?

10 A. Sometimes if I am sure of what I should put in
11 its place, but out of fairness I should leave it as it is,
12 and let it be explained by whoever said it.

13 Q. Out of fairness to whom, sir?

14 A. Out of fairness for my translation, not to
15 anybody in particular.

16 Q. So every time that you do not understand
17 something, you leave it as it is without translating? Is
18 that what you are telling us?

19 A. The question was not that I did not understand.
20 I understand the word very well. But the question was was
21 it used in direct context or not or was it taken out of
22 context.

23 Q. So it was your sole determination not to
24 translate the word hadduta, which does have an English
25 equivalent, is that right?

1 A. As the translator, yes.

2 Q. So in that instance, you were interpreting, isn't
3 that correct?

4 A. No, ma'am, I was not. If I was interpreting, I
5 would have chosen a word according to my own discretion that
6 would be equivalent to it. But out of the fairness and
7 sticking to the word translation, I didn't want to get out
8 the word translation and the meaning of it. I left it as it
9 is.

10 Q. In your translations, you make notations in
11 parentheses with the symbols capital U, capital I. Are you
12 familiar with those symbols?

13 A. Yes, ma'am.

14 Q. Would you tell us what UI means, please.

15 A. Unintelligible.

16 Q. And when you write unintelligible, that is
17 because you haven't understood what was said in that part of
18 the text or the recording, is that correct?

19 A. No, ma'am. That means the word cannot be heard.

20 Q. When you write unintelligible, you don't indicate
21 in the transcript whether it is one word which is
22 unintelligible or whether it is four lines which are
23 unintelligible, do you?

24 A. No, I don't indicate.

25 Q. In fact, it might even be a very large segment of

1 conversation that is unintelligible, isn't that correct?

2 A. Sometimes, yes.

3 Q. But you don't indicate that in your transcript at
4 all.

5 A. No, ma'am, I don't.

6 Q. Would it be fair to say that a gap in a
7 conversation which you have marked as unintelligible can
8 change the meaning of a conversation? Can't it?

9 A. Sometimes, yes.

10 Q. When you are making your transcript from the tape
11 recordings, your translations don't reflect meaning that is
12 conveyed by a total quality, isn't that fair to say?

13 MR. McCARTHY: Objection. I am sorry. I didn't
14 mean to object. I didn't hear the word before quality --

15 MS. LONDON: Total quality?

16 THE COURT: The objection is withdrawn?

17 MR. McCARTHY: Yes.

18 A. I really don't understand what you mean by your
19 question.

20 Q. For example, take the words in English, "You mean
21 what," If I speak them to you as a simple question, "You
22 mean what," that gets conveyed as a question to you, isn't
23 that correct?

24 A. Yes, ma'am.

25 Q. Now, for example, if I change the intonation and

1 say "You mean what," doesn't that change the meaning of what
2 I am saying?

3 A. Yes.

4 Q. Your interpretation -- your translation, I am
5 sorry -- does not take into account those total meanings,
6 does it?

7 A. Yes, it does.

8 Q. How do you reflect those total meanings in your
9 transcript, sir?

10 A. From my experience in translating between two
11 languages, I have to put exactly what the person mean by it.

12 Q. So how do you reflect it in, for example, these
13 transcripts?

14 A. I just write the way I understand it. When you
15 ask me, "You mean what," I understand is a question. When
16 you say "You mean what," with a surprising look on your face
17 or a surprising sound in your tone, I understand it as a
18 surprising comment.

19 Q. So it would be fair to say there would be a
20 notation then in the transcript that says surprise,
21 sarcasm --

22 A. No, ma'am, there shouldn't be.

23 Q. Then how would you reflect, how are tonal
24 meanings indicated in your transcripts?

25 A. It is reflected by the words I use to translate

1 with.

2 Q. In other words, you move away from the literal
3 words that you hear and supplant them with what you
4 understand the speaker to be conveying by a tone?

5 MR. McCARTHY: Objection to form.

6 THE COURT: Overruled. Is that your testimony?
7 Is that what you did?

8 THE WITNESS: No, not exactly.

9 Q. I am sorry. I didn't hear your answer.

10 A. The answer, not exactly the way you put it.

11 Q. You have translated segments, have you not, where
12 a speaker was sarcastic, correct?

13 A. Yes.

14 Q. How did you indicate that in a transcript?

15 A. I used the words that will give the indication to
16 the reader that it was used in a sarcastic way.

17 Q. Without putting in the word sarcastic?

18 A. No, without putting in the word sarcastic.

19 Q. So it is your testimony that if this transcript
20 or these transcripts are read to the jury by persons in the
21 courtroom who are taking the roles of the speakers, the
22 words on this page will reflect the intonation and the total
23 meaning underlying what is written here by the words on this
24 page?

25 A. Yes, ma'am.

1 Q. It would be fair to say that the style of Arabic
2 speaking is very different to that of English, isn't that
3 fair to say?

4 A. In which way?

5 THE COURT: She asks the questions, you give the
6 answers.

7 THE WITNESS: I don't understand the way --

8 THE COURT: If you don't understand the question,
9 she can rephrase it.

10 THE WITNESS: Yes.

11 Q. Let me give you an example. It is common for a
12 speaker of Arabic to insert words such as insha Allah in the
13 course of conversation, isn't that correct?

14 A. Yes, ma'am.

15 Q. Would it be fair to say that that is common for
16 an Arabic speaker, whether he has deeply held religious
17 views, somewhat religious, or not very religious at all;
18 isn't that correct?

19 A. That is correct.

20 Q. And it would also be fair to say that words that
21 you have translated such as praise be to God, God's mercy be
22 upon us, are also regular features of everyday Arabic
23 speech; isn't that fair to say?

24 A. That is fair.

25 Q. That is not the case in regular English language,

1 isn't that correct, among English speaking people?

2 A. That is true.

3 Q. Would it be also fair to say that regular use of
4 phrases such as praise be to Allah, Allah is great, is also
5 very common, isn't that correct?

6 MR. McCARTHY: Objection to form. Common to
7 what?

8 MS. LONDON: I am sorry, Mr. McCarthy.

9 THE COURT: The objection was to form. I will
10 allow it. Go ahead.

11 A. Yes.

12 Q. And, for example, the greeting may peace be upon
13 you as it is translated in English, that is a common form of
14 greeting, isn't it?

15 A. Yes.

16 Q. But that is not a common form of greeting in
17 English, is it?

18 A. No, it is not.

19 Q. In fact, when you greet English speaking people,
20 you say hello or hi, don't you?

21 A. Yes, ma'am.

22 Q. You didn't write hello or hi in these
23 transcripts, did you?

24 A. Not when it says Salam a'laikum, which is peace
25 be upon you.

1 Q. Instead you stayed with the literal translation
2 of those words, correct?

3 A. Yes, ma'am.

4 MS. LONDON: I have nothing further.

5 THE COURT: Anything else?

6 MS. AMSTERDAM: May I ask a question, your Honor?

7 THE COURT: Yes, Ms. Amsterdam, representing
8 Mr. Khallafalla. Go ahead.

9 CROSS-EXAMINATION

10 BY MS. AMSTERDAM:

11 Q. Sir, in the suppression Ms. London just used, you
12 mean what, if you used that in Arabic, you mean what, how
13 would you write that in the translation? You would write
14 you, Y-O-U, mean, M-E-A-N, what, W-H-A-T question mark,
15 correct?

16 A. Yes.

17 Q. If you heard in Arabic you mean what, how would
18 you write that in English?

19 A. If you hear it this way you can very easily write
20 in English with moving the words around to give it the
21 surprising sound, what do you mean by that, or oh, what do
22 you mean by that?

23 Q. So you would change the literal meaning of the
24 words and you would replace them with other words to convey
25 that sound?

1 A. Not exactly replacing them. It's very possible
2 to switch the words around or add a sound like oh to the
3 beginning of the sentence.

4 Q. So you might add words that were not there in a
5 literal translation, is that your testimony?

6 A. No.

7 Q. You said that you might add the word oh but in
8 the -- excuse me, sir. In the expression I just gave you,
9 in the example I gave you, I said how would you translate
10 you mean what, and the word oh does not appear there.

11 A. When I understand it as a surprising question,
12 it's a question by someone who is surprised, I will have to
13 convey the way I understood it.

14 Q. So you would interpret, would you not? That
15 would be interpretation.

16 MR. McCARTHY: Objection to interrupting the
17 answer.

18 THE COURT: That is correct. Ms. Amsterdam,
19 would you please pose questions and not have a conversation.

20 Q. That would be --

21 MR. McCARTHY: Your Honor, can the witness
22 continue and complete his answer?

23 THE COURT: Complete your answer, please.

24 A. When I translate you mean what, I don't have to
25 take one word for you and one word for me and one word for

1 what. I will understand it as a sentence and I will
2 translate it as a sentence. If the sentence were using five
3 words to explain the way I understood the sentence, I will
4 use five words. If it requires only one word to convey the
5 way I understood the sentence, I will use only one word.

6 (Continued on next page)

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1 Q. So when you do not do a literal word-by word
2 translation, you are in fact interpreting what the speaker
3 intended to convey, is that not true?

4 A. I never use word by word in translation the way
5 you portray it. When I use -- when I use the words to
6 translate, I am translating what the speaker or the writer
7 wants to say.

8 Q. So in all instances you are interpreting what the
9 speaker or the writer wants to say, is that your testimony?

10 A. No, there is a big difference between translating
11 and interpreting. I translate what they are saying. I
12 interpret it if I want to use a different way in saying what
13 they are saying. If you look at me in the morning and you
14 say, "Good morning" with a harsh look, if I say, Ms.
15 Amsterdam said, "Good morning," I translated what you just
16 told me.

17 If I said, "She gave me a frowny look, and she
18 said, 'good morning' or she said, 'good morning, sir,'" and
19 I put it in capital letters with spaces in between, I would
20 like to let the person know that I felt that Ms. Amsterdam
21 is trying to show me that she is not pleased with me or
22 she's not pleased to see me this morning. That is the
23 difference between interpretation --

24 Q. I understand.

25 A. Yes, ma'am.

1 Q. So there were instances in which you attempted to
2 convey what you believed was in the speaker's mind when he
3 or she said those words, correct?

4 A. Not in their minds, in their voice.

5 MS. AMSTERDAM: I have no further questions.

6 MR. NOOTER: I have some questions, your Honor.

7 THE COURT: Mr. Nooter, representing Wahid Saleh.

8 Q. Sir, do you have Exhibit 369T in front of you?

9 A. No, sir, I don't.

10 MR. NOOTER: May I approach the witness, your
11 Honor.

12 THE COURT: Yes, you may.

13 Q. Just to make sure I understood you, you testified
14 that you wrote the word "hadduta" rather than translate it
15 into the English words because it had been used out of
16 context, is that right?

17 A. Yes, sir, that's correct.

18 Q. The speaker did not intend to say "fairy tale,"
19 he meant something else, is that correct?

20 A. That's true.

21 Q. I would like to direct your attention to the
22 bottom of page 3 of Exhibit 369T, the last speech there by
23 Mr. Siddig Ali where you translated whatever he said as
24 saying, "No, no. What weapons, what weapons, it's called
25 kids' toys, toys, toys," etc.

1 A. Yes, sir.

2 Q. Is it your testimony that the word "toys" was
3 used in context there, that he meant toys?

4 Let me rephrase the question.

5 Is it your testimony that Mr. Ali in saying those
6 words meant "kids' toys"?

7 A. He said it in English.

8 Q. He said those words in English?

9 A. Yes, sir.

10 Q. Have you not delineated where words are in fact
11 spoken in English as opposed to Arabic?

12 A. No, sir, I did not.

13 MR. NOOTER: No further questions.

14 THE COURT: Mr. Jacobs, representing Mr. Mohammed
15 Saleh.

16 CROSS-EXAMINATION

17 BY MR. JACOBS:

18 Q. My name is John Jacobs, and I represent Mohammed
19 Saleh.

20 Tape No. CM32, Government Exhibit 333E --

21 MR. JACOBS: Do you have the originals on those?

22 Q. -- am I correct that you worked with the exhibits
23 before you in preparing the transcript of 32?

24 A. Only the underlying parts.

25 Q. You didn't review the entire 32, you just did the

1 underlying parts?

2 A. Only the underlying parts.

3 Q. You never examined the original tape, is that
4 correct, whatever they were on the underlying parts?

5 A. I had to examine that tape.

6 Q. That tape that is in your hand?

7 A. The one in my hand.

8 Q. Would you know whether the original tape had been
9 altered, erased or any additions added to the original tape?
10 You don't have any knowledge of that, do you,
11 sir?

12 A. I translate what I hear.

13 Q. You translated what was in front of you, right?

14 A. Exactly.

15 MR. JACOBS: May I just have one moment.

16 Q. In your reviewing the tapes, did you come across
17 a Arabic word that is -- and my pronunciation may be
18 terrible, something called "insha Allah"?

19 A. "Insha Allah," yes.

20 Q. What is that in English?

21 A. "If God wills it."

22 Q. Would it be fair to say that it might mean
23 something like, "We will see. We'll see what happens."

24 If you know.

25 A. Sometimes it means, "We'll see what happens."

1 Q. So your answer for the other ones, I think it is
2 41-1, 641, Exhibit No. 641 IT, and also for CM No. 1, you
3 just looked at certain portions and translated those
4 underlying portions, is that correct? I am talking only
5 about CM1 and CM32.

6 A. Yes, I have that one.

7 Q. On that one, which was of a tape marked 41 1 --
8 MR. JACOBS: Mr. McCarthy, what is the exhibit
9 number?

10 MR. McCARTHY: 641 1.

11 THE COURT: 641 1.

12 Q. On that tape, that one you translated in its
13 entirety, is that correct?

14 A. Yes, sir, I reviewed it, and --

15 Q. Who was that a conversation between?

16 A. Between Mr. Emad Salem and Mr. Siddig Ali.

17 Q. In translating that, you were given a copy by the
18 Assistant U.S. Attorneys or the by the FBI to work from,
19 correct?

20 A. That's correct.

21 Q. Do you know whether the original tape had been
22 altered, erased, additions or deletions made in the original
23 tape, sir?

24 A. I have no idea about that.

25 Q. You are not a tape expert?

1 A. No, sir, I am not.

2 Q. OK. Would I be correct in stating that 641, that
3 tape appears to begin in the middle of some conversation, is
4 that fair to say?

5 A. That's fair to say.

6 Q. Do you know what happened to the beginning
7 portion of the conversation, sir?

8 A. No, I don't.

9 Q. Do you know whether that beginning portion was
10 erased or deleted by someone, sir?

11 Do you know that?

12 A. I don't know that, but the tape with the very
13 beginning of the tape started with what I wrote here, so
14 there was nothing before that. That's a blank portion of
15 tape.

16 Q. So, in other words, somebody turned on the tape
17 at a particular portion in the middle of a conversation,
18 correct, sir?

19 A. That seems likely.

20 Q. You have no personal knowledge who that person
21 was?

22 A. No, sir.

23 Q. You have no knowledge of the circumstances under
24 which the tape was made, correct?

25 A. No, sir.

1 Q. You don't know if the machinery was operating
2 correctly?

3 A. I have no idea.

4 Q. You don't know if the person was capable of
5 operating the machine correctly? You don't know that, sir?

6 A. No, I have no idea.

7 MR. JACOBS: I have nothing further, your Honor.

8 THE COURT: Mr. Bernstein?

9 CROSS-EXAMINATION

10 BY MR. BERNSTEIN:

11 Q. Sir, with regard to 641 particularly, when you
12 say you worked from a tape, are you talking about the
13 original tape or are you talking about a copy of the
14 original tape given to you?

15 A. I really don't know which one is the original and
16 which is the copy. The one I worked from is the one I
17 initialed.

18 Q. I'm sorry?

19 A. I have no idea which one is the original and
20 which one is the copy.

21 Q. So that --

22 A. When I am given a tape I work from it and I
23 initial it.

24 Q. So that you don't know whether or not that is a
25 the original recording, or a first or second or third

1 generation copy that you are working from?

2 A. No, sir, I am not aware of that.

3 Q. You don't know whether or not, if it is a copy,
4 whether in the reproduction from the original something was
5 left off prior to the beginning of the tape that you
6 actually received?

7 A. I would have no knowledge of that.

8 MR. BERNSTEIN: Thank you, sir.

9 MR. SERRA: One or two questions.

10 THE COURT: Mr. Serra, representing Mr. Alvarez.

11 CROSS-EXAMINATION

12 BY MR. SERRA:

13 Q. Good afternoon, Mr. Abdel Hafiz?

14 A. Good afternoon, sir.

15 Q. Am I addressing you correctly, Mr. Abdel Hafiz?

16 A. Yes.

17 Q. You were asked about one Arabic phrase by a
18 couple of other lawyers, "insha Allah."

19 You said that translates to "God willing," is
20 that correct?

21 A. God willing, yes.

22 Q. That is perhaps the most common phrase in the
23 entire Arabic usage, that correct?

24 A. That's true.

25 Q. There are other similar phrases such as, for

1 example, excuse my pronunciation, also, "hamdi Allah"?

2 A. "Hamdi Allah."

3 Q. That means?

4 A. "Praise God."

5 Q. That is another of those phrases which is used in
6 many different contexts, is that right?

7 A. That's true.

8 Q. There are people whose native language is not
9 Arabic who perhaps will know those two phrases and no other
10 words in Arabic, is that right?

11 A. That's possible, if they have lots of contacts
12 with Arab speakers.

13 Q. People whose native language is not Arabic but
14 who have contact with Arabic speakers may know those two
15 phrases, perhaps a couple of other similar ones, and nothing
16 else, is that right?

17 A. That's true.

18 MR. SERRA: Thank you. I have nothing further.

19 THE COURT: Any redirect?

20 MR. McCARTHY: Yes, briefly.

21 REDIRECT EXAMINATION

22 BY MR. McCARTHY:

23 Q. You were asked questions about the Arabic word
24 "hadduta?

25 A. Yes, sir.

1 Q. You said it was taken out of context?

2 A. Yes, sir.

3 Q. Have you translated conversations, that is, other
4 conversations in this case where people agreed to use the
5 word "hadduta" as a code word for something else?

6 A. Yes.

7 Q. You were asked some questions about translating
8 the word "hello," do you recall that?

9 A. Yes.

10 Q. Is there an Arabic word for "hello," Mr. Abdel
11 Hafiz?

12 A. No.

13 MR. McCARTHY: Thank you.

14 THE COURT: All right. You are excused. Thank
15 you.

16 (Witness excused)

17 Ladies and gentlemen, we are going to break for
18 lunch. Please leave your notes and other materials behind.
19 Please don't discuss the case. Have a pleasant lunch and we
20 will resume at or near 2 o'clock.

21 I will ask everybody to remain seated until the
22 jury leaves, please.

23 (Jury not present)

24 (Continued on next page)

25

1 (Jury not present)

2 THE COURT: Looking ahead, Mr. Jacobs, you
3 indicated -- I think it was you. Somebody indicated that
4 you are going to have a foundation objection to the CM's.

5 MR. JACOBS: Yes.

6 THE COURT: At what point am I going to have to
7 pass on that, and when are you going to provide me with the
8 argument or whatever you are relying on to support that?

9 MR. JACOBS: Part of the problem is I don't know
10 if the government is going to do -- I am not sure what
11 foundation they are going to lay. We have Napoli. Napoli
12 is the agent that allegedly took custody of 32. I suppose
13 that the Salem will attempt to authenticate the tape, if he
14 is capable of giving the appropriate testimony on his
15 direct.

16 Then I am prepared to make some legal arguments.
17 I will be happy to give your Honor the cases now on that
18 point. Certainly with respect to CM1, which is the one that
19 Anticev picked up, I don't think the government has any
20 foundation on the record at this point concerning CM1. If
21 you will recall, your Honor, Ms. Amsterdam objected at the
22 time. While we have envelopes in --

23 THE COURT: I can't tell you that the fact that
24 she objected at the time of CM1 is fresh in my mind. I
25 really can't.

1 MR. JACOBS: What I meant, your Honor, is that,
2 as I understand the Court of Appeals and their rulings on
3 the admissibility of tapes, there are certain foundations
4 that have to be laid. I think it all goes back to Judge
5 Weinfeld's case, which is United States v. McKeever, which
6 is continuing to be cited in the Court of Appeals as what
7 the foundation should be. The most recent one I have on
8 this subject is -- there are a few of them. One of them
9 that discusses this in some detail is United States v.
10 Fuentes, 563 F.2d 527. The Court of Appeals, continuing to
11 cite United States v. McKeever, 169 F.Supp. 426, quoting
12 from that case, sets out various tests in admitting tapes.
13 They are 1, that the recording device --

14 THE COURT: I can read. I can look at the case.
15 Is there anything other than Fuentes you wanted
16 me to look at? I believe there is more current authority
17 than that? 563 goes back to the '70s, doesn't it?

18 MR. JACOBS: Yes. Most of the recent cases --
19 United States v. Bahadar, I have it at 954 F.2d 821; United
20 States v. Barone, 913 F.2d 46 -- they are really cases where
21 the government attempts to introduce the tapes without the
22 CI, without the informant. But, again, they cite back to
23 these various criteria that have to be met.

24 We are asking for the government to meet their
25 burden, I think it is a clear and convincing standard on

1 this authentication question, and follow the criteria that
2 the Court of Appeals has set out.

3 If they do it, then I guess the tapes come in. I
4 am going to ask your Honor, or we ask the government to meet
5 the burden of proof. There is no testimony that these tapes
6 are authentic, that they have not been tampered with,
7 deleted. I have agreed with Mr. McCarthy that once the FBI
8 got the tapes -- for example, in my case, on June 7, there
9 is no claim that the FBI has done anything improper with the
10 tapes after June 7. So I am not at all alleging that during
11 the chain of custody any agent that got them after June 7
12 did anything. I still think they have an obligation to
13 put --

14 THE COURT: Is there any evidence that they were
15 tampered with before?

16 MR. JACOBS: Yes, Judge. I have CM32. My
17 conversation begins in the middle of something.

18 THE COURT: Other than that. I am talking about
19 rerecording, that sort of thing.

20 MR. JACOBS: No. Other than stops and starts,
21 which is a different --

22 THE COURT: Stops and starts are a different
23 issue.

24 MR. JACOBS: I have no evidence that I can
25 present.

1 THE COURT: Dubbing, you know what I am talking
2 about.

3 MR. JACOBS: Absolutely. I don't have the burden
4 of proof on this issue.

5 THE COURT: You don't. On the other hand, if you
6 have proof, it would be nice to know about it.

7 MR. JACOBS: My position is that my tape, CM32,
8 is not a full and accurate tape of what occurred. I think
9 that the government has the burden of proof in that case to
10 show the circumstances under which it was made. If they can
11 comply with the Court of Appeals test, then it comes in.

12 THE COURT: OK. Mr. McCarthy?

13 MR. McCARTHY: I think Mr. Jacobs is simply wrong
14 about the state of law. There is no requirement at all that
15 the entirety of a conversation be recorded in order for a
16 tape of it to be admissible.

17 THE COURT: It seems to me as long as the jury
18 understands what they are getting is a segment of the
19 conversation, then the remainder is for lawyers to argue.

20 MR. McCARTHY: I wouldn't dispute that. There is
21 certainly a different standard of evidence when you try to
22 get a tape recording in through a person who neither
23 witnessed the conversation nor participated in it. But I
24 believe that when you have a participant or someone who can
25 testify with a foundation that the conversation was

1 witnessed, as long as that person can testify that the
2 recording represents a fair and accurate recording of the
3 conversation that the person recalls having or hearing, it
4 comes in and everything else goes to weight. I think that
5 is the situation. I don't think we would have had to put
6 Napoli on in order to get the tapes in at all.

7 THE COURT: Why did you?

8 MR. McCARTHY: Well, there are other issues in
9 the case, your Honor.

10 THE COURT: Right.

11 MR. McCARTHY: I doubt that a day goes by when
12 somebody doesn't say, "Gee, why did I do that?"

13 THE COURT: I take it this is one of those days.

14 MR. McCARTHY: One of those weeks, perhaps.

15 MR. JACOBS: With respect to the source tapes,
16 some of which the government is going to introduce on the
17 direct case, there we do have issues of erasures, deletions,
18 overdubbing, and things like that, and we are prepared to
19 come forward with testimony with respect to that. I don't
20 have it with the CM's, and Mr. McCarthy and I have had a lot
21 of discussions. I spoke to Mr. Ginsberg, the tape expert.

22 So there is nothing that hasn't been disclosed
23 between both sides. We are certainly prepared to go forward
24 with respect to these bootleg tapes when the government is
25 offering them in their direct case to show that these tapes

1 were handled improperly, that there are copies, erasures and
2 deletions, and many other things along that line. I can't
3 say the same for the CM's. I think there is a difference.

4 MR. McCARTHY: May I respond to that?

5 THE COURT: Yes.

6 MR. McCARTHY: First of all, we are not offering
7 all of Salem's personal conversations. There is probably a
8 handful that we will be looking to put into evidence. He
9 wasn't under any duty to make those obviously in the first
10 place. The fact that he may have rewound, taped over, and
11 that kind of stuff, as long as he can testify that a
12 particular recording of a particular conversation fairly and
13 accurately reflects a conversation that he had, again, the
14 rest of it goes to weight.

15 While it may be generally true that on 60 or 70
16 tapes there are instances of playbacks, tapeovers and that
17 kind of stuff, that doesn't necessarily imperil the
18 integrity of any particular conversation on any particular
19 tape. Again, it goes to weight. If he can testify that it
20 is fair and accurate, they can cross-examine him, I suppose,
21 until the cows come home about whether he is fooling around
22 somehow with the conversation.

23 MR. JACOBS: Your Honor asked me a question. I
24 cannot say that with respect to the CMs -- in particular, I
25 will talk about my tape. The Court of Appeals in their

1 test, under number 4 states, that changes, additions or
2 deletions have not been made in the recording. I cannot say
3 that with respect to the CM's. I can state that with
4 respect to the source tapes, and if the government --

5 THE COURT: When you say "the source tapes," that
6 is a broad category. The question is a particular
7 conversation.

8 MR. JACOBS: As I said, the government has the
9 burden of proof. I am prepared to cross the witness and --

10 THE COURT: And make your objections, and I will
11 hear them at a time.

12 MR. JACOBS: Right.

13 MR. MCCARTHY: Your Honor, for the record, I
14 would just like you to know that we not only turned over the
15 CM's but also Salem's personal tapes to Mr. Ginsberg, the
16 defense examiner.

17 THE COURT: All right.

18 MR. JACOBS: If we have an issue as to that item,
19 I guess it comes to whatever the Court feels is necessary to
20 make the proper evidentiary ruling on whether they are
21 authentic. As I said, Judge, I am not asking for the CM's.
22 I understand that point. But on the bootlegs, I think we
23 have another issue, and we are prepared to go forward if we
24 have to after Salem does his direct on them and controvert
25 that these are authentic tapes.

1 THE COURT: I am going to let you do that on your
2 own case and put it to the jury. Just intuitively he would
3 have to have been pathetic to believe that they were going
4 to be seized from him and turned over and then the subject
5 of evidence in this case if he didn't disclose them.

6 MR. JACOBS: I haven't heard what he has to say
7 about them, Judge. We are looking forward to it.

8 THE COURT: Fine. We will resume at 2:15.

9 (Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Mr. McCarthy?

MR. McCARTHY: Your Honor, the government calls
Emad Salem.

EMAD ELDEN ALI SALEM,
called as a witness by the government,
having been duly sworn, testified as follows:

MR. McCARTHY: May I proceed, your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. McCARTHY:

Q. Good afternoon, Mr. Salem.

A. Good afternoon, sir.

Q. Would you pull the microphone on your left into
your direction, and let me ask you to continue to speak in a
loud, clear voice.

A. Yes, sir.

Q. Would you tell us, please, where you were born?

A. Egypt.

Q. Where in Egypt?

A. Cairo.

1 Q. How old are you, sir?

2 A. Forty-five.

3 Q. When did you come to the United States?

4 A. 1987.

5 Q. I am going to ask you some questions now about
6 your background in Egypt. Can you tell us, please, whether
7 after you were born you grew up in a household with parents,
8 brothers and sisters?

9 A. Yes, sir.

10 Q. How many brothers and sisters did you have?

11 A. I have one brother and one sister.

12 Q. Are they still living?

13 A. My brother passed away and I still have my sister
14 alive.

15 Q. Can you describe for us, please, the financial
16 circumstances of the family that you grew up in.

17 A. We wasn't rich. We were comfortable.

18 Q. Obviously you are testifying here today in
19 English.

20 A. Yes, sir.

21 Q. Would you tell us, please, what your native
22 language is.

23 A. Arabic.

24 Q. Did either one of your parents speak English?

25 A. My father.

1 Q. Aside from your father, did you have any other
2 exposure to the English language as a child?

3 A. Yes, sir.

4 Q. Can you describe that for the ladies and
5 gentlemen of the jury.

6 Q. When I was four years old we used to live in an
7 area called Al-'Aabasiyyah in Cairo. Close by there is
8 American kindergarten school. My father admit me into the
9 American kindergarten school.

10 Q. For how long did you go to the American school?

11 A. Like almost two years, I would say.

12 Q. How much English did you learn there?

13 A. Some songs and head, shoulders, knees, these
14 primary things.

15 Q. How did it happen that you went to an American
16 school rather than an Egyptian school?

17 A. My father rather to let us to get in touch with
18 the language from being young, and languages always, he
19 taught us it is good for us.

20 Q. How long did you go to American kindergarten?

21 A. I will say almost two years.

22 Q. Did you continue on in American schools after
23 that?

24 A. No, sir.

25 Q. Why not?

1 A. We moved out of this area to another area called
2 Inbaaba, and in this neighborhood there was no American
3 schools.

4 Q. How did the school that you started attending in
5 Inbaaba differ from the American school?

6 A. In these schools we used to learn Arabic. We
7 used to learn religion. We used to learn math, history,
8 geography, already learn things, except English, we did not.

9 Q. Did you continue to attend regular Egyptian
10 schools, after you began in the Egyptian school in Inbaaba,
11 did you continue at that point to attend Egyptian schools
12 rather than an American school?

13 A. Yes, sir.

14 Q. Moving back to your ability in English, did you
15 have any other education in English besides what you told us
16 about the American kindergarten and the fact that your
17 father spoke English?

18 A. Yes. In the summertime between elementary school
19 and the junior high school, I had one of our neighbors, she
20 is an English teacher, she used to teach me English to get
21 ready for the junior high.

22 Q. Did you have English classes after that in junior
23 high?

24 A. In junior high we started English as a second
25 language, yes, sir.

1 Q. When did you come to the United States?

2 A. 1987.

3 Q. Had you been living in Egypt immediately prior to
4 coming to the United States in 1987?

5 A. Yes.

6 Q. How would you compare your English today to the
7 English that you spoke when you came to the United States in
8 1987?

9 A. When I came it was very, I will say, poor
10 English, and now I think I can handle myself, I can explain
11 myself.

12 Q. How would you explain your oral English, that is,
13 your spoken English, compared to your ability to read and
14 write English?

15 A. There is a difference because I can speak OK, but
16 when comes to writing or reading it's much slower.

17 Q. Do you have any particular problems or peculiar
18 problems in expressing yourself in English?

19 A. Yes.

20 Q. Can you explain?

21 A. Sometimes I switch words or numbers, something
22 like that.

23 Q. What do you mean by that you switch words?

24 A. For example, if I say bell the ring or ring the
25 bell, and then I get confused which is first. 87, 78, 6 --

1 Q. So you change words around and digits around?

2 A. Sometimes, yes.

3 Q. Mr. Salem, did you participate in any athletic
4 competitions as a young man growing up in Egypt?

5 A. Yes, sir.

6 Q. Can you describe those to the ladies and
7 gentlemen of the jury?

8 A. When I start go to junior high school, I start to
9 do wrestling.

10 Q. Did you progress with wrestling after that?

11 A. Yes.

12 Q. Can you describe your progression in wrestling?

13 A. I start with Greek Roman wrestling and free style
14 wrestling until I start to grow up a little bit, to high
15 school. In high school I start participating some
16 championships, and I get into judo --

17 Q. When you say get into judo, the martial art judo?

18 A. Yes, it's Japanese type wrestling.

19 Q. Can you describe what your proficiency, level is
20 in judo?

21 A. I got a black belt first degree.

22 Q. Mr. Salem, were you in the military service in
23 Egypt?

24 A. Yes, sir.

25 Q. Let me first ask you whether when you were 18 it

1 was mandatory for Egyptian males to sign up for military
2 service?

3 A. Yes.

4 Q. For how long?

5 A. It's different. If you not finished with the
6 high school diploma you serve mandatory three years. If you
7 finish the high school diploma, then you serve two years.
8 If you are a college graduate, then you serve one year.

9 Q. In 1968, you were 18?

10 A. Yes, sir.

11 Q. What did you do with respect to your military
12 obligation when you were 18?

13 A. I went to do my obligatory duty.

14 Q. Where did you go to do it?

15 A. Cairo.

16 Q. What branch of the military service did you
17 enroll in?

18 A. Republican Guard.

19 Q. Can you tell us, please, what is the Republican
20 Guard in Egypt?

21 A. It's a forces which responsible for protecting
22 the President of Cairo -- of Egypt.

23 Q. Did you ever actually become a part of the
24 Republican Guard, Mr. Salem?

25 A. No, sir.

1 Q. Besides basic training, did you have any further
2 involvement with the Republican Guard as a soldier in Egypt?

3 A. No, sir.

4 Q. How long were you in the Republican Guard?

5 A. It was just only first couple of weeks of
6 training.

7 Q. What happened after the first couple weeks of
8 training?

9 A. The Special Forces, or what is called Green
10 Berets, because my athletic background, they took me to the
11 Green Beret service, or the Special Forces service.

12 Q. How long did you serve in the Green Berets or
13 Special Forces?

14 A. Almost two years.

15 Q. Beyond whatever training you received initially,
16 did you actually serve in the Green Berets or the Special
17 Forces?

18 A. Yes.

19 Q. What happened at the end of your two-year tour?

20 A. I applied to one of the military colleges in
21 Egypt, called the Military Technical Institute.

22 Q. That is in Egypt?

23 A. Yes, sir.

24 Q. Can you tell us what kind of schooling the
25 Military Technical College provided you with?

1 A. They teach us the military arts completely, and
2 we study also the engineering parts in it. So it is
3 military and technical together.

4 Q. How long did you go to college?

5 A. Four years.

6 Q. Did you get a degree?

7 A. Yes, sir.

8 Q. What kind of degree?

9 A. In the military art we get bachelor's in military
10 art, and in technical branch we get diploma in engineering,
11 different branches.

12 Q. At the end of your time in college, what
13 happened?

14 A. I graduated as a second lieutenant, and I get
15 distributed to one of the units.

16 Q. What unit did you get distributed to?

17 A. It's a unit under the supervision of the
18 department of arms -- one second. I'm switching words --
19 department -- arms ammunition department.

20 Q. Can you describe for us briefly the kind of work
21 you did in the arms and ammunition department?

22 A. I was responsible about the radar stations.

23 Q. What other kind of jobs did you have in your
24 military career in Egypt?

25 A. The radar stations is the main technical job, and

1 then every officer is obligated to practice the military
2 job, which is firearms training and teaching my soldiers
3 arms, things like that.

4 Q. Did you have any job which related to the
5 shipment of weapons?

6 A. Yes, sir.

7 Q. Can you describe generally what that job was?

8 A. If Egypt want to do weapons shipment to some
9 other country, they have to have some representative to
10 represent the arms ammunition department, and I was chosen
11 to represent this department.

12 Q. How often?

13 A. Not that often.

14 Q. Mr. Salem, what year did you leave the Egyptian
15 military?

16 A. 1987.

17 Q. Can you tell us what your rank was at that time?

18 A. Major.

19 Q. Did you receive a pension for your service in the
20 military?

21 A. Yes, sir.

22 Q. At what rank was your pension table?

23 A. The next rank, which is lieutenant colonel.

24 Q. That is the rank you would have had if you
25 continued on?

1 A. Yes, sir.

2 Q. Do you still receive your pension from Egypt?

3 A. Yes, sir.

4 Q. Why is it that you got a rank for lieutenant
5 colonel rather than for major?

6 A. They figure out the years of the service and they
7 have certain calculation, they figure out as long as you
8 came to the end of major and you coming to be discharged,
9 they give us the end of the next rank pension, which is
10 lieutenant colonel in that rank.

11 Q. Mr. Salem, were you ever actually a lieutenant
12 colonel in the Egyptian army?

13 A. No, sir.

14 Q. From the time that you first entered the Egyptian
15 military in 1968 until you left in 1987, were you ever a
16 combat trooper?

17 A. No, sir.

18 Q. It is true, is it not, that Egypt was involved in
19 1973 in a war with Israel?

20 A. Yes, sir.

21 Q. Did you fight in that war?

22 A. No.

23 Q. Did you ever in your life fight in combat on
24 behalf of Egypt?

25 A. No, sir.

1 Q. Have you ever been wounded by gun fire?

2 A. No, sir.

3 Q. Were you ever at any time assigned to a special
4 unit that was responsible for protecting the President of
5 Egypt?

6 A. No, sir.

7 Q. Mr. Salem, while you were living in Egypt, did
8 you get married?

9 A. Yes, sir.

10 Q. Was the marriage a successful one?

11 A. For the first 15 years, yes.

12 Q. Do you have any children as a result of the
13 marriage?

14 A. Yes, sir.

15 Q. How many?

16 A. Two.

17 Q. How old are your kids?

18 A. I have my daughter, 16 and a half, I have my son
19 12.

20 Q. Who has custody of your children?

21 A. Myself, sir.

22 Q. How long have they been living with you?

23 A. The last four years.

24 Q. How did they come to be living with you here in
25 America?

1 A. Their mother went to and she get married for
2 another man, and I just don't like to let anybody raise up
3 my kids. So I take responsibility for bringing them up, and
4 I made arrangements with the mother. I am raising them up.

5 Q. I want to ask you some questions about
6 intelligence gathering in Egypt.

7 A. Yes, sir.

8 Q. In the years that you lived in Egypt and served
9 in the military there, did you learn that there are
10 intelligence gathering agencies in Egypt?

11 A. Yes, sir.

12 Q. Can you tell us what your understanding is of
13 what intelligence gathering agencies there are in Egypt?

14 A. Basically there are three agencies. There is the
15 general intelligence, which is they call the national
16 intelligence council, or the national council intelligence.

17 Q. Let me interrupt you for a moment. Does it have
18 another name?

19 A. The Arabic name we call it Al-Mukhabaraat.

20 Q. What other intelligence gathering agencies are
21 there?

22 A. There is another law enforcement division which
23 they have the capacity of intelligence gathering, and it's
24 like the FBI here in the United States, something like that.

25 Q. Is there a third?

1 A. Pardon me?

2 Q. Is there a third intelligence gathering service
3 that you are familiar with?

4 A. Right, sir.

5 Q. What is the third intelligence gathering service?

6 A. The military intelligence service.

7 Q. Let's start with the Egyptian general or central
8 intelligence agency. Have you ever, Mr. Salem, been an
9 agent of the Egyptian General Intelligence Service?

10 A. No, sir.

11 Q. Have you ever been approached for cooperation by
12 the Egyptian General Intelligence Service?

13 A. Yes, sir.

14 Q. Can you describe for us when that happened?

15 A. That, during the term of the investigation of
16 this case I was --

17 Q. Where were you living at the time?

18 A. I was in Manhattan.

19 Q. Can you tell us how it is that you know you were
20 approached by the Egyptian General Intelligence Service?

21 A. I got a phone call from somebody who said I am
22 one of your friends, I know you, I want to talk to you. All
23 right, what's your name? He said well, I can't tell you.
24 Well, so if you want to meet me we got to know what is it,
25 it's a secret.

1 MR. JABARA: Objection, your Honor. Hearsay.

2 THE COURT: Overruled.

3 Q. Did there come a time, Mr. Salem, that the person
4 identified himself to you as a member of the Egyptian
5 General Intelligence Service?

6 A. Yes, sir.

7 Q. Did you have a conversation with this person?

8 A. Yes, sir, I did.

9 Q. Did he ask for your cooperation?

10 A. Yes, sir, he did.

11 Q. What was your response?

12 A. I told them that you got to give me -- I became
13 an American citizen, I am living in this country, I don't
14 want to cross my line, get me the green light from the FBI
15 and I am gladly will cooperate with you.

16 Q. Before you spoke with this person from the
17 Egyptian Central Intelligence Service, did you speak with
18 some FBI agents about what you should tell him?

19 A. Yes, sir.

20 Q. How did it happen that you spoke to the FBI
21 agents?

22 A. At the beginning I don't know who this person is,
23 somebody very mysterious --

24 Q. Let me stop you for a moment. My question was,
25 how did it happen that you contacted the FBI agent?

1 A. I called him on the phone right away after I hang
2 up with him, I say I have somebody want to meet me, I don't
3 know who it is, I don't want my cover be blown, I am going
4 to meet this guy, please come to give me that.

5 Q. Did the FBI agents ultimately give you some
6 instruction about what you should do?

7 A. No. They came and they just watched how I met
8 him and how we talked.

9 Q. What did you tell them?

10 A. I told him that first you got to get me the green
11 light from Egypt, from the authorities there and from the
12 FBI United States, so I will be clear for what I am doing,
13 because I don't want to just do something to jeopardize
14 myself in the country here.

15 Q. After this occasion when the person from Egyptian
16 general intelligence approached you, did you ever see him
17 again?

18 A. No, sir.

19 Q. Have you ever since that time been involved with
20 or had any relationship with Egyptian general intelligence?

21 A. No, sir.

22 Q. Have you had a relationship with one of the
23 intelligence services from Egypt?

24 A. Yes, sir.

25 Q. Can you tell us which one?

1 A. The military intelligence.

2 Q. Can you explain to the ladies and gentlemen of
3 the jury how it is that you come to have a relationship with
4 people in Egyptian military intelligence?

5 A. In the beginning when we graduated and we start
6 to go to the officers clubs, we get mixed up with all kind
7 of officers. When we serve in regular units, we have our
8 colleagues who get promoted later on, and they go to higher
9 level and they start to serve in the intelligence military
10 service, but we keep our friendship with them.

11 Q. How long have you known the people that you know
12 from Egyptian military intelligence?

13 A. Since I graduated, 1974.

14 Q. Have you ever been requested by people in the
15 Egyptian -- withdrawn.

16 When you left Egypt in 1987, were you requested
17 by any of your friends in Egyptian military intelligence to
18 perform a service?

19 A. It wasn't type of service. We were sitting in
20 the officers club, they know that I am coming to the United
21 States. They said if you run by this individuals -- they
22 give me five people -- these people, there is an aid from
23 United States to Egypt, educational aid, and there is some
24 people who come on this aid to United States to learn. They
25 fled the mission and they just went through the people. So

1 they told --

2 Q. Let me just interrupt you for a moment. These
3 are Egyptian soldiers who were trained in the United States
4 under a cooperative program --

5 MS. STEWART: Judge, I am going to object to the
6 leading --

7 THE COURT: Sustained.

8 Q. All right. The people that you were asked about,
9 were they soldiers? Were they Egyptian soldiers?

10 A. They are Egyptian officers.

11 Q. Did you act on the request?

12 A. I did not get a chance because I wasn't living in
13 places where the Egyptian community living.

14 Q. Did the five people that you were asked about
15 have anything whatsoever to do with any of the defendants in
16 this case?

17 A. No, sir.

18 Q. Mr. Salem, did you ever get the information that
19 they were asking about?

20 A. No, sir.

21 Q. Had you gotten it, if you had received it would
22 you have passed it along?

23 COUNSEL: Objection.

24 THE COURT: Overruled.

25 Q. Would you have?

1 A. Yes, sir.

2 Q. Am I correct that there came a time that you
3 began working for the FBI in America, Federal Bureau of
4 Investigation here in New York?

5 A. Yes, sir.

6 Q. When was that?

7 A. Late 1991.

8 Q. When you began working with the Federal Bureau of
9 Investigation, did you tell them that you had friends or
10 ties to the Egyptian military intelligence?

11 A. Absolute, yes.

12 Q. Did you in fact tell them that you were an agent
13 of the Egyptian military intelligence?

14 A. Yes.

15 Q. Was that true?

16 A. No, it was not.

17 Q. During the whole time that you were cooperating
18 with the American FBI, were you in communication with your
19 friends in the Egyptian Military Intelligence Service?

20 A. Yes, sir.

21 Q. Did you tell the FBI agents with whom you were
22 working that you were in touch with people from the Egyptian
23 Military Intelligence Service?

24 A. Could you repeat the question, please.

25 Q. Yes, sir. Did you tell the FBI agents with whom

1 you were working after 1991 that you were in fairly regular
2 contact with friends of yours from the Egyptian Military
3 Intelligence Service?

4 A. Yes, sir.

5 Q. At the beginning of your cooperation with the
6 United States Federal Bureau of Investigation, did you
7 inform your friends in the Egyptian Military Intelligence
8 Service that you were cooperating with the American FBI?

9 A. No, I did not, sir.

10 Q. Did there come a time when you did tell the
11 people in Egypt that you were cooperating with the American
12 authorities?

13 A. Yes, sir.

14 Q. Do you remember what year that was?

15 A. It was 19 -- just close -- right after certain
16 instance. I don't know if I should say it or not.

17 Q. There is an incident by which you remember when
18 you told the Egyptian authorities that you were cooperating
19 with the Americans?

20 A. Yes, sir.

21 Q. What incident is that?

22 A. Bombing the World Trade Center.

23 Q. Mr. Salem, do you currently have a contract with
24 the Federal Bureau of Investigation?

25 A. Yes, sir.

1 Q. Do you recall when you entered the contract?

2 A. It was late 1993.

3 Q. Are you sure of the date as you sit here today?

4 A. I am bad at numbers and dates.

5 Q. Let me withdraw the question and ask you another
6 question.

7 A. All right.

8 Q. Mr. Salem, I am placing before you first what is
9 marked as Government's Exhibit 3534U for identification.

10 A. Yes, sir.

11 Q. Do you recognize that document?

12 A. Yes, sir.

13 Q. What do you recognize it to be?

14 A. It's my contract with the Federal Bureau of
15 Investigation.

16 Q. Looking at the last page, how do you know it is
17 your contract?

18 A. Because it's my signature there.

19 Q. What is the date of the contract?

20 A. 7/20/1994.

21 Q. That document 3534U is a modification to the
22 contract? Have I read that correctly?

23 A. Yes, sir.

24 Q. Directing your attention to 3534T, is that the
25 original contract?

1 A. Yes, sir.

2 Q. Looking at the last page, do you recognize your
3 signature?

4 A. Yes, sir.

5 Q. What is the date on that?

6 MS. STEWART: Objection. Not in evidence.

7 THE COURT: Overruled.

8 Q. You can read the date.

9 A. 7/8/1993.

10 (Continued on next page)

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1 MR. McCARTHY: Your Honor, at this time, I would
2 offer 3534T and 3534U, but not show them to the jury subject
3 to later rulings on parts of the contents.

4 MR. JACOBS: Voir dire?

5 THE COURT: It is a partial offer, and it is not
6 to be shown to the jury, so I don't understand the
7 significance of it. Why don't you just wait.

8 MR. McCARTHY: OK.

9 MR. JACOBS: Is the offer being withdrawn?

10 THE COURT: Yes.

11 Q. Mr. Salem --

12 A. Yes, sir.

13 Q. -- am I correct that under that contract, the FBI
14 and the United States government are obligated to pay you
15 \$1,056,200?

16 A. Yes, sir.

17 Q. Is it also correct that, in addition to that,
18 until you get that payment, you are receiving \$7,000 a month
19 under that contract?

20 A. Yes, sir.

21 Q. Have you been paid any portion of the \$1,056,200?

22 A. Yes, sir.

23 Q. About how much?

24 A. \$116,000.

25 Q. Prior to the time that you entered that contract

1 in July 1993, that is, the initial contract, did you have a
2 contract from 1991 through July of 1993 while you were
3 cooperating with the government?

4 A. No, sir.

5 Q. Did you have at any point any arrangement about
6 payment of fees and expenses?

7 A. Yes, sir.

8 Q. Can you describe for the ladies and gentlemen of
9 the jury what arrangements you had.

10 A. They offered me \$500 a week, plus expenses.

11 Q. That was during the periods of time that you were
12 cooperating between 1991 and 1993?

13 A. Yes, sir.

14 Q. That is November 1991 --

15 A. Yes, sir.

16 Q. -- and July 1993?

17 A. Yes, sir.

18 Q. What is your understanding of your obligations
19 under the contract that you signed in July of 1993 and the
20 modification that you signed in July of 1994?

21 A. That I must come to the court and give full and
22 truthful testimony; two, I should not leak or disclose any
23 other government agents' name or ranks; any information
24 which is considered secret in the Federal Bureau of
25 Investigation that came to my knowledge I should not release

1 it; and, if I will decide to write a book, I have to give it
2 to the FBI to review it and give me written permission first
3 before I go ahead and publish any secret information.

4 Q. I would like you to answer this question yes or
5 no. After June 23, 1993, did the FBI relocate you?

6 A. Yes, sir.

7 Q. Temporarily or permanently?

8 A. It was temporarily.

9 Q. Did a different government agency give you a more
10 permanent residence?

11 A. Yes, sir.

12 Q. Which agency was that?

13 A. The United States Marshals Service.

14 Q. Are you also receiving funding from the United
15 States Marshals Service under the program as to which you
16 were relocated?

17 A. Yes, sir.

18 Q. How much?

19 A. \$2700.

20 Q. How often is that?

21 A. A month.

22 Q. Mr. Salem, you told us earlier you had two
23 children. Do you live with anyone else besides your two
24 children?

25 A. My wife.

1 Q. Are you legally married to your wife?

2 A. No. We get married -- we have private contract
3 between both of us, like religious ceremony between us.

4 Q. Have you ever gotten married under the law of any
5 state?

6 A. No, sir.

7 Q. Do either you or your wife work at the present
8 time?

9 A. No, we are not able to work yet.

10 Q. Have you and your family been relocated since
11 June 23, 1993?

12 A. Yes, sir.

13 Q. How many times?

14 A. 14.

15 Q. I want to take you back to 1987 for a moment.

16 Can you describe, please, for the ladies and
17 gentlemen of the jury, what your financial circumstances
18 were like when you were in Egypt in 1987?

19 A. I would say comfortable, an officer in the Army.
20 Over there we have a lot of benefits. We have some
21 officers' clubs. We have special restaurants, we have --
22 privileges we have as officers there.

23 Q. Mr. Salem, do you need a drink of water?

24 A. Yeah, I guess so.

25 Q. You can fill the cup if you'd like.

1 A. Thank you.

2 Q. When in 1987 did you come to the United States?

3 A. Late 1987.

4 Q. Were things the same or different for you
5 financially once you got here?

6 A. It was completely different.

7 Q. Can you describe for the ladies and gentlemen how
8 it was different.

9 A. At the beginning, of course, I came, I used to
10 stock shelves in men's clothing store. I drove a cab. I
11 worked as a salesman in a men's clothing store. Then I get
12 little bit higher, I start work as a security guard in
13 Bergdorf Goodman. I get little bit promoted, I start work
14 as a private investigator in a company, in a private
15 detective agency.

16 Q. Let me interrupt you for a moment. Was the
17 social life that you had when you got to New York different
18 from what it had been in Egypt?

19 A. Yes, of course.

20 Q. Can you briefly describe for us how it was
21 different.

22 A. There were just -- I was like big shot in Egypt,
23 and all of a sudden I became just an immigrant.

24 Q. You said you worked as a private investigator.
25 Were there any other jobs that you had after you

1 were a private investigator, once you came to the United
2 States that is?

3 A. Yes, sir. I worked as an engineer in a
4 supervisory level in one of the midtown hotels.

5 Q. What midtown hotel was that?

6 A. It's called the Best Western Woodward Hotel.

7 Q. Can you tell us where that is located?

8 A. 55th Street between 7th and Broadway.

9 Q. After you arrived in the United States in 1987,
10 did you strike up a relationship with a woman?

11 A. Yes, sir.

12 Q. Who was that?

13 A. Barbara Rogers.

14 Q. When did you meet Barbara Rogers?

15 A. Right after I came, the next week after my
16 arrival.

17 Q. How did you meet her?

18 A. I was introduced to her through my cousin's
19 girlfriend and my cousin.

20 Q. Where?

21 A. In the karate school.

22 Q. After you met Barbara Rogers, what did she tell
23 you she did for a living?

24 A. Pardon me?

25 Q. What did she tell you she did for a living?

1 A. She told me she is a doctor.

2 Q. Did you later learn that she was not a doctor?

3 A. Yes.

4 Q. What did she actually do for a living?

5 A. She is a secretary in a company, cosmetic
6 company.

7 Q. Were you truthful with Barbara Rogers about your
8 background?

9 A. No, sir, I was not.

10 Q. Generally speaking, can you tell us what you told
11 her about yourself?

12 A. I tried to maintain myself to be a big shot. I
13 told her I was big security for the president. I was --

14 Q. The president of Egypt?

15 A. Yes, sir.

16 Q. What else did you tell her about yourself?

17 A. I was trying to impress her. I was -- I told her
18 a lot of bragging stories.

19 Q. Did you tell her about being wounded in combat?

20 A. Yes, I did.

21 Q. Were any of the stories that you told her about
22 your accomplishments in Egypt true?

23 A. No.

24 Q. Was Barbara Rogers the only person you tried to
25 impress with these stories about your accomplishments in

1 Egypt?

2 A. No, sir.

3 Q. Is it fair to say that you told these stories to
4 just about anyone who would listen to you?

5 A. Yes, sir.

6 Q. Did you and Barbara Rogers end up getting
7 married?

8 A. Yes, sir.

9 Q. Do you remember when?

10 A. That was two weeks after I met her.

11 Q. Two weeks after you met her, right after coming
12 here to the United States?

13 A. That's correct, sir.

14 Q. Without going into what religion, were you
15 married in a religious ceremony?

16 A. Yes, sir.

17 Q. How many times?

18 A. Twice.

19 Q. Were you and she of the same religion?

20 A. No, sir.

21 Q. How far apart were the two marriages, the two
22 wedding ceremonies?

23 A. A few months, seven, eight months, something like
24 that.

25 Q. Mr. Salem, was it a successful marriage?

1 A. At the beginning, yes, it was very successful.

2 Q. How about later?

3 A. It turns to be bad.

4 MS. STEWART: I didn't hear the answer, Judge.

5 I'm sorry.

6 THE WITNESS: It turns to be bad.

7 MS. STEWART: Thank you.

8 THE WITNESS: You're welcome.

9 Q. Did there come a time when you got divorced?

10 A. Yes, sir.

11 Q. Did you continue to have a relationship of sorts
12 with Barbara Rogers after you got divorced?

13 A. Yes, sir, I did.

14 Q. Mr. Salem, from the time that you came here to
15 the United States in 1987 until the time you started
16 cooperating with the FBI sometime in 1991, did you ever
17 contact any other government service about employment?

18 A. Yes, sir.

19 Q. Which service?

20 A. The CIA.

21 Q. How did it happen that you contacted the CIA
22 about employment?

23 A. After we get with Barbara, she start to suggest
24 that she want to help me to get employed, excuse me --

25 Q. Let me stop you there for a moment.

1 What kind of job did you ask for with the CIA?

2 A. A language specialist.

3 Q. How many times did you contact them?

4 A. Twice.

5 Q. Did they indicate that they were interested in
6 hiring you as a language specialist?

7 A. No. They said since you are not U.S. citizen
8 yet, we cannot hire you.

9 Q. Other than those two occasions, did you have any
10 other contact with the Central Intelligence Agency of the
11 United States?

12 A. No, sir.

13 Q. Mr. Salem, let me direct your attention to the
14 spring of 1991. Would you tell us please, where you were
15 working at that time?

16 A. I was working the Best Western Woodward Hotel.

17 Q. Did there come a time in the spring of 1991 that
18 you met a person named Nancy Floyd?

19 A. Yes, sir.

20 Q. How did you meet Nancy Floyd?

21 A. I was in charge of the security, and I was the
22 managing agent and engineer for the hotel. She came to the
23 lobby. She asked one of the security guards to --

24 Q. Let me ask you to back up from the microphone
25 just a little bit. Your words are getting a bit garbled

1 back here. Go ahead.

2 A. She asked one of the security guards to let her
3 to get in touch with the head of the security. He brought
4 her to me in my office. She introduced herself to me. She
5 showed me her badge, "I am an FBI agent and we need some
6 cooperation from you," and I said OK.

7 Q. You agreed to cooperate with Agent Nancy Floyd?

8 A. Sure. Yes, sir.

9 Q. Did she tell you what federal agency she worked
10 for?

11 A. She -- yes, she told me she works for the FBI.

12 Q. Mr. Salem, without telling us the nature of the
13 investigation that Agent Floyd asked for your cooperation
14 in, can you tell us, please, whether that investigation had
15 anything at all to do with this case?

16 A. No, sir.

17 MR. JACOBS: Objection.

18 THE COURT: Overruled.

19 Q. Did you have access to the information that Agent
20 Floyd wanted because of where you were working at the time?

21 A. Yes, sir.

22 Q. Before you were contacted by Agent Floyd, between
23 1987, when you got here, and 1991, did you ever at any time
24 contact the FBI to offer to give them any help or
25 information?

1 A. No, sir.

2 Q. You assisted Agent Floyd the first time she asked
3 you for assistance?

4 A. Yes, sir, I did.

5 Q. After the first time you provided her with
6 assistance, did you continue from time to time to provide
7 her with information?

8 A. Yes, sir, I did.

9 Q. Did you call Agent Floyd? Did she call you? Or
10 describe generally how that worked.

11 A. She used to come right about my lunchtime, and I
12 used to give her the information she needed.

13 Q. In this time, the spring of 1991, when you were
14 giving her information, was the FBI paying you for that
15 information?

16 A. No, sir.

17 Q. Did you ask the FBI to pay you?

18 A. No, sir.

19 Q. Did there come a time in the summer of 1991 when
20 Agent Floyd asked you about your background?

21 A. Yes, sir.

22 Q. Were you truthful with Agent Floyd when she asked
23 you about your background?

24 A. No, I did the same thing.

25 Q. What do you mean you did the same thing?

1 A. I made myself big shot.

2 Q. Did you tell Agent Floyd that you had been a part
3 of President Sadat's detail when he was assassinated?

4 A. Yes, sir, I did.

5 Q. Did you tell Agent Floyd that you were with
6 Egyptian military intelligence?

7 A. Yes, sir, I did.

8 Q. Was either of those things true?

9 A. No, sir, it was not.

10 Q. Did you tell Agent Floyd that you knew Colonel
11 Muammar Qaddafi of Libya from having met him on several
12 occasions?

13 A. Yes, sir, I did.

14 Q. Was that true?

15 A. It was not true.

16 Q. Had you ever met Colonel Qaddafi?

17 A. No, I had never met --

18 Q. How about Saddam Hussein of Iraq or King Hussein
19 of Jordan? Did you tell her that you knew those people?

20 A. Yes, sir, I did.

21 Q. Did you in fact know either one of those people?

22 A. No, sir, I did not.

23 Q. Did you tell Agent Floyd that you had knowledge
24 of the military and atomic capabilities of Middle East
25 countries?

1 A. Can you repeat the question, please.

2 Q. Did you tell Agent Floyd that you had knowledge
3 of the military and atomic capabilities of other countries?

4 A. Yes, sir, I did.

5 Q. Was that true?

6 A. No, it was not.

7 Q. Did there ever come a time after you originally
8 gave Agent Floyd that information that you told her that the
9 things that you originally told her were not true?

10 A. Yes, after we get involved in work more, I just
11 told her that I want to clear the picture.

12 Q. Mr. Salem, I want to ask you some questions about
13 the assassination of President Sadat.

14 A. Yes, sir.

15 Q. Can you tell us, please, whether you were present
16 at a military parade in the early 1980s when President Sadat
17 was killed?

18 A. Yes, sir.

19 Q. Were you in uniform that day?

20 A. No, I was in a day off. I was in civilian
21 clothes.

22 Q. How were you dressed?

23 A. Plainclothes.

24 Q. Were you anywhere near where President Sadat was
25 standing at the time that he was assassinated?

1 A. No, sir.

2 Q. Let me direct your attention to February 4, 1993.

3 Do you recall that day?

4 A. I am bad at dates. I will recall it, just --

5 Q. Let me ask you whether you testified in a New
6 York State trial on February 4, 1993?

7 A. Yes, sir.

8 Q. What kind of case was that?

9 A. It was a criminal case, somebody hit me with a
10 car.

11 Q. Can you briefly describe for the ladies and
12 gentlemen of the jury the type of case, how it happened that
13 you were called as a witness in a New York State trial,
14 briefly?

15 A. I was driving my car; I stopped in a red light.
16 He hit me from the back. I get out the car to take the
17 information, he hit me with the car, carried me on the hood
18 and kept driving with me on the hood, and I was hanging
19 there until the cops saw him. They stopped him, and with
20 the weapons, and they arrested him on there and they took me
21 off the hood.

22 Q. Mr. Salem, did the Manhattan District Attorney's
23 office summon you as a witness at that trial?

24 A. Yes, sir.

25 Q. Did you give truthful answers to all of the

1 questions you were asked?

2 A. No, sir.

3 MR. McCARTHY: Let me direct counsel's attention
4 to 3534R for identification. Directing your attention,
5 counsel, to page 5 of the transcript.

6 Q. Mr. Salem, were you asked these questions and did
7 you give these answers in your testimony in the New York
8 State criminal trial on February 4, 19 --

9 MS. AMSTERDAM: Objection as to leading, your
10 Honor.

11 THE COURT: Pardon?

12 MS. AMSTERDAM: Objection as to leading.

13 THE COURT: Overruled.

14 Q. Were you asked these questions and did you give
15 these answers in your testimony on February 4, 1993:

16 "Q. What is -- can you tell the members of the
17 jury what your educational background is.

18 "A. I am a college graduate as engineer,
19 electrical engineer. I became a member of the secret
20 service to bodyguard the president of my country

21 "Q. Egypt?

22 "A. Correct. I get injured on the
23 assassination of my president. I decided to reside and move
24 to the United States.

25 "Q. How long were you employed with the secret

1 service in Egypt?

2 "A. With the secret service eight years."

3 Did you give those answers to those questions in
4 your testimony in a New York State court on February 4,
5 1993?

6 A. Yes, sir, I did.

7 Q. Directing counsel's attention to page 31 of that
8 transcript, were you asked these questions and did you give
9 these answers, Mr. Salem:

10 "Q. And you told Dr. Stein that you were a
11 demolition expert in the Army, isn't that correct?

12 "A. I still don't understand what 'demolition'
13 means.

14 "Q. Then you couldn't have said it, right?

15 "A. I'm sorry. I am not --

16 "Q. I think 'demolition' means to destroy
17 things. Does that help?

18 "A. Yes.

19 "Q. Were you an expert in destroying things?

20 "A. Yes.

21 "Q. OK. What kinds of things did you destroy
22 that you were an expert in destroying?

23 "A. If you want to destroy a ship so we can
24 scuba dive and plant to explosives with a certain way, we
25 train to do that.

1 "Q. So you were trained to destroy that ship,
2 correct?

3 "A. Correct.

4 "Q. What other kind of things were you trained
5 at destroying?

6 "A. Cars, planes and buildings."

7 Were you actually a demolition expert in the
8 Army, Mr. Salem?

9 A. No, sir.

10 Q. Moving to page 32 --

11 THE COURT: First would you ask whether he gave
12 that testimony?

13 MR. McCARTHY: Yes, your Honor.

14 Q. Did you give those answers to those questions?

15 A. Yes, sir.

16 Q. At page 32, were you asked these questions and
17 did you give these answers, Mr. Salem:

18 "Q. At some point you were selected to be the
19 personal bodyguard for President Sadat, is that correct?

20 "A. That is correct.

21 "Q. And that was a special assignment,
22 correct?

23 "A. Correct.

24 "Q. And there was an intensive evaluation
25 process that you went through, correct?

1 "A. That's correct.

2 "Q. What did that consist of?

3 "A. It consist of civil control, high
4 qualification of control and observing, and that's the
5 secret service should be.

6 "Q. Was there special training for that
7 position?

8 "A. Correct.

9 "Q. What did that training consist of?

10 "A. I can't answer this question.

11 "Q. You are not allowed to answer at all?

12 "A. I am not -- like this is very special
13 things belong to the secret service agency of my country. I
14 shouldn't be talking about it anywhere else."

15 Did you give those answers to those questions?

16 A. Yes, sir.

17 Q. Finally, page 34:

18 "Q. You were present when the president was
19 assassinated, correct?

20 "A. Correct.

21 "Q. And you were injured during that attempt,
22 correct?

23 "A. Correct.

24 "Q. Were you injured other times while you
25 were in the Army?

1 "A. Correct.

2 "Q. In what sense?

3 "A. What do you mean 'in what sense'? In
4 which area?

5 "Q. How were you injured those other times
6 when you were in the Army?

7 "A. Operations.

8 "Q. OK. You were shot at?

9 "A. Yes.

10 "Q. OK. You had bullets in your body?

11 "A. Bullets removed.

12 "Q. How many times?

13 "A. Three times, as far as I could recall --
14 as far as I recall.

15 "Q. What other injuries did you sustain while
16 you were in the Army?

17 "A. That's all."

18 Mr. Salem, did you give those answers to those
19 questions?

20 A. Yes, sir, I did.

21 Q. Did you understand that perjury was a crime at
22 the time you gave those answers?

23 A. Yes, sir, I did.

24 Q. Mr. Salem, let me direct your attention back to
25 1991. Did there come a time after the first matter that

1 Agent Floyd asked you to give cooperation in that you were
2 asked to provide assistance to the Immigration Service?

3 A. Yes, sir.

4 Q. How did you come to provide information to the
5 Immigration Service?

6 A. She introduced me to one of the agents from --
7 not -- immigration naturalization --

8 Q. Let me interrupt you. Who was the she who
9 introduced you to the agent of the Immigration Service?

10 A. Agent Nancy Floyd.

11 Q. Who was the agent she introduced you to?

12 A. Agent Perry Kao.

13 MS. AMSTERDAM: I'm sorry?

14 A. Agent Perry Kao.

15 Q. P-E-R-R-Y K-A-O?

16 Did you provide cooperation to the Immigration
17 Service?

18 A. Yes, sir, I did.

19 Q. Were you paid any money for that cooperation?

20 A. No, sir.

21 Q. Can you tell us what the nature of the
22 cooperation you provided the first time was?

23 A. Agent Perry Kao told me, "Do you know any illegal
24 employees in this hotel?"

25 I said, "Yes, I know."

1 "How many?"

2 I said, "Most of them."

3 "Are you willing to cooperate with us and supply
4 us information about these illegal aliens?"

5 I said, "Yes, I'm willing."

6 And I supplied them with the information.

7 Q. Before you supplied them with the information,
8 were you paid any money by the Immigration Service?

9 A. No, sir.

10 Q. After you provided them with the information, did
11 you receive any benefit at all from the Immigration Service?

12 A. Yes, sir.

13 Q. Describe to the ladies and gentlemen what that
14 benefit was.

15 A. When I brought my kids and I want to make them
16 the green card, they brought me the forms for the green card
17 for my kids, and they didn't let me stand in the long line
18 in front of the place.

19 Q. Mr. Salem, did you become a United States citizen
20 after you came here?

21 A. Yes, sir.

22 Q. Do you remember when? Do you remember when you
23 became a United States citizen?

24 A. I am bad at dates, sir.

25 Q. Approximately how long have you been a United

1 States citizen?

2 The time's not any better than the date.

3 About how long did you --

4 A. Three, four years, something like that.

5 Q. Have your children become United States citizens
6 yet?

7 A. No, sir.

8 Q. Why not?

9 A. They should be under my supervision for at least
10 five years according to the immigration law, so then I got
11 to apply for them and they got to go through tests and then
12 they will become U.S. citizens.

13 Q. The time that you gave Agent Kao information that
14 one occasion, was that the only time that you ever
15 cooperated with INS, the Immigration Service?

16 A. No, sir.

17 Q. How many other times did you cooperate with INS?

18 A. Another two cases.

19 Q. Did either of those cases involve a hotel?

20 A. No, sir.

21 Q. Can you tell us what those two cases involved?

22 A. Some individuals who has, who had access to the
23 Immigration Service, and they make fraud for green cards and
24 they sell it for \$3,000 or \$2,000 to the people who's
25 illegal aliens coming into the country.

1 Q. How did you meet that person?

2 A. He was introduced to me through Mr. Mohammed
3 El-Gabrowny.

4 Q. Who is Mohammed El-Gabrowny?

5 A. He is the brother of Mr. Ibrahim El-Gabrowny.

6 Q. Let me direct your attention to October 1991.

7 Did there come a time when Agent Floyd asked you to meet
8 another FBI agent at that time?

9 A. Yes, sir.

10 Q. Who was the agent that Agent Floyd introduced you
11 to?

12 A. Agent John Anticev.

13 Q. Did you meet with Agents Floyd and Anticev in
14 late October 1991?

15 A. Yes, sir.

16 Q. Without telling us any of the information they
17 may have given you, were you asked at that time to provide
18 them with assistance?

19 A. Yes, sir.

20 Q. What kind of assistance did Agent Anticev and
21 Agent Floyd ask you to provide?

22 A. He wants me to give him information about
23 Mr. Sayyid Nosair's followers.

24 Q. How were you asked to provide information about
25 Mr. Sayyid Nosair?

1 A. By going and getting involved with him and see
2 what they are -- because Mr. Sayyid Nosair at that time was
3 in a trial.

4 Q. Was there any other person besides Mr. Sayyid
5 Nosair that Agent Anticev mentioned to you as being a focus
6 of his investigation?

7 A. Yes.

8 MR. STAVIS: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. Did Agent Anticev ask you to provide him
11 assistance in connection with any other named person?

12 MR. STAVIS: Objection, your Honor, same
13 objection.

14 THE COURT: Answer that yes or no.

15 A. Yes, sir.

16 Q. Who was the named person?

17 MR. STAVIS: Objection, your Honor.

18 THE COURT: May I see counsel at the side.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: First off, who is the other person?

3 MR. McCARTHY: Sheik Rahman.

4 THE COURT: Go ahead.

5 MR. McCARTHY: I was going to say, given the
6 openings in the case, I am quite surprised actually to hear
7 the objection. I mean, they opened saying that this guy
8 solicited the FBI that so he could go in and carry out a
9 mission for an agent.

10 THE COURT: It is relevant that they came to him
11 and these are the people they asked him about.

12 What is the response? I will ask Mr. Stavis
13 since he was the source of the objection.

14 MR. STAVIS: Obviously, Mr. McCarthy has a leg up
15 on me because I don't know what the witness is going to say.
16 I just know that it is rank hearsay, and I would --

17 THE COURT: Well, it's being introduced to show
18 who put what to whom at what time.

19 MR. McCARTHY: I have no objection if your Honor
20 wants to instruct the jury that the fact that somebody is
21 being investigated is not --

22 THE COURT: It seems to me the proper person to
23 ask for that would be --

24 MS. STEWART: Right.

25 THE COURT: -- his counsel.

1 MS. STEWART: Let me think about this. Maybe
2 that is not introduced for the truth necessarily of the
3 matter.

4 THE COURT: It is introduced for the truth of his
5 having heard it.

6 MS. STEWART: Right.

7 THE COURT: It is not introduced for the truth of
8 showing that your client was worthy of being investigated.
9 If you want me to use that word or another --

10 MS. STEWART: I prefer no instruction myself.

11 THE COURT: OK.

12 MR. WASSERMAN: What about --

13 THE COURT: What about staying out of arguments
14 that you have no part of.

15 (Continued on next page)

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1 (In open court)

2 THE COURT: OK. As I understand it, the
3 objection is withdrawn, is that correct?

4 MR. STAVIS: Yes, your Honor.

5 THE COURT: Let's go.

6 Q. Mr. Salem, who was the other person that Agent
7 Anticev named to you?

8 A. Sheik Omar Abdel Rahman.

9 Q. I would ask you to answer this question yes or
10 no. At the time that Agent Anticev mentioned the name Sheik
11 Omar Abdel Rahman to you, had you ever heard of Sheik Omar
12 Abdel Rahman?

13 A. Yes, sir.

14 Q. How had you learned about him? Don't tell us
15 what you had heard about him, just tell us how you had come
16 to hear about him.

17 A. He's very well-known in the Arab world.

18 Q. Did you know Sheik Omar Abdel Rahman personally?

19 A. No, sir.

20 (Continued on next page)

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1 Q. At the time that he mentioned the name El Sayyid
2 Nosair to you, had you ever heard the name El Sayyid Nosair
3 before?

4 A. No, sir.

5 Q. All right. The first time that Agent Anticev
6 asked you to do -- withdrawn.

7 What kind of work, what kind of investigation did
8 Agent Anticev ask you to participate in? What were you
9 supposed to do, according to the way he described it?

10 A. I supposed to supply information about the
11 activity of Mr. Sayyid Nosair's followers.

12 Q. How did you understand that you were supposed to
13 get the information to supply him?

14 A. To be undercover among the community and supply
15 the information about the activity there.

16 Q. The first time he asked you to work undercover,
17 did you agree to do it?

18 A. In that time I was working in the hotel, I have a
19 full-time job --

20 THE COURT: The question was simply whether you
21 agreed or not. Did you?

22 Q. Mr. Salem.

23 A. Yes, sir.

24 Q. The judge's question is, did you agree to or not?

25 A. No, I did not.

1 Q. You can you tell us why not?

2 A. Because I was still having full-time job in the
3 hotel.

4 Q. Did you get injured at the end of October 1991?

5 A. Yes, sir.

6 Q. Can you briefly describe to us how you were
7 injured and the nature of your injury?

8 A. I was in my office. I was called by the
9 messenger to adjust the boiler. I took a step ladder 5
10 feet, I went up to adjust it, it slipped from the bottom.
11 There is a hole in the ground and I slipped, I fall down.

12 Q. Fell off the ladder?

13 A. Yes, sir.

14 Q. Can you tell us how badly you were injured?

15 A. I was pretty bad. My head was bleeding all over,
16 my neck, my back, my knee.

17 Q. Did the job you were working at that time involve
18 any kind of physical labor?

19 A. Yes, sir.

20 Q. What kind of physical labor?

21 A. I was in charge of the whole block, which is
22 three buildings, the hotel and another two residential
23 buildings, and I have to go up and down all the day between
24 the three buildings, for the tenants, for the guests of the
25 hotel. I was the managing agent, registered managing agent

1 with the city as well. So a lot of carrying and running
2 around.

3 Q. After your injury, were you out of work for
4 awhile?

5 A. Yes, sir.

6 Q. Did there come a time that Agent Anticev again
7 asked you to participate in the investigation in an
8 undercover work?

9 A. Yes. He came back to me, he said since you have
10 some time off, will you reconsider cooperating with us? I
11 said yes.

12 Q. At the time that you agreed to begin working with
13 the agents undercover, did you have any agreement about how
14 much you would be paid?

15 A. Yes, sir.

16 Q. What was your understanding?

17 A. \$500 a week plus my expenses.

18 Q. What were the arrangements regarding which agent
19 you would report to?

20 A. Agent John Anticev.

21 Q. Any other agents you were supposed to report to?

22 A. His partner Agent Louie Napoli.

23 Q. Was Nancy Floyd someone that you were involved
24 with in connection with the investigation?

25 A. No, no, sir.

1 Q. Did you continue to contact Nancy Floyd anyway in
2 connection with the investigation?

3 A. Yes. She was the agent who brought me to the
4 Bureau, so she always, from time to time she was in touch
5 with me.

6 Q. Did you have any understandings with the FBI
7 about what the extent of your cooperation would be?

8 A. Yes, just supplying information.

9 Q. Did the subject of testifying ever come up?

10 A. No, sir.

11 Q. Did it not come up in that time or was there a
12 time afterwards that it came up?

13 A. Yes, afterwards they told me you have to testify,
14 I said no way.

15 MS. STEWART: Judge, I didn't catch that word,
16 after something we would have to testify?

17 THE COURT: I think he said afterwards.

18 MS. STEWART: Afterwards, OK.

19 MR. MCCARTHY: Your Honor, I am about to go on to
20 a new topic.

21 THE COURT: Ladies and gentlemen, we are going to
22 take a break. Please leave your notes and other materials
23 lined. Please don't discuss the case. We will resume after
24 the break. I ask everybody to remain seated until the
25 jurors have left the courtroom.

1 (Jury excused)

2 THE COURT: You can step down.

3 THE WITNESS: Yes, sir.

4 (Witness temporarily excused)

5 (Recess)

6 (Witness resumed)

7 (Jury present)

8 MR. McCARTHY: Shall I proceed, your Honor?

9 THE COURT: Go ahead, Mr. McCarthy.

10 BY MR. McCARTHY:

11 Q. Mr. Salem.

12 A. Yes, sir.

13 Q. Let me invite your attention to November 4, 1991.

14 A. Yes, sir.

15 Q. Where did you go that day?

16 A. I went to the courtroom in 100 Centre Street.

17 Q. What was going on in the courtroom at 100 Centre
18 Street?

19 A. There was a trial for Mr. El Sayyid Nosair.

20 Q. Who did you see when you got to the courtroom at
21 100 Centre Street?

22 A. In front of the courthouse I met with a Middle
23 Eastern looking man. I speak in English to him. I ask him
24 about Mr. El Sayyid Nosair's trial, and he answer me back in
25 Arabic. Told me it's up here and he is one of his

1 followers, so he took me upstairs.

2 MR. STAVIS: Your Honor, I object to the use of
3 the term "followers."

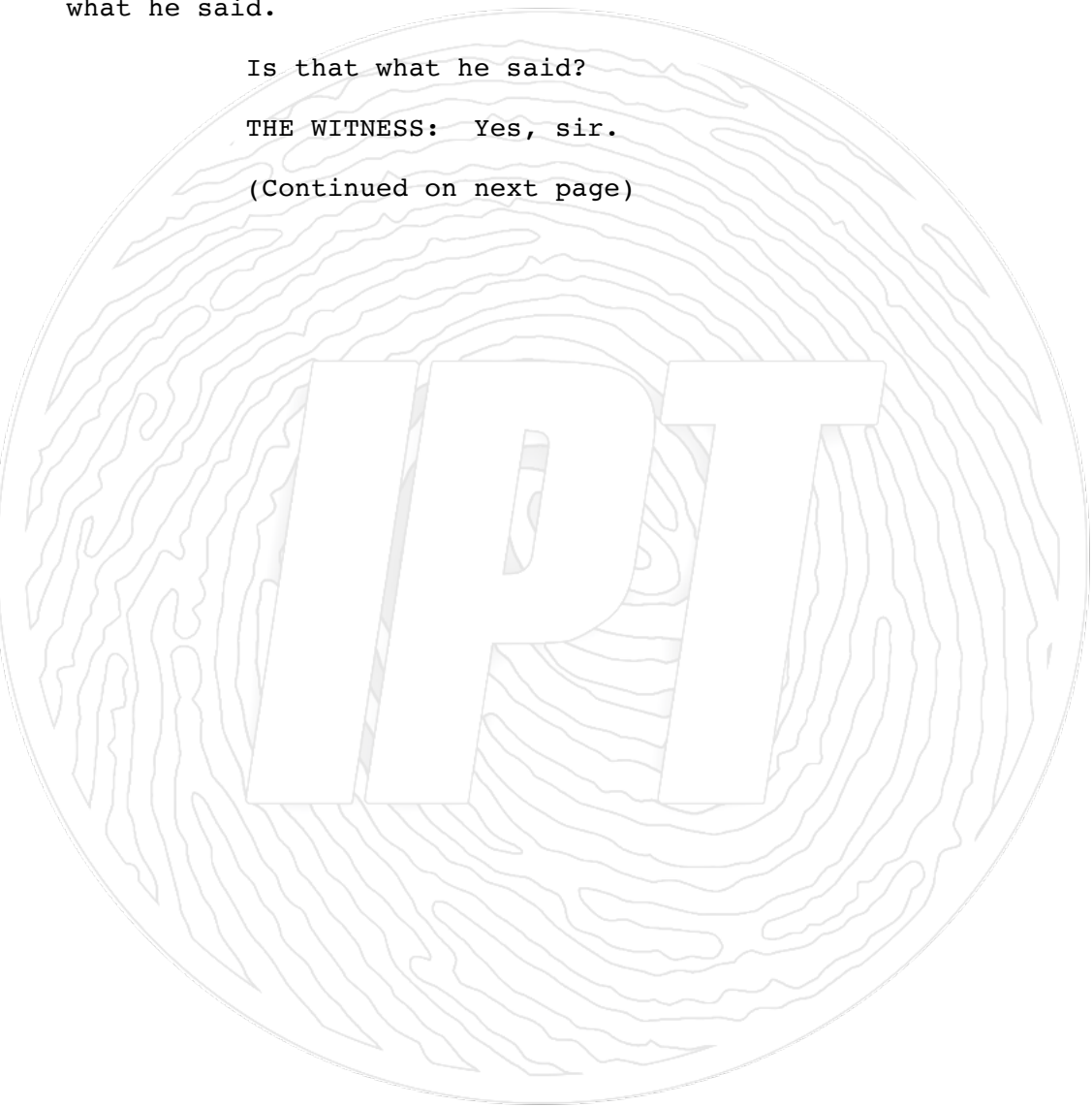
4 THE COURT: If that is what the man said, that's
5 what he said.

6 Is that what he said?

7 THE WITNESS: Yes, sir.

8 (Continued on next page)

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1 Q. Did he identify himself to you?

2 A. Yes, sir.

3 Q. Did he tell you what his name was?

4 A. Yes, sir.

5 Q. Who was it?

6 A. Mr. Emad Abdou.

7 Q. Did you meet anyone else at the time that you met
8 Mr. Emad Abdou?

9 A. Yes, sir. As soon as we get into the courthouse
10 we met with Mr. Mohammad Attia.

11 Q. When you met Mr. Mohammed Attia and Mr. Emad
12 Abdou, where did you go?

13 A. We went to the courtroom, and they showed me the
14 courtroom and the trial.

15 Q. Did you tell those gentleman anything about
16 yourself?

17 A. Yes, I told him that I live in Manhattan; I am a
18 jeweler, and I used to be in the Army. I used to be in the
19 Green Berets, things like that.

20 Q. Did you tell them anything about fighting in any
21 wars?

22 A. Yes. I told them that I was fighting in 1973
23 War, and I was fighting the Jews and things like that.

24 Q. Was there any discussion, sir, about what mosque
25 you attended?

1 A. They actually invited me to El Salaam mosque.

2 Q. Was there any discussion about what mosque you
3 attended?

4 A. No. I told them -- yes, I told them I attend at
5 96th Street Mosque in Manhattan, that's why you don't see
6 me, and things like that.

7 Q. You went to the courtroom with those men?

8 A. Yes.

9 Q. Did there come a time that they pointed anyone
10 out to you?

11 A. They pointed Mr. Ibrahim El-Gabrownny.

12 Q. What did they tell you about Ibrahim El-Gabrownny?

13 A. They told me he is in charge of the committee of
14 Mr. Sayyid Nosair he is his cousin.

15 Q. Did there come a time that you met Ibrahim
16 El-Gabrownny?

17 A. Yes, sir.

18 Q. How did you meet him?

19 A. I approached him by myself in the courtroom.

20 Q. Did you introduce yourself to him?

21 A. Yes, sir.

22 Q. And he to you?

23 A. Yes, sir.

24 Q. How often did you see Mr. Ibrahim El-Gabrownny
25 after the first time you met him?

1 A. Almost daily basis.

2 Q. Do you see Ibrahim El-Gabrownny in court today?

3 A. Yes, sir.

4 Q. Could you point him out, please?

5 A. He's with the glasses and the red and white
6 and -- striped shirt.

7 THE COURT: Indicating Mr. El-Gabrownny.
8 Go ahead.

9 Q. Did you see the defendant El Sayyid Nosair at his
10 state trial?

11 A. Yes, sir.

12 Q. Did you see him on occasion after that?

13 A. Yes, sir.

14 Q. Do you see Mr. Nosair in court today?

15 A. Yes, sir.

16 Q. Can you point him out, please?

17 A. He is number 2 in the front line with the
18 stripes, gray tie.

19 THE COURT: Indicating Mr. Nosair. Go ahead.

20 Q. From the time that you met him in early November
21 until the end of that month, did you have some conversations
22 with Ibrahim El-Gabrownny?

23 A. Yes, sir.

24 Q. Can you tell us, please, what you told him about
25 yourself and what his response was?

1 A. I told him, "I am a jeweler. I live in
2 Manhattan. I have my own business. I can manage my time by
3 myself, and I am here to support Mr. Sayyid Nosair."

4 Q. Did you tell him about your military exploits?

5 A. Yes, I told him I used to be a Green Berets and I
6 used to be in 1973 War. I fought the Jews and I am a
7 fighter, I am a mujahid.

8 Q. A mujahid?

9 A. Yes.

10 Q. What was Mr. El-Gabrownny's reaction?

11 A. He said, that's fine. It is good to have brother
12 like you, and probably you can help for brother Sayyid
13 Nosair.

14 Q. After you first met Ibrahim El-Gabrownny, did he
15 introduce you to some of his friends?

16 A. Yes, sir.

17 MR. RICCO: Objection to the form.

18 MR. McCARTHY: I will withdraw it.

19 Q. Did he introduce you to other people?

20 A. Yes, sir.

21 Q. Who were the other people that he introduced you
22 to?

23 A. Siddig Ibrahim Siddig Ali, to Mr. Ahmed Abdel
24 Sattar, Mr. Nasser Homosamy, Mr. Ali Shinawy, a lot of
25 individuals that used to come to the courtroom and trial.

1 Q. Over the weeks and months that followed, did you
2 get to know some of these people better?

3 A. Yes, sir.

4 Q. How did you first meet Ahmed Abdel Sattar?

5 A. It was intermission between the court sessions,
6 and I was walking out of the courtroom with Mr. Ibrahim
7 El-Gabrownny, and then he introduced me to him and grabbed
8 his -- grab him around his shoulder and said, "That's our
9 next champ, Abdel Sattar."

10 Q. Did you ever hear Mr. El-Gabrownny use the term
11 "champ" in connection with anyone else?

12 A. Yes, sir.

13 Q. Who was that?

14 A. Mr. Sayyid Nosair.

15 Q. How often did you see Mr. Sattar after the first
16 time you met him?

17 A. I would say twice a week, every week.

18 Q. Can you tell us some of the different places that
19 you saw him?

20 A. Sometimes in the courtroom, sometimes in the
21 mosque.

22 Q. Which mosque?

23 A. Abu Bakr mosque.

24 Q. Did you see him in any other mosques besides the
25 Abu Bakr mosque?

1 A. Yes. Sometimes he went to the Islamic Senate in
2 New Jersey, sometimes he went to El Salaam mosque in New
3 Jersey as well.

4 Q. Can you tell us, please, some of the people that
5 you would see Mr. Sattar with?

6 A. He's constantly with Mr. Ali El Shinawy,
7 Mr. Nasser Homosamy. He was with Sheik Siddig Ali, most of
8 the people in the Abu Bakr mosque mostly.

9 Q. Did you ever see him with any people in New
10 Jersey?

11 MS. STEWART: Objection, Judge.

12 THE COURT: Overruled.

13 A. Yes, sir.

14 Q. Who would that be?

15 A. Mr. Hamdi Moussa, Mr. Hamdi Ali, Mr. Sheik
16 Hammati, Sheik Abdel Khalik.

17 Q. Thank you.

18 You mentioned the Abu Bakr mosque earlier in your
19 testimony. Where was the Abu Bakr mosque?

20 A. In Brooklyn, sir.

21 Q. Do you recall where in Brooklyn?

22 A. Ocean Avenue, and then you turn right to Foster
23 Street, at the end, on the right end of Foster Street.

24 Q. Did Mr. El-Gabrowny, that is, Ibrahim
25 El-Gabrowny, indicate to you that he had any connection to

1 the Abu Bakr mosque?

2 A. Yes, he was the -- he was a member in the board
3 of directors of this mosque.

4 Q. Did Mr. El-Gabrowny introduce you to others who
5 were connected to the mosque?

6 A. Yes, sir.

7 Q. Who would that be?

8 A. Mr. Ali El Shinawy, who was a member of the board
9 of directors as well, Mr. Nasser Homosamy in charge of the
10 money.

11 Q. You told us before I think that you saw Mr. Ali
12 Shinawy at the trial?

13 A. Yes, sir.

14 Q. How often did you see him there?

15 A. Almost daily basis.

16 Q. You also mentioned a man named Siddig?

17 A. Yes, sir.

18 Q. Did you ever come to learn that person's full
19 name?

20 A. Yes.

21 Q. What name was that, sir?

22 A. Siddig Ibrahim Siddig Ali.

23 Q. Who introduced you to Siddig Ali?

24 A. Mr. Ibrahim El-Gabrowny.

25 Q. Did he refer to him by a particular name?

1 A. Yes. We were in the courtroom and then -- excuse
2 me.

3 He said, "This is Sheik Siddig from Sudan."

4 Q. Did there come a time at the trial of Sayyid
5 Nosair that you were involved in an incident involving
6 Siddig Ali?

7 A. Yes, sir.

8 Q. Can you describe that to the ladies and gentlemen
9 of the jury.

10 A. It was an intermission between the court sessions
11 and, Siddig, Mr. Siddig walked towards me and he said, did
12 you see this -- he cursed at the guy, he said what happened.
13 He said, he grabbed the phone from my hand, and he called
14 me --

15 THE WITNESS: Should I say curse words?

16 THE COURT: Say whatever was said at the time.

17 A. And he called me fag, and he's undercover cop,
18 and he took the phone from me.

19 Q. What did you do in response to that?

20 A. I went to the undercover cop, and I told him you
21 shouldn't describe a guy like that as a faggot, and that is
22 inappropriate and you know, you are going to put yourself in
23 trouble with these people, and you must apologize to them.

24 Q. Did you get the man to apologize?

25 A. Yes, he did.

1 Q. After that incident, did there come a time that
2 you discussed it with Ibrahim El-Gabrownny on the telephone?

3 A. Yes, I told him what happened over there and in
4 this instant.

5 Q. Thank you.

6 Did there come a time in mid to late November,
7 1991, when Ibrahim El-Gabrownny asked you to do something for
8 him?

9 A. Yes, sir.

10 Q. Can you tell us, please, first, how it was that
11 he contacted you?

12 A. It was like almost midnight, one o'clock a.m., I
13 got a phone call from Mr. Ibrahim El-Gabrownny, and he said,
14 "I'm sorry to interrupt you. I have something for you to
15 do. Are you willing?"

16 I said, "Sure, what is it?"

17 He said, "I have the directory book for the
18 Muslim community, and I want it to be typed on stickers so
19 we can make a mailing list out of it.

20 I said, "Sure. No problem."

21 Q. After that, did you receive the Islamic business
22 directory?

23 A. Yes. Next morning in the courtroom he gave it to
24 me, sir.

25 Q. What did you do with it when you got it?

1 A. I took it to Agent Nancy Floyd and they typed it
2 for him.

3 Q. Did there come a time that you gave him back the
4 labels?

5 A. Yes, sir.

6 Q. What happened when you gave him back the labels?

7 A. We went to the basement of the mosque and we kept
8 putting their addresses on the envelopes and stuffed letters
9 to make fund raising for Mr. Sayyid Nosair.

10 Q. Did Mr. El-Gabrownny ask you to do anything else
11 or ask you to become further involved in the fund raising
12 for Sayyid Nosair?

13 A. Yes, sir.

14 Q. What did he ask you to do?

15 A. I was going on a trip to Detroit, and he asked me
16 to represent Mr. -- the committee of Mr. Sayyid Nosair in
17 Detroit to gather some money.

18 Q. Where were you going in Detroit?

19 A. We were going to Michigan, Detroit, it was --
20 there is a lecture -- it was a conference over there.

21 Q. How did it happen that you gotten invited to a
22 conference in Detroit, Michigan?

23 A. We were in El Salaam mosque -- or I was in El
24 Salaam mosque and we did evening prayer. I saw individual
25 called Ahmed Hassan. He was distributing flyers to invite

1 the Muslim people in the mosque to go, to attend this
2 lecture in Detroit.

3 Q. Let me interrupt you for a moment. Let me back
4 you up to the first time that you went to the El Salaam
5 mosque. How did it happen that you went to the El Salaam
6 mosque for the first time?

7 A. I was invited.

8 Q. Who invited you?

9 A. Mr. Emad Abdou.

10 Q. How long after you met him did Emad Abdou invite
11 you to the El Salaam mosque?

12 A. He invited me the first day, but I went right
13 after he invited me, next, or third day or something like
14 that.

15 Q. Did there come a time, Mr. Salem, when you met
16 the defendant Omar Abdel Rahman?

17 A. Yes, sir.

18 Q. When was that and where was that?

19 A. It was in the El Salaam mosque in New Jersey. I
20 went and he was giving a lecture over there after the
21 evening prayer.

22 Q. Did you introduce yourself?

23 A. Yes, sir.

24 Q. Did there come a time after the first time you
25 saw him that you saw him again?

1 A. Yes, sir.

2 Q. How long after the first time?

3 A. It was probably next three days, four days,
4 something like that.

5 Q. Did you have a discussion with Omar Abdel Rahman
6 about tape recording lectures?

7 A. Yes. After he finished his lecture, I told him,
8 that is a very good speech, and we need that to be on tapes,
9 and we shouldn't lose these speeches and we should videotape
10 it.

11 Q. Who was present when you had this conversation
12 with Omar Abdel Rahman?

13 A. Mr. Hamdi Ali, Mr. Hamdi Moussa, Mr. Ibrahim
14 Hammati, Mr. Adil.

15 Q. Who is Adil?

16 A. All what I know his name Adil, and he's
17 Palestinian, but I don't know the last name.

18 Q. Who else was present?

19 A. Sheik Abdel Khalik.

20 Q. The people who first invited you to the El Salaam
21 mosque, were they also there?

22 A. Yes, Mr. Emad Abdou and Mr. Mohammad Attia, they
23 are the ones who met me there.

24 Q. What was Omar Abdel Rahman's reaction when you
25 mentioned to him the possibility of tape recording his

1 lectures?

2 A. He said, OK, it is a good idea.

3 Q. You mentioned a man named Hamdi Moussa?

4 A. Yes, sir.

5 Q. Did you ever discuss Hamdi Moussa with Ibrahim
6 El-Gabrowny?

7 A. Yes, sir.

8 Q. What did Ibrahim El-Gabrowny tell you about Hamdi
9 Moussa?

10 A. He told me he used to be one of us, and now he's
11 with the New Jersey people.

12 Q. Did Mr. El-Gabrowny tell you anything about Hamdi
13 Moussa's nature?

14 A. He used to be very paranoid or paranoid about the
15 FBI watching the people there.

16 (Continued on next page)

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- 1 Q. You told us that Hamdi Moussa was present when
2 you discussed videotaping lectures with Omar Abdel Rahman?
- 3 A. Yes, sir.
- 4 Q. What was Hamdi Moussa's reaction?
- 5 A. He refused.
- 6 Q. What did he say?
- 7 A. He said no way, there is no cameras into the
8 mosque because it will end up at the FBI and intelligence.
- 9 Q. Tell us about the conversation you had with the
10 man Ahmed Hassan at the Al Salaam mosque?
- 11 A. He said he is coming to invite Sheik Omar to the
12 lecture in Detroit, it is a big lecture, most of the Islamic
13 leaders will attend, and Sheik Omar will give lecture in it,
14 and he was distributing flyers as well.
- 15 Q. After the first time that you spoke with Ahmed
16 Hassan, did there come a second time that you spoke with
17 him?
- 18 A. Yes, sir.
- 19 Q. Did he tell you what he did for a living?
- 20 A. He told me that he is with the Sudanese Muslim
21 government, Dr. -- Sheik Hassan Turabe's government.
- 22 Q. What did Ahmed Hassan tell you about how long the
23 conference would last?
- 24 A. I would say four or five days.
- 25 Q. Did there come a time that you spoke to Sheik

1 Omar Abdel Rahman about the conference in Detroit?

2 A. Yes, sir.

3 Q. Tell us about that conversation.

4 A. Right after I finished talking to Mr. Ahmed
5 Hassan, I went to Sheik Omar and I said you going to
6 Detroit, Sheik, and he said yes. OK, I would like to come
7 with you. He said do you have a car? I said yes, I have a
8 car. What kind of car? I said it's a Pontiac, 4-passenger
9 car.

10 Q. That's a Pontiac?

11 A. Yes, sir, Pontiac.

12 Q. Continue to describe the conversation.

13 A. He told me no, it's a small one. You said you
14 are a jeweler. Can you get us something bigger? Yes, sir,
15 I can. All right, we going to be six, can you get us a van?
16 I said I can get you a van, sir.

17 Q. Did you agree to get a van?

18 A. Yes, sir.

19 Q. Did you arrange with the FBI to get a van?

20 A. Yes, sir.

21 Q. Moving you to the end of November 1991, did you
22 go on a trip to Detroit with Sheik Omar Abdel Rahman and a
23 few other people?

24 A. Yes, sir.

25 Q. Describe for us how you met up with the group

1 that went to Detroit.

2 A. I got the van, I drove to El Salaam Mosque. In
3 front of El Salaam Mosque Sheik Abdel Khalik was waiting for
4 me.

5 Q. Let me interrupt you for just a moment. Who is
6 sheik Abdel Khalik?

7 A. He is the imam of El Salaam Mosque in New Jersey.

8 Q. What happened when you met up with Sheik Abdel
9 Khalik?

10 A. He rode with me in the van. We drove to Sheik
11 Omar's house and they brought him down to the van.

12 Q. Who is the "they" that brought him down?

13 A. Mr. Adil, the Palestinian, Mr. Hamdi Ali, and
14 that's it.

15 Q. By the way, the person you have identified as
16 Adil, who you said was a Palestinian, did you ever learn his
17 last name?

18 A. No, sir.

19 Q. After you picked up Omar Abdel Rahman, Hamdi Ali
20 and Adil, what happened next?

21 A. We drove back to the mosque, we picked up Mr.
22 Heshami Hemamy, and we drove to the last person, which was
23 Mr. Hamdi Moussa.

24 Q. What involvement if any did you learn that Hamdi
25 Moussa had in Omar Abdel Rahman's day-to-day affairs?

1 A. Mr. Hamdi Moussa used to arrange everything at
2 that time for the sheik.

3 Q. Once you were all assembled, did you leave for
4 Detroit?

5 A. When Mr. Hamdi Moussa came I was driving and he
6 said no, move, because I know the road, so I will be
7 driving.

8 Q. When you arrived in the van and started to pick
9 up these people, did you have any music on in the car?

10 A. Yes, I --

11 MS. STEWART: Objection, Judge.

12 THE COURT: Overruled.

13 A. Yes, sir.

14 Q. Did anybody react to the fact that you had music
15 on in the car?

16 A. Yes. They disagreed with listening to music.
17 They say something Satanic and we should listen to something
18 better.

19 Q. So you turned the music off?

20 A. They turned the music off and they put some
21 cassettes.

22 Q. What kind of cassettes?

23 A. It's a Koran cassettes.

24 Q. How long was the trip to Detroit?

25 A. It was a long trip, took like 15, 16 hours.

1 Q. Can you please describe or compare how you were
2 dressed compared to the way the rest of the people in the
3 van were dressed?

4 A. I thought we going to lecture --

5 Q. Don't tell us what you thought. Just tell us how
6 you were dressed and how the other people were dressed.

7 A. I was dressed in a suit and Mr. Hamdi Ali was
8 wearing a galabia and taqwa, Mr. Abdel Khalik was wearing
9 galabia and taqwa. Mr. Adil was wearing a shirt, jacket and
10 a pants, something.

11 Q. Let me ask you this: Was anybody dressed the way
12 you were dressed?

13 A. No, sir.

14 Q. Once everyone was gathered together, was there a
15 discussion about who would drive?

16 A. Yes, Mr. Hamdi Moussa said I know the road and I
17 will drive. So I moved to the next seat.

18 Q. Did there come a time that you had a conversation
19 with Sheik Omar Abdel Rahman in the van?

20 A. Yes, sir. When I moved to the next seat beside
21 the driver, he said no, let him to come back beside me, step
22 back to sit beside me. So I did.

23 Q. You stepped back to sit beside Sheik Omar Abdel
24 Rahman?

25 A. Yes, sir.

1 Q. Did you have some conversation at that point?

2 A. Yes, sir.

3 Q. Describe the conversation for us.

4 A. He start asking me questions, what you was doing
5 in the army and how long you have been in the army, which
6 department in the army you was in.

7 Q. Did you answer the questions?

8 A. I did answer the questions, yes.

9 Q. Did the subject of when you arrived in the United
10 States come up?

11 A. He asked me which year you get retired, so I told
12 him, I told him '78. He said which year you came to United
13 States? I said '87. And I mixed up the numbers, 78, 87.
14 So he is like '87, '78, you told me you get retired and you
15 came right away? I said yes. He said how come you said
16 '87? I said I am sorry, I just mixed up the number but I
17 retired and came right away.

18 Q. Did you have some conversation about what you had
19 been doing in Egypt?

20 A. Yes, sir.

21 Q. What was the nature of that conversation?

22 A. I told him I am a good mujahidin, I have been
23 involved in the war against the Jews and I fought in 1973
24 war and I was a very good mujahidin and I did my part in
25 jihad.

1 Q. What was Sheik Omar Abdel Rahman's reaction to
2 that statement?

3 A. He said no, you are not a mujahidin because
4 fighting for an infidel government does not consider jihad.

5 Q. Did he mention about being paid?

6 A. Yes. He said since you getting paid by the
7 government, so that's not a jihad, to do jihad means you
8 should do work without getting paid, you do it for God's
9 sake, and you should make up with God now.

10 Q. What did he say about your years in the Egyptian
11 army?

12 A. Pardon me?

13 Q. What did he say, if anything, about your years in
14 the Egyptian army?

15 A. I am sorry.

16 Q. Sorry. What did Sheik Omar Abdel Rahman say, if
17 he said anything at all, about your years in the Egyptian
18 army?

19 A. How many years you have been in the Egyptian
20 army? I told him 18 years.

21 Q. Did he tell you anything about how he considered
22 those years?

23 A. Went to the train, it's gone, it's not considered
24 jihad.

25 Q. You meant the drain?

1 A. Right.

2 MS. STEWART: I don't understand.

3 THE COURT: As in "down the drain."

4 Q. How did you react when Sheik Omar Abdel Rahman
5 said that your 18 years had gone to the drain?

6 A. I made myself like I am very upset, how come all
7 of these 18 years went to the drain, and he said yeah,
8 because you get paid, you work for infidel government, when
9 you get paid for jihad, that's not a jihad.

10 Q. Did he make any suggestion as to how you might
11 make up for the lost time?

12 A. Yes. I was telling him that among my jobs that I
13 was a sharpshooter and a sniper in the Green Berets, so he
14 said OK, you should make up with God. So I told him how can
15 I make up with God? He said by turning your rifle's barrel
16 to President Mubarak's chest, and kill him.

17 Q. How did you react when he made that proposal?

18 A. I told him Sheik Omar, I thought you going to
19 tell me kill Saddam Hussein. He said no, Mubarak is a
20 tyrant, he killed 15 of my home town.

21 Q. Was there any discussion about the United States
22 in the 16-hour ride to Detroit?

23 A. Yes, there was.

24 Q. Tell us about that discussion.

25 A. He was saying how tyrant Mubarak is.

1 Q. Let me stop you. Who is the "he"?

2 A. Mr. Omar Abdel Rahman, Sheik Omar Abdel Rahman.

3 Q. What did he say?

4 A. He said Mubarak is a tyrant, he is a loyal dog to
5 the American -- to the Americans, and he is the lamb,
6 something to that effect.

7 Q. Did he make any analogy about a snake?

8 A. He said he is like a tail of the snake, he and
9 Israel, they are following United States, United States is
10 like the head of the snake and this is tails for the snake.

11 Q. Who is the "he" that was the tail of the snake?

12 A. Egyptian government and the Israeli government as
13 well.

14 Q. Did you agree that you would turn your rifle on
15 Mubarak?

16 A. No, sir, I did not.

17 Q. What was the reaction of Sheik Omar Abdel Rahman
18 to your reaction?

19 A. He then call to me and just didn't talk to me,
20 and the whole van shut up for a certain time and everybody
21 start to look each other and start to get nervous.

22 Q. Did he continue to question you on the van ride
23 after that point?

24 A. No, after that point he stopped questioning me.

25 Q. Did there come a time that you arrived in

1 Detroit, Michigan?

2 A. Yes, sir.

3 Q. When you arrived in Detroit, where was it that
4 you arrived?

5 A. There was a big hotel called Western Hotel, as
6 far as I recall.

7 Q. Did you unload your belongings from the van?

8 A. Yes.

9 Q. At the time you were unloading your belongings
10 from the van, did you have a conversation with Hamdi Moussa?

11 A. I was grabbing my garment bag from the van -- I
12 have some suits in it, and my camera case. So he said why
13 did you brought these cameras? I said, you know, it's a
14 lecture, should take some pictures with the sheik. He said
15 no, nobody will take pictures with the sheik, it's not going
16 to happen.

17 Q. Where did you go after you unloaded your
18 belongings?

19 A. We went the front desk, looked for somebody
20 because we arrived very late, until one of the
21 representatives from this conference came and they give us
22 suite and a room, something like that.

23 Q. At the time you went up to the suite and the
24 room, were sleeping arrangements made?

25 A. Yes, sir.

1 Q. Who directed the sleeping arrangements?

2 A. Sheik Omar.

3 Q. What were the sleeping arrangements?

4 A. He chose to sleep on the floor in the suite, and
5 he directed me to sleep in the room with Mr. Adil.

6 Q. What about the other people who were present?

7 A. Some of them slept on the bed, some of them on
8 the couch. I didn't see how they made the rest of the
9 arrangements.

10 Q. Besides Adil, did anybody else sleep in the area
11 where you were sleeping?

12 A. No, only Mr. Adil and myself.

13 Q. There came a time when you retired for the
14 evening?

15 A. Yes, sir.

16 Q. When you got up the next morning, did you check
17 your belongings?

18 A. Yes, sir. I was hanging my jacket on the hanger,
19 and when I dressed up I got my wallet and I see that
20 somebody went through my wallet during the night.

21 Q. Did you confront anyone about that?

22 A. I am confronting Mr. Adil about it.

23 Q. Tell us about your discussion with Mr. Adil after
24 you found that someone had gone through your wallet.

25 A. I said Adil, what happened, somebody went through

1 my wallet. And he said what are you talking about, I don't
2 know, I don't know nothing about it. I said that's
3 ridiculous, you shouldn't do that, something to that effect.
4 He said who are you, who are you, what you want from us,
5 what you getting from? We start to get rough conversation.

6 Q. Did there come a time that the rough conversation
7 ended?

8 A. Yes, sir.

9 Q. While you were in Detroit, did you go to any
10 mosques in Detroit?

11 A. Yes, sir.

12 Q. Was there some discussion between Sheik Abdel
13 Rahman and Sheik Abdel Khalik about who would go to which
14 mosque?

15 A. Yes. It was Sheik Omar want to go to the mosques
16 there, to make fund raising to aid Al Jihad. Sheik Abdel
17 Khalik want to go to the mosques to collect money, fund
18 raising for El Salaam mosque, because they want to buy
19 bigger mosque.

20 Q. Let me stop you. When you say Sheik Omar wanted
21 to do fund raising for Al Jihad, what is Al Jihad that you
22 are talking about?

23 A. Al Jihad is a group of his followers which is all
24 over, in Egypt, Afghanistan, United States.

25 Q. What was the resolution, that is, what was the

1 end result of who would go to where, who would go to which
2 mosque?

3 A. Sheik Omar decided to go to the big mosque and he
4 pointed certain mosque to Sheik Abdel Khalik. He said we
5 are here for --

6 Q. Who is the "he," Mr. Salem?

7 A. Sheik Omar.

8 Q. Said what?

9 A. Said we are here for Al Jihad, not for El Salaam
10 Mosque.

11 Q. Did you go to a mosque with Sheik Omar Abdel
12 Rahman?

13 A. Yes, sir, I went.

14 Q. What happened at the mosque?

15 A. He give a lecture over there and he asked us
16 after his lecture to stand by the door to collect the money.

17 Q. How much money was collected, if you know?

18 A. It's between 7 to \$8,000.

19 Q. Did you also go to the conference in Detroit?

20 A. Yes, sir.

21 Q. Mr. Salem, I am showing you what is marked as
22 Government's Exhibit 388 in evidence and ask you if you
23 recognize this item?

24 A. Yes, sir, I recognize it.

25 Q. How are you able to recognize it?

1 A. My initials here.

2 Q. What do you recognize this item to be?

3 A. It's the lecture Sheik Omar Abdel Rahman given in
4 Detroit.

5 Q. Are there other things on this tape besides the
6 lecture that Sheik Omar Abdel Rahman gave in Detroit at the
7 conference?

8 A. Yes, sir. There is a tape of Dr. Ahmad Nofal
9 from Jordan.

10 Q. Did you meet Dr. Ahmed Nofal at the conference?

11 A. Yes, sir.

12 (Continued on next page)

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1 Q. What if anything did he tell you about
2 Palestinian Hamas?

3 MS. STEWART: Objection.

4 THE COURT: Sustained.

5 MR. McCARTHY: Your Honor, at this time the
6 government would ask to play a portion of Government's
7 Exhibit 388 in evidence.

8 MS. STEWART: A portion? May we approach, Judge?

9 THE COURT: Yes.

10 (At the side bar)

11 MS. STEWART: Can we ask what portion?

12 MR. McCARTHY: Your Honor, there is a portion of
13 the tape that shows Dr. Abdel Rahman at the podium speaking.
14 Then the person he identified as Dr. Ahmed Nofal speaking.
15 Then it pans to the audience and shows sheik Abdel Khalik,
16 and then there is another portion that I would like to
17 direct the jury's attention to, which depicts Mr. Salem and
18 some of the other men that he mentioned that he went on the
19 trip with.

20 MS. STEWART: In other words, you are not playing
21 it for the speech. They are not going to be asked to look
22 at the transcript, are they?

23 MR. McCARTHY: At this point I would ask to be
24 able to read from part of the speech.

25 MS. STEWART: That is what we are asking.

1 THE COURT: The pictures show that he was there
2 and the other folks were there.

3 MS. STEWART: I would like to know which part,
4 because we may want the whole thing in.

5 MR. McCARTHY: I would like to read from the top
6 of page 2 to about the middle of page 5.

7 MS. STEWART: I will have to look. I have not
8 committed it to memory. Can you give us the headlines here?

9 MR. McCARTHY: It is the portion of the speech
10 where he basically attacks the Camp David accords, says that
11 America is behind many of the problems in the Middle East,
12 etc.

13 MS. STEWART: I realize that time is of the
14 essence, but I think that the page and a half where he gives
15 the religious incantation sets the tone for the speech --

16 THE COURT: Is it only a half page?

17 MS. STEWART: He says middle of page 2.

18 MR. McCARTHY: It goes from page 5 to page 9,
19 where he basically attacks the other Islamic scholars and
20 says that they are the root of the problem --

21 MS. STEWART: That is important to us, too. We
22 are saying he is one of many Islamic scholars. That is what
23 we opened on. So I would ask that the whole tape be played.

24 MR. McCARTHY: Can I propose this, your Honor? I
25 don't want to do this to the jury at the end of the day. If

1 we are going to hit them with a lengthy tape, I would rather
2 do it in the beginning of the day.

3 MS. STEWART: At least they could sleep.

4 MR. McCARTHY: I would request to turn the sound
5 down, show the portion of the video with the pictures,
6 finish up with Detroit, which will take 10 minutes or so,
7 and start with the tape first thing in the morning.

8 THE COURT: And then we will hash out what gets
9 played. Good.

10 (In open court)

11 MR. McCARTHY: Agent Liguori, can I ask you to
12 turn the volume all the way down?

13 AGENT LIGUORI: Yes.

14 MR. McCARTHY: And will you do if I ask you?
15 Your Honor, may we start the tape?

16 THE COURT: Yes, you may.

17 MR. McCARTHY: Miss Chu, could you start the
18 tape.

19 (Videotape played)

20 MR. McCARTHY: Stop it at that point, please.

21 (Continued on next page)

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25

1 BY MR. McCARTHY:

2 Q. Mr. Salem, turning your attention to the screen
3 on your left, do you see the person who is currently
4 depicted on the screen?

5 A. Yes, sir, I see him.

6 Q. Do you know that person?

7 A. Yes, sir, I know him.

8 Q. Who is that?

9 A. Sheik Abdel Khalik.

10 MR. McCARTHY: Miss Chu, could you move to the
11 next part of the tape, or Agent Liguori.

12 Q. As the tape is fast forwarding, Mr. Salem, who is
13 that?

14 A. That is Dr. Ahmad Nofal.

15 MR. McCARTHY: Stop the tape for a moment,
16 please. Could you just stop it there. Thank you.

17 Q. Could you tell us who is depicted on the screen
18 at this time?

19 A. Sheik Omar Abdel Rahman in the middle, Dr. Ahmad
20 Nofal on the right, and Dr. Ahmed Hassan on the left.

21 MR. McCARTHY: Thank you. Could you move to the
22 next portion, please.

23 Q. Mr. Salem, let me again direct your attention to
24 the screen on your left, and could you tell us who you we
25 are seeing right now.

1 A. It's myself all the way to the left, and then
2 Hamdi Ali next to me, with a white taqwa, and Hamdi Moussa
3 right next to him, and Heshami Hemamy with the glasses in
4 his hands underneath his chin.

5 MR. McCARTHY: Thank you. We can stop the tape
6 now.

7 Q. Mr. Salem, did there come a time in the hotel
8 room when you were again questioned by some of the people
9 that you went to Detroit with?

10 A. Yes, sir.

11 Q. Can you explain to us what kind of questions you
12 were asked at that time and who was asking?

13 A. That was like next day or the day after, we were
14 sitting in Sheik Omar Abdel Rahman's suite. We were sitting
15 on the floor and then we start -- we, which would be Sheik
16 Omar, Sheik Hemamy, Sheik Moussa, and myself, and Adil of
17 course. Then Sheik Omar start asking me again about my
18 background in the army.

19 Q. Did he ask you any specific questions about what
20 you did in the army?

21 A. Yes. He tell us what you was doing in the army
22 again, Green Berets? I say yes. Explosives expert?
23 Because one of the things I introduce myself at that time is
24 explosive expert. I said yes. Well, if you are explosives
25 expert, do you know dynamite? I said yes. Do you know how

1 you set up dynamite? I said yes. Do you know how you can
2 blow up dynamite? I said yes. He said that's good, and
3 that's it.

4 Q. Were you asked any questions or was there any
5 questioning done about marksmanship?

6 A. Among the things I told about myself, that I am a
7 sharpshooter, and that's the time when he ask me to turn my
8 rifle to President Mubarak's chest.

9 Q. Let me stop you there and ask you, there came a
10 time that you left Detroit?

11 A. Yes, sir.

12 Q. Did Sheik Omar Abdel Rahman go with you when you
13 left Detroit?

14 A. No. Dr. Nasser Homosamy --

15 Q. Let me stop you. Did you meet Dr. Homosamy at
16 the conference?

17 A. Yes, sir.

18 Q. What if anything did you learn about what his
19 role in the conference was?

20 A. He is the organizer of the lecture. He is Saudi
21 Arabian national. He is rich man and he is the one who is
22 sponsoring or arranging the whole lecture.

23 Q. How come Sheik Abdel Rahman did not go back to
24 Detroit -- I am sorry -- back to --

25 MS. STEWART: Objection.

1 MR. McCARTHY: Let me try it another way.

2 THE COURT: Do you want to ask it another way?

3 MR. McCARTHY: Yes.

4 Q. Who went back to the New York/New Jersey area
5 with you?

6 A. We went back in the van, Sheik Abdel Khalik,
7 Hashami Hemamy, Hamdi Moussa, and myself.

8 Q. What did Adil do?

9 A. Mr. Adil stay with Sheik Omar, because he used to
10 serve.

11 Q. On the ride back to Detroit, was there some -- I
12 am sorry. On the ride back from Detroit, was there some
13 conversation in the van about marksmanship and shooting?

14 A. Yes, sir.

15 Q. Can you describe that conversation to us?

16 A. During the trip back, Hamdi Moussa said that they
17 did not go out for any deer hunting since Mr. Nosair get
18 arrested.

19 Q. He said deer hunting. Can you tell us how it was
20 that he said that to you? Can you describe what he said and
21 what if any body movements he made while saying?

22 A. Yes. He said since Sheik Sayyid -- that's how we
23 call him, Sheik Sayyid. Since Sheik Sayyid get arrested, we
24 did not go out to deer hunting. And I said well, we can go.
25 He said well, since you are here and you are experienced,

1 why don't you train us for deer hunting. I said sure, why
2 not, we will do that.

3 MS. STEWART: Indicating holding a rifle, Judge,
4 for the record.

5 THE COURT: Yes.

6 MR. McCARTHY: Thank you.

7 Q. Did you ever hear from anyone else of any role
8 that Mr. Nosair had in firearms training?

9 A. Yes, sir.

10 Q. From whom did you hear that?

11 A. I heard from Mr. Ahmed Abdou, Mr. Mohammed Attia,
12 Ahmed Abdel Sattar, Mr. Mahmoud Abouhalima.

13 MR. STAVIS: Your Honor, I am going to object
14 unless the witness can testify to the statements as opposed
15 to the list.

16 MR. McCARTHY: I will get to it.

17 THE COURT: Presumably he is going to.

18 Q. After you got back to New York, did there come a
19 time that you got a phone call?

20 A. Yes, sir.

21 Q. Who did you get the phone call from?

22 A. Dr. Hassan Yahya.

23 Q. Dr. Hassan Yahya is one of the people you pointed
24 out for us on the videotape?

25 A. Yes, sir. He was the third party on the screen

1 to the left.

2 Q. That was at the podium?

3 A. Yes, sir.

4 Q. What did Dr. Hassan Yahya ask you to do?

5 A. He ask me to go pick up Sheik Omar Abdel Rahman
6 from Newark Airport.

7 Q. After he asked you that, did you get in touch
8 with someone else?

9 A. In that time I don't know how to go to Newark
10 Airport, so I called Mr. Hamdi Moussa.

11 Q. What was your conversation with Hamdi Moussa?

12 A. I ask him will you describe to me how can I get
13 to the airport. He said why. Because I got a phone call
14 from Detroit. Dr. Hassan Yahya said I go pick up the sheik.
15 He said don't worry about it, we will take care of that, and
16 I didn't go.

17 Q. After he told you he or they would take care of
18 that, you did not go to the airport?

19 A. No, sir, I didn't.

20 MR. McCARTHY: Your Honor, I am ready to move on
21 to another topic.

22 THE COURT: I take it it is a topic that is
23 longer than 10 minutes.

24 MR. McCARTHY: Yes, your Honor.

25 THE COURT: Ladies and gentlemen, we are going to

1 break for the day. Please leave your notes and other
2 materials behind. Please don't discuss the case. Please
3 don't see, read or hearing anything about the case. Have a
4 pleasant evening. We will see you tomorrow morning. Good
5 night.

6 (Jury excused)

7 (Witness excused)

8 THE COURT: It might be helpful, I guess, for me
9 to see the exhibit that we talked about at the side.

10 MR. McCARTHY: Yes, your Honor. Your Honor, my
11 proposal was to skip the first page and to go down to the
12 third paragraph on page 5 and end with the second sentence.

13 (Pause)

14 THE COURT: Miss Stewart, do you want to review
15 this and talk about it tomorrow?

16 MS. STEWART: I think we have a position, Judge,
17 and I think our position is that we would like the whole
18 thing. I would suggest, though, that perhaps the way it
19 might be done, if the jury just reads as they observe on the
20 video. I don't think Mr. McCarthy has to necessarily read
21 it out loud.

22 THE COURT: The video is in Arabic, I assume. Is
23 that true?

24 MS. STEWART: That is true, but this is in
25 English.

1 MR. McCARTHY: Your Honor, there is an awful lot
2 of Arabic conversations in the case, and I don't think it is
3 helpful to the jury's attention, especially after we go
4 through the whole rigmarole of translating everything into
5 English, to have them distracted at a time when we are
6 presenting what may be some of the most important evidence
7 in the case. I mean, the electronic evidence in general. I
8 am not saying that this particular conversation is so
9 crucial.

10 MS. STEWART: It is double spaced, Judge.

11 THE COURT: I know that.

12 MS. STEWART: As opposed to the last one, which
13 was single spaced.

14 THE COURT: Slightly better, not much.

15 I would like a chance to look at this, which I
16 haven't had, and I will give you a ruling tomorrow.

17 MS. STEWART: I would call to your attention, at
18 the very end there is a statement from the Koran, and there
19 is prayer -- we want the whole context of the entire
20 statement that was made.

21 THE COURT: I guess the question is whether to
22 the extent a statement is probative or the government
23 charges it is probative, the context, which is to say the
24 remainder of the speech, changes the con meaning.

25 MS. STEWART: Your Honor, they said it was the

1 most important evidence in the case. It is cited in the
2 indictment, I believe.

3 MR. McCARTHY: Yes, there is a lot of stuff in
4 the indictment.

5 THE COURT: As I say, let me look at it.

6 MS. STEWART: The other thing, Judge, we asked
7 for a subpoena to be signed for Mr. Salem's immigration
8 records. We ask for asked for it to be returnable on
9 Thursday and we would ask for you to sign that for us.

10 THE COURT: I actually -- a copy of the subpoena
11 was delivered to my chambers over lunch and I had no idea
12 what that meant. Now I know.

13 MR. McCARTHY: Your Honor, I would like an
14 opportunity to get those, go through them, and make sure
15 there isn't anything that should be redacted before they are
16 turned over to the defense.

17 MS. STEWART: I am having trouble hearing Mr.
18 McCarthy.

19 THE COURT: He wants to review the records in
20 question. Let's get the subpoena out. Have you seen the
21 subpoena?

22 MR. McCARTHY: I have not.

23 THE COURT: Would you mind getting it out and
24 seeing what it calls for?

25 MS. STEWART: Judge, it is a handwritten

1 subpoena. You may have noticed that.

2 THE COURT: I did notice that.

3 THE COURT: Do you mind his looking at it?

4 (Pause)

5 MR. McCARTHY: Your Honor, after viewing the
6 subpoena, I would still like to have the opportunity to go
7 through it, but what I would propose is to have Miss Stewart
8 go ahead and serve the subpoena. I will try to get the
9 records if I can, faster, go through it and tell the court
10 anything that we think should be redacted so your Honor has
11 a chance to pass on it.

12 THE COURT: Why don't they deliver the material
13 to me, so you will get it that way.

14 MS. STEWART: Thank you, Judge.

15 MR. McCARTHY: Your Honor, there is one other
16 issue and that is, we circulated some transcripts that we
17 intended to play in connection with the witness's testimony.
18 I understand that there are a variety of objections to
19 different matters, in the nature of hearsay objections and
20 other evidentiary issues. I think in connection with this
21 group it is a pretty finite rule of transcripts, but what I
22 see down the road is, if we go through the process of making
23 copies so the jury can have transcripts and then we don't
24 get objections until just at the moment we are about to play
25 them, that is going to bog things down.

1 THE COURT: When were you planning to get playing
2 any of those?

3 MR. McCARTHY: Tomorrow or the next day.

4 THE COURT: When tomorrow?

5 MR. McCARTHY: I think late tomorrow. I would
6 say the afternoon session.

7 THE COURT: Let me suggest this. We will sit
8 tomorrow morning. I will deal with whatever objections I
9 have to deal with tomorrow afternoon -- what I would suggest
10 we do is get to the point where the first of the transcripts
11 that is going to generate those objections has to be
12 offered. At that point, which will presumably be sometime
13 tomorrow afternoon, we would break for the remainder of the
14 day and I will deal with whatever objections there are to
15 that, and to any of the additional transcripts so that we
16 don't do it piecemeal. If somebody could tell me what the
17 objections are and give me a copy of the transcripts, it
18 would be nice to do it that way rather than do doing it on
19 the fly, but I will do whatever you like.

20 MR. McCARTHY: I have enough to cover tomorrow
21 that it could be a good long time before we get to those
22 transcripts if we get to any at all.

23 MR. JACOBS: Judge, one of the ones that they
24 want to deal with is 32.

25 THE COURT: That was the one where you had a

1 foundation objection?

2 MR. JACOBS: Yes. Besides that, assuming that
3 the government gets around to the foundation question, I
4 don't know if the government is planning to do what portion
5 but I am going to request that all be read to the jury. I
6 don't want to do it in the middle of the day tomorrow when
7 we have the jury sitting here. I am going to ask for all of
8 it to be -- I don't know what the government's position is.

9 THE COURT: Have you talked about this with him?

10 MR. JACOBS: Yes. The government's position was
11 they wanted to do some portions. I am asking that all of it
12 be done under 106. Let them think about it, and if the
13 government is going to insist on portions, your Honor can at
14 least review it.

15 MR. McCARTHY: Your Honor, we may not be that far
16 off.

17 THE COURT: Since you know what you are going to
18 do and I don't, and you know what your objections are and I
19 don't, would you kindly get together and at least agree on a
20 half day, be it a morning, be it an afternoon, if it is
21 going to take a half day. I am not saying it necessarily
22 will. Maybe it won't. But agree on some segment of time
23 when they, they being the jury, don't have to be bothered
24 with sitting in there while we do what we have to do, but
25 rather can simply take a half day, and if we can get it done

1 I will rule one way or the other and we will go from there.

2 Thank you.

3 (Proceedings adjourned until 9:30 a.m.,

4 Wednesday, March 8, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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S5 93 Cr. 181 (MBM)

March 8, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

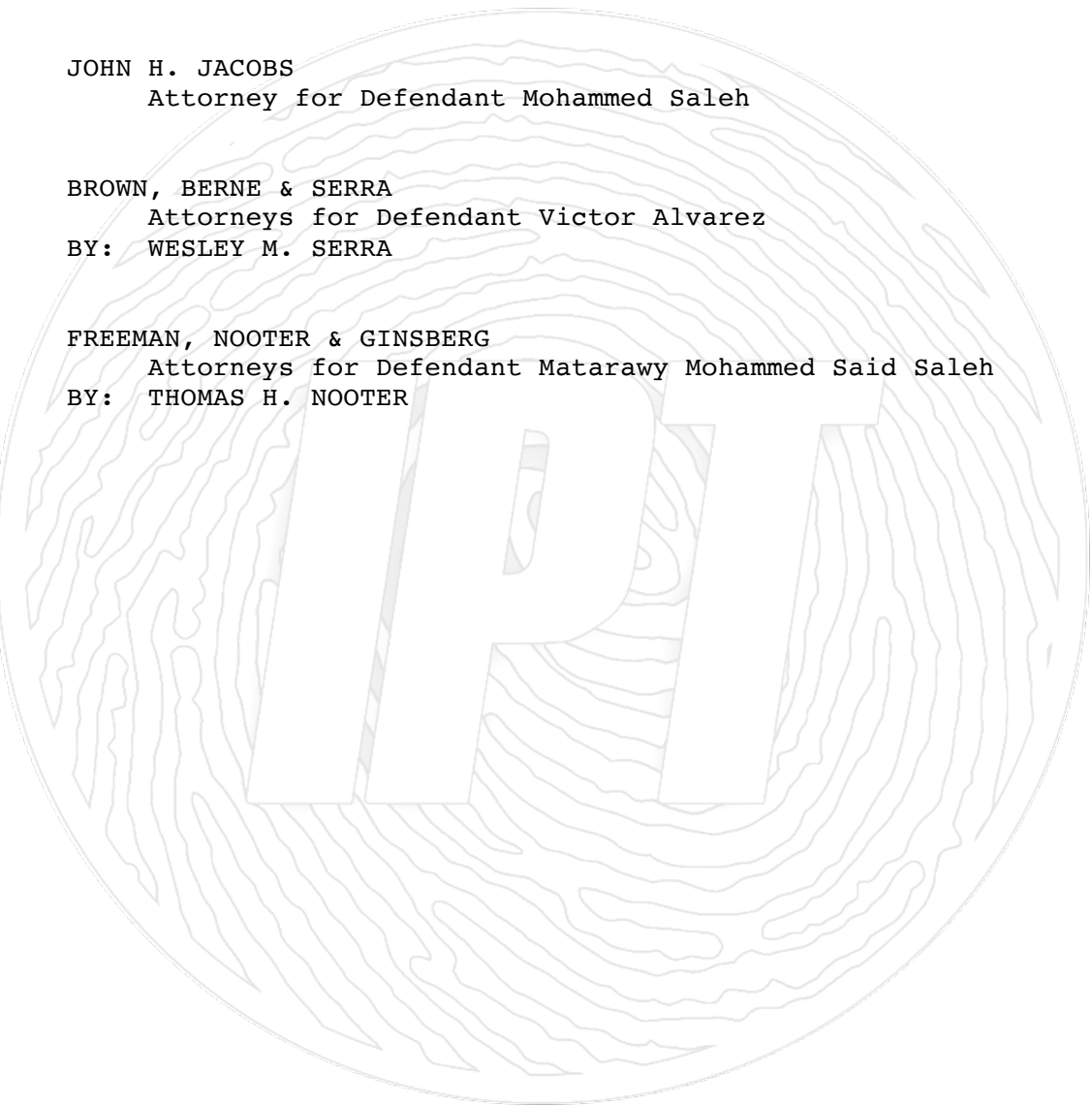
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. When we broke
4 yesterday, Miss Stewart had raised the question about a
5 transcript that the government proposed --

6 MS. STEWART: I am sorry, Judge. I can't hear
7 you.

8 THE COURT: It might be if some of your
9 colleagues quieted down you would be able to hear better.

10 When we broke yesterday, you had raised the
11 subject of a transcript that the government proposed to read
12 from. I guess my question is, without the entire that you
13 want read, what impression is it that you think is going to
14 be created that would be dispelled by reading the remainder,
15 or what material is it that you think has to be filled in in
16 order to make what is read comprehensible?

17 MS. STEWART: Judge, the sheik gave a speech at a
18 conference. It had a beginning and it had an ending. It
19 started out with a long recitation of prayers or of quotes
20 from the Koran invoking Allah --

21 THE COURT: It is not really very long. It is
22 about a half page.

23 MS. STEWART: Exactly, but they propose not to
24 read that, as I understand it, and at the end the same thing
25 happens. It seems to me that the thing is of a unit. It is

1 on a single subject that he has been asked to address, that
2 to hear some of it without hearing all of it is unfair. He
3 doesn't repeat himself, as I read the thing --

4 THE COURT: There is a certain variation on a
5 single theme.

6 MS. STEWART: Yes, but I don't think we should
7 pick and choose between those variations.

8 THE COURT: What you are telling me is not that
9 there is some particular item but rather that it is a
10 seamless web.

11 MS. STEWART: Yes.

12 THE COURT: I don't think it is a seamless web.
13 However, if you want the invocation at the beginning I will
14 be happy to ask the government to read it, or direct the
15 government to read it.

16 MS. STEWART: And the end, too, Judge?

17 THE COURT: The end, beginning on the last page
18 with "The jihad for the sake of God is a must"?

19 MS. STEWART: Yes.

20 THE COURT: Fine. The last page beginning with
21 that, until the end.

22 MR. McCARTHY: That is the first full paragraph
23 on the last page?

24 THE COURT: The first full paragraph on the last
25 page and the last paragraph on the last page, and begin at

1 the beginning.

2 MR. McCARTHY: Yes, sir.

3 Your Honor, I spoke to counsel this morning about
4 one of the issues that came up yesterday, which is how we
5 are going to work the transcripts and ruling on the issues
6 that relate to the transcripts that are coming in, we hope
7 will be coming into evidence at some point. Your Honor, I
8 think, yesterday proposed that we pick a time which seemed
9 to be the most sensible time to address those issues so as
10 not to bog the trial down unduly. My proposal, and I have
11 spoken to a number of the defense lawyers -- I can't say
12 that I have spoken to everyone -- would be that we take this
13 afternoon to do that. The reason for that, your Honor, is
14 that we propose to have five transcripts come in through the
15 testimony of Salem and be read, and if we can get that stuff
16 ruled on today so that we can tonight make whatever
17 redactions and other stuff that have to be on the
18 transcripts, it will make things much smoother tomorrow.

19 The other thing is, there are a number of pending
20 issues that if the court please I would like to get rulings
21 on before Salem's direct is over. There is the outstanding
22 issue of what your Honor is going to instruct the jury about
23 the polygraphs, and I believe there are a couple of other
24 items. There are some issues about what additional legal
25 objections there may be to the foundation of the CM tapes.

1 My suggestion to the court would be that we take
2 this afternoon to resolve that stuff so that we can do what
3 we have to do tonight and proceed more smoothly tomorrow.

4 THE COURT: Is that the group's view? Hearing no
5 dissent, I guess it is the group's view. Presumably this
6 afternoon you are planning to tell me what the issues are
7 and what authority you are relying on and so forth.

8 MR. McCARTHY: Yes, your Honor. I don't know as
9 I stand here if there are any other objections besides the
10 ones I have already been told about, and what I am frankly
11 fearful of, and I don't mean to cast aspersions at anyone --
12 I realize things come up.

13 THE COURT: So you can cast them at everyone.

14 MR. McCARTHY: I hope that is not true either.

15 THE COURT: In other words, you want to smoke out
16 whatever objections there are.

17 MR. McCARTHY: Right.

18 THE COURT: Mr. Jacobs.

19 MR. JACOBS: Your Honor, one of the subjects we
20 need to discuss is how we are going to proceed with the
21 nontranscripts and tapes that the government is going to use
22 on direct.

23 THE COURT: The nontranscripts --

24 MR. JACOBS: The tapes and transcripts that they
25 are not going to use in their direct. There are 60 other

1 CM's and bootlegs that they are going to put in evidence
2 through Salem but not publish, and I think we need to
3 discuss how this is going to be done, the mechanism for
4 doing this. I am not saying they can't try to do it but it
5 is a rather unusual step of not publishing it on the direct
6 of Salem and then maybe trying to publish it later on. I
7 think we need to discuss how we should go about doing this
8 and what your Honor thinks is the best way to do this on
9 cross so we don't spend a lot of dead time in front of the
10 jury reading transcripts. I think we need to deal with
11 this, the four that they are going to publish, what about
12 the other 60?

13 THE COURT: OK.

14 MS. AMSTERDAM: One last thing, if the government
15 could think about this before the afternoon session, it does
16 occur to me if we are going to do cross of Emad and put
17 other publications to the jury before the end of the case,
18 that at least there should be some indication what the
19 universe is from the government in terms of what they intend
20 to publish, because obviously we will want to explore those
21 things on cross-examination with the informant when he was
22 on the stand rather than wait until the end or call him
23 back.

24 MS. STEWART: Judge, I want to be sure. Mr.
25 McCarthy had said that on this particular exhibit, the

1 Islamic economy thing, that he was reading from someplace on
2 page 6.

3 MR. McCARTHY: Page 5.

4 MS. STEWART: Well, there is one paragraph on
5 page 6 where the sheik says, then we don't blame Israel and
6 we don't blame America more than we blame the Muslim rulers.
7 I think that does go to the heart of this case. I would ask
8 that whole paragraph on the bottom of page 6 over to page 7.

9 MR. McCARTHY: No problem.

10 THE COURT: Wait a second. You want read the
11 paragraph that begins at the bottom of page 6 with the word
12 "also," and goes over to page 7?

13 MS. STEWART: Yes. "This is the position of the
14 Muslim rulers."

15 THE COURT: Right, but it is the paragraph that
16 begins with the word "also," at the bottom of page 6?

17 MR. McCARTHY: I don't think that is the one.

18 THE COURT: It may not be. Do you understand
19 what she wants you to read?

20 MR. McCARTHY: I know I have read it. I just
21 haven't found it yet.

22 Your Honor, that was part of the part that I
23 actually had asked to read.

24 THE COURT: That is on page 5.

25 MR. McCARTHY: Right. It is right where I cut

1 off, the sentence that ends "these things," in the very
2 middle of page 5.

3 THE COURT: Yes. The paragraph begins "This is
4 the position of the Muslim rulers," in the middle of page 5.

5 MR. McCARTHY: I want to make sure Miss Stewart
6 has the same draft.

7 Your Honor, with the court's permission, Miss
8 Stewart asked me to read to the end of that paragraph, which
9 is two more sentences. I have no objection to that.

10 THE COURT: Let's get the jury and the witness.
11 EMAD SALEM, resumed.

12 (Jury present)

13 THE COURT: Good morning, ladies and gentlemen.

14 JURORS: Good morning, your Honor.

15 MR. McCARTHY: May I proceed?

16 THE COURT: Mr. McCarthy, please.

17 MR. McCARTHY: Thank you.

18 THE COURT: You are still under oath.

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION continued

21 BY MR. McCARTHY:

22 Q. Good morning, Mr. Salem.

23 A. Good morning.

24 MR. McCARTHY: Good morning, ladies and
25 gentlemen.

1 JURORS: Good morning.

2 MR. McCARTHY: The government would propose to
3 begin this morning, your Honor, by reading from a portion,
4 actually most of Government's Exhibit 388T in evidence.

5 THE COURT: That is the transcript of the
6 videotape?

7 MR. McCARTHY: That is correct, your Honor.

8 THE COURT: You will be playing the tape also?

9 MR. McCARTHY: No, we will just be reading from
10 the transcript.

11 THE COURT: Go ahead.

12 MR. McCARTHY: Ladies and gentlemen, it is
13 Government's Exhibit 388T, which I believe is in your book.
14 We are going to begin the reading of it from page 1. Shall
15 I begin?

16 THE COURT: Please.

17 MR. McCARTHY: Reading from right above the first
18 full paragraph on page 1.

19 Omar Abdel Rahman.

20 Praise belongs to God. We thank him, we ask his
21 help and seek his forgiveness and we seek refuge in God
22 against our evil self and and our wicked deeds.

23 MR. SERRA: Your Honor, I am sorry to interrupt
24 Mr. McCarthy, but there is a problem with the Spanish
25 translation.

1 THE INTERPRETER: It's taken care of.

2 THE COURT: We are on the air.

3 MR. McCARTHY: Praise belongs to God. We thank
4 him, we ask his help and seek his forgiveness. And we seek
5 refuge in God against our evil self and our wicked deeds.
6 He who is guided by God cannot be misguided. He who is
7 misguided has no one to guide him. And I submit that there
8 is no God but God. He is one and has no partners. And I
9 submit that Mohammed is his servant and messenger. God's
10 prayers and peace be upon our master Mohammed and his
11 relatives and adherents and all who are guided by his
12 guidance till the day of judgment. The lord of glory, the
13 exalted says. Be not weary and faint-hearted, crying of
14 peace when ye should be uppermost, for Allah is with you and
15 will never put you in loss for your deeds.

16 Dear revered brothers. God has obligated us to
17 jihad for the sake of God. Thus it is one of the
18 obligations that must be undertaken. It is the zenith of
19 Islam's apex. Thus we must protect our land and defend it
20 by jehading for the sake of God, and conquer the lands of
21 the infidels, and Islam spreads with the ministry of God.
22 And if they stood in its way, the jihad becomes for the sake
23 of God. And any solutions other than this is farthest from
24 what God has decreed and what great Islam has proclaimed.
25 Thus any invitation to abandon the jihad and negotiate or

1 sit at a rectangular or circular table to negotiate with the
2 enemy who pillaged the land and raped and committed all the
3 grave sins is a deviation from Islam and departure from it.
4 Clear words devoid of hidden meanings or mystery. Any call
5 for a peace accord or peace conference or peaceful
6 resolutions or anything of that sort is nothing but a
7 watering down of the issues and a waste of its significance.
8 Thus, if they call for a peace conference in Afghanistan or
9 Palestine, that signifies a wasting of the matter's
10 significance and undermining its seriousness. How could a
11 call for peace be issued in Afghanistan, for example, after
12 the falling of 2 million martyrs? And how come there wasn't
13 peace before that? After the falling of 2 million martyrs
14 comes the call to peace and negotiations so that the
15 communists can sit with the mujahidins to form a temporary
16 or permanent, continuous or intermittent government or the
17 king attends or something like that. These are solutions
18 that are watered down and far from the truth.

19 Also, if there were a call for a peace accord
20 which was signed by the double-crossing traitor, the doomed
21 Sadat, and followed by many, that is also a deviation from
22 Islam and a departure from it. Any negotiations with the
23 enemy is a departure from the truth and a departure from the
24 religion. And that is clear in the religious decrees of the
25 true scholars. Al-Azhar decreed in the fifties that any

1 negotiations with Israel and any sitting with it and any
2 agreement is a matter that is farthest from the truth and is
3 not permitted or accepted by Islam. But rather, he who
4 negotiates or permits the land of Islam or permits it to be
5 handed over to the enemies of Islam is an infidel. And
6 Jerusalem's spiritual leader decreed the same thing -- if I
7 recall correctly it was Sheik Amin Al-Husaini, may God's
8 mercy be upon him. And the scholars decreed, the scholars
9 who strive to please God not the authorities decreed that.
10 Thus any peace, sitting or negotiations is neither permitted
11 nor embraced by Islam, not at all. That is a clear matter
12 devoid of hidden meanings or mystery.

13 The second matter. What did Egypt get from the
14 peace accord which was signed between the double-crossing
15 traitor Egyptian regime and Israel? All the winnings went
16 to Israel and all the losses went to Egypt. The claim that
17 Egypt repossessed Sinai, it is as if they didn't get it
18 back. Because the Sinai did not completely come under the
19 sovereignty of Egypt, where armament is not permitted in it
20 and where there are airports that get utilized by Israel, I
21 daresay not only in emergency basis important rather at any
22 time. All the winnings went to Israel and all the losses
23 went to Egypt.

24 And after that, what benefit did Egypt get from
25 this accord? Egypt received the benefit of defeatism and

1 depravity that has afflicted everything. Egypt has become
2 splintered and fragmented in its policy, economy and system,
3 where debilitating diseases have entered to Egypt via
4 Israel. And whoredom and prostitution prevailed.
5 Similarly, the Egyptian economy failed. There is a plan to
6 forbid the planting of certain types of foods needed to
7 Muslims and planting things that are not needed by them.
8 Even agriculture and commerce, all of that according to a
9 plan to impair the Egyptian economy and make it dependant
10 upon America and whirling in America's orbit.

11 Therefore, the debilitating diseases, the corrupt
12 economy, the agriculture which Egypt used to excel in is
13 lost. Thus, what did the Egyptians gain from the peace
14 accord other than shame and disgrace which was realized at
15 the hands of the corrupt and traitors? Evidence of this is
16 when the Israelis are roaming up and down the country while
17 the Palestinians are forbidden and their residency is
18 restricted and their time tracked and whomever is found
19 guilty of any jihad activity he is either sent to Israeli
20 prison or sent to what is worse than Israeli prisons,
21 Egyptian prisons. The Palestinians who have entered
22 Egyptian prisons testify that the treatment they received
23 while in Israeli jails was more lenient than the treatment
24 they received by the Egyptian regime. Then this is the
25 depravity that came to Egypt as a consequence of the peace

1 accord.

2 Thirdly, we say, what or over what are the Arabs
3 and the Israelis negotiating? And I don't say the Muslims
4 because they don't negotiate in the name of Islam and if
5 they were to negotiate they would have taken off the Islamic
6 noose from their necks. What or over what are the Arab
7 rulers negotiating? Over nothing, nothing at all. Israel
8 is the one that places the procedures and the conditions and
9 the style and the beginning and the end and everything, and
10 if something like this emanated from the American side it is
11 because Israel provided it and sanctioned it. So what's
12 left for the Arabs? Nothing is left for them. These are
13 artificial matters. Israel determines everything in these
14 negotiations. It says we don't want the negotiator to be
15 from east Jerusalem and we don't want him to be from the
16 liberation organization. And we don't want the United
17 Nations to be in attendance, unless as an observer. And
18 they don't want also, they don't want everyone to be in one
19 negotiation setting, rather it wants to fish one nation
20 after another to be able to satisfy their conditions. Then
21 it wants to interpret -- lost words but here it is -- it
22 wants to interpret resolutions, Resolution 242 as it wishes,
23 and America is obligated to agree to that and the Arab
24 countries are obligated to agree to this interpretation.

25 Then, after that, they want by that what they do

1 not want. And what do they want? They want no embargo to
2 their products. They want water. It must flow to them from
3 all the Arab countries so they can finish their projects or
4 do with it what they please. They want their economy and
5 their goods to be in Arab markets. They want to control the
6 entirety of the Middle East and they want the whole economy
7 to be in their hands.

8 Skipping down to the last paragraph on that page:

9 Thus we see that all these matters are about what
10 Israel wants and does not want. So what is there to
11 negotiate over? They are all matters that appear to be
12 theatrical and artificial, devoid of any truth.

13 When we look at the fourth issue, we find who is
14 behind all this. They are the traitors, back stabbers,
15 among the so-called Islamic leaders. They are the ones who
16 are providing this deal as a sweet bait, a sweet bait. If
17 Abdel Nasser was the one who allowed Isreal to expand in its
18 ports and its state and it took a huge plot before the
19 damned revolution in Egypt, what was Isreal? It was a small
20 strip. After the revolution, this damned revolution, Isreal
21 acquired a large mass of land, especially in the '67 war.
22 Also, Sadat surrendered whatever Isreal wanted in the Camp
23 David accord. And now comes the third traitor, back stabber
24 who becomes the loyal dog to America and gives everything
25 and is at the forefront of the treachery caravan, to give to

1 Israel and then America everything. This is the position of
2 the Muslim rulers, this traitorous position. Then we don't
3 blame Isreal and we don't blame America more than we blame
4 the Muslim rulers or the Arab rulers who did all these
5 things. The scholars, the true Islamic scholars, we said
6 that they resolved to forbid any negotiations or any
7 reconciliation with Isreal, but government scholars who
8 empower rulers with all that they want and issue religious
9 edicts on their behalf to assist them and empower them over
10 any matter they want.

11 Your Honor, at this point I think we skip to page
12 8, which is the last page, the first full paragraph on that
13 page.

14 The jihad for the sake of God is a must, and we
15 mention, so as an inducement to jihad the saying of the
16 exalted God: Oh ye who believe --

17 MS. STEWART: Quotations around that, your Honor.

18 MR. McCARTHY: Ladies and gentlemen, you will
19 note the quotations around that statement in the first full
20 paragraph on that page.

21 The jihad for the sake of God is a must, and we
22 mention so as an inducement to jihad, the saying of the
23 exalted God, quote, O ye who believe, shall I lead you to a
24 bargain that will save you from a grievous penalty, that ye
25 believe in Allah and his messenger and that ye strive in the

1 cause of Allah with your property and and your persons.
2 Close quote. And we mention as a warning against leaving
3 jihad, the saying of the exalted God, quote, O ye who
4 believe, what is the matter with you, that when ye are asked
5 to go forth in the cause of Allah, you cling heavily to the
6 earth? Do ye prefer the life of this world to the
7 hereafter? But little is the comfort of this life as
8 compared with the hereafter. Unless ye go forth, he will
9 punish you with a grievous penalty and put others in your
10 place. But him ye would not harm in the least. For Allah
11 has the power over all things. Close quote.

12 I say these these, my words, and I seek God's
13 forgiveness for me and for you. May God's prayers be upon
14 our master Mohammed and his relatives and adherents.

15 (Continued on next page)

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1 Q. Mr. Salem, I want to ask you to try to speak more
2 slowly, particularly when I ask you a question that causes
3 you to mention a name. I may stop you from time to time to
4 clarify the names, if that is necessary, do you understand?

5 A. Yes, sir.

6 Q. Mr. Salem, during your testimony yesterday you
7 described for us a trip to Detroit in a van that you took
8 with the defendant Abdel Rahman and some other people, do
9 you recall that?

10 A. Yes, sir.

11 Q. In connection with that testimony you mentioned
12 that in speaking with Dr. Abdel Rahman you said that you
13 thought you had been a good mujahed?

14 A. Yes, sir.

15 Q. What do you mean by "mujahed"?

16 A. Mujahed who is the person who will carry the
17 sword to commit the act for the cause.

18 Q. Yesterday in your testimony you described for us
19 a number of conversations that you had with a number of
20 people after you started working on this investigation in
21 November 1991. Do you recall that?

22 A. Yes, sir.

23 Q. Can you tell us what language those conversations
24 were in.

25 A. Arabic language, sir.

1 Q. At the end of yesterday's session you mentioned
2 that you had had conversations with a number of people about
3 the subject of firearms in connection with the defendant El
4 Sayyid Nosair, do you recall that?

5 A. Yes, sir.

6 Q. Can you tell us slowly the names of the people
7 that you say you had these conversations with?

8 A. Mr. Emad Abdou, Mr. Mohammed Attiyya, Mr. Siddig
9 Ibrahim Siddig Ali, Mr. Nasser El Homosamy, Mr. Emad Abdel
10 Sattar, Mr. Ali Shenawy. Most of the people around these
11 two mosques.

12 Q. Let me ask you first about Emad Abdou and
13 Mohammed Attiyya.

14 A. Yes, sir.

15 Q. Can you tell us when it was that you spoke with
16 Emad Abdou and Mohammed Attiyya about El Sayyid Nosair and
17 firearms?

18 A. There come a time in El Salaam mosque, Mr. Emad
19 Abdou told me that, "Since Sheik Sayyid get arrested, we did
20 not do any firearm training. You know, that he was the emir
21 of the "remaia."

22 Q. Let me stop you there. The emir of what?

23 A. The emir of the "remaia."

24 Q. "Remaia"?

25 A. "Remaia," yes. It means marksmanship or

1 shooting.

2 Q. Was this one conversation or more than one?

3 A. No. It was frequently talking about the firearm
4 training and how they used to go out to different locations
5 for firearm training with Mr. El Sayyid Nosair.

6 Q. Did Emad Abdou mention to you where it was that
7 they used to go out for firearms training?

8 A. He did mention Long Island, there is a firearm
9 range in Long Island City and another location, I don't
10 recall it right now.

11 Q. You also mentioned ahead Abdel Sattar.

12 A. Yes, sir.

13 Q. Could you describe what conversation you had with
14 Ahmed Abdel Sattar about the defendant El Sayyid Nosair and
15 firearms training?

16 A. He said that we are not -- we never been into
17 firearm training since El Sheik Sayyid get arrested.

18 Q. Was this one conversation or more than one?

19 A. More than once.

20 Q. Can you tell us approximately when these
21 conversations took place?

22 A. That was during the time of the trial of
23 Mr. Sayyid Nosair.

24 Q. Did there come a time that you spoke with Mahmud
25 Abouhalima about firearms training in connection with the

1 defendant El Sayyid Nosair?

2 A. Yes, sir.

3 Q. Could you describe for the ladies and gentlemen
4 of the jury that conversation.

5 A. It was a time when we -- during the trial of
6 Mr. Sayyid Nosair we left the courtroom in the intermission,
7 and we stood in front of the courtroom and he mentioned to
8 me that they used to do firearm training. When I brought
9 the subject about myself that I am Green Berets, they said,
10 "Yeah, that's good, we used to do firearm training with
11 brother Sayyid Nosair."

12 Q. When we broke yesterday you were discussing a
13 trip to Detroit. Would you tell us again, slowly for the
14 record, who the people were who came with you in the van on
15 the trip from Detroit back to the New York area?

16 A. Sheik Abdel Khalik, Mr. Heshami El Hemamy,
17 Mr. Hamdi Moussa, Mr. Hamdi Ali,

18 Q. Is that it?

19 A. Myself.

20 Q. How did you get along with Hamdi Moussa on the
21 ride back from Detroit?

22 A. We did not get along.

23 Q. Can you describe for us how you did not get
24 along.

25 A. Since the incident of he seeing me unloading the

1 cameras from the van, he wasn't happy about me bringing
2 cameras to the lecture, and he kept just being cold to me in
3 the duration -- during these three days or four days we
4 stayed there.

5 On our way back, it came a subject of the talking
6 about the training and the firearm training, he mentioned
7 hunting deer. He did not reveal to me, he did not talk to
8 me straight --

9 MS. STEWART: Objection, Judge.

10 THE COURT: Sustained.

11 Q. He's the one who mentioned hunting deer?

12 A. Yes, sir.

13 Q. Did there come a time in your van ride back to
14 the New York area when some conversation broke out regarding
15 who would pay for the rental van?

16 A. Yes, sir.

17 Q. Can you describe that for us, please.

18 A. Sheik Abdel Khalik said we should all guys
19 participate in paying for the van. Then Mr. Hamdi Moussa
20 said if so, Mr. Salem must supply us with a receipt and
21 prove where he get the van and all sorts of papers, which I
22 don't want to present in that time. So I told him I did not
23 ask him for contributions, and you don't have to ask me for
24 receipts, and I didn't ask anybody to pay anything, I will
25 take care of it.

1 Q. Did anyone else end up paying for any part of the
2 van?

3 A. No, sir.

4 Q. You told us that when you got back from Detroit
5 you got a phone call?

6 A. Yes, sir.

7 Q. Who did you get the phone call from?

8 A. Dr. Hassa Yahya, the third party on the left in
9 the videotape we saw yesterday.

10 Q. You are referring to the videotape that was
11 Government's Exhibit, I believe it was 388, the videotape we
12 saw yesterday?

13 A. Yes, sir.

14 Q. When you say "the third person from the left,"
15 you are talking about when the podium was up on the screen?

16 A. Yes, sir.

17 Q. What did Hassan Yahya ask you to do?

18 A. He asked me to pick up Sheik Omar Abdel Rahman
19 from Newark airport.

20 Q. Did you have a conversation with Hamdi Moussa
21 after that?

22 A. Yes, sir. In that time I don't know how to go to
23 Newark Airport. I called Mr. Hamdi Moussa, asking him how
24 can I go to Newark Airport so to pick up the sheik. He
25 said, "No, forget about it. We will take care of it."

1 Q. Did there come a time, sir, after your trip to
2 Detroit when you had a conversation with Emad Abdou about
3 the trip that you had taken?

4 A. Yes, sir.

5 Q. How long after you came back from Detroit did you
6 speak with Emad Abdou?

7 A. Just a few days after we came back.

8 Q. Can you describe for the ladies and gentlemen of
9 the jury your conversation with Emad Abdou after you
10 returned from Detroit?

11 A. We were in El Salaam mosque in New Jersey, and I
12 told Mr. Emad Abdou that Mr. Hamdi Moussa and the guys were
13 so rough with me in the trip to Detroit.

14 Q. Let's me stop you. You said "so rough"?

15 A. Yes, sir.

16 Q. Continue, please.

17 A. So he smiled and he said, "Well, I know."

18 I said, "How do you know?"

19 He said, "Well, because they saw your dog tag
20 chain."

21 I told him, "OK. So what's wrong with that?"

22 Q. Let me stop you for just a moment. Were you
23 wearing a dog tag chain when you were in Detroit?

24 A. Yes, sir.

25 Q. Did you wear it at other times when you were at

1 the mosque in New Jersey?

2 A. Yes, sir?

3 MS. STEWART: Objection, leading.

4 THE COURT: Overruled.

5 Q. Tell us about the rest of your conversation.

6 A. So I told him, "What's wrong with that?"

7 He said, "people who wear dog tag chain is people
8 always either FBI or intelligence or undercover."

9 I said, "Emad, you've got to realize that I used
10 to be a private investigator here in the United States. And
11 I used to be an officer in the Army. And we are in the
12 habit of putting our blood sample on the dog tag chain so
13 if, God forbid, something wrong happened, it would be -- the
14 ambulance will take care of us."

15 He said, "Well, that is the way they interpret it
16 and, that's just the way they understood it."

17 Q. Did there come a time that you spoke with other
18 people besides Emad Abdou about the suspicions in Detroit?

19 A. Yes, sir.

20 Q. Who else did you speak to?

21 A. I spoke to Mr. Ibrahim El-Gabrownny about it. I
22 told him that Mr. Hamdi Moussa was so rough with me and it
23 seemed to me that they are suspecting that I am an FBI
24 informant. So he told me Hamdi Moussa used to be one of us,
25 but now he's with the New Jersey people and just don't worry

1 about that, Hamdi Moussa is very paranoid about the FBI
2 watching us and monitoring all of our moves.

3 MR. RICCO: Your Honor, I didn't hear the last
4 part of what Mr. Salem said.

5 THE COURT: "Monitoring all our moves."

6 MR. RICCO: Thank you.

7 Q. Did you have a conversation with Ahmed Abdel
8 Sattar about this matter?

9 A. Yes, sir.

10 Q. How long after you came back from Detroit did you
11 speak with Ahmed Abdel Sattar?

12 A. Not that long. I talked to him, I believe, on
13 the phone once and in the mosque once. I explained to him,
14 I said, "Ahmed, you know, I was going to these people with
15 an open heart and they suspected me, and they coming to say
16 that I'm wearing a dog tag chain."

17 So he laughed, he said, "Yeah, I remember. They
18 told me."

19 And, you know, you just got to understand that
20 the people's perception to you it's not going to be --
21 because you just appear all of a sudden and they suspecting
22 things like that.

23 Q. Mr. Salem, when you came back from the Detroit
24 trip, did you speak to Mr. Ibrahim El-Gabrownny about fund
25 raising?

1 A. Yes, sir.

2 Q. What, if anything, did you say about fund raising
3 in Detroit?

4 A. I -- before I went to the Detroit trip
5 Mr. El-Gabrowny asked me to represent Mr. El Sayyid Nosair's
6 committee to make fund raising. When I came back, I was
7 reporting to him what happened.

8 I told him that I was not able to make any money
9 because there was a little conversation between Sheik Omar
10 and Sheik Abdel Khalik about who's supposed to collect what
11 for what.

12 Sheik Abdel Khalik wants to collect money for El
13 Salaam mosque; Sheik Omar wants to collect money for jihad
14 and mujahideen, and I could not get involved or to open my
15 mouth to say I want to collect money for Sayyid Nosair.

16 So, he said, "All right. Don't worry about it.
17 May God facilitate it."

18 Q. "Facilitate it"?

19 A. Yes, sir.

20 Q. Did you speak to Mr. El-Gabrowny about other
21 possible fund raising trips?

22 A. I don't recall for the moment.

23 We always stuffed letters --

24 Q. Your answer is that you don't recall?

25 MS. STEWART: You cut off the witness.

1 A. I remember --

2 THE COURT: He started to talk about stuffing
3 letters, which was not a conversation about a fund raising
4 trip. Go ahead.

5 A. I remember that we always stuffed letters in the
6 basement of Abu Bakr mosque in Brooklyn to be distributed
7 locally in United States and overseas to make fund raising
8 from everywhere.

9 Q. Did you ever actually go on any trips for fund
10 raising?

11 A. Mr. Ibrahim El-Gabrownny asked me to go to a trip
12 to Chicago, where is a conference, Islamic conference going
13 to be held over there, and he said this is -- probably will
14 be a good opportunity as well to do fund raising for Sheik
15 Sayyid Nosair.

16 Q. Did you actually go?

17 A. No, I did not.

18 Q. Mr. Salem, I want to ask you about a man named
19 Montasser el Zayyat?

20 A. Yes, he is.

21 Q. Did there come a time when you met a man named
22 Montasser el Zayyat?

23 A. Yes, sir.

24 Q. Can you tell us where you met him?

25 A. That was during Mr. Sayyid Nosair's trial. I was

1 in the courtroom sitting beside -- I was accidentally
2 sitting beside this individual who introduced himself to me
3 as Montasser el Zayyat. The name was familiar to me, and
4 then he reminded me that he writes a column in one of the
5 Egyptian newspapers about Sheik Omar --

6 MS. STEWART: Objection. Judge, may we approach.

7 THE COURT: Yes.

8 (Continued on next page)

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1 (At the side bar)

2 MS. STEWART: The basis for the objection, Judge,
3 is that this man was the sheik's lawyer in Egypt. I think
4 that anything he might have said might be confidential, and
5 I would impose whatever rights my client might have to
6 the --

7 THE COURT: It sounds like he is about to talk
8 about a column that he wrote.

9 MR. McCARTHY: Well, he knows --

10 MS. STEWART: I don't know what the answer is.
11 This is not discovery.

12 MR. McCARTHY: He knows that he is a lawyer, and
13 he knows that he is connected to the sheik. I don't know
14 that he knows exactly that he was the sheik's lawyer,
15 although it's certainly reasonable from that information
16 that he has. The reason for going into the subject at all
17 is that this is the incident that ultimately results in the
18 Egyptian intelligence officer showing up to speak to
19 Mr. Salem. I can give your Honor a brief proffer of what
20 I --

21 THE COURT: Does the incident involve el Zayyat's
22 disclosure of any information to Salem?

23 MR. McCARTHY: What happened was he saw el Zayyat
24 at Nosair's trial. He then saw him at the El Salaam mosque
25 receive a package that was wrapped in newspaper from Sheik

1 Abdel Rahman. He reported that to Agent Anticev. Agent
2 Anticev told him that under American law he did not think
3 that anything could be done about trying to figure out what
4 was in the newspaper.

5 I am sorry. I don't mean to speak this loudly.

6 But that if Salem wanted to, he could go ahead
7 and call his friends in Egypt, and, if they wanted to pursue
8 it, they could pursue it. What this hooks up with is at the
9 same time he has a conversation with the agents about the
10 Mubarak solicitation, we will call it.

11 MR. RICCO: "He" being Emad.

12 MR. McCARTHY: "He" being Emad.

13 MR. RICCO: OK.

14 MR. McCARTHY: The agents tell him that that
15 incident should also be reported to the proper authorities.
16 What the agents meant was that it should be reported to the
17 proper authorities so that Egypt could be notified through
18 official channels. What he took it to mean was a green
19 light that he could go on ahead and tell his pals over there
20 about that, too.

21 THE COURT: I asked you what time it is and you
22 tell me how to build a clock. All I wanted to know is
23 whether any information was disclosed by el Zayyat, and the
24 answer to that is no?

25 MR. McCARTHY: Right.

1 THE COURT: So let's proceed.

2 MS. AMSTERDAM: Your Honor, I want to state an
3 objection? I believe there is really wholesale hearsay from
4 various people where there is no foundation at all to
5 establish that those people are co-conspirators. I am not
6 talking about this situation, but in the van, there are
7 plenty of people such as the last person that was spoken to
8 where Mr. El-Gabrownny allegedly said, "He's not with us. He
9 belongs to the group in New Jersey." That would not
10 necessarily make him a co-conspirator, yet we are having a
11 complete recitation of conversations without any foundation
12 that these people are co-conspirators, and I object.

13 MR. RICCO: I would join in that objection.

14 MR. McCARTHY: I don't think that El-Gabrownny
15 saying that he was with us, now he is with the New Jersey
16 people, when the New Jersey people are obviously --

17 MR. RICCO: The problem, Judge --

18 THE COURT: We are not going to deal with this
19 now.

20 MR. RICCO: I just want to say one thing. The
21 problem is when he makes the reference to people, you
22 know --

23 THE COURT: He is specifying who they are and
24 he's specifying who they are and the setting in which they
25 make the statements. So far everything I have heard is

1 unobjectionable.

2 MR. RICCO: Except, Judge, he says when he is

3 a --

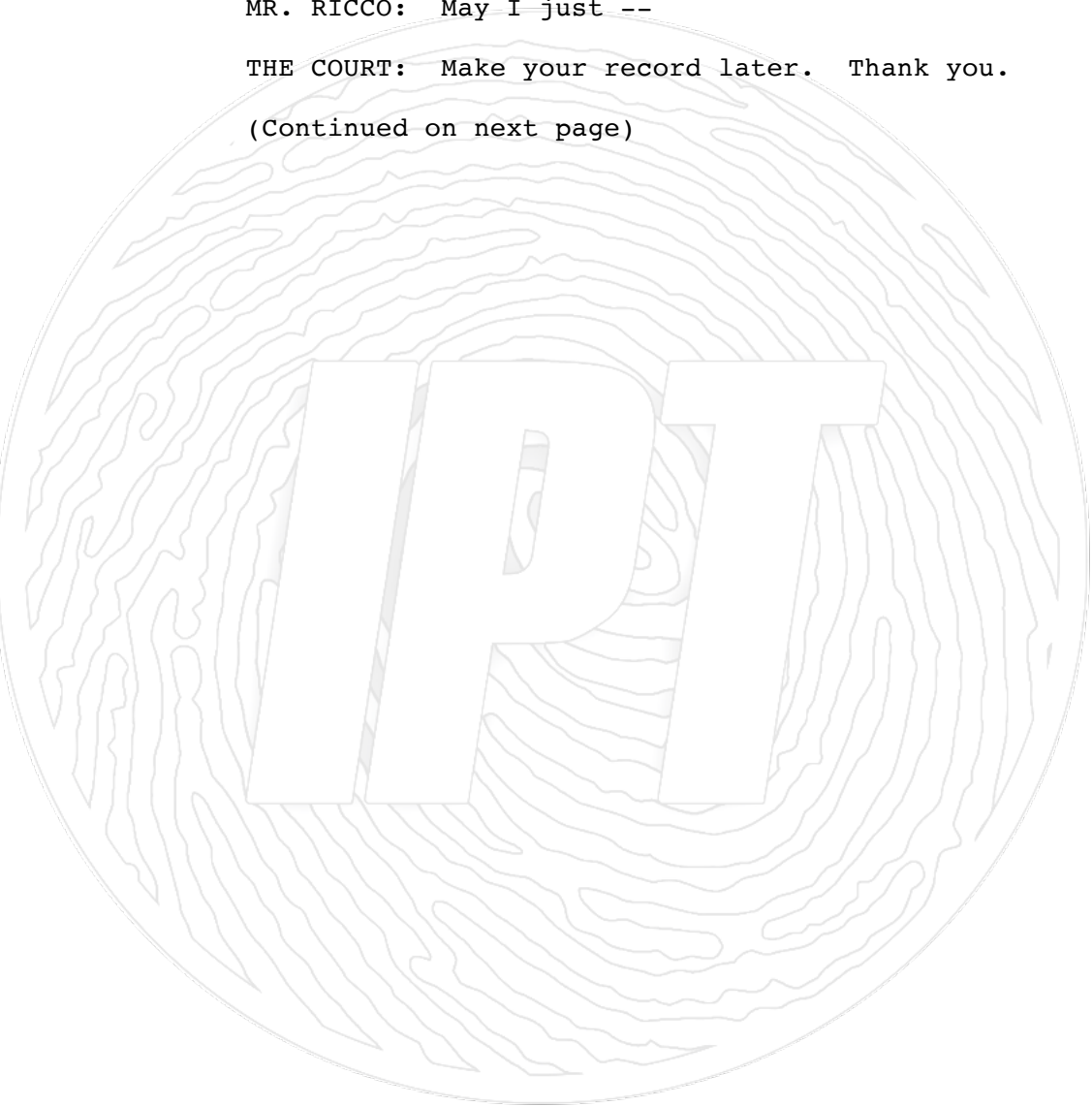
4 THE COURT: Let's go back.

5 MR. RICCO: May I just --

6 THE COURT: Make your record later. Thank you.

7 (Continued on next page)

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1 (In open court)

2 THE COURT: Let's go.

3 Q. Mr. Salem, after you saw -- withdrawn.

4 What, if anything, did Mr. Montasser el Zayyat
5 tell you about himself?

6 A. He told me --

7 Q. Let me stop you for just a moment. When you give
8 your answer, please don't give any information that came
9 from or about any other people. Simply tell us what he said
10 about himself.

11 A. He told me that he writes in one of the Arabic
12 newspapers a column. I said, "Yes, I remember something
13 like that. I remember your name now."

14 He said that he's coming from Egypt for
15 supporting and trying to defend Mr. El Sayyid Nosair.

16 Q. After you saw Mr. Montasser el Zayyat at the
17 Nosair trial, did there come a time that you saw him
18 someplace else?

19 A. Yes, sir.

20 Q. Where else did you see him?

21 A. In El Salaam mosque in New Jersey.

22 Q. Who did you see him with at the El Salaam mosque
23 in New Jersey?

24 A. Sheik Omar Abdel Rahman.

25 MS. STEWART: May we have a time frame on this,

1 Judge.

2 Q. Approximately how long after you came back from
3 Detroit?

4 A. I don't recall.

5 Q. Was the Nosair trial still going on?

6 A. Yes, sir.

7 Q. Can you tell us what you observed of
8 Mr. Montasser el Zayyat and Sheik Omar Abdel Rahman?

9 A. Mr. Montasser el Zayyat held the arm of Sheik
10 Omar. They went to the corner at the end of El Salaam
11 mosque, Sheik Omar opened his cloth and he got a wrap of
12 paper, wrapped in a newspaper, that size, and he gave it to
13 Mr. Montasser el Zayyat.

14 Q. When you say "that size," could you make that
15 gesture again, please?

16 A. It's like that size.

17 Q. You are holding your hands apart, approximately
18 three inches apart with your finger extended?

19 A. Yes, sir.

20 Q. What did you see Mr. el Zayyat do with the
21 package?

22 A. He took it, put it in the pocket of his galabia.

23 Q. After you made this observation, did there come a
24 time that you spoke with Agents Anticev and Napoli?

25 A. Yes, sir.

1 Q. Did you also speak with Agent Nancy Floyd?

2 A. Yes, sir.

3 Q. I want to ask you to answer this yes or no. Did
4 you report what you had seen to the agents?

5 A. Yes, sir.

6 Q. In connection with your observation, did you have
7 a conversation with Agent Anticev over what should be done
8 next?

9 A. Yes, sir.

10 Q. Can you describe for us briefly what that
11 conversation was.

12 A. I told Agent Anticev and Agent Nancy Floyd, "I
13 don't know what's inside this wrap of paper, and when I was
14 talking to Mr. Montasser el Zayyat, I find out that he is
15 going on that trip number," and I give him the trip number.
16 "You will be able to search his luggage."

17 He said, "No way, that is not the way in the
18 United States."

19 Q. When you say the trip number, what kind of trip
20 are you talking about?

21 A. Mr. Montasser el Zayyat because he was leaving
22 next day, and --

23 Q. Leaving for where?

24 A. Leaving from United States back to Cairo.

25 Q. Did you ask Agent Anticev or did he ask you about

1 anything in connection with your friends from the Egyptian
2 military intelligence?

3 A. Agent John Anticev, he said, "The law here won't
4 allow us to search him, but if you want to contact your
5 friends over there, that's something between you and them."

6 Q. Was there any conversation during this
7 conversation between you, Agent Anticev and Agent Floyd
8 about the trip you had taken to Detroit and the conversation
9 you had had with Dr. Abdel Rahman in the van?

10 MS. STEWART: Objection.

11 THE COURT: Overruled.

12 A. Yes, sir. It was.

13 Q. What, if anything, did Agent Floyd say in
14 connection with that matter?

15 A. She said we must report that to the authorities.

16 Q. What did you understand her to mean when she said
17 that?

18 A. I understood that I should report it to the
19 authorities in Egypt.

20 Q. Did you later have a conversation with Agent
21 Floyd about what she actually meant?

22 A. Yes, sir.

23 MR. RICCO: Objection.

24 THE COURT: Sustained.

25 You can answer it yes or no, but nothing else.

1 Q. Did you later have a conversation with Agent
2 Floyd about what she had meant by that statement? Yes or
3 no.

4 A. Yes.

5 Q. Did you in fact contact anyone in Egypt?

6 A. Yes, sir.

7 Q. Who did you contact?

8 A. One of the intelligence officers in the military
9 in Egypt.

10 Q. What did you tell him?

11 A. I told him that I observed an individual with
12 name Montasser el Zayyat. He told me, "Yes, I know him."

13 I said, "If you will be able to check his
14 luggage, because he --"

15 Q. Let me stop you there.

16 I am asking you what you --

17 MR. STAVIS: Your Honor, the witness has not
18 completed his answer.

19 MR. MCCARTHY: I apologize. OK.

20 Go ahead.

21 THE COURT: You want the rest?

22 MR. STAVIS: Yes, your Honor.

23 THE COURT: Go ahead.

24 Q. Go ahead. What did you say to him and what did
25 he say to you?

1 A. I told him that, "If you will be able to check
2 his luggage, because I saw him getting a wrap of paper from
3 Sheik Omar last night or the day before," something like
4 that, and he said, "We'll see what can we do about that."

5 Q. Did you speak to anybody else about this, any
6 other Egyptian official?

7 A. No, sir. I spoke about something else to the
8 counsel deputy of New York.

9 Q. Let me deal first with the rest of your
10 conversation with the person from Egyptian military
11 intelligence.

12 Did you tell that person anything about the
13 conversation you had had with Sheik Abdel Rahman?

14 MS. STEWART: Leading, Judge.

15 THE COURT: Overruled.

16 A. Yes, sir, I did.

17 Q. Tell us what you told him.

18 A. I told him that, "Sheik Omar asked me to
19 slaughter the president of your company."

20 Q. Are those the exact words you remember using?

21 A. Yes, sir.

22 Q. With respect to that matter, did you have a
23 conversation with any other Egyptian government official?

24 A. Yes, sir.

25 Q. Who was that?

1 A. Another intelligence and -- military intelligence
2 officer.

3 Q. Did you have a conversation with any Egyptian --
4 withdrawn.

5 Did you have any conversation with any Egyptian
6 official in New York?

7 A. Yes, sir, I did.

8 Q. Who was that?

9 A. The deputy counsel for the New York Egyptian
10 consulate.

11 Q. Is that a person who is known to you?

12 A. Yes, sir, he used to serve in the Green Berets,
13 and we used to be friends for a long time in the officers'
14 club back in Cairo.

15 Q. After you had these conversations with the
16 Egyptian officials, did there come a time that you received
17 a phone call?

18 A. Yes, sir, I did.

19 Q. How long after?

20 A. Soon after. I don't want -- I am bad with dates.

21 Q. You don't recall the exact date?

22 A. No, I don't, sir.

23 Q. Can you tell us what the person who called you on
24 the phone said to you?

25 A. He stated to me that he's a friend of mine, he

1 want to meet me.

2 "What's your name?"

3 He said, "I cannot tell you why, it is a secret,
4 something like that."

5 I would like to know regarding what.

6 He said, "When I see you, I will tell you." And
7 then he mentioned, "I know" -- and he mentioned that deputy
8 counsel's name.

9 Q. Did he ask to meet you?

10 A. Yes, sir.

11 Q. Did you, in fact, meet him?

12 A. Yes, sir, I did.

13 Q. Before you met him, did you make any phone calls?

14 A. I called the FBI immediately. I talked to agent
15 John Anticev. I said, "I got a mysterious call. Somebody
16 want to meet me immediately. I don't know who he is. I
17 don't know what's his identity. I am nervous about it.
18 Probably my cover being blown."

19 Q. Did you ask Agent Anticev to do anything?

20 A. Yes, I told him, "Get your car quickly and come
21 here. Just, if something wrong happen to me, you will be
22 there."

23 Q. Did there come a time when you met with this
24 person?

25 A. Yes, sir, I did.

1 Q. How did he identify himself to you?

2 A. He told me, "My name is Mohammed Nasser." And he
3 told me that he works with the Egyptian intelligence.

4 Q. Did he ask you to do anything?

5 A. Yes, sir, he did.

6 Q. What did he ask you to do?

7 A. He asked me to cooperate with him and supply
8 information about Sheik Omar Abdel Rahman.

9 Q. What did you tell him?

10 A. I told him, "If you want me to do that, you have
11 to do two things: Number one, you got to get me the green
12 light from the military intelligence service back in Egypt.
13 So if you are a really legitimate intelligence officer, then
14 they will let me know about that."

15 Q. Let me stop you.

16 Did you say "legitimate intelligence officer"?

17 Did you use the word "legitimate" in your answer?

18 A. No, I did not.

19 Q. I'm sorry. I didn't hear you correctly then.

20 What kind of intelligence officer?

21 You said if you were really something --

22 A. If you are really -- a real intelligence officer,
23 then the military intelligence people who I know, they will
24 give me the green light, and they will tell me to cooperate
25 with you. If you are not, then it is a different story.

1 Then you got to give me the green light as well from the
2 authorities in United States because I became U.S. citizen,
3 and I don't want to violate the rules of the country.

4 Q. Did you meet with this person again after the
5 first time?

6 A. No, sir.

7 Q. Did you ever cooperate with the Egyptian military
8 intelligence -- withdrawn.

9 Did you ever cooperate with this person
10 afterwards?

11 A. No, sir.

12 Q. Let me return you back to the Nosair trial for a
13 moment. How often did you see Emad Abdou at the Nosair
14 trial?

15 A. Very often.

16 Q. Were there times when you saw him use the
17 telephone?

18 A. Yes, sir.

19 Q. What, if anything, did he tell you about what he
20 was doing when he used the telephone?

21 A. Mr. Emad Abdou asked me to translate for him
22 what's going on in the courtroom because his English is not
23 that good.

24 We went out of the courtroom in the intermission
25 time, and he used to call Sheik Omar Abdel Rahman from the

1 hallway in front of the courtroom to tell him what is going
2 on in Mr. Sayyid Nosair's trial.

3 Q. Did you ever participate in one of these phone
4 conversations?

5 A. Yes, sir. I did not talk to him personally, but
6 I was standing beside Mr. Emad Abdou translating to him, and
7 he was relaying the message to Sheik Omar.

8 Q. All right. You mentioned in your testimony
9 yesterday a man named Mahmud Abouhalima. Do you recall
10 that?

11 A. Yes, sir.

12 Q. When and where did you meet Mahmud Abouhalima?

13 A. I meet Mr. Mahmud Abouhalima in the courtroom
14 during Mr. Sayyid Nosair's trial.

15 Q. Who introduced you to him?

16 A. Mr. Ibrahim El-Gabrowny.

17 Q. How often did you speak with Mahmud Abouhalima
18 during the Nosair trial?

19 A. A few times, very little.

20 Q. Did there come a time that you had a conversation
21 with Mahmud Abouhalima about firearms?

22 A. Yes, sir.

23 Q. Who else was present?

24 A. Mr. Mohammed El-Gabrowny and Mr. Ibrahim
25 El-Gabrowny.

1 Q. Can you tell us about the conversation you had
2 about firearms with those people.

3 A. Mr. Ibrahim El-Gabrownny was looking to purchase a
4 gun, a pistol, a handgun.

5 He told me that he want to talk to Agent John
6 Anticev to try to help him to purchase the gun.

7 Q. Let me interrupt you for a moment.
8 Was there some conversation about a license?

9 A. Yes, sir.

10 Q. What was that conversation?

11 A. That he want to get a licensed gun, and he want
12 to talk to agent John Anticev to help him, but he is
13 concerned and afraid that he is not going to help him.

14 Q. Did Mr. Abouhalima have anything to say about the
15 matter?

16 A. Mr. Abouhalima said it is easier to purchase a
17 rifle, and, if it is a short one, like an Uzi, will be
18 more -- it will be much better.

19 Q. Did you see Agent Anticev and Detective Napoli at
20 the Nosair trial?

21 A. Yes, sir.

22 Q. How often?

23 A. Pretty often.

24 Q. Did there come a time that you were actually
25 introduced to Agent Anticev and Detective Napoli by someone

1 at the Nosair trial?

2 A. Yes, sir.

3 Q. Can you tell us what happened.

4 A. In one day in the intermission between the court
5 sessions, I was stepping out of the courtroom, and
6 Mr. Ibrahim El-Gabrownny was talking to Agent John Anticev
7 and Agent Louis Napoli, and he introduced me to them,
8 "Brother Emad. He is one of the good brothers." And he was
9 making like a joke with them saying --

10 Q. Let me interrupt you.

11 Who was the "he" who was making a joke?

12 A. Mr. Ibrahim El-Gabrownny.

13 Q. Go ahead with your answer.

14 A. Was making a joke, "Why don't you find me a job
15 with you guys."

16 So I intervened in the conversation. I said,
17 "Yes, I am an ex-Army -- I am an exclusive expert. Why
18 don't you find me a job as well?"

19 Q. Who was present when you made that statement?

20 A. Agent John Anticev, Agent Louis Napoli,
21 Mr. Ibrahim El-Gabrownny and myself.

22 Q. After you made that statement, what happened?

23 A. Mr. Ibrahim El-Gabrownny squeezed my shoulder and
24 pushed me away and excused himself from the agents and took
25 me in front of the elevators right beside the courtroom and

1 he give me hard time, telling me, "Are you crazy? You
2 telling the FBI that you are exclusive expert?"

3 I said, "What's wrong with that. I am a U.S.
4 citizen. It's a free country."

5 He said, "They're going to monitor you. They are
6 going to spot you. And if something happened, they will
7 come to pick you up first one."

8 Q. Did there come a time anyone joined this
9 conversation you were having?

10 A. Yes, sir.

11 Q. Who was that?

12 A. Mr. Mohammed El-Gabrownny and Mr. Mahmud
13 Abouhalima.

14 Q. Did Mr. Mahmud Abouhalima have anything to say
15 during this part of the conversation?

16 A. Yes, sir.

17 (Continued on next page)

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1 Q. What did he say?

2 A. He warned me against Agent John Anticev and Agent
3 Louis Napoli, that they will try to recruit me to spy on
4 them, and they used to surveil him personally. He told me
5 that he used to drive his car, the time when they were
6 surveilling him, drive all the way to Connecticut --

7 Q. Let me interrupt you for just a moment. Just to
8 be clear, who is the "they" and who is the "he"?

9 You said they used to surveil him?

10 A. All right. Mr. John Anticev used to surveil
11 Mr. Mahmud Abouhalima.

12 (Continued on next page)

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1 Q. And what did Mr. Mahmoud Abouhalima say?

2 THE COURT: Is that what Mr. Mahmoud Abouhalima
3 is telling you near the elevator?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right, go ahead.

6 A. He told me that Mr. John Anticev and the FBI
7 agents used to surveil me, used, I used to drive my car all
8 the way to Connecticut, go to a coffee shop with my friend
9 Mohammed Hassan, drink cup of coffee, drive back, and go
10 over sidewalk and drive crazy -- drive them crazy as well
11 behind me, and all the way back home and then tell them good
12 night.

13 Q. Did there come a time at the Nosair trial when
14 you had a conversation with Mr. Mahmoud Abouhalima and
15 Mr. Mohammed El-Gabrownny?

16 A. Yes, sir.

17 Q. Can you tell us what that conversation was about?

18 A. When I mentioned the explosive expert issue in
19 front of the agents and Mr. Ibrahim El-Gabrownny asked me
20 about it, Mr. Mohammed El-Gabrownny asked, I think -- asked
21 that way. He said I think if we dropped some dynamite, it
22 won't explode, right? He was directing his question to
23 Mr. Mahmoud Abouhalima.

24 Q. Let me interrupt you for a moment. Was this the
25 same conversation you were telling us about before in

1 connection with Anticev and Napoli?

2 A. Yes, sir.

3 Q. The part of the conversation you are describing
4 now, was Mr. Ibrahim El-Gabrownny present for that?

5 A. Yes, sir.

6 Q. He was present when you had the conversation
7 about dropping the dynamite on the floor?

8 A. No. He left in that time. It was only
9 Mr. Mohammed El-Gabrownny, Mr. Mahmoud Abouhalima and myself.

10 Q. So this was later in time?

11 A. Just couple minutes later, Mr. Ibrahim stepped
12 away. He wasn't present in this conversation.

13 Q. Tell us about the conversation you had.

14 A. He said that if you drop dynamite it won't
15 explode. Mr. Mahmoud Abouhalima said of course not, but if
16 you hold in your hand detonator, capsule cap, it can explode
17 from the heat of your hand, and Emad can correct me if I'm
18 wrong.

19 Q. Emad meaning you?

20 A. Yes, sir. And I said yes, you are right, it will
21 explode, you seems to be very knowledgeable about that.

22 Q. Did you learn in your conversations over time
23 with Mohammed El-Gabrownny whether he had, that is, Mohammed
24 El-Gabrownny, had any military background?

25 A. Yes, sir.

1 Q. What was his military background?

2 A. He used to be a lieutenant colonel, as far as I
3 know, in the communication division in the Egyptian military
4 service.

5 Q. Mr. Salem, did there come a time toward the end
6 of the Nosair trial when you went on a car ride with
7 Mr. Abouhalima?

8 A. Yes.

9 Q. Can you describe for us the conversation --
10 withdrawn. How did it happen that you went on a car ride
11 with Mahmoud Abouhalima?

12 A. He asked me to go down from -- we were standing
13 in front of the courtroom. He asked me to go downstairs
14 with him. We stepped down in front of the courthouse. He
15 said well, let us to go for a ride. We get into my car. We
16 start driving around Centre Street and Foley Square and the
17 area in Manhattan. And he start asking me questions about
18 my background. I told him that I am explosive expert, I am
19 looking to do jihad because I want to be a good mujahed. He
20 told me that jihad, people worried when they do jihad about
21 their wives and their kids, but God always there to take
22 care of the wives and the kids.

23 Q. Let me interrupt you for a moment. Did the
24 subject of Afghanistan come up during your conversation?

25 A. Yes, sir. He said I myself, I started by myself

1 and I went to Afghanistan and I did jihad and I fought over
2 there, and we should all gather under God's wing and do
3 jihad.

4 Q. Did Mr. Abouhalima have any conversation with you
5 about the subject of a search of his home?

6 A. Yes, sir.

7 Q. Can you describe that conversation for us?

8 A. Mr. Abouhalima told me that the FBI was watching
9 him and they pushed the Taxi and Limousine Commission
10 inspectors to stop him somewhere, and they went to his house
11 and they searched the house looking for detonators, and they
12 could not find it, but anyhow, he find from one of his
13 neighbors cross his apartment who told him that this is not
14 Con Edison people -- the Con Edison electricity company --
15 this is the FBI, and they were looking for explosives.
16 That's how he know about it.

17 Q. Did Mr. Abouhalima acknowledge that he actually
18 had explosives in his house?

19 A. No, sir, he never did.

20 Q. Mr. Salem, did there come a time that you were
21 invited over to Mr. Ibrahim El-Gabrownny's house?

22 A. Yes, sir.

23 Q. Approximately when was that?

24 A. It was one of the evenings.

25 Q. Let's see if we can narrow it down a little more

1 than that. Was the Nosair trial still going on at that
2 time?

3 A. Yes, sir.

4 Q. Can you tell us, please, about the dinner that
5 you had over at Mr. El-Gabrowny's house. First of all, who
6 was present?

7 A. Mr. El-Gabrowny's family was in the back rooms,
8 but the front room was Mr. El-Gabrowny and myself.

9 Q. How long did you stay at Mr. El-Gabrowny's house
10 that night?

11 A. Three to four hours, something like that.

12 Q. Can you tell us where Mr. El-Gabrowny lived?

13 A. Yes, sir, I can. It's in front of Prospect Park
14 in Brooklyn.

15 Q. How many times had you been there, or have you
16 been there?

17 A. Few times. I mean, I went so many times there.

18 Q. The time that we are talking about, was this the
19 first time you were there?

20 A. I am not so sure, sir.

21 Q. Would you describe for us, please, the visit that
22 you had with him that evening.

23 A. Yes. He put the dinner on the table and turned
24 the TV up, and said when I leave the house, my wife is not
25 here, I am not sure if the FBI will bug the house, so let us

1 to keep that up because that will make noise background on
2 what we are talking about. And then he stepped in the top
3 of the TV and brought some pictures of Meir Kahane, Rabbi
4 Meir Kahane, after his death, and he showed me a picture of
5 the entry wound and the exit wound in the head of Rabbi Meir
6 Kahane.

7 Q. Did he make any statement while he was showing
8 you the pictures?

9 A. Yes, sir.

10 Q. What did he say?

11 A. He said, you don't mention these pictures to
12 nobody, because --

13 Q. Let me stop you for a moment there. Did he make
14 any statements about Rabbi Meir Kahane?

15 A. Yes, sir.

16 Q. What did he say about Rabbi Meir Kahane?

17 A. It was picture of Rabbi Meir Kahane's head only,
18 and he said see this tyrant lying down like a dog.

19 Q. Did you have any conversation that evening about
20 explosives?

21 A. Yes, sir.

22 Q. Would you describe for the ladies and gentlemen
23 of the jury your conversation with Mr. El-Gabrownny about
24 explosives.

25 A. He said, do you know how you can build a bomb? I

1 said yes, I can. He said what kind of bomb? I said well,
2 we can make a cocktail Molotov bombs. He said no, we need
3 high power explosives, do you know how you can make it? I
4 said yes. He ask of me what do you need to make it? I said
5 we need explosives or powder and detonators. He said you
6 cannot manufacture detonators?

7 A. I said no. He said explosives is no problem, I
8 can bring explosives. But I am under the microscope, I
9 cannot keep it in my apartment. I can keep it at the roof,
10 near but not very close. That's as far as I recall right
11 now.

12 Q. After that occasion, over the months that
13 followed did you have other conversations with Mr.
14 El-Gabrownny about building bombs?

15 A. Yes, sir.

16 Q. How often?

17 A. Pretty often.

18 Q. Mr. Salem, did there come a time that you went to
19 Rikers Island, the prison?

20 A. Yes, sir.

21 Q. Was that during the Nosair trial?

22 A. Yes, sir.

23 Q. Who did you go to Rikers Island with?

24 A. I went with Mr. Tarek Khatteria and Mr.
25 El-Gabrownny.

1 Q. That is K-H-A-T-E-R-R-I-A? Tarek?

2 A. Yes, sir, and Ibrahim El-Gabrownny.

3 Q. Let me step back for a moment. Who is Tarek
4 Khatteria?

5 A. He is the nephew of Sheik Ali Shinawy and the
6 brother of Mr. Ahmed Khatteria.

7 Q. Did someone ever tell you -- and I want you to
8 answer this question yes or no. Did someone ever tell you
9 who Ahmed Khatteria was?

10 A. Yes, sir.

11 Q. Can you tell us who told you?

12 A. Sheik Ali Shinawy.

13 Q. What did Sheik Ali Shinawy tell you about
14 Khatteria?

15 A. He told me that he is one of the leaders of
16 mujahideen groups in Afghanistan and he is one of the good
17 mujahidin in Afghanistan.

18 Q. Where did you go with Tarek Khatteria and Ibrahim
19 El-Gabrownny when you went to Rikers Island?

20 A. When did we?

21 Q. Where did you go? Who did you see?

22 A. Mr. Sayyid Nosair.

23 Q. Did you have a conversation?

24 A. Yes, sir.

25 Q. Can you just describe the conversation briefly?

1 A. It was introduction, Mr. Ibrahim El-Gabrowny
2 introduced me to him, this is brother Emad, he is new member
3 in the family, he is a good brother. That's all.

4 Q. That's about the end of it?

5 A. That's the conclusion of it, just introduction.

6 THE COURT: Mr. McCarthy, can you come to a
7 convenient break point in the next 10 minutes?

8 MR. McCARTHY: Yes, your Honor. Your Honor, I am
9 about to go on to another topic. Do you want me to do it
10 now or do you want me to continue?

11 THE COURT: If you can give cover something
12 relevant in 10 minutes, that would be fine.

13 Q. Mr. Salem, did there come a time that you became
14 aware that the Nosair trial ended?

15 A. Yes, sir.

16 Q. How did you learn that the Nosair trial had come
17 to an end?

18 A. One day I left the courtroom and I went home, I
19 called Mr. Ibrahim El-Gabrowny from my apartment. He wasn't
20 available. His wife answered the phone, and she said that
21 he is not around. I told her is he still in the court? She
22 said yes, because Sayyid Nosair get acquitted from the
23 murder charge. And then I put my clothes on and I went to
24 the court place where is the people gathered in front of the
25 courthouse.

1 Q. Did you see Mr. El-Gabrowny there?

2 A. Yes, sir, I saw him there.

3 Q. Did you have some conversation with him?

4 A. Yes, sir.

5 Q. What did he tell you?

6 A. He was happy about the -- he told me about that
7 they will prepare a celebration party next day in Abu Bakr
8 Mosque, and they will slaughter three sheeps for his
9 acquittal.

10 Q. Was there a party the next evening at the Abu
11 Bakr Mosque?

12 A. Yes, sir.

13 Q. Did you attend it?

14 A. Yes, sir.

15 Q. Was a videotape made of the party?

16 A. Yes, sir.

17 Q. Can you tell us some of the people that you saw
18 at the party?

19 A. Sheik Ali Shinawy, Mr. Ahmed Abdel Sattar,
20 Mr. Ibrahim El-Gabrowny, sheik Siddig Ibrahim Siddig Ali.
21 Mr. Mohammed El Zayat. Mr. Nasser Homosamy. It's a lot of
22 people. Mr. Michael Warren.

23 Q. Let me ask you just a couple more questions about
24 the Nosair trial. During the Nosair trial, did you come to
25 meet a person called Leon?

1 A. Yes, sir.

2 Q. Who was Leon?

3 A. Leon, a Jewish person, one of Rabbi Meir Kahane's
4 supporters. He used to attend the trial of Mr. Sayyid
5 Nosair. He used to sometimes sit beside me or some others,
6 and make some statements, and it was provocative.

7 Q. Provocative?

8 A. Yes.

9 Q. Did you meet a man named Mohammed Saad, S-A-A-D?

10 A. Yes, sir.

11 Q. Who is Mohammed Saad?

12 A. Mr. Mohammed Saad is the cousin of Mr. Ahmed
13 Abdel Sattar.

14 Q. How often did you see Mohammed Saad at the Nosair
15 trial?

16 A. Very often.

17 (Continued on next page)

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1 MR. McCARTHY: Your Honor, is this a convenient
2 point?

3 THE COURT: All right. Ladies and gentlemen, we
4 are going to take a break. Please leave your notes and
5 other materials behind. Please don't discuss the case. We
6 will resume in a short while.

7 (Jury excused)

8 (Witness excused)

9 MR. STAVIS: Your Honor, very briefly, there was
10 a portion of Mr. Salem's direct examination where Mr.
11 McCarthy asked him what he told John Anticev and Louie
12 Napoli and what Louie Napoli and John Anticev told him. At
13 that time I did not object, and I am not objecting but I
14 want the record to be clear that I believe that testimony is
15 relevant and I will be eliciting similar testimony to that
16 when it comes time for my cross-examination.

17 THE COURT: I don't know what that is a coming
18 attractions for, but if what you are telling me is because
19 he elicited one conversation between Napoli and Anticev you
20 think any conversation between Napoli and Anticev and the
21 witness is coming in, then I am telling you we will deal
22 with it on an ad hoc basis.

23 MR. STAVIS: No, I intend to do it on an ad hoc
24 basis. I am saying that particular conversation was
25 relevant to the vision and how it was proceeding.

1 THE COURT: I am glad you endorse his having
2 brought it out.

3 Mr. Ricco, you wanted to make a record on
4 something.

5 MR. RICCO: Judge, just a small point. That is
6 what I find, having listened to the bootlegs, oftentimes it
7 is very difficult to follow Mr. Salem as he is recounting
8 his stories. The references become very difficult to
9 follow. That is the only thing I was going to say.

10 THE COURT: I thought you had a totally different
11 objection.

12 MR. RICCO: He often refers to they and we, and
13 it is very hard to follow.

14 MR. McCARTHY: Your Honor, I am trying to clear
15 up some of that but I don't want to be in a position of
16 stopping and having objections that I am cutting off the
17 witness.

18 MR. RICCO: That is a different objection. I am
19 addressing a different problem, because I think not only
20 does it come out in his testimony but also in the bootlegs
21 and other conversations. They are very difficult to follow.

22 THE COURT: If you want me to start doing it, I
23 will start doing it. I would rather not.

24 MR. RICCO: I would rather deal with it as a
25 comes.

1 THE COURT: Mr. McCarthy has done it on a number
2 of occasions when he has asked for who is he and who is we.
3 If there is any point where you think it is unclear, don't
4 be bashful.

5 Ms. Amsterdam, you had --

6 MS. AMSTERDAM: I think I made the record. My
7 objection was that I thought that there are instances where
8 there is no foundation that somebody is a coconspirator and
9 then we get wholesale recitations of their statements,
10 presumably, I think, which would be hearsay unless they were
11 coconspirator statements. And the last example of the
12 columnist from Egypt, or whoever that person was who writes
13 a column --

14 THE COURT: El Zayat.

15 MS. AMSTERDAM: Right. There is indication of
16 conversation there. That to me does not seem to be a
17 coconspirator statement, and I do want the government to be
18 aware that I am concerned that we are getting Mr. Salem up
19 there to make, you know, just everybody that I talked to
20 this is what I said and this is what I said to them, without
21 any rules of evidence.

22 THE COURT: Two points. First of all, I don't
23 know whether it was before you got up or not, when it was
24 pointed out by Miss Stewart that Mr. El Zayat at one time
25 had acted as Dr. Abdel Rahman's lawyer. So there is agency

1 there.

2 MS. AMSTERDAM: I presume that is not
3 coconspirator, however, right? As a lawyer, I would like to
4 note that right now.

5 THE COURT: Rest assured it is only agency, not
6 coconspirator. Coconspirator is an agency theory.

7 Secondly, those statements weren't received for
8 the truth, they were received to show that they were made
9 and to explain his contact, as I understand it, with
10 Egyptian intelligence. That is the only reason they were
11 received.

12 We will resume in a short while.

13 (Recess)

14 (Continued on next page)

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1 EMAD SALEM, resumed.

2 THE COURT: Go ahead.

3 MR. McCARTHY: Thank you, your Honor.

4 Q. Mr. Salem, before we broke, you told us about a
5 conversation that you had with Mr. Mohammed El-Gabrownly and
6 Mr. Mahmud Abouhalima in the hallway at the Nosair trial, do
7 you recall that?

8 A. Yes, sir.

9 Q. Can you describe for the ladies and gentlemen of
10 the jury what tone of voice you were speaking in when you
11 had that conversation.

12 A. Soft tone of voice.

13 Q. Can you tell us what language the conversation
14 was in.

15 A. Arabic.

16 Q. Now, Mr. Salem, following the conclusion of the
17 Nosair trial, but prior to the sentencing, were you involved
18 in some meetings about security arrangements?

19 A. Yes, sir.

20 Q. Did there come a time that you went to a meeting
21 at a place called the Shopaz mosque?

22 A. Yes, sir.

23 Q. Can you tell us, please, where the Shopaz mosque
24 is located?

25 A. It is uptown in Manhattan.

1 THE COURT: Go ahead.

2 MR. RICCO: Excuse me, your Honor.

3 (Pause)

4 MR. RICCO: I'm sorry, your Honor.

5 Q. Mr. Salem, let me just make this clear for the
6 record, what did you understand the name of the mosque to
7 be?

8 A. Shopaz.

9 Q. Can you try to spell that for us?

10 A. S-H-O-B or P-A-Z.

11 Q. Who was at the meeting that you attended at that
12 mosque?

13 A. It was Mr. Ali Abdel Karim, Mr. Yahya, and the
14 security forces.

15 Q. Let me stop you there.

16 You met a man named Ali Abdul Karim?

17 A. Yes, sir.

18 Q. How did you meet, that is, who introduced you to
19 Ali Abdul Karim?

20 A. Mr. Ibrahim El-Gabrowny one day took me to Al
21 Taqwa mosque, and he introduced me to him.

22 Q. Did there come a time when you had -- I am asking
23 you to answer this question yes or no -- did there come a
24 time that you had some conversation with somebody about Ali
25 Abdul Karim?

1 A. So many.

2 Q. Did there come a time that you had a conversation
3 with someone about who Ali Abdul Karim was?

4 A. Yes.

5 Q. Who was the person that you had this conversation
6 with?

7 A. Sheik Ali Shenawy.

8 Q. What did Ali Shenawy tell you about Abdul Karim?

9 A. He told me that he is the leader of the security
10 forces for the mosques.

11 Q. What arrangements were made at the meeting at the
12 mosque in upper Manhattan that you went to with respect to
13 the Nosair sentencing?

14 A. They put -- they asked me to be in the courtroom
15 and contact them through the booth phone in the hallway --

16 Q. Let me stop you. You mean the phone booth?

17 A. Yes.

18 Q. Contact them with the phone booth to where?

19 A. To another phone booth down the stairs in front
20 of the courthouse. They will put another individual to
21 receive my call, and then he have a radio, will air what's
22 going on to Mr. Ali Abdul Karim to move the security forces.

23 Q. What do you mean by the "security forces"?

24 A. It is a group of the people from Al Taqwa mosque
25 who perform security for any occasions like this.

1 Q. Did you actually perform that role at the Nosair
2 sentencing?

3 A. Yes, sir.

4 Q. Let me direct your attention to the time after
5 the sentencing of El Sayyid Nosair. Did there come a time
6 that you had a conversation with Mr. Sattar about the
7 security arrangements?

8 A. Yes.

9 Q. Can you tell us about that conversation.

10 A. Mr. Sattar said that during the riots of the
11 American Muslims, they tried to let the Egyptian -- the
12 Arabic Muslims to help them, which they did not.

13 Now we are trying to get the American Muslims to
14 help us for the security of the sentencing of Mr. Sayyid
15 Nosair and this is a good opportunity that we both came
16 together, and we would like to maintain this relationship.

17 Q. Maintain it after the Nosair trial?

18 A. Yes.

19 Q. Did there come a time that you spoke with
20 Mr. El-Gabrownny about the same subject, that is, the
21 security arrangements?

22 A. Yes.

23 Q. About when in time compared to your conversation
24 with Mr. Sattar?

25 A. I don't recall.

1 Q. Can you tell us what you remember about your
2 conversation with Mr. El-Gabrownny.

3 A. I don't recall.

4 Q. Mr. Salem, are you familiar with a location
5 called the Islamic Center in New Jersey?

6 A. Yes, sir.

7 Q. Where is the Islamic Center?

8 A. It's close to the -- the El Salaam mosque in New
9 Jersey, Jersey City, in this area. I don't know the exact
10 address.

11 Q. Can you tell us what the Islamic Center is.

12 A. It's a location where Islamic weddings take
13 place, prayers take place, meetings take place.

14 Q. Did there come a time shortly after the
15 sentencing of Mr. Nosair that you were invited to a meeting
16 at the Islamic Center in New Jersey?

17 A. Yes, sir.

18 Q. Who invited you to the meeting?

19 A. Mr. Emad Abdou Sattar.

20 Q. Did you go to the meeting?

21 A. Yes, sir, I did.

22 Q. Can you tell us, please, who you saw when you got
23 there that you knew?

24 A. Mr. Siddig Ali, Mr. --

25 Q. Let me stop you for a moment.

1 Was Siddig Ali alone or was he with other people?

2 A. He have some other individuals, but I don't know
3 their names, some Palestinians, some Sudanese.

4 Q. Who else did you see that you knew at the meeting
5 at the Islamic Center in New Jersey?

6 A. I saw Mr. Ali Abdul Karim, Siraj Wahaj, Mr. Ahmed
7 Abdel Sattar his cousin Mr. Mohammed Saad and some others
8 from New Jersey.

9 Q. You mentioned the name Siraj Wahaj?

10 A. Yes, sir.

11 Q. Did there come a time -- withdrawn.

12 Had there been a time before this meeting that we
13 are talking about at the Islamic Center that you had met
14 Siraj Wahaj?

15 A. Yes, sir.

16 Q. Who introduced you to him?

17 A. Mr. Ibrahim El-Gabrownny as well.

18 Q. Who did you understand Mr. Siraj Wahaj to be?

19 A. He is the imam of Al Taqwa mosque in Brooklyn.

20 Q. Let me invite your attention back to the meeting
21 at the Islamic Center in New Jersey in early 1992.

22 Was there some conversation at that meeting about
23 the person you've described to us as Leon?

24 A. Yes.

25 Q. Can you describe for us, please, what that

1 conversation was and who participated in it?

2 A. The participants, Mr. Ahmed Abdel Sattar, his
3 cousin, Mr. Mohammed Saad, Mr. Ali Abdul Karim and I was
4 just present.

5 Q. Can you tell us who said what to whom?

6 A. Mr. Ahmed Abdel Sattar was complaining that
7 Mr. Leon provoking him during the court session when
8 Mr. Sayyid Nosair's trials take place. Mr. Ali Abdul Karim
9 said if there is anybody have his phone number or address.
10 Mr. Ahmed Abdel Sattar said, "We got his phone
11 number."

12 Mr. Ali Abdul Karim said, "Why don't you give it
13 to me?"

14 Mr. Ahmed Abdel Sattar said, "We give it to
15 Ibrahim El-Gabrownny."

16 Mr. Ali Abdul Karim said, "OK. Give it to me,
17 and I will take care of him."

18 Q. Did Mr. Ali Abdul Karim ever indicate in your
19 presence that he had an ability to run down telephone
20 numbers?

21 A. No, sir.

22 Q. Can you tell us, please, whether you had a
23 conversation with Mohammed Saad after the time of the
24 meeting at the Islamic Center?

25 A. Yes, sir.

1 Q. How long after the meeting, if you recall?

2 A. Soon after the meeting. I don't specify -- a
3 couple of days, something like that. I mean --

4 Q. Where did the meeting take place that you had
5 with Mohammed Saad?

6 A. I was in Abu Bakr mosque, and after we finished
7 the evening prayer, Mr. Mohammed Saad asked me to give him a
8 lift by my car. We --

9 Q. Where did you go on the lift?

10 A. We were driving to his house. In the middle of
11 the drive he was talking about Mr. Leon, and that he and
12 Mr. Ahmed Abdel Sattar did surveillance on Mr. Leon and they
13 got his address. And they discovered that he lives close to
14 the -- to Mr. Mohammed Saad's house.

15 And he directed me to be, to drive over there.
16 He showed me Mr. Leon's house, and he said, "If you will get
17 us a nice bomb to put it underneath his car, we can get rid
18 of him."

19 Q. Let me stop you there. Did you agree to make a
20 bomb for Mr. Leon's car at that time?

21 A. I said, "Yes, it is a good idea. We will see
22 what can we do."

23 Q. Did you have a conversation about any other
24 subject besides Mr. Leon?

25 A. Yes. We drove further, and we pulled in an area.

1 We started talking about Sheik Sayyid Nosair and
2 Mr. Mohammed Saad suggested to get a plan to break him out
3 of jail.

4 Q. Did he describe the plan he had in mind for you?

5 A. Yes, sir, he did.

6 Q. Tell the ladies and gentlemen of the jury what he
7 told you about the plan.

8 MS. STEWART: Objection, Judge.

9 THE COURT: Overruled.

10 A. He told me that he wants to rent apartment close
11 to Attica jail so he can get a job with either the garbage
12 company who is doing garbage with jail or the bakery company
13 who is delivering or something in that effect.

14 And then we tell Mr. Nosair to work inside jail
15 in these areas, and then when he drive the car or the van --

16 Q. Who is "he"?

17 A. Mr. Mohammed Saad.

18 Q. Right.

19 A. That will facilitate us to pick him up from jail
20 and smuggle him out and put him in the apartment close to
21 the jail. That is the last place anybody would look for him
22 close to jail.

23 Q. Let me just interrupt you for a moment.

24 Who said that was the last place anyone would
25 look for him?

1 A. That was me.

2 Mr. Mohammed Saad said that the highway, it will
3 be all monitored in that time after his escape, so we put
4 him right close to jail. My answer to him, that that was
5 the best place, nobody will look for him.

6 Q. After you had this conversation about Mr. Leon
7 and about escaping or breaking Mr. Nosair out of jail, did
8 you have a conversation with Mr. El-Gabrowny, that is,
9 Ibrahim El-Gabrowny?

10 A. Yes.

11 Q. How long after the conversation with Mohammed
12 Saad?

13 A. I would say 45 minutes or -- right after I
14 finished, I drove to Mr. El-Gabrowny's house and we sat in
15 my car and we talked about Mr. Mohammed Saad's plan.

16 Q. Can you tell us, please, or describe for us what
17 your conversation was with Ibrahim El-Gabrowny 45 minutes
18 after meeting with Mohammed Saad?

19 A. I told him I just came from Mohammed Saad, and he
20 got an idea about Sheik Sayyid.

21 Q. You said "Sheik Sayyid"?

22 A. Sheik Sayyid Nosair. He said, "What is it?"

23 I said, "He thinking on getting a job over there
24 to get an apartment and job to allow us to get in, take
25 him" -- and I told him exactly what is the plan.

1 He said, "Well, we should wait and slow down now
2 until we finish the appeal, probably will beat the appeal,
3 and may God facilitate that."

4 Q. So he told you not to do it at that time?

5 A. Yes. He refused to do it in that time. He said
6 later after the appeal because he's -- he told me that he is
7 hoping to beat the appeal legally.

8 Q. "Beat the appeal legally" you said?

9 A. Yes, the appeal would let Mr. Nosair free.

10 Q. Mr. Salem, did there come a time in 1992 that you
11 became involved in firearms training?

12 A. Yes, sir.

13 Q. Can you tell us, please, generally how it is that
14 you became involved in firearms training.

15 A. During the security meeting in Shopaz mosque, I
16 was approached by Mr. Abdul Rahman Ali --

17 Q. I'm sorry. Who was Abdul Rahman Ali?

18 A. He is one of the American Muslims.

19 Q. Did you know him by any other name?

20 A. Mr. Ferguson.

21 Q. What was his first name? Do you recall?

22 A. I am not so sure.

23 Q. What role, if any, did Abdul Rahman Ali or
24 Mr. Ferguson have in the firearms training?

25 A. He is the trainer.

1 Q. What do you mean he's the trainer?

2 A. He's a firearm trainer, and performed on the
3 behalf of the National Rifle Association.

4 Q. Where did his firearms training take place?

5 A. He chose two places. We used to go to two
6 places. One in front -- one -- well, both of them in
7 Queens. But it's two schools, and we used to go on the
8 weekend or when the school time is not out.

9 Q. Can you tell us where in Queens it was.

10 A. I don't recall the exact address.

11 Q. Was there any live firing?

12 A. Live firing?

13 Q. Withdrawn.

14 What kind of firing went on in the two locations
15 in Queens?

16 A. Dry firearm training.

17 Q. What do you mean by "dry firearms"?

18 A. He bring weapons and explained to us how you can
19 cock it, how you can hold it, how you can aim and follow
20 through, and the breathing process, and all sorts of fire
21 training.

22 Q. Was there any part of the training that included
23 the actual firing of firearms, not dry firing but actual
24 firing of rounds?

25 A. Yes, sir.

1 Q. Where did that take place?

2 A. In Long Island City range. It's called
3 Calvingson or -- Calvington, a firearm range.

4 Q. Your best recollection is it's called Calvington?

5 A. Something in that effect.

6 Q. Did you go to the firearms training that was run
7 by Mr. Abdul Rahman Ali?

8 A. Yes, sir.

9 Q. How many times?

10 A. As far as I recall, once.

11 Q. One time you went to firearms training?

12 A. With Mr. Ferguson by himself once, with
13 Mr. Mohammed Attiyya and Mr. Ahmed Sheik Husama, and some
14 others from the other mosques. We went another once.

15 Q. Let me back you up for a minute. When you say
16 you "went another once," what is the place that you are
17 talking about that you went once or twice?

18 A. The same range.

19 Q. That's the actual shooting of firearms as opposed
20 to dry firing?

21 A. Yes, sir.

22 Q. Did you go to dry firearms, dry firing?

23 A. Dry firearms, that was in the schools.

24 Q. Did you go to that as well?

25 A. Yes.

1 Q. How many times?

2 A. Twice a week.

3 Q. During how long a period of time?

4 A. I cannot specify. It is just -- I don't recall.

5 Q. Can you tell us, please, some of the people who
6 went with you to the dry firing?

7 A. Mr. Mohammed Attiyya, Sheik Husama, some other --
8 somebody, his name is Johnny D. Some other young fellows
9 from the American mosques. I am not familiar with their
10 names.

11 Q. Did there come a time that you saw Mr. Ferguson
12 or -- I'm sorry, Abdul Rahman Ali with Mr. Sattar?

13 A. Yes, sir.

14 Q. Where did that take place?

15 A. In Mr. Ferguson's house.

16 Q. Where was Mr. Ferguson's house?

17 A. Somewhere in Queens. I don't recall the exact
18 address.

19 Q. Tell us what happened when you and Mr. Sattar
20 went to Mr. Ferguson's house in Queens?

21 A. Started by doing prayer, and after we finish
22 prayer, he showed us two machines of reloading bullets and
23 some other equipment for firearm training.

24 Q. Can I stop you for a moment.

25 What do you mean by "machines for reloading

1 bullets"?

2 A. It is a press machine where you put the old
3 cartridge, and you take out the firing pin -- the firing
4 capsule, the old one, and then you pack the new one, and
5 then you put powder in it, and then you put the nose and you
6 compact it. Then you have a new round or new bullet.

7 Q. A new bullet?

8 A. Right. It was two machines, one automatic and
9 one manual.

10 THE COURT: When you say "he showed us," who
11 showed who?

12 THE WITNESS: Mr. Ferguson showed Mr. Ahmed Abdel
13 Sattar and myself.

14 MR. McCARTHY: Thank you.

15 Q. What else did he show you, if anything?

16 A. He took us to the next room, opened a door that
17 had three green boxes on the top of each other. The top box
18 it was full of pistols, different type between revolvers and
19 semiautomatic pistols.

20 The second box there was a number of rifles.
21 Among these rifles I recall one Egyptian rifles, it is
22 called Hakim.

23 Q. Hakim?

24 A. Hakim rifle. It is being used for sniping.
25 The bottom box I saw a crossbow, crossbow rifle in the

1 bottom box.

2 Q. That was at Mr. Ferguson's home?

3 A. Yes, sir.

4 Q. Did there come a time that you went to dry
5 firearms training, to Mr. Ferguson with Ibrahim El-Gabrownny

6 MR. RICCO: Objection.

7 THE COURT: Overruled.

8 A. Yes, sir.

9 Q. Was that before or after the time you that you
10 went to Mr. Ferguson's home with Sattar?

11 A. That was after.

12 Q. Can you tell us, please, about the time that you
13 went to the dry firing with Mr. El-Gabrownny.

14 A. At the time I don't know. It was midday. But I
15 don't recall the date.

16 Q. I'm sorry. I wasn't asking you about the time of
17 day. I was asking you to describe what happened when you
18 went there.

19 A. OK. Mr. Ibrahim El-Gabrownny told me that he
20 wanted to purchase a pistol. To purchase a pistol, it will
21 be easier to get the license if you have a license of
22 trained for firearm or weapons training.

23 Mr. Ferguson, as firearm trainer, he have the
24 capacity to give certificates. Mr. Ibrahim El-Gabrownny told
25 me that, "How long is the course?"

1 I told him it takes five classes.

2 "How much for each class?"

3 I told him, "\$10."

4 He said, "Is it possible to give him the \$50 and
5 get the certificate right away?"

6 I told him, "You can try that yourself. I don't
7 know."

8 He came with me that day to the school. He
9 attended the class, and Mr. Ferguson explained to us some of
10 the dry firing and loading -- reloading bullets and things
11 like that and --

12 (Continued on next page)

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1 Q. Let me interrupt you. Was there another one of
2 those machines that you described for us before?

3 A. Yes, the manual one was there.

4 Q. Did you have a conversation about certification
5 for you with firearms?

6 A. Yes.

7 Q. Who did you have that conversation with?

8 A. Mr. Ibrahim El-Gabrownny.

9 Q. Tell us about that conversation?

10 A. Mr. El-Gabrownny told me it's a good idea that you
11 going to these classes because when you get your
12 certificate, after three courses or few advanced courses,
13 you will become instructor. Then we can have our own
14 trainer and when you train us, then if somebody will come to
15 monitor this training you will be certified as a trainer and
16 it will be legal.

17 Q. Did you in fact at one time get certified by
18 Mr. Ferguson?

19 A. Yes, I took the first course and he certified me.

20 Q. Mr. Salem, I am placing before you what is marked
21 for identification as 3534L.

22 A. Yes, sir. I am asking you to take a look at this
23 document and see if you recognize what it is a copy of?

24 A. Yes. This is the certificate of the first course
25 of firearms training and shooting.

1 Q. Does Mr. Ferguson's signature appear on it?

2 A. Yes, sir.

3 Q. Mr. Salem, following the meeting that you -- or
4 the dry firing session that you and Mr. El-Gabrowny went to
5 with Mr. Ferguson, did you have a conversation with Mr.
6 El-Gabrowny about the carpenter shells?

7 A. Yes.

8 Q. Can you first explain to the ladies and gentlemen
9 of the jury what carpenter shells are?

10 A. There is something called a nail gun -- the
11 nails, the carpentry nails, there is a gun to shoot these
12 nails. There is cartridge shells to be put in this nail gun
13 to shoot these nails, to let it to go into the wood.

14 Q. Tell us about your conversation with Mr.
15 El-Gabrowny about carpenter shells.

16 A. Mr. El-Gabrowny told me right after we left the
17 school that he got the idea if reloading the bullets with
18 the press that Mr. Ferguson used, with powder, and this
19 powder will be usable for making bombs. I said yes. He
20 said I am a contractor, certified carpenter, and I have, I
21 can get you thousands of this cartridge -- nail gun
22 cartridge shells. I said, well let me take a look at it and
23 then I will tell you what, I got to check this powder and
24 see it.

25 Q. Did he ever give you anything?

1 A. Yes. We drove to his house. He gave me a box
2 full of cartridges shells, loaded with powder.

3 Q. Did you ever do anything with the shells?

4 A. No, I did not. I showed it to the agents, of
5 course.

6 Q. Did you ever try to build a bomb --

7 MS. STEWART: I didn't hear that response, Judge.
8 I am sorry.

9 THE COURT: "I showed it to the agents."

10 Q. Did you ever try to build a bomb with the
11 carpenter shells?

12 A. No, sir.

13 Q. Mr. Salem, did there come a time that you spoke
14 with Sheik Omar Abdel Rahman about your role in firearms
15 training?

16 A. Yes, sir.

17 Q. Do you remember approximately when that was?

18 A. It was one day we went at the evening after the
19 evening prayer to his house.

20 Q. Let me stop you. What do you mean "we went"?
21 Who was "we"?

22 A. Myself, Mr. Ahmed Abdel Sattar and myself. Sheik
23 Omar told me, I heard you are participating in training and
24 you getting to the training now. I said yes. He said
25 that's a good idea. We all should be trained because there

1 is a time going to come when we need that.

2 Q. Had you spoken much to Sheik Abdel Rahman since
3 the Detroit trip?

4 A. No, not that much.

5 Q. This conversation that you are telling us about,
6 did that happen before or after the sentencing of Mr.
7 Nosair, if you recall?

8 A. I don't recall.

9 Q. Mr. Salem, did there come a time that you had a
10 conversation at the El Salaam Mosque in Jersey City, New
11 Jersey, with Sheik Abdel Rahman and Hamdi Moussa?

12 A. Yes, sir.

13 Q. Was this after the sentencing of Mr. Nosair?

14 A. Yes, sir.

15 Q. Can you please describe for us the conversation
16 that you had.

17 MS. STEWART: Can we get a time frame, Judge?

18 THE COURT: Time frame, if you can nail it down
19 any closer than after the sentencing of Mr. Nosair.

20 Q. What is your best recollection as you sit here
21 today of what the time frame was of the conversation?

22 A. I don't recall.

23 Q. Do you recall as you sit here how long after the
24 sentencing of Mr. Nosair it may have been?

25 MS. STEWART: Objection, leading.

1 THE COURT: Overruled.

2 A. It was close to it. It wasn't that far from it.
3 But I don't want to pin day, and I -- it was close after it.

4 Q. Tell us about the conversation.

5 A. We were in the El Salaam Mosque after the evening
6 prayer. We were sitting, Mr. Hamdi Moussa coming from the
7 kitchen area, laughing, said Sheik Omar, do you know that
8 Mahmoud Abouhalima ripped up the phone off the wall, off his
9 wall?

10 Q. Off his what?

11 A. Off his wall.

12 Q. I am sorry.

13 THE COURT: You say he ripped the phone off his
14 wall?

15 THE WITNESS: Yes, sir.

16 THE COURT: Go ahead.

17 A. Sheik Omar said why? What happened? He said
18 that Mr. Sayyid Nosair called him from --

19 MR. STAVIS: Objection, your Honor.

20 THE COURT: Overruled.

21 A. He said Mr. Sayyid Nosair called Mahmoud
22 Abouhalima from jail, told him Mahmoud, is it true that you
23 was with me in the time of the instant? And then Mahmoud
24 Abouhalima get very upset and he said why did you say that,
25 why you saying that, and he ripped the phone off the wall

1 and changed his number.

2 (Continued on next page)

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1 Q. When you say the incident, did Hamdi Moussa make
2 clear what incident was being referred to?

3 MR. STAVIS: Objection, your Honor.

4 THE COURT: Overruled.

5 MR. STAVIS: May I be heard at the side bar?

6 THE COURT: Sure.

7 (At the side bar)

8 MR. STAVIS: Your Honor, I originally objected
9 because of the double hearsay. Mr. Salem is saying --

10 THE COURT: I know who is saying what to whom.
11 Why don't we get what his theory is.

12 MR. McCARTHY: Your Honor, I believe it is
13 coconspirator hearsay.

14 THE COURT: How is it in furtherance?

15 MR. McCARTHY: Because it is members of the
16 conspiracy keeping other members of the conspiracy apprised
17 about ongoing activity.

18 THE COURT: What is the ongoing activity, other
19 than tearing telephones off walls?

20 MR. McCARTHY: The fact that Abouhalima was
21 concerned about surveillance, the fact that Abouhalima was
22 concerned that Nosair was compromising their arrangements
23 between and among each other by acting recklessly on the
24 telephone, the fact that Mr. Abouhalima, I am about to
25 elicit, called Mr. Salem time and again prior to this call.

1 At the moment after the time that this call occurred he
2 didn't call him again until late December of 1992.

3 THE COURT: Abouhalima stopped calling Salem?

4 MR. McCARTHY: He stopped calling Salem and
5 didn't call him again for several months until December
6 1992. The phone records support -- I am sorry.

7 MR. STAVIS: All of which can be established
8 without what has been established here or sought to be
9 established, which is that Mahmoud Abouhalima years earlier
10 or a year and a half earlier was a participant with my
11 client in the Meir Kahane homicide, which is a separate
12 count here. That is why I objected to this, your Honor.
13 And also, the next question that he asked was attempting to
14 have another person clarify what Mahmoud Abouhalima meant
15 when he did that.

16 THE COURT: It is in a separate count because I
17 took it out of the sedition count. According to the
18 government's theory it is not a separate conspiracy.

19 MR. McCARTHY: That is correct.

20 MR. STAVIS: Your Honor, when we talk about in
21 furtherance of the conspiracy, we talk about something that
22 happened a year or two years earlier not being in
23 furtherance of the conspiracy.

24 MR. McCARTHY: The indictment charges a large
25 organization. I think we are entitled to show that people

1 in the conspiracy were concerned when others acted
2 recklessly, and the fact that Sheik Rahman -- Sheik Abdel
3 Rahman -- I apologize -- was kept apprised of that and the
4 fact that that was done by Hamdi Moussa is relevant.

5 MR. STAVIS: That is the problem, your Honor.
6 You get into third-hand hearsay concerning what happened in
7 the Marriott D ballroom. All the things that Mr. McCarthy
8 wishes to establish I have no problem with, when they were
9 called and these kinds of things, even pulling the phone off
10 the receiver. I didn't have a problem with that. When you
11 get into third hand what was told and how it impacts back a
12 year and a half earlier or two years earlier --

13 MR. MCCARTHY: Your Honor, if I may, if he
14 doesn't have a problem with pulling the phone out of the
15 wall, I would think that would be the only thing under the
16 coconspirator exception that is offered for the truth of the
17 matter asserted. Mr. Nosair's statement isn't offered for
18 the truth.

19 THE COURT: It is bound to be received for the
20 truth, please.

21 MR. WASSERMAN: Right.

22 THE COURT: Thank you.

23 MR. WASSERMAN: No, I am affected by it.

24 THE COURT: If it is OK with counsel, I will let
25 you lead on the question of whether he was concerned about

1 security and concerned about telephone conversations, and
2 then whether there was a hiatus in his calling on that
3 ground.

4 MS. STEWART: Who was concerned, Judge? I am
5 sorry.

6 THE COURT: Abouhalima was concerned and left off
7 telephone calling as a result over a particular period of
8 time.

9 MR. McCARTHY: Your Honor, can I propose this,
10 then?

11 THE COURT: Go ahead.

12 MR. McCARTHY: I would move to another area to
13 make sure that he doesn't pull out something that shouldn't
14 be pulled out, and I will make sure tomorrow --

15 THE COURT: Fine.

16 MR. STAVIS: Except that there is something that
17 we have to deal with, which is that the testimony stands in
18 the record as it is now, your Honor, and I would ask for an
19 instruction to disregard anything that was said concerning
20 second-hand statements from Mr. Nosair.

21 THE COURT: I am not going to give an abstract
22 instruction, and for me to give a concrete instruction is
23 going to be worse than the disease. Let's just go back and
24 move to something else.

25 MR. STAVIS: Can we have it stricken from the

1 record then, your Honor?

2 MR. McCARTHY: There is no basis to strike it
3 from the record at this point.

4 THE COURT: There is no basis to strike it. We
5 will deal with that later on.

6 (In open court)

7 MR. McCARTHY: May I proceed, your Honor?

8 THE COURT: Yes.

9 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q. Mr. Salem, I want to move you to a new topic.
3 Did there come a time that you went to visit Mr. Nosair at
4 Attica prison in upstate New York?

5 A. Yes, sir.

6 Q. As you sit here today, do you remember when the
7 first time you went to do that was?

8 A. After they moved him from Rikers Island to Attica
9 jail.

10 Q. Do you know the exact date?

11 A. No, I don't recall, sir.

12 Q. Who went with you when you went to Attica prison?

13 MR. STAVIS: Can we have an approximate date of
14 this trip, your Honor?

15 THE COURT: Can we get an approximate time with
16 regard to another event, if possible, if necessary?

17 MR. McCARTHY: Yes.

18 Q. Mr. Salem, as you sit here today, what is your
19 best recollection of when this conversation took place, this
20 first visit?

21 A. It was after Mr. Nosair's sentencing.

22 Q. Let me ask you this: When you got to Attica
23 prison -- withdrawn. Did you go by yourself or with others?

24 A. I went with Mr. Mohammed El-Gabrownny and
25 Mr. Tarek Khatteria.

1 Q. Did you have to sign in at Attica prison?

2 A. Yes, we have to sign in, put address.

3 Q. When you signed in, did you have to give the date
4 of when you were visiting?

5 A. Yes, sir.

6 Q. How did it happen that you went to visit Mr.
7 Nosair at Attica prison?

8 A. We were doing evening prayer in Abu Bakr Mosque.
9 Mr. Mohammed El-Gabrownny said that I am going to visit Sheik
10 Sayyid in Attica. He was talking to Mr. Tarek Khatteria.
11 Mr. Tarek said OK, I will go, I will bring my car for the
12 trip. I said, guys, include me, I will pay for the gas.
13 Mr. Mohammed El-Gabrownny said, I have the sandwiches.

14 Q. Did you go to Attica?

15 A. Yes, we did.

16 Q. Did there come a time at Attica that you visited
17 with Mr. Nosair?

18 A. Yes, sir, we did.

19 MR. STAVIS: Can I have an approximate date of
20 this visit, your Honor?

21 Q. What is your best approximation as you sit here
22 today of what the date was?

23 A. I don't recall.

24 Q. Do you remember if it was spring or summer or
25 fall?

1 A. I am sorry. I can't recall. I can't recall,
2 sorry.

3 Q. Did there come a time, Mr. Salem, that you
4 stopped cooperating with the FBI during 1992?

5 A. Yes.

6 Q. Do you remember when that was?

7 A. Yes. It was by close to the end of 1992.

8 Q. Do you remember how long before you stopped
9 cooperating with the FBI that you went to visit Mr. Nosair
10 up at Attica?

11 A. No, I don't. I am bad at dates.

12 Q. As you sit here today, you cannot recall when the
13 conversation took place?

14 A. No, I cannot remember.

15 Q. But you know that you signed in at Attica?

16 A. Yes, I know. If you get the signature, it's
17 going to be at the jail's entrance.

18 Q. Can you tell us, please, about your
19 conversation -- withdrawn. Did you go to visit Mr. Nosair
20 at Attica?

21 A. Yes.

22 Q. Who else was present on this visit?

23 A. Mr. Mohammed El-Gabrowny, Mr. Tarek Khatteria and
24 myself, and Mr. Sayyid Nosair, of course.

25 Q. Did Mr. Mohammed El-Gabrowny and Mr. Tarek

1 Khatteria sign in at the same time you did?

2 A. Yes, sir.

3 Q. Tell us, please, about your visit with Mr. Nosair
4 at that time.

5 MR. STAVIS: I don't mean to sound like a broken
6 record, Judge.

7 THE COURT: Overruled. Take your seat. Thank
8 you. All right.

9 Q. You can answer the question.

10 A. I am sorry. Can you repeat the question, please.

11 Q. Tell us about the meeting that you had with Mr.
12 Nosair at Attica.

13 A. Mr. Mohammed El-Gabrownny, Mr. Tarek Khatteria, we
14 went to visit Mr. Sayyid Nosair. Mr. Sayyid Nosair told us,
15 after greeting and we sit over there, that the whole
16 duration was five hours. You are sitting doing nothing, I
17 did my part, what are you doing? He start to explaining
18 that they did some experimentation with the help of friend
19 of his --

20 Q. Let me stop you there. Who is the "he" who did
21 some experimentation?

22 A. Mr. Sayyid Nosair did some experimentation with
23 friend of his who is an electrician, to build bombs, and
24 they did bomb places, and they used device, the beepers to
25 detonate the bombs. So I ask him how did you do that? He

1 said that the beeper, when it, somebody page the beeper, the
2 light will start to flash. So we take this light out, we
3 hook it up to a Christmas light bulb. After, we break the
4 glass. In this case, once the beeper goes off and the juice
5 will go -- I am sorry -- and the electricity will go through
6 the filament, it will create only spark, because the glass
7 around the Christmas light bulb is broken. Then there is an
8 oxygen will burn the filament and it will create spark, and
9 that's all what you need to detonate the bomb, and we did it
10 and it work.

11 Q. Let me interrupt you. Did he describe who the
12 "we" who had done it was?

13 A. Yes, he and the electrician, his friend the
14 electrician.

15 Q. Did he describe any other types of bombs besides
16 that one?

17 A. Yes. He said we did try the propane tank bomb,
18 we got a propane tank, we wrapped it with four M80's.
19 M80's, it's type of firecrackers. And when we wrap it
20 around it, that will be enough to detonate the whole propane
21 tank. It works very well.

22 Q. What if anything did Mr. Nosair say about where
23 you could obtain materials for these things?

24 A. He described to me store for to buy timers, which
25 they did bought timers before, on Canal Street in Chinatown.

1 Another store to buy a fuse. Mr. Sayyid Nosair told me this
2 fuse, we did experimentation, it's being left under the
3 water, the water won't extinguish it, and it works fine. He
4 described at the corner of Mott Street in Chinatown --

5 Q. That is Mott Street you are talking about?

6 A. Moth, M-O -- yes, Mott Street in Chinatown I can
7 buy the M80's. That's the places where I can get the
8 materials from.

9 Q. Did the subject of the person you have described
10 as Leon come up during the conversation?

11 A. Yes, sir.

12 Q. Can you describe what conversation there was
13 about Leon?

14 A. I told him that Leon, you know, that he is making
15 a lot of comments during the case, and he is provoking
16 everybody, and he said, well, he's a little kid, that's all
17 then, forget about him, we got to look to the big heads.

18 Q. Did he describe who you should be looking at?

19 A. Yes.

20 Q. Who did he say you should be looking at?

21 A. Mr. Dov Hikind.

22 Q. Did he tell you who Dov Hikind was?

23 A. Yes, he is one of the -- he is the assemblyman
24 for the Jewish community in Brooklyn.

25 Q. Did he mention anyone else you should be looking

1 at?

2 A. Yes, sir.

3 Q. Who was that?

4 A. The judge.

5 Q. What judge?

6 A. The judge who ruled against him in his case.

7 Q. What if anything did he say you should be doing
8 with respect to Dov Hikind and the judge?

9 A. He said you guys could kidnap the judge and
10 bargain with him to release me. He was not merciful with me
11 and we should have no mercy.

12 Q. Did you respond, or did anyone else respond to
13 that?

14 A. I did respond to it. I said kidnapping the
15 judge, where are we going to hide it? I mean, United
16 States, the FBI is all over. He said you got to realize,
17 these people does not have 24-hour security, and by the
18 weekend, if you surveil him by the weekend you can even
19 shoot him. I said that means we need a motorcycle and a
20 sharpshooter. Mr. Sayyid Nosair said, well, I was not a
21 sharpshooter, and 300 individuals in the room, nobody saw
22 who killed Meir Kahane.

23 Q. Did Mr. Nosair make any gesture to you?

24 A. Yes, sir, he did.

25 Q. Can you stand up for a moment. Point the

1 microphone up so that we will be able to hear you. Can you
2 show us what Mr. Nosair's gesture was.

3 A. He said, there was 300 individuals in the room,
4 and nobody saw who shot Meir Kahane.

5 Q. For the record, you raised your right hand up
6 around the level of your belt and you are holding your right
7 hand in the manner of a pistol, is that correct?

8 A. Yes, sir.

9 Q. You can take your seat.

10 Did the subject of breaking Mr. Nosair out of
11 jail come up?

12 A. Yes, sir.

13 Q. Can you tell us what was said in that regard?

14 A. I told him that Mr. Mohammed Saad was suggesting
15 to do something about breaking you out of jail. He said you
16 just missed a very good opportunity because I just went out
17 to the hospital with two guards only, with pistols. This
18 was a good opportunity, you can take them down in that time.
19 But you missed the chance.

20 Q. Was the topic of stun guns discussed?

21 A. Yes.

22 Q. Tell us what was said in that regard.

23 A. It came the subject of that when he was running,
24 he said I was running and I used the pistol, but if I have a
25 stun gun I could have been in a different shoes than now,

1 stun gun, it won't be a position of weapon.

2 Q. After you had this conversation with Mr. Nosair,
3 did you report the conversation to Mr. El-Gabrowny?

4 A. Yes, sir.

5 Q. What was Mr. El-Gabrowny's reaction?

6 A. He said the guy is very upset, he is in jail, he
7 is hot right now, just let us to slow down after we finish
8 with the appeal, and then may God will facilitate it.

9 (Continued on next page)

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1 THE COURT: When you come will you come to a
2 convenient break point in the next 10 minutes.

3 MR. McCARTHY: I am here now, your Honor.

4 MR. RICCO: The witness said "Then God will
5 facilitate?"

6 THE COURT: Yes.

7 THE COURT: Members of the jury, we are going to
8 break from your standpoint in the middle of the day so that
9 we can save your time, hopefully a lot. Please leave your
10 materials and notebooks behind. Please don't discuss the
11 case or see or read or hear about it, and we will see you
12 tomorrow.

13 (Jury excused)

14 THE COURT: You can step down.

15 (Witness excused)

16 THE COURT: We are going to reconvene with the
17 lawyers at 2:00. Is there anything that would be helpful to
18 me between now and then?

19 MR. JACOBS: Your Honor, if we are going to
20 discuss 32, I don't want your Honor to spend the lunch hour
21 read reading it, but without your Honor having been familiar
22 with what 32 contains --

23 THE COURT: What you are telling me is that I
24 should read 32 over lunch.

25 MR. JACOBS: I think it would help move it along

1 this afternoon.

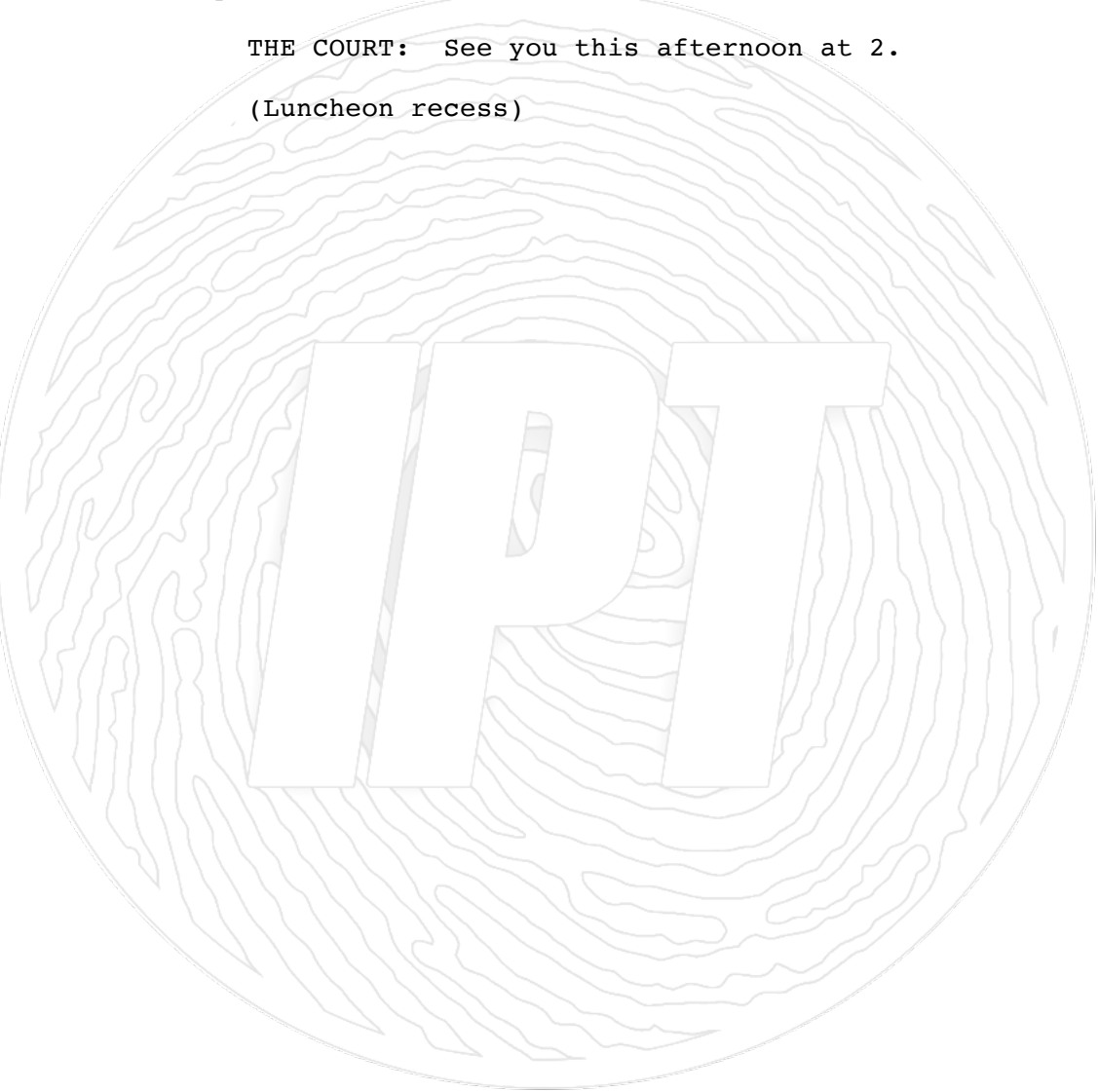
2 THE COURT: Then just say it. I will read it.
3 Anything else?

4 MR. JACOBS: That is the only thing that I think
5 would help resolve some of the issues.

6 THE COURT: See you this afternoon at 2.

7 (Luncheon recess)

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1 (Pages 4761-4763 were sealed by order of the
2 Court)

3 (In open court)

4 THE COURT: Good afternoon.

5 In what order do we want to do this?

6 MR. McCARTHY: Your Honor, I guess we think the
7 pending issues are what objections there are to the
8 transcripts that we have notified counsel that we intend to
9 go into during the direct of this witness, and then there
10 are issues with respect to the authenticity of the CM tapes
11 themselves. I just wanted to lay out what I understand the
12 agenda to be, your Honor.

13 THE COURT: What are the transcript issues?

14 MR. McCARTHY: With respect to 32, how much of 32
15 will be presented to the jury, which means read --

16 THE COURT: Which means what?

17 MR. McCARTHY: Read.

18 THE COURT: Because it is in Arabic?

19 MR. McCARTHY: Yes, your Honor.

20 THE COURT: What is the dispute?

21 MR. McCARTHY: I don't know that there is a
22 dispute. Mr. Jacobs has, I think, said that he wants the
23 whole thing read. We don't have any objection to reading
24 the whole thing. It is a lengthy transcript.

25 THE COURT: It is.

1 MR. McCARTHY: But it is the major evidence
2 against his defendant in the case, and even though it is
3 lengthy, it is important, more important than a lot of the
4 things we are doing.

5 THE COURT: It sound like you don't have an
6 argument.

7 MR. JACOBS: They are going to read it on his
8 direct. There are a few minor points I want to work out
9 with them privately. Other than that, if they are going to
10 read it in its entirety, no problem.

11 MR. McCARTHY: With respect to source tape --

12 THE COURT: You are telling me that my having
13 read this over lunch was for naught?

14 MR. JACOBS: What can I tell you?

15 MR. McCARTHY: Your Honor, we thought we'd have a
16 dispute and we didn't.

17 THE COURT: No, it was fascinating.

18 MR. BERNSTEIN: Judge, you can be excused while
19 we read it in.

20 THE COURT: OK.

21 MR. JACOBS: That takes care of that.

22 THE COURT: All right.

23 MR. McCARTHY: I am also aware that there is an
24 issue with respect to Mr. Salem's personal tape 41 1, which
25 we would intend to put in evidence. Mr. Stavis has an

1 objection to that one.

2 THE COURT: You mean the transcript?

3 MR. McCARTHY: Yes, sir.

4 MR. STAVIS: Yes, your Honor. I pointed out just
5 one brief portion of the transcript to Mr. McCarthy on
6 page -- it begins on the bottom of page 32 and continues on
7 to page 33 where Mr. Salem is relating to Mr. Siddig Ali
8 what Mr. Nosair told Mr. Salem earlier. Mr. McCarthy
9 indicated that he might consider some redactions. I would
10 assume that he is not considering them.

11 MR. McCARTHY: No.

12 THE COURT: You say no?

13 MR. McCARTHY: No.

14 THE COURT: May I see it.

15 MR. STAVIS: Yes.

16 THE DEPUTY CLERK: You have that, Judge. 641

17 1/T.

18 THE COURT: I'm sorry. Mr. Stavis, the page
19 again?

20 MR. STAVIS: The bottom of page 32.

21 THE COURT: Yes. OK. One second.

22 (Pause)

23 THE COURT: OK. I have read it.

24 MR. STAVIS: I believe that we have heard
25 testimony this morning along the same lines. The difference

1 being that it was Mr. Salem relating a conversation with my
2 client as opposed to the double hearsay, out-of-court
3 statement to Mr. Siddig Ali concerning what my client had
4 said.

5 THE COURT: The only difference between what we
6 heard this morning and this -- I mean other than there are
7 some slightly different words -- is that here Salem is
8 telling somebody else the same thing he said this morning.

9 MR. STAVIS: Yes. But we are talking about
10 introducing a tape. That is why it is double hearsay, your
11 Honor. I understand the co-conspirators exception under
12 Rule 801 classifies it as nonhearsay.

13 THE COURT: I am not sure that it -- well, go
14 ahead.

15 MR. STAVIS: I am not sure it is either. I don't
16 know why this particular portion is being offered. I don't
17 know if it is offered under the co-conspirator's exception,
18 because it is made to Mr. Salem who is not and cannot be a
19 co-conspirator.

20 THE COURT: Correct. Why isn't it an admission?

21 MR. STAVIS: Why isn't it an admission?

22 THE COURT: Yes.

23 MR. STAVIS: When I discussed the issue with Mr.
24 McCarthy, he said that it wasn't being offered or its truth.

25 MR. McCARTHY: That's not --

1 MR. STAVIS: Correct me if I am wrong.

2 MR. McCARTHY: I'm sorry.

3 MR. STAVIS: I don't know what it is coming in
4 for here.

5 THE COURT: Let me here the theory from
6 Mr. McCarthy and then we can talk about it.

7 MR. McCARTHY: I think it is admissible for three
8 different reasons. I think it comes in first as a prior
9 consistent statement as substantive evidence.

10 THE COURT: Although Salem knows that this
11 conversation is being recorded, correct?

12 MR. McCARTHY: Right. But he also knows that the
13 person he's speaking to can independently verify what he is
14 saying so that he doesn't have a motive to fabricate.
15 Indeed, that is a motive to be truthful.

16 THE COURT: That is your argument?

17 MR. McCARTHY: Right.

18 THE COURT: OK.

19 MR. McCARTHY: Theoretically it is also an
20 adoptive admission of Mr. Siddig Ali in the sense that Ali,
21 who also has an independent relationship with Nosair, is not
22 making any statements which would be inconsistent with
23 Mr. Salem's recitation of things. That is not a theory that
24 we rely on as much as, A, that it is a prior consistent
25 statement, and, B, that even if it were not admissible as

1 substantive evidence, it would be admissible as
2 rehabilitation at this point.

3 In the opening statements and the way the defense
4 theory has been presented so far, the defense is basically
5 attacking Salem wholesale as fabricating just about
6 everything that ever happened. Mr. Stavis in his opening
7 made a big deal about the fact that Salem hardly knew Nosair
8 at all, had only had four visits with him up in Attica, and
9 that it was, frankly, unbelievable that he would have borne
10 his soul to Mr. Salem.

11 THE COURT: "Bared" I think.

12 MR. McCARTHY: Bared. All right.

13 In any event, given that attack that's been made
14 on him, even were it not admissible as substantive
15 evidence -- and we would suggest that under the Supreme
16 Court's -- I guess it is January '95 -- decision in United
17 States v. Tome, it would be admissible as substantive
18 evidence. It certainly would be admissible as nonhearsay
19 for the fact that he made the statement to somebody who had
20 the independent means to verify whether it was true or not.

21 MR. STAVIS: In terms of Mr. Siddig Ali's
22 relationship with Mr. Nosair, I don't believe that has been
23 established. The burden remains with --

24 THE COURT: It doesn't have to be established
25 before the statement comes in. They can take that on

1 credit, as long as they can establish it. I am willing to
2 take it on faith if they can do that.

3 MR. McCARTHY: There is evidence in the record
4 about that already.

5 MR. STAVIS: The relationship between Mr. Siddig
6 Ali and Mr. Nosair?

7 MR. McCARTHY: Right.

8 THE COURT: There is some.

9 MR. McCARTHY: Right. There is some evidence in
10 the record already that Siddig Ali was at the trial and that
11 he was at the celebration at the Abu Bakr mosque. There is
12 visitors' records at Rikers Island that that Mr. Siddig Ali
13 visited with Nosair around --

14 THE COURT: Those are not in yet.

15 MR. McCARTHY: They are not in yet, but for
16 purposes of Rule 104 the court can consider them. So there
17 is other evidence of a relationship between Siddig Ali
18 and --

19 THE COURT: All right. That is admissible.

20 32 we don't have a problem with, correct? Are
21 those all the transcript problems?

22 MR. JACOBS: No.

23 THE COURT: All right.

24 MR. JACOBS: I am not sure what the government
25 wants to do on CM1, your Honor.

1 THE COURT: What number was that?

2 MR. JACOBS: CM1.

3 THE COURT: Which is which exhibit?

4 MR. JACOBS: 301/T. It is the first one, May 7,
5 your Honor.

6 THE COURT: OK.

7 MR. JACOBS: I don't know. Is the government
8 going to read the whole thing?

9 MR. McCARTHY: Yes.

10 Your Honor, with respect to 41 1 and CM1, which
11 is, I guess, 301/T, if I could just explain, these are two
12 of the three conversations that Siddig Ali has with Salem
13 prior to what we call the second phase of the bombing plans.

14 In these conversations it is clear that it is
15 Siddig Ali who is proposing the bombing operations to Salem
16 and it is clear that he is, in addition to proposing the
17 criminal activity, also doing things like picking out the
18 targets and other things which are directly relevant
19 evidence to the entrapment claims.

20 THE COURT: What is the problem?

21 MR. JACOBS: Focusing on CM1 for the moment --

22 THE COURT: Right.

23 MR. JACOBS: -- which I thought was made as part
24 of the second phase -- Andy, are you going to read the whole
25 thing?

1 MR. McCARTHY: That is our intention.

2 MR. JACOBS: No problem.

3 MS. AMSTERDAM: And 41 1?

4 MR. JACOBS: Then no problem.

5 THE COURT: So there is no transcript problem.

6 MR. JACOBS: No transcript problem then.

7 THE COURT: OK. Let's get on to something else.

8 MR. McCARTHY: There are other transcripts, your
9 Honor, which we have given counsel notice of.

10 THE COURT: As I understand it, there are no
11 other transcript problems -- or are there -- that I have to
12 deal with today?

13 MR. JACOBS: May I just --

14 THE COURT: Sure.

15 MR. JACOBS: Let me explain the problem this way,
16 Judge. In a normal tape case, you have one tape and one
17 transcript. The government would put their witness on --
18 whether it be the person who made it or not -- the tape
19 would be authenticated, the transcript comes in, the
20 government plays the tape and the transcripts, asks a few
21 questions on it of the witness, cross-examination. That is
22 what we normally do. I guess to some extent on 32, 1, the
23 other ones, that procedure will be followed.

24 The government has 61 or 60 other CM's and 30 or
25 40 other bootlegs that they are not going to following that

1 procedure with.

2 THE COURT: That they intend to offer
3 nonetheless?

4 MR. JACOBS: Yes.

5 THE COURT: So here is my question to you: Let
6 me just address the CM's. The same principle applies.

7 MR. JACOBS: Yes.

8 I have never had a situation where the government
9 is attempting to elect not to publish the document while the
10 witness is on the stand and is electing to publish the
11 document. I think, under Giovanelli they have to before it
12 goes to the jury. I think Judge Motley got reversed on
13 that. But, in any event, hypothetically, let's assume that
14 they want to publish it --

15 THE COURT: Tell me about the mistake in that
16 case so I don't make it here.

17 MR. JACOBS: In that case the mistake was the
18 document was never published.

19 THE COURT: All right.

20 MR. JACOBS: What do we do when the government
21 takes the unusual position, or at least attempting not to
22 publish the document until the witness is off the stand. So
23 we have 60 transcripts --

24 THE COURT: What do you do with respect to cross
25 examining him?

1 MR. JACOBS: Yes.

2 THE COURT: I don't know.

3 MR. JACOBS: I will be honest with you. Judge,
4 normally the document is published on the direct and then
5 lawyers get up and do what they want to do.

6 THE COURT: I could be impeached for practicing
7 law, but the only difference between what they normally do
8 and what they propose to do here is that in a normal case
9 they play it while the witness is on the stand and you then
10 cross-examine on it.

11 MR. JACOBS: Yes.

12 THE COURT: Here they propose to play it after he
13 leaves the stand, right?

14 MR. JACOBS: Or read it after.

15 THE COURT: Or read it after, whatever.

16 MR. JACOBS: Right.

17 THE COURT: You are certainly not barred from
18 cross-examining him on it.

19 MR. JACOBS: Let me tell you from my personal
20 point of view. I can't speak for anybody else. I have,
21 let's say, ten other transcripts that I want to use. My
22 position is that I am then put in a position to having to
23 stand there and having my associate or myself read their
24 exhibits that they didn't publish. I am just saying what I
25 have to do then. And then go through the ten transcripts,

1 whatever method I want to do it with, and my application is
2 if the government is offering -- and they are all relevant
3 for argument's sake -- there is no question of connection or
4 relevancy, forgetting authentication. We will discuss that
5 in a minute. But my belief is that the government should --
6 and I think your Honor controls the method how this case is
7 tried, and I think your Honor has a lot of discretion to
8 direct the parties to proceed in an orderly fashion, to
9 publish it when they offer it.

10 THE COURT: Since the government can't appeal, I
11 can make them do whatever I want them to do.

12 MR. JACOBS: Why should I have to publish the
13 document and then start to cross on it? They don't have to
14 ask their witness a question, Judge, that is not a
15 requirement. But when they offer the transcript, I think in
16 an orderly fashion, those should be given to the jury so
17 that they are here.

18 THE COURT: I understand your point.

19 MR. JACOBS: OK.

20 THE COURT: I understand your dilemma, too.

21 MR. JACOBS: I haven't had this before.

22 THE COURT: But it is your dilemma. What I will
23 permit you to do if you want, you don't have to present the
24 whole thing.

25 MR. JACOBS: I understand.

1 THE COURT: I mean, you can focus in on the parts
2 that you think help you and forget the rest. I am not going
3 to listen to any claim from them that you didn't put it in
4 context.

5 MR. JACOBS: All right. I am just saying I think
6 some other lawyers -- I think Ms. Amsterdam has the same
7 problem. We have a number.

8 MS. STEWART: We all have the same problem.

9 MR. JACOBS: OK. We all do. We all have
10 different issues that we want to raise in these transcripts.
11 So we are forced to get up here for a day maybe -- I might
12 have to take six, seven, eight hours on some of these
13 transcripts, and then publish them, and it looks like I am
14 doing it. I think it is the government's document, they
15 don't choose to read it, and I don't think --

16 THE COURT: They are going to choose to read it
17 at the end.

18 MR. JACOBS: Well, I just think, you know,
19 perhaps then with some cautionary instruction to the jury
20 that the government doesn't wish to publish it now, they are
21 going to publish it at some point. I don't want to be
22 penalized in front of the jury to publish their own
23 document.

24 THE COURT: I would be happy to tell the jury
25 some comprehensible version of what is going on here, which

1 is that the government has the right to put in their proof
2 in the order in which they want to put it in. They have
3 chosen for their own good and sufficient reasons to wait
4 until later on to present these documents. However, because
5 defense counsel have a right to cross-examine this witness
6 about them, in view of the fact that he is on them, they may
7 present them to you and cross-examine him with respect to
8 them. Ladies and gentlemen, you are not to draw any
9 conclusions about the fact that they may be reading parts of
10 these or all of these that they are somehow sponsoring it.
11 They are not. They are the government's exhibits. Defense
12 counsel is simply presenting them to you in order to make
13 their cross-examination comprehensive.

14 MR. JACOBS: That takes --

15 MR. NOOTER: Your Honor, I agree with that
16 procedure so far as it goes. A problem we may have, and I
17 don't know yet since our negotiations aren't finished, the
18 problem we may have is that we may not have agreement on
19 what these transcript should be, meaning I have had the
20 translator working on certain lines, and he believes them to
21 be one thing, and the government's translator believes them
22 to be something else. Then the dilemma of cross-examining
23 without having authenticated my version of those lines.
24 Again, I think with the CMS we mostly have consistency, and
25 we are not going to have that problem. I do still have some

1 problems which I have been endeavoring to work out, and they
2 will be worked out with respect to the video transcript,
3 which is the most important piece of evidence with respect
4 to my client where we do still have some substantial number
5 of differences.

6 I am just presenting what the problem is. For me
7 it is a little premature to be dealing with it now because I
8 hope to work it out with the government before I have to
9 cross-examine, which would be at the end of the line. If we
10 don't, then we have a problem. Can I stop and call
11 Mr. Kheir and have him authentic a piece of transcript so I
12 can cross-examine with it, or am I in the position of having
13 to call back Mr. Salem later on my case or something like
14 that, which I gather is not desirable?

15 MR. JACOBS: No.

16 THE COURT: Let me hear from Mr. McCarthy.

17 MR. McCARTHY: I just want to put on the table,
18 your Honor, the underlying assumption here appears to be
19 that we are going to offer everything all at once. My
20 intention was to offer only that which we wanted to offer
21 into evidence at this time. I am going to fully lay the
22 foundation so that anything that is admissible can be
23 offered, but I am not going to blindly offer --

24 THE COURT: His point is simply that he has the
25 right, if he chooses, to cross-examine this witness about

1 any tape that he's on while he is on the witness stand.

2 MR. McCARTHY: I think that is right.

3 THE COURT: What does he do with regard to
4 bootleg tapes as to which there is no agreement?

5 MR. McCARTHY: I think it is just like any other
6 instance where there is a dispute. Throughout the
7 transcripts, as we have laid the procedure out thus far,
8 there are underlying portions where the parties are not in
9 agreement, and what we have agreed to do is highlight for
10 the jury the portions of the transcripts which are not
11 agreed to. So while for Mr. Nooter it is a problem of
12 greater degree because he's got more of a dispute, it is not
13 really a different problem than everybody else has. There
14 are portions of the transcripts which simply aren't --

15 THE COURT: What I am thinking of doing, unless
16 somebody can give me a good reason why not -- and the
17 witness would have to be alerted to this -- but during his
18 cross-examination of the witness, I am going to let him use
19 his version, ask the witness whether it doesn't in fact say
20 that. It might help conceivably to have the witness listen
21 to it at some convenient point --

22 MS. STEWART: That means we are going to have
23 endless -- all of us I would say, Judge, without exception
24 have some dispute with the government about some portion of
25 the transcripts. Some are less, some are more. But all

1 have portions in dispute as to translations.

2 THE COURT: Then you will use your version to
3 cross-examine and they will use theirs.

4 MR. NOOTER: I would just assume that that is
5 sort of subject to connection, and later I will have my
6 translator authenticate the transcript or whatever.

7 THE COURT: Correct. I'm sorry, Ms. London?

8 MS. LONDON: Yes, your Honor. I foresee one
9 other potential problem arising: Yesterday the government's
10 translator authenticated two CM tapes, tapes 1 and 32, which
11 I believe the government is intending to introduce into
12 evidence through Mr. Salem. Those transcripts were
13 authenticated. It is my understanding that the translator
14 will come back at a subsequent time to authenticate the rest
15 of the CM translations.

16 THE COURT: They are not coming in unless and
17 until he does.

18 (Continued on next page)

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1 MS. LONDON: That is what I wanted to know,
2 because then I was told by other counsel this morning that
3 the transcripts were to be authenticated through Mr. Salem,
4 which I foresee as a problem.

5 MR. JACOBS: That is part of the problem, Judge.

6 MS. LONDON: The problem being, your Honor -- two
7 problems. First, Mr. Salem has already stated on the record
8 that he doesn't read English very well.

9 THE COURT: I think you are discussing a
10 nonproblem. Why don't I hear from Mr. McCarthy and find out
11 whether that is what the plan is to be.

12 MR. MCCARTHY: Your Honor, I don't think he is
13 capable of authenticating the transcripts. He has to
14 authenticate the tapes.

15 THE COURT: Let's leave it at that.

16 MR. JACOBS: Judge, I am sorry. Then I think we
17 do have a problem, and there is what it is. Let me give you
18 an example. CM 31 is the tape that is made right after they
19 meet my client. Salem and Siddig go in the car and discuss
20 the meeting. It is an important conversation. We are
21 working on the final resolution on CM 31, and let's assume
22 we are fairly close to a resolution. Nobody has gotten on
23 the stand and the interpreter hasn't done it yet. Now we
24 have Salem on the stand, I want to use 31. But we haven't
25 had an interpreter come up yet. We are sort of putting the

1 cart before the horse. The government and I may have an
2 informal agreement that 31 is accurate but we haven't got
3 somebody on the stand to do it. We don't have it yet there.
4 I think we all have that same problem.

5 MR. SERRA: Everyone has that problem.

6 THE COURT: I thought what I said a minute ago
7 was, to the extent you haven't reached agreement you can use
8 your version to cross-examine.

9 MS. STEWART: The problem is, let's say my
10 version alludes to an example that was used before, which
11 says the dog jumped over the moon, as opposed to the
12 government's version, which says the cow. Mr. Salem, isn't
13 it a fact that you said the dog jumped over the moon? No, I
14 never said that. I am stopped, I'm done.

15 THE COURT: No, you are not.

16 MS. STEWART: He might have said the cow jumped
17 over the moon but that is not my version.

18 THE COURT: You can prove it up on your case.

19 MS. STEWART: But it stops the cross-examination
20 because I am working from a version that he doesn't accept.

21 THE COURT: You would be working from a version
22 that he doesn't accept even if the government had
23 authenticated and played it.

24 MS. AMSTERDAM: It was my understanding from Mr.
25 McCarthy, your Honor, that if there was an agreement, as

1 there is on 99.9 percent of the transcript information, that
2 the government would say if Mr. Salem said it didn't say
3 that, that the government would say that is a fair and
4 accurate representation of the transcript.

5 THE COURT: And they still will. I am going to
6 use one of their favorite phrases. They can't try this
7 around the truth. If it turns out that the government's
8 version is that it says the cow jumped over the moon, then
9 if you ask them whether it doesn't say the cow jumped over
10 the moon and if he says no, Mr. McCarthy is going to get up
11 and say, your Honor, regardless of his testimony, the
12 government stipulates that is what it says.

13 MS. STEWART: Let me scratch that and let me
14 raise a different issue.

15 THE COURT: One second.

16 MR. McCARTHY: Your Honor, this is not at this
17 point the government transcript. It is at this point at
18 least with respect to the portions there is agreement on, it
19 is the agreed-upon transcript.

20 THE COURT: Regardless of what it is, it is
21 something that the government has agreed to, and if the
22 witness runs away from it --

23 MR. McCARTHY: Your Honor, let me back up for a
24 second. We agreed and didn't do the kind of wholesale
25 review that might otherwise have been done in the interests

1 of arriving at an agreement in a timely fashion of what the
2 transcripts say. If we put on a translator and put on our
3 version, chances are that there are portions of the
4 transcripts which would come out differently. What we have
5 come up with is an agreed-upon version. What that has meant
6 sometimes is that defense counsel have proposed changes to
7 us and we didn't think they were important enough to ever a
8 fight over, so we adopted it. You get Salem on the stand,
9 he is a person who participated in the conversations. If
10 they get to a portion where unbeknownst to anybody the
11 transcript turns out to be inaccurate and they hone in on
12 something that he actually said but is not in our
13 agreed-upon transcript --

14 THE COURT: I can't imagine it would be anything
15 of significance if it turns out that all you are compromised
16 about is stuff that doesn't matter.

17 MR. McCARTHY: I agree, except until we see the
18 process unfold, we don't know that for absolutely certain.
19 There is no question that we would have to stipulate and say
20 in court that counsel has accurately read from the
21 transcript that both sides agree to.

22 THE COURT: That is what you will have to say.

23 MR. McCARTHY: Right.

24 MS. STEWART: Judge, there is no transcript,
25 because the transcript is not in evidence, because the jury

1 has nothing in their hand. We are talking about an abstract
2 situation.

3 THE COURT: No, you are not.

4 MR. NOOTER: Actually, I thought we could have
5 the jury have something in their hands if it is an
6 agreed-upon transcript.

7 MS. STEWART: If they are not putting it into
8 evidence --

9 MR. McCARTHY: That doesn't mean you can't
10 impeach on it. If it is proper impeachment and it is the
11 transcript we have agreed to and it is a portion we have
12 agreed to, they have much more latitude with what they can
13 do on cross than we have with what we can put in
14 substantively. We are not trying to cut them off from doing
15 proper cross-examination. If it is proper to cross on it
16 and it is a version that we have agreed to, then they can
17 cross on it -- I think.

18 MS. STEWART: But it is in the abstract because
19 it is not -- in other words, to go back to Mr. Jacobs's
20 example, in the normal course the jury has heard the whole
21 conversation, they have read the transcript, they may have
22 heard it twice, they played it through and played it again.
23 Here they are getting up, they have nothing before them at
24 all, as I understand it. They will have some short
25 narrative leading into a tape. I am the first to

1 cross-examine. Am I going to have to lay the whole
2 foundation for the tape, for everything that led up to it
3 that is in the transcript? Am I actually presenting the
4 transcript to the jury, saying CM 10, CM 45, 46, which are
5 the main ones that affect me, plus the other ones which I
6 intend to use because I think they point out something that
7 I think is valuable for the jury to know with respect to my
8 client? In other words, am I going to go with a stack of
9 transcripts and ask them to be distributed to the jury?
10 Whose tapes are these anyway?

11 THE COURT: This goes back to something that we
12 started with, which is that I am going to explain to the
13 jury what is being done and why, and I guess the short
14 answer to your question is yes, but it is going to come with
15 an explanation. It is the one that I gave before.

16 MS. STEWART: I think my objection then, Judge,
17 and we had this once in a side bar. In the orderly running
18 of a trial, especially a trial of this complexity and this
19 length and this many issues and this many people, which we
20 know is more than -- somebody give me the name of the
21 case -- Giovanelli -- should be in a case, the jury is
22 hearing cross-examination about something that is not before
23 them in essence. You know what I am saying?

24 THE COURT: But can be put before them for the
25 purpose of cross-examination.

1 MS. STEWART: But it isn't, because you know that
2 these transcripts run 75, 85 pages in length.

3 THE COURT: We don't have to put in 75 or 85
4 pages --

5 MS. STEWART: In other words, we are going to put
6 in the government's transcripts. I am going to say Judge, I
7 am moving for the admission of CM 10 because I want the jury
8 to hear the whole thing, the context, everything about it.

9 THE COURT: That's your choice.

10 MS. STEWART: I think that is an unfair choice.

11 THE COURT: If you don't want to put in the whole
12 thing, you can put in only the parts that you want.

13 MS. STEWART: But I am saying it has no
14 reference, it has no framework, it's a free-floating defense
15 because it is a conversation taken out of context with what
16 has gone on before, what has happened since, what will be
17 presented since. It is just not the best way for the jury
18 to come to understand this case. I understand the
19 government has a right to do it in whatever way they want.

20 THE COURT: It is not a question of whatever way.

21 MS. STEWART: But I think that a line has to be
22 drawn where it does not make sense to the jury, where it
23 becomes inefficient and time wasting and makes things appear
24 to be not as they are. When the defense starts putting in
25 the CM's, this jury is going to say why is Miss Stewart

1 putting in this tape after she yelled and screamed about the
2 way these things are being done.

3 THE COURT: I am going to explain to them that is
4 not what you are doing.

5 MS. STEWART: But if I move it into evidence?

6 THE COURT: You will not move it into evidence.

7 MS. STEWART: I may do it, Judge, so they get the
8 whole flavor, that after they speak to the sheik, what they
9 do afterwards.

10 THE COURT: Then you have a dilemma and I
11 sympathize, but I can't dictate their order of proof.

12 MS. AMSTERDAM: Your Honor, you will be happy to
13 know that I agree with you, but on the other hand I don't
14 necessarily why your Honor should dictate the order in which
15 we cross-examine.

16 THE COURT: I didn't.

17 MS. AMSTERDAM: There is another alternative
18 here, which is, they put their case in whatever way they
19 want and we call him back on our case to do the transcripts.

20 THE COURT: On your case?

21 MS. AMSTERDAM: Yes.

22 MR. McCARTHY: I don't think we have a problem
23 with that.

24 THE COURT: Fine.

25 MR. McCARTHY: I would like to run that through

1 the system for a minute or two.

2 MR. NOOTER: I am not sure all of us were in
3 agreement with that.

4 MR. McCARTHY: We would agree to do that, if that
5 is what they wish.

6 THE COURT: He agreed.

7 Look, I don't understand that to be any except
8 Miss Stewart's --

9 MS. STEWART: I don't know that that resolves the
10 problem, actually.

11 MS. LONDON: Your Honor, could I ask you for a
12 clarification on one issue as we discuss this?

13 THE COURT: Sure.

14 MS. LONDON: If the transcripts, we were going to
15 cross-examine Mr. Salem on the transcripts, and we have
16 government transcripts available to us in which certain
17 disputed areas where the defense have proposed a solution
18 that the government has not accepted but has put as an
19 alternative in the transcript for us subsequently to argue
20 to the jury and present it, the court has said that we can
21 cross-examine on our versions that are there.

22 THE COURT: Yes.

23 MS. LONDON: There is a third, or a second
24 situation, in which we have submitted changes to the
25 government, where the changes have not been accepted, in

1 which case we can then, I guess, present them on our case.
2 If we are cross-examining Mr. Salem at that point, is the
3 court going to permit us to present a defense transcript to
4 a jury with the portions that the government has omitted but
5 which we believe is there or is the court going to require
6 us until our defense case?

7 THE COURT: Let me hear them on that.

8 MR. McCARTHY: I think as long as they are
9 transcripts that we had seen, that is not a problem. If it
10 is wholesale new stuff, that is different.

11 THE COURT: I assume what you are talking about
12 is information that you have gone back and forth about and
13 have not reached agreement on, correct?

14 MS. LONDON: Yes, your Honor. Actually, I have
15 not discussed this in the last two or three days with the
16 government, and I am thinking in particular about a set of
17 additions that I had submitted to the government and were
18 accepted in the February 26 revisions that they gave us, and
19 then when we are checking our thousands of pages with the
20 revisions we got on March 3, I find that changes that we had
21 submitted which were accepted are now taken out and a
22 different set are put in. So it gets complicated.

23 THE COURT: In any event, these are things which
24 they have seen before, and whether their omission from the
25 version you got was advertent or inadvertent, you can use

1 it.

2 MS. LONDON: Use it and present a transcript of
3 our own --

4 THE COURT: Yes, with some underlining or
5 something else to signal the fact to the jury at least that
6 this is something in dispute. What the dispute is is
7 something that you can find out later, but you can
8 cross-examine using your version.

9 MS. LONDON: Thank you, your Honor. And then the
10 omissions that I am talking about are all attributions in
11 conversations and segments that have been presented to the
12 government probably since October. So I am not talking
13 about surprises for them.

14 THE COURT: You also said at one point that you
15 thought they bought into it.

16 MS. LONDON: At one point they did, and I find a
17 week later they missed it.

18 THE COURT: You might be able to clear it up
19 after court today.

20 MR. RICCO: Judge, I have two questions. I am
21 just trying to get a clarification. Let's say we have three
22 bootleg conversations. The basis of the cross is really
23 bootleg conversation number 3, but in order for the jury to
24 have an appreciation of what you are trying to do with
25 conversation number 3, they necessarily have to hear

1 portions of tape 2 and maybe portions of tape 2. Is your
2 Honor saying what we will do is have them hear the portions
3 of tape 1, the portions of tape 2, and then get to your
4 point?

5 THE COURT: Absolutely. If they haven't put in
6 tape 1 or tape 2, you want to cross-examine on tape 3 but
7 you think it is necessary to play some of tape 1 and tape 2,
8 what I am also telling you is, you don't have to introduce
9 all. You can tiptoe up to whatever issues you want to
10 tiptoe up to with whatever, and only whatever you think is
11 necessary to get there. If you can do it with three lines
12 out of one and three lines out of another --

13 MR. RICCO: Do it.

14 THE COURT: -- do it. Of course on redirect they
15 may try to get in the rest. That is their problem.

16 MR. PATEL: Judge, just to make it clear, your
17 Honor has the --

18 THE COURT: Don't you love sentences that begin
19 with that?

20 MR. PATEL: -- to control the order of the
21 proceeding of the trial. We are in the position of
22 introducing transcripts without the benefit of someone who
23 says I speak English, I speak Arabic, this is what this
24 transcript says. The cart is coming potentially months
25 before the horse. I think that is an unfair position for us

1 to be in and I would ask your Honor to order them to do this
2 in the normal procedure.

3 THE COURT: If all that is missing -- are you
4 telling me that all that is missing is somebody swearing to
5 the accuracy of the transcript?

6 MR. PATEL: It is not all, it is a big part of
7 it. In other words, that is the first step that is missing.
8 The second step is that usually they would come on and say
9 and this is what was going on and this is what I meant,
10 because there is always vagueness in these things.

11 THE COURT: But now you are telling me I have to
12 tell them how to prove their case.

13 MR. PATEL: Your Honor -- yes. I am not asking
14 you to tell them how to prove their case but the order of
15 proof.

16 MS. STEWART: Judge, may I ask if the government
17 is willing upon the first cross-examination, which will be
18 mine, to have, if I give them a list of the CM's that I am
19 going to place, to have the transcripts ready to distribute
20 to the jury for those CM's that I choose to use? Otherwise
21 I think the thought of reproducing transcripts through all
22 of this is mind boggling.

23 THE COURT: As to any exhibit that they are
24 potentially going to introduce or introduce later in the
25 case on reasonable notice, they are to have them available

1 for distribution to the jury.

2 MS. STEWART: May I inquire of the government if
3 they intend through Mr. Salem at least to lay the foundation
4 as to all the CM's, all the videos and the bootlegs?

5 MR. McCARTHY: Only the CM's and the bootlegs.

6 THE COURT: Not the videos.

7 MR. McCARTHY: Right.

8 THE COURT: But they are going to lay the
9 foundation for the CM's and the bootlegs.

10 MR. McCARTHY: Yes, your Honor.

11 THE COURT: Otherwise you couldn't get them in.

12 MR. McCARTHY: Correct.

13 MS. AMSTERDAM: Let me just make sure. We can
14 use the videos in cross-examination. If he says
15 Mr. Khallafalla was there on the 22nd and I have the tape of
16 the 22nd and it is clearly gone, I am not going to be
17 prohibited from showing that in cross-examination, will I?
18 I am not going to be prohibited not from a relevance point
19 of view but from the fact that they haven't been
20 authenticated point of view.

21 MR. NOOTER: Beyond that, let me make it clear, I
22 intend to show the video of my client. That is my whole
23 cross, practically.

24 THE COURT: Can we deal with her problem first?

25 MR. NOOTER: I was just expanding the problem.

1 THE COURT: Thanks for expanding the problem.

2 MS. AMSTERDAM: Other than Mr. Nooter, I don't
3 see a wholesale playing of videos. But at a point where it
4 is essential to show the video of that day because he says
5 something else was happening and it didn't, that the
6 government is not going to say we have to wait until the
7 videos come sometime down the road.

8 MR. McCARTHY: Your Honor, I think every witness
9 in every case that gets impeached gets impeached. I think
10 that is not that an unusual situation.

11 MR. STAVIS: There may be things that we wish to
12 prove through Mr. Salem. That's the distinction.

13 MR. McCARTHY: That is their case.

14 THE COURT: What you do on cross-examination is
15 impeach. If you want to prove something up, you do it on
16 your case.

17 MS. STEWART: You have to have a foundation for
18 impeachment. So we have to play the tape for the foundation
19 and then do the impeachment. In other words, this is what
20 you said on this occasion, is it not, and did you hear the
21 sheik say such and such, doesn't that mean no to you,
22 Mr. Salem? So the foundation, you have to do both, in
23 essence.

24 MR. JACOBS: Your Honor, I thought your Honor
25 reserved on Miss London's application on the video person

1 who put the equipment in the safe house and the whole
2 mechanism of how the videos are done, and I think to some
3 counsel's objection is very well founded. While your Honor
4 is correct, you can't control how the government tries their
5 case, and I think obviously Miss London just got the
6 information, was preparing an examination on how this whole
7 safe house was set up, and there is a lot that goes into it,
8 how the FBI did their equipment, audios, what spots they had
9 it in. Mr. Nooter may want to argue that they didn't do
10 certain locations.

11 THE COURT: That has nothing to do with
12 Mr. Salem's testimony.

13 MR. JACOBS: Yes, it is, if I can explain.
14 Because he is on the stand already, without the video being
15 authenticated, and how it was made, counsel is right, we
16 have to put the tape in when the government hasn't been
17 forced to authenticate it, unless we call him back on our
18 case, and Mr. Nooter would like to cross on the merits when
19 he is up there. So to some extent the government has jumped
20 the gun putting Salem on the stand when we still haven't had
21 an opportunity to authenticate things like the videotape.

22 THE COURT: That is not the problem. You can do
23 it one of two ways. If you want to prove something through
24 Salem -- if you want to prove something affirmative through
25 Salem, you can call him back on your case. If you want to

1 do something that properly qualifies as cross-examination,
2 you can lay whatever foundation is necessary and then
3 cross-examine. I am not going to solve this problem for you
4 in the abstract, because it is a lousy place to solve it.

5 MR. JACOBS: I think the video, your Honor, the
6 FBI set the safe house up and there is a lot that goes with
7 it. It is not that simple to have us play the video when
8 the government has an exhibit that we want to challenge,
9 microphones, there is expertise involved, Mr. Ginsberg
10 reviewed things on how they did their microphones. So I
11 think the government -- and I assume the government may
12 elicit something about what occurred in the safe house.
13 Miss London has reserved her application on that.

14 THE COURT: I know. If you feel that the safe
15 house video is valuable to use, you can use it in
16 cross-examination. You can then go after it on your case,
17 if you want.

18 MR. JACOBS: But, your Honor, in the normal order
19 of proof there would have been normal cross-examination of
20 the agents, how they did it and set it up -- what we are
21 doing is, we are being forced to use the video when the
22 government hasn't laid the proper foundation --

23 THE COURT: Not forced. You mean you would like
24 to use it for some purposes and not for others, and I
25 appreciate the dilemma you are in. I have said that several

1 times.

2 MR. JACOBS: I think that what needs to be done
3 is, Salem's testimony needs to be, I believe, interrupted --

4 THE COURT: Interrupted and have five witnesses
5 put on, no, Mr. Jacobs. I know you would like to make a
6 sort of tossed salad.

7 MS. LONDON: Your Honor, I think I would like to
8 take this problem back one step because I think we have the
9 cart and the horse in different states right now. As I
10 understand it, the government intends to introduce what they
11 have termed either as snippets or the best of the night of
12 June 23 or June 24, which is about a 20-minute segment. Are
13 we going to have to view those snippets without having had
14 the videotapes and all of the underlying material that goes
15 into the taping of those authenticated?

16 THE COURT: I don't understand.

17 MR. SERRA: Let me tell you, your Honor, why
18 Ms. London says that. We received from the government,
19 three of the safe house counsel, yesterday, what have been
20 labeled cuts of the videos. Ms. London and Mr. Bernstein
21 and I reviewed it last night. I had a brief conversation
22 with Miss Chu and Mr. Khuzami, who said it wouldn't be
23 introduced today but it would be introduced soon. It
24 appears to be taken from the last night of the video of the
25 safe house. It appears that the government will show these

1 snippets, 10 minutes or less out of about 160 hours of
2 videotape in this case, show it to Mr. Salem, ask him is
3 this what you saw for 10 minutes on the night of the 23rd
4 and show it to the jury. I may be wrong but there is a
5 reason it appeared on my desk. That squarely raises the
6 problems that Mr. Jacobs and Ms. London were just
7 addressing. If the government believes that they can simply
8 take one quarter of one percent of the video in this case
9 without qualifying all the rest of it and show it to the
10 witness because it shows what the government will argue is
11 some sort of microcosm of the case, there is a problem here.

12 MR. McCARTHY: I just don't understand why that
13 is any different from a situation where, suppose we had no
14 tapes and we had 10 minutes of a video. If we play 10
15 minutes of video and it is properly authenticated, if we
16 violate Rule 106, they are entitled to get whatever portion
17 we don't play. If not, it is not any different from any
18 other situation. There is no requirement that if you put in
19 a picture that you have to put the photographer on who took
20 it, and I guess, the way they would have it, the guy who
21 built the camera, too. If the person who is going to
22 testify to it has a proper foundation that is adequate under
23 the law, there is no requirement that we do the full-blown
24 show of everything that could possibly be done on the planet
25 to authenticate the exhibits. If we are doing something

1 wrong --

2 THE COURT: In the normal case, if you have no
3 tape at all and somebody has a conversation about a wide
4 variety of subjects, including sports and families and so on
5 and so on, and one of the subjects they touch on is bank
6 robbery, it is perfectly permissible for the government to
7 ask whether they had a conversation that included bank
8 robbery, permit five minutes of testimony about that subject
9 and leave out the rest, and if you think it is relevant to
10 show that they talked about other subjects as well, ask that
11 on cross-examination, just the same way you, I suppose,
12 demand of me that they be required to put in some other
13 segment that more fairly or that puts in context a segment
14 they did put in. One of two things happens. Either I find
15 it necessary that -- I guess one of three things -- or I let
16 you put it in on your case or it doesn't come in at all. It
17 is no different from similar situations. The fact that
18 there is a videotape or a series of them or many hours of
19 them doesn't change it.

20 MR. JACOBS: I think the foundation for the video
21 is the same foundation problems that we are going to deal
22 with in the CM's and the bootlegs. The government still has
23 their burden by clear and convincing evidence as to
24 authenticity. I assume, your Honor -- that was my next
25 subject that I wanted to discuss on the agenda.

1 THE COURT: Fine.

2 MR. JACOBS: It is my position, your Honor, that
3 the government can make an attempt to authenticate, I guess
4 it is the videos as well as the CM's and the bootlegs. I
5 think counsel is committed to conduct a proper voir dire,
6 obviously not a full examination, to test the authenticity
7 as some of the tests are laid out by the Second Circuit to
8 do that. As I understand it, and I found another case
9 Mr. Stavis gave me, U.S. against Ruggiero, 928 F.2d 1289,
10 where, quoting from Section C concerning authentication of
11 tape recordings you --

12 THE COURT: What was the page?

13 MR. McCARTHY: It was 1289, your Honor. The jump
14 cite is 1303.

15 MR. JACOBS: Quoting from the Second Circuit,
16 Rule 908 requires the appropriate of any evidence to present
17 evidence sufficient to support a finding that the matter is
18 what the appropriate claims. Following down the language,
19 namely that the government produce clear and convincing
20 evidence of authenticity and accuracy as to the foundation
21 the admission of such recordings.

22 MR. McCARTHY: There is a part missing.

23 MR. JACOBS: This requirement is satisfied if
24 sufficient proof has been introduced so that a reasonable
25 juror can find in favor of authenticity or identification,

1 quoting from Weinstein's evidence, without the full
2 citation.

3 I am prepared and I think other counsel are
4 prepared to challenge the CM's and the other bootlegs.
5 Unfortunately, in this case, your Honor, it is not just one
6 tape recording. If it were just one tape recording, this
7 would be a rather quick process. It is one of these things
8 where I think -- I say, the government has to do what they
9 have to do. They have 150 tapes here, whatever it is, 120,
10 and they are going to dump 120 tomorrow, show them to the
11 witness, say look at these 120, these are all authentic,
12 these are all real, you listened to them, this is what
13 occurred, they will make their attempt, and I have 120 tapes
14 then, and counsel, to deal with. If it was one tape I could
15 take 10 minutes and do it and sit down. But we have 120
16 tapes here and frankly, based on Napoli's testimony, there
17 is a lot of issues that were raised. These bootlegs are a
18 mess and the government is going to proffer a lot of
19 bootlegs. I think the CM's are a mess. I don't know what
20 this man was doing, I don't know what tape recorders he was
21 running at the time. We want to challenge them. Obviously
22 the government has to prove them by clear and convincing
23 evidence. I want to challenge them as we think we are
24 entitled to.

25 THE COURT: The challenges that you are

1 suggesting --

2 MS. STEWART: Which brings me back to my problem
3 again. How is John going to challenge these tapes if I move
4 them into evidence?

5 MR. JACOBS: I was going to challenge them
6 tomorrow.

7 MS. STEWART: They authenticate them, they have
8 Mr. Salem say this is whatever, they lay the foundation. I
9 want the jury to have a transcript -- I just -- I was just
10 trying to explain to myself what my feeling was about, but
11 when you try a case you start out with your theory of the
12 defense and there is a theory of prosecution and you stick
13 with your theory. We don't have the burden to present this
14 tape to this jury, but we do have the burden to confront
15 Mr. Salem with these tapes, because they are indeed the
16 whole case and he is indeed the author.

17 THE COURT: You can get Mr. Salem back. You want
18 him back?

19 MS. STEWART: But it bifurcates the situation.

20 THE COURT: Yes indeed.

21 MS. STEWART: They are going to have him on for
22 this and it is diluted down. If he comes back again at
23 another point, we all at that point danced on this man in
24 all our openings. Is it going to appear to this jury that
25 we are shrinking back from the confrontation because we

1 don't talk about the tapes because they are not in evidence
2 unless your Honor is prepared to instruct the jury that he
3 will be called back --

4 THE COURT: Signal to me when you are done so I
5 know when I am permitted to speak.

6 MS. STEWART: I am sorry.

7 THE COURT: You can do it one of two ways. You
8 can either put them in when he is on the stand now or you
9 can wait till the government puts them in and cross-examine
10 with respect to those later. I am not going to change their
11 order of proof. I have given you a choice. Which is it
12 that you want?

13 MR. McCARTHY: Your Honor, I didn't hear what you
14 said with respect --

15 THE COURT: They want to -- I suppose you could
16 cross-examine after the government puts them in, with
17 respect to them.

18 MR. McCARTHY: What they are talking about, if
19 this is proper cross-examination what they are talking about
20 is impeaching him. I think what Miss Stewart is lapsing
21 into is putting evidence in her own case. If she wants to
22 put in affirmative evidence and Salem is the witness she
23 needs to do it, we will bring him back. There is no reason
24 that she can't impeach him with everything she has
25 available. Why is this situation different from a situation

1 where they made the tape and we don't know about it, and
2 they have a recording which shows that something that he has
3 testified to isn't true? They would have to come in, and if
4 it was proper impeachment they would be able to show him the
5 recording.

6 MR. JACOBS: Your Honor, I am confused. I have a
7 list in front of me of all the CM's, all the bootlegs. Does
8 the government intend to offer them tomorrow through Salem,
9 into evidence, the exhibit list that we have here? If we
10 could get that answered, at least we know where we go from
11 there.

12 MR. MCCARTHY: We give counsel an exhibit list
13 for convenience of identifying things. We are not going to
14 offer anything that we don't intend to put in. I have given
15 counsel notice at this point that the only of the bootleg
16 tapes that we intend to offer at this point is 41-1. I
17 think for ease of proceeding further I have to lay the
18 foundation for all the boot bootleg tapes. Otherwise we
19 have to call this guy back every time somebody wanted to put
20 something in. I don't see any reason why the foundation
21 can't be laid. But we don't have any intention of putting
22 in anything other than 41-1.

23 Your Honor, the other end of this that the court
24 should understand is, my understanding of what I am hearing
25 is that they intend to put in a number of the bootleg tapes

1 because they think it helps their case. It is a little
2 anomalous on the one hand to say they are not reliable and
3 on the other hand to say that the jury can rely on them for
4 the purpose they want to put them in for.

5 THE COURT: If they can get them in, they can get
6 them in. That is not my problem or yours.

7 MR. JACOBS: The problem I have, your Honor, is
8 procedurally. The government shows an exhibit to the
9 witness. Let's assume it is the other 62 CM's and they go
10 through their authentication procedure but they don't make
11 the final statement, which is, we offer them into evidence.
12 If I understand my rules, if they don't make the final
13 statement I offer it into evidence, I don't get to voir
14 dire, unless I misunderstand the normal procedures the way
15 we try our cases here.

16 So to that extent I don't get up. But I will say
17 this: The government can't then right before the end of
18 their case say now we offer the other 62 into evidence
19 because what they have done is, they have prevented the
20 proper voir dire on the authentication issue. I assume they
21 are going to attempt to do it with 32 because that is coming
22 in. But all these other ones, your Honor, as far as I am
23 concerned they don't come into evidence on the government's
24 direct case and if we want to then affirmatively on our
25 case --

1 THE COURT: Why don't you stop there.

2 MR. McCARTHY: Could I have one moment on this to
3 chat with my colleagues?

4 (Pause)

5 MR. McCARTHY: Your Honor, I think the problem
6 may be obviated if we limited what we lay the foundation for
7 to just what we intended to put in, or what we might intend
8 to put in, so that everybody would have their eyes open
9 about what is going in.

10 THE COURT: What is going in period or what is
11 going in through him?

12 MR. McCARTHY: What could go in. I guess for the
13 most part the bootleg tapes, I think, will probably only go
14 in through him. I am trying to imagine a situation where
15 that is not necessarily so but I haven't come up with one
16 yet. But I think that if we only offer that which we intend
17 to put in -- in other words, I guess there is about 75, 76
18 so-called bootleg tapes. For the moment we intend only to
19 put in on direct one of the bootleg tapes.

20 THE COURT: You mean on his direct?

21 MR. McCARTHY: On his direct. What we could do
22 is just put in the one that we are going to put in, which
23 obviates their problem of being in the blind, so to speak,
24 and having to do --

25 THE COURT: Voir dire on all the others.

1 MR. McCARTHY: Exactly.

2 THE COURT: Then if you want to put in any
3 others --

4 MR. McCARTHY: He would have to be here anyway
5 because I think the only time they could come in would be on
6 redirect.

7 THE COURT: The problem has been solved.

8 MR. JACOBS: Fine.

9 MR. McCARTHY: What I am now thinking we ought to
10 do is perhaps limiting the CM offer to the CM's that the
11 government intends, the world of CM's that the government
12 would intend to put on the direct case, with the same
13 theory. I would like to think about that for a couple
14 minutes to make sure I am not making a --

15 THE COURT: Tell you what. Let's pass that for
16 the moment.

17 Mr. Stavis?

18 MR. STAVIS: No. I had some questions along this
19 line.

20 THE COURT: Can I make a suggestion? Are there
21 any other --

22 MR. JACOBS: Yes, I have a couple more items.
23 You know, I sit here and I think of things.

24 MS. AMSTERDAM: It might be good if we conferred
25 and they conferred and we come back in 10 minutes and maybe

1 we could limit the number of things that your Honor would
2 have to decide.

3 THE COURT: Music to me.

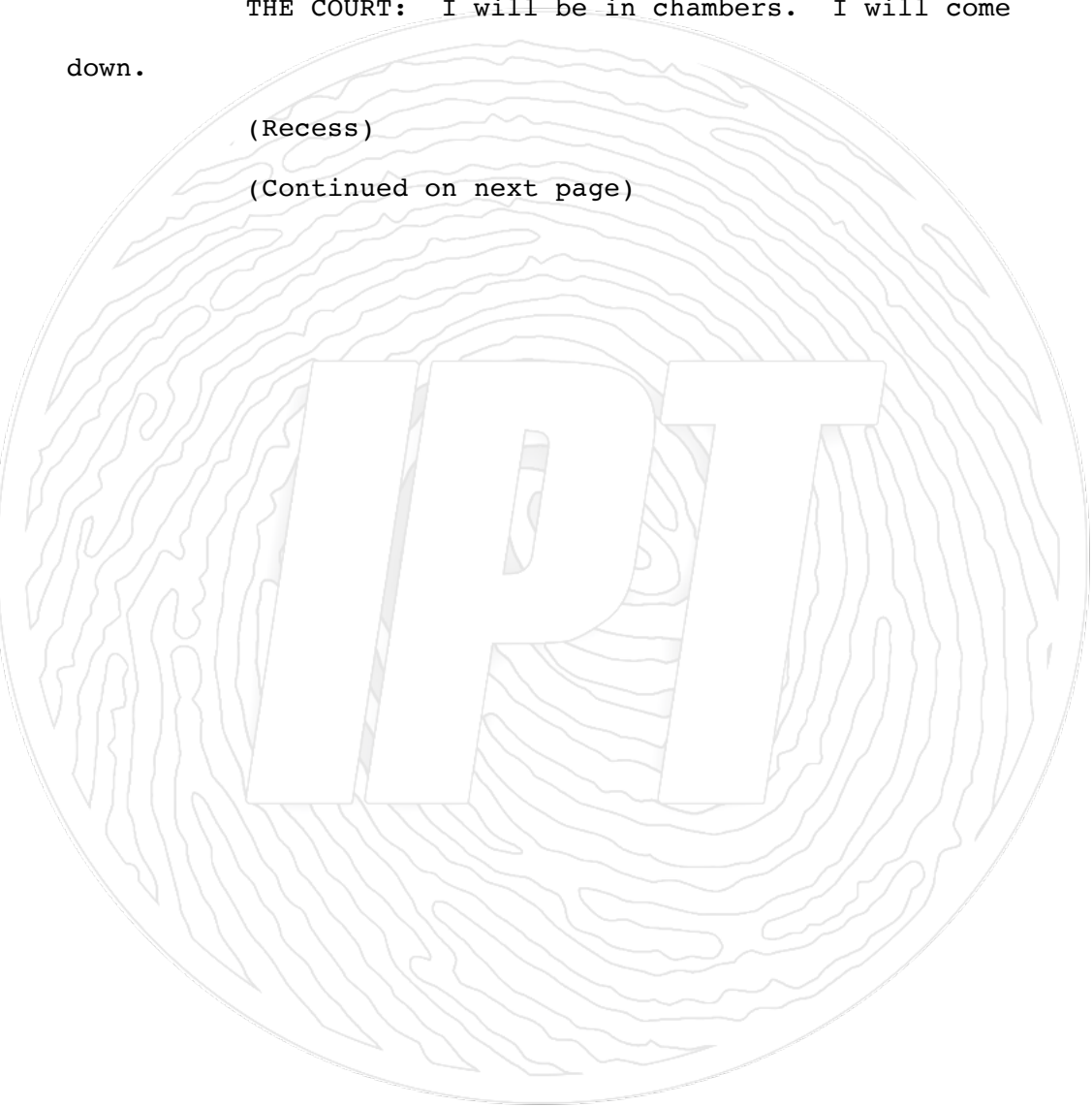
4 MS. AMSTERDAM: No promises.

5 THE COURT: I will be in chambers. I will come
6 down.

7 (Recess)

8 (Continued on next page)

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1 THE COURT: Do you want to lay out the agreement
2 that you have reached?

3 MR. McCARTHY: Yes, your Honor.

4 MR. STAVIS: I would, but I don't understand it,
5 Judge.

6 MR. McCARTHY: Your Honor, I think the major
7 disagreement that we have is whether it is appropriate to
8 have defense versions of the transcripts which haven't been
9 authenticated by any witness at all shown to the jury. We
10 didn't show anything to the jury during our case unless
11 someone got in the chair and authenticated them. I think
12 what we are stuck on is whether it is appropriate to have
13 the --

14 THE COURT: Let me unstick you. I am going to
15 let them do it. So much for that. I have solved that
16 problem.

17 MR. JACOBS: The other proposal, Judge --

18 THE COURT: As long as the jury is told that the
19 underlying portions -- I assume there are underlying
20 portions, right, about the parts that are in dispute?

21 MR. NOOTER: Yes.

22 THE COURT: I would like them marked in some
23 fashion. As long as they are told when they are referred to
24 those portions, if they are referred to them, that they are
25 in dispute and they may be the subject of later proof.

1 MR. JACOBS: Your Honor --

2 THE COURT: Yes.

3 MR. JACOBS: -- with respect to the CM's, we are
4 prepared to, understanding your Honor's thinking, prepared
5 to then offer --

6 THE COURT: I am glad you understand it. I am
7 not sure I do.

8 MR. JACOBS: We are prepared to play or read the
9 other CM's with the intent to use them during cross.
10 Obviously, if there is some dispute as to the transcripts,
11 putting in our version, and complete the cross on the CM's.

12 As far as the cross about bootlegs, the proposal
13 we made was as follows to the government: If the government
14 would be willing to waive any technical objection to the
15 putting in of the bootlegs themselves, we would complete
16 Salem's cross using the bootleg tapes themselves. The
17 government, I believe, would like to think about that. Our
18 position is the lawyers in the case are prepared to use the
19 bootlegs on cross. For example, the one I have talked
20 about, where Anticev talks about the gadget and keeping the
21 tape not to be used in evidence, I think it's been mentioned
22 publicly quite a bit. We want to play that portion, put it
23 into evidence, play it, and cross-examine him on it.

24 The government wants to think about whether they
25 will agree to that procedure. The alternative is to call

1 Salem back on our case, authenticate the bootleg that way
2 and do it that way.

3 THE COURT: I don't want to try your case, but I
4 assume you are going to be cross-examining Anticev about
5 that, too.

6 MR. JACOBS: I can state affirmatively that
7 Floyd, Anticev and Napoli will probably be the first three
8 witnesses called by the defense. That is two different
9 things. We have a right to cross-examine Salem on it and
10 the agents who participated in the conversations. That is
11 no surprise. The government would like to think about that.

12 So that is on the table. Forgetting the
13 transcript issue on that, they are in English. But there
14 are some Arabic ones that Ms. Stewart has as well. We are
15 talking about the law enforcement ones. We are proposing to
16 wrap it up, do the cross on it, if the government lets us
17 play it, and cross-examine on it.

18 MR. McCARTHY: Your Honor, I would like to think
19 about that even more now in light of the court's ruling.

20 THE COURT: Which ruling?

21 MR. McCARTHY: The ruling that you made a couple
22 of minutes ago.

23 THE COURT: About the disputed transcripts?

24 MR. McCARTHY: Yes.

25 THE COURT: I don't know that the two things are

1 related, but if you think they are, they are. Think about
2 it.

3 MR. McCARTHY: Your Honor, there is not only an
4 evidentiary problem with the procedure that the Court's
5 approved of --

6 MR. RICCO: I can't hear you.

7 MS. STEWART: I can't hear you.

8 MR. McCARTHY: There is not only an evidentiary
9 problem, what your Honor is talking about, if it is done the
10 way that I think was mentioned earlier, it is a logistical
11 nightmare. It is going to be utterly impossible for us to
12 function along those lines. We planned --

13 THE COURT: I don't understand a word you have
14 said. What do you mean, "It is utterly impossible for you
15 to function" along which lines?

16 MR. McCARTHY: As I understand it, what your
17 Honor directed us to do before is to have the transcripts
18 available for the jury every day when we get notified of
19 what CM's they want to put in with their versions.

20 THE COURT: Let's visit that. What would be the
21 problem, other than money, of having you have them
22 duplicated?

23 MR. NOOTER: I don't know the answer to that. I
24 was prepared to do that. I was going to do that myself.

25 THE COURT: I was looking at Ms. Stewart

1 actually.

2 MS. STEWART: He has one CM, Judge.

3 THE COURT: Who is he?

4 MS. STEWART: Mr. Nooter. It is not only a
5 question of money, though, it is a question of the time and
6 the organization, to which Mr. Fitzgerald is nodding his
7 head. I mean, Kinko would be very happy, I am sure.

8 THE COURT: Or whoever, or the copying service
9 that we used for the questionnaires. How many transcripts
10 could you conceivably have?

11 MS. STEWART: Pardon me.

12 THE COURT: How many transcripts could you
13 conceivably have?

14 MS. STEWART: I would say it is less than ten. I
15 am just saying, I am sure people would --

16 THE COURT: Say it is ten.

17 MS. STEWART: Right.

18 THE COURT: You need 17 copies for them and more
19 for us.

20 MS. STEWART: Right.

21 MR. PATEL: It is 30 sets, your Honor.

22 MR. JACOBS: We have ours.

23 THE COURT: You have yours. So it is not an
24 insurmountable logistical problem.

25 MS. STEWART: Those were their words, Judge.

1 THE COURT: What I am saying is it would not be
2 insurmountable to have you do it since you want to use them
3 rather than make them do it.

4 MS. STEWART: You are right.

5 THE COURT: It is not.

6 MS. STEWART: That is why I became a defense
7 lawyer. So I didn't have to do that.

8 THE COURT: I am serious. You have students and
9 so on.

10 MS. STEWART: I was just being facetious, Judge.

11 THE COURT: What else?

12 MR. McCARTHY: Your Honor, just to understand
13 your Honor's ruling, do we get to put our version in at the
14 same time they put their version in?

15 THE COURT: No. They are not putting it in.
16 They are simply confronting him with it.

17 MR. McCARTHY: They are going to show the jury
18 what they are confronting him with before it is in evidence?

19 THE COURT: Correct.

20 Mr. Jacobs?

21 MR. JACOBS: Moving to other subjects, does
22 anybody have anything else further on the tapes. Anybody?

23 Your Honor, two matters: I have reason to
24 believe that there were some internal either OPR or some
25 internal investigation concerning the conduct of Agents

1 Anticev and Floyd in particular and there are internal
2 documents within the FBI and the Department of Justice
3 concerning the handling of Salem.

4 I am certainly not asking at the moment to see
5 the documents, but in light of the fact that Salem is on the
6 stand, and the government may have access to these
7 documents, which may reflect on matters that we need to
8 cross-examine him on, I proposed to Mr. McCarthy -- because
9 we are going to call Anticev and subpoena the file, I have
10 indicated that many times -- but rather than have to call
11 Salem back, I would ask your Honor to take a look, if there
12 is a file -- if the government comes back and says
13 affirmatively there isn't any document concerning Anticev in
14 existence concerning his handling of Salem that ends it. If
15 there are documents that Judge Freeh has reviewed or people
16 have reviewed concerning his handling of Salem, I would ask
17 your Honor to review them.

18 I leave it to your Honor's discretion whether you
19 feel that it needs to be turned over to defense counsel.
20 But I do believe that there are such documents, and we are
21 certainly going to subpoena them in our case, but I don't
22 want to have this fellow Salem on the stand with the
23 government, and I don't say that the government has
24 affirmative evidence of misconduct by the agents involving
25 Salem. If it exists and we should be cross-examining Salem

1 on it, that they violated rules on money --

2 THE COURT: How is their violation of a rule the
3 subject of cross-examination of Salem?

4 MR. JACOBS: Let me give you an example, your
5 Honor. The tape issue, with secretly making tapes and not
6 using them in evidence. Now, my understanding is that the
7 FBI's reviewed Anticev's conduct with respect to that. That
8 may be obstruction of justice. It could be a lot of things.
9 I am using the extreme, your Honor. But we have a tape, we
10 have a tape where that is there.

11 THE COURT: Cross-examine about it.

12 MR. JACOBS: I understand. But if there is a
13 disciplinary action that is involved, that may have
14 Anticev's explanation, further conversations with Salem --

15 THE COURT: That has nothing do with Salem's
16 testimony.

17 MR. JACOBS: May I just finish, your Honor?

18 THE COURT: Yes.

19 MR. JACOBS: Let's assume Anticev has made a
20 statement where he has had further conversations with Salem
21 that we haven't been given. That to me would be 3500
22 material.

23 THE COURT: What?

24 MR. JACOBS: Let me give you an example: Anticev
25 makes a statement to the Bureau under oath where he says

1 that, "I had seven conversations about this with Salem,"
2 where he said --

3 THE COURT: Unless Salem's signature is on that
4 document, it is not 3500 material for Salem. You know it; I
5 know it; they know it.

6 MR. JACOBS: Let me just finish. Wouldn't it be
7 Giglio material?

8 THE COURT: No.

9 MR. JACOBS: My application is for your Honor to
10 review any files within the FBI concerning this matter. We
11 are going to ask for it in our own case. I make the
12 application now. That is all.

13 MR. McCARTHY: Unless your Honor directs me to, I
14 am not going to comment publicly on a disciplinary
15 proceeding against anyone.

16 THE COURT: I am not asking you to comment on it.
17 I will rather direct you to get whatever appropriate
18 paperwork there is, if there is any, without acknowledging
19 that there is or isn't --

20 MR. McCARTHY: Yes, your Honor.

21 THE COURT: -- and I will do another homework
22 assignment for Mr. Jacobs.

23 MR. JACOBS: Thank you.

24 MR. McCARTHY: Your Honor means by "appropriate"
25 that if a file of some kind exists?

1 THE COURT: Yes. You can't give me a file that
2 doesn't.

3 MR. McCARTHY: I'm sorry. We don't think this is
4 appropriate at all.

5 THE COURT: I know you don't. What I am saying
6 is if there is a file, I would like you to get it.

7 MR. McCARTHY: Yes, your Honor.

8 THE COURT: Give it to me, let me look at it.

9 MR. JACOBS: Next matter.

10 3534W, your Honor, contains an interview with
11 Salem, February 19, 1992, from Nancy Floyd where Salem
12 indicates that he has a list of 21 people who the Egyptian
13 Army intelligence kept close track of. These individuals
14 are all involved in the el jihad movement, and there are 21
15 names, only two of which we have gotten.

16 I take the position that that is a phony list
17 that he created, that he made it up, and that he was going
18 to frame 21 people and that he gave 21 fictitious names
19 including the sheik's and people involved in this movement,
20 and it was part of his lies that he's told. I would like
21 the 21 names. I would like to cross -- or at least reserve
22 the right to cross-examine and say, "You were going to frame
23 21 innocent people, or 19 other people," whatever it is.
24 "You made up names. They are not a member of the movement.
25 you don't know them."

1 I think it is relevant and I think -- I don't
2 know if your Honor reviewed this, we just got this recently,
3 but in light of his testimony now, I would ask your Honor to
4 rethink the redaction that your Honor's reviewed. That is
5 with respect to other times where he's given lists of
6 people.

7 It is a few months later. I think it is a couple
8 of months later after he gave the two-day interviews which
9 are total lies. That was a little earlier. My position is,
10 your Honor, that he is framing 21 people, he made it up, it
11 is all a lie. These people have nothing to do with
12 anything, and I think we are entitled to the names.

13 MR. McCARTHY: If that is true, then the names
14 don't add anything except for, I suppose, the embarrassment
15 of the people who were named.

16 At this point in time, given the amount of
17 information that they have and the point that they want to
18 make with respect to this, this is so tangential and
19 marginal I think your Honor can easily find under Rule 403
20 that it is just plainly cumulative.

21 THE COURT: Which is the exhibit?

22 MR. JACOBS: I have it, your Honor. Here it is.
23 This is two months, I think, after, your Honor, he did the
24 two-day debriefing which was, just to give you the context
25 of it, he spoke to Floyd a month or so earlier and made up a

1 whole two-day bunch of nonsense --

2 THE COURT: Why don't you just wait and let me
3 read the exhibit. Thank you.

4 (Pause)

5 THE COURT: I haven't seen who is on the list.

6 MR. JACOBS: I don't need it tonight, Judge. I
7 mean, this may be a continuing problem. When your Honor
8 reviewed the unredacted material, obviously, we weren't able
9 to see the context of what some of these things were said.
10 In light of his testimony now that through many months he
11 was just creating everything and a lot of these lists of
12 people are created people --

13 THE COURT: I don't recall that testimony.

14 MR. BERNSTEIN: Judge, may I --

15 THE COURT: No. We will deal with him first. I
16 will look at --

17 MR. JACOBS: Fine, that is all.

18 THE COURT: -- the unredacted list on page 000024
19 of 3534W.

20 Now, you wanted something?

21 MR. BERNSTEIN: Judge, it had to do with what the
22 government adduced from this witness. They didn't direct
23 the witness to which specific days, but I think in context
24 it was pretty clear that the nine-page, two-day debriefing,
25 that is in detail, a Middle East nation and leader atomic

1 capabilities is what they effectively drew teeth on, on his
2 direct, that he didn't know any of these people, that he
3 hadn't met them, he didn't know about atomic capabilities.

4 That seems to be what Mr. Jacobs links to this
5 kind of list, that when you accept that the redaction was
6 built around a presumption that there were security
7 mechanisms necessary, given his testimony, it now seems
8 clear these are potentially created lies to build his
9 big-shot status, and, therefore, for impeachment purposes, I
10 think we are entitled to say to a witness: "Didn't you
11 create this name?" Or, "Didn't you give this name? Weren't
12 you making" --

13 THE COURT: Let me look at the list.

14 MR. BERNSTEIN: Thank you, Judge.

15 THE COURT: Anything else?

16 MR. McCARTHY: Your Honor, we are going to get to
17 CM10 perhaps tomorrow. CM10 is the transcript that has the
18 allusion to the Kennedy assassination in it.

19 THE COURT: Right. I ruled that out, didn't I?

20 MR. McCARTHY: No, you ruled that it wasn't to be
21 mentioned in front of the jury --

22 THE COURT: Right.

23 MR. McCARTHY: -- until you said one way or the
24 other whether it could be mentioned to the jury.

25 It is our position, your Honor, that that is

1 relevant, probative evidence of Dr. Abdel Rahman's state of
2 mind. He has tried this case on a theory that, aside from
3 being a servant of God, that he has elected to do jihad
4 nowhere -- I guess what I should say is that he's in favor
5 of jihad virtually every place else except America.

6 It is a case which is boiling down by the minute
7 to basically what his state of mind was, since there hasn't
8 been a whole lot of dispute, at least up to this point with
9 respect to those things that we contend he did, whether he
10 did them. The whole case is about what he had on his mind,
11 and it makes it much more relevant that he's mentioned the
12 name of a United States government official as opposed to
13 another man.

14 THE COURT: No. All it does is call for all
15 kinds of speculation that have not a great deal to do with
16 this case and that antedate the conspiracy in this case by a
17 good number of years.

18 MR. McCARTHY: It is not the government's
19 position that he actually had anything to do with the
20 Kennedy assassination. But it is extremely relevant, given
21 the fact that what was being proposed were attacks on
22 American installations, that what he's talking about is
23 training for an attack on an American government official in
24 a case where he has contended that he's not involved in any
25 kind of jihad other than jihad overseas.

1 THE COURT: But all he is saying in that
2 dispute -- I don't have the disputed part in front of me,
3 but as I recall it, all the he is saying is, wait for some
4 period of time, there is need to prepare, after all, the
5 person who effected the Kennedy assassination prepared for
6 some unspecified period of time --

7 MS. AMSTERDAM: Three years.

8 THE COURT: He could just as well be saying that
9 about a proposed foreign project as he could about a
10 proposed domestic project.

11 MR. McCARTHY: But he is the one who elected not
12 to.

13 THE COURT: Not to do what?

14 MR. McCARTHY: Not to mention a foreign official.

15 THE COURT: No. The point is, his advice to
16 train because the person who carried out the Kennedy
17 assassination trained for three years is a point he could
18 just as easily have been making about an act to take place
19 overseas, that is, a proposed act to take place overseas, as
20 he could about a proposed domestic act.

21 For example, if he had said have your escape
22 plans ready because John Wilkes Booth had a horse waiting
23 out in the alley --

24 MR. McCARTHY: Except if he had escape plans this
25 would be one thing. This is an attack on American military

1 installations by somebody who says he doesn't have anything
2 to do with jihad in the United States --

3 THE COURT: But if he is talking about an attack
4 on American military installations, it will be apparent
5 without his reference to advice based on an earlier act. If
6 he is saying wait to attack American installations because
7 after all the person who attacked Kennedy trained for three
8 years, then the fact that he alludes to the example of the
9 person who attacked Kennedy doesn't add anything. On the
10 other hand, if he says wait or train to assassinate Mubarak
11 because the person who assassinated Kennedy trained for
12 three years, that doesn't make a proposed assassination of
13 Mubarak somehow a more American act.

14 I am not making myself clear. Or am I?

15 MR. McCARTHY: I just think it is different. I
16 think it is different, your Honor. You are looking at it in
17 the abstract. That is, you are taking the statement, such
18 as it is, and you are making a logical argument out of it.
19 This has to be considered in the context of the way he is
20 trying the case. This whole case is about, at this point,
21 his state of mind to exercise force against the United
22 States. He has a proposal in front of him about multiple
23 attacks on American soil installations, two of them American
24 government installations, and he is telling somebody who is
25 involved in that to slow down because the person who

1 attacked an American government official waited three years
2 to carry that out. That is different from doing a jihad act
3 overseas, which, frankly, he does at the drop of a hat.

4 THE COURT: But the fact that he alludes to the
5 Kennedy assassination adds nothing to the fact that it was
6 an American installation that he was talking about. I don't
7 see why you can't simply introduce that without his example.
8 His example doesn't add any force to your case, nor does it
9 take away any force from his. His example is only an
10 example.

11 MR. McCARTHY: May I have just a moment, your
12 Honor?

13 (Pause)

14 MR. McCARTHY: Your Honor, here is our problem,
15 if I could just read part of the transcript.

16 THE COURT: Which exhibit is it?

17 MR. FITZGERALD: CM 10 page 7.

18 THE COURT: Don't give me the CM number, give me
19 the exhibit.

20 THE CLERK: It's not in the book yet.

21 MR. McCARTHY: It is 311T, your Honor, but it is
22 not ready yet, as Jane tells me, since we don't have it in
23 the book. Let me hand up the page.

24 Your Honor, I would expect that you will hear
25 before the end of the case an argument by the defense,

1 conceivably, that he was telling him to slow down in order
2 basically to blow him off, and just say whatever he had to
3 say in order to get out of the conversation. Read in
4 context, what he is actually telling him is slow down to
5 make sure that you do it right.

6 THE COURT: OK.

7 MR. McCARTHY: Perhaps the name Kennedy, I can
8 understand the court's view that that is -- it has a danger
9 of unfair prejudice that an appropriate substitution might
10 not have. But I think we should be entitled at least either
11 to an appropriate substitution or to an instruction from the
12 court with the transcript left intact that the government
13 doesn't make any contention that any defendant on trial had
14 anything to do with that incident.

15 THE COURT: I understand your point.

16 So that the nature of the advice can be made
17 clear, why not simply strike the word Kennedy?

18 MR. McCARTHY: Can we put the word redacted in so
19 it is clear there is something omitted?

20 MS. STEWART: The problem is that it raises the
21 specter that there was a crime that he had something to do
22 with, if you take out the word Kennedy.

23 THE COURT: No.

24 MS. STEWART: Could you read it aloud, Judge? I
25 don't have it in front of me, just as it would be without

1 the word Kennedy, that sentence.

2 THE COURT: That sentence standing alone?

3 MS. STEWART: The whole --

4 THE COURT: I think you want the context. I
5 think the context can be gotten from beginning with Salem
6 saying:

7 SALEM: We have prepared the thing now.

8 SHEIK RAHMAN: Never mind.

9 SALEM: We have to slow down a little then?

10 SHEIK RAHMAN: Slow.

11 SALEM: OK.

12 SHEIK RAHMAN: Slow down a little bit.

13 SALEM: OK.

14 SHEIK RAHMAN: Are you paying attention?

15 SALEM: OK, Sheik.

16 SHEIK RAHMAN: The man who killed X was training
17 for three years. We don't want, ah --

18 SALEM: No, no, we will do a good job, God
19 willing.

20 SHEIK RAHMAN: OK.

21 MS. STEWART: The problem is, John Wilkes
22 Booth --

23 MS. AMSTERDAM: Without being funny, there is the
24 tension. I am extremely concerned with spillover prejudice
25 as to any inference in front of this jury that somebody even

1 remotely connected with this group had something to do with
2 Kennedy. On the other hand, if you substitute it with a
3 blank there is some suggestion that a recent assassination
4 was actually committed. So from her point of view, I think
5 that she would almost take the Kennedy because it is so far
6 away in time that she couldn't possibly have been involved
7 in it. From my point of view, however, I will take anything
8 other than Kennedy. I think from that point of view
9 Lincoln --

10 MR. STAVIS: Or President Garfield.

11 MS. AMSTERDAM: If it has to be domestic --

12 THE COURT: It doesn't have to be domestic.

13 MS. AMSTERDAM: Or an example.

14 MS. STEWART: You can't change the words, Judge,
15 I understand. Either the words are in or weren't there. I
16 think the lines do raise such specters that your original
17 ruling is correct and should be adhered to.

18 THE COURT: Let's take another step further.

19 Instead of just blanking out Kennedy, why not blank out kill
20 also, and simply leave it as the man who redacted redacted
21 was training for three years. That's a crime.

22 MR. McCARTHY: Your Honor, they are talking about
23 mass murder. You have completely denuded the character --

24 THE COURT: No, I haven't. Look, this is not a
25 claim with which he claims or you claim he was associated.

1 It is an example.

2 MR. McCARTHY: Of killing, talking to somebody
3 who is talking about --

4 THE COURT: In context, it is highly unlikely
5 that they are going to conclude that this means the man who
6 embezzled three checks from a bank was in training for three
7 years.

8 MR. McCARTHY: Your Honor, these are his words.
9 They are not our words, they are his words.

10 THE COURT: I know they are his words, but they
11 invite speculation on his having been connected --

12 MS. STEWART: I am waving to my cocounsel to
13 quiet down so I can hear you, Judge.

14 THE COURT: Good. I am waiting for him to take
15 your advice.

16 They are inviting speculation that he is
17 connected with murder with which as far as you know you have
18 not a shred of evidence that he was connected.

19 MR. McCARTHY: Other than what he said, no.

20 THE COURT: This doesn't suggest that he was
21 connected at all.

22 MR. McCARTHY: I never contended that he was. I
23 am saying, other than that statement that is right. The
24 point is that it is important that he is talking about
25 murder.

1 THE COURT: Mr. McCarthy.

2 MR. McCARTHY: Yes, your Honor.

3 THE COURT: I don't ever -- that is not fair.

4 It's not in. "It is important" is not a winning argument.
5 if it is important that he is talking about murder, that is
6 another reason for taking it out. If you think about it, it
7 will come to you.

8 What else can I do for you, or to you?

9 MR. JACOBS: I will think of something.

10 THE COURT: I am sure you will.

11 MR. McCARTHY: Your Honor, I want to put on the
12 table, there is no reason to take up the court's time unless
13 you want to. We have made a motion, or at least I heard the
14 court that we would move in limine to preclude on
15 cross-examination the fact that there are persons who
16 haven't been arrested.

17 THE COURT: I am sorry. I hadn't recalled that,
18 but as long as it is out --

19 MR. McCARTHY: It was in the letter where I gave
20 the court a proposed instruction on the polygraphs.

21 MR. JACOBS: Could the government say what they
22 mean a little bit?

23 THE COURT: Yes, the notion what, that there are
24 people that are named who have not been arrested?

25 MR. McCARTHY: Correct.

1 THE COURT: That is not a subject for
2 cross-examination.

3 MS. AMSTERDAM: Except, your Honor, what if he
4 had named, for example, Michelle Pfeiffer as one of his
5 suspects and it was so obvious on its face that it was
6 ludicrous.

7 THE COURT: He didn't name Michelle Pfeiffer and
8 you are not cross-examining on people who have not been
9 arrested. You are not cross-examining on people who have
10 not been arrested. Anyone who is unclear? Good.

11 MR. JACOBS: That goes back to the list. What I
12 am saying is, if he names the Nancy Floyd people who
13 committed criminal acts and that is a fraud and fictitious
14 and it is a lie, that goes back to argument. I am not
15 suggesting that the argument is that the government didn't
16 arrest other people. That is two different things. If he
17 is naming people he told the government did something or
18 named as part of the enterprise, I think we have a right to
19 bring that out.

20 THE COURT: Let me say again, there is to be no
21 cross-examination that alludes in any way, shape or form to
22 the fact that there are people who have been arrested who
23 are not indicted. As you know, the conspiracy involved in
24 this case is the subject of an ongoing investigation. There
25 has been at least one arrest since the subject of this

1 trial.

2 MR. JACOBS: I may want to cross-examine him
3 about Yousef and who he knows, how he knows and what he
4 knows, Yousef's associates. It is not an argument that
5 other people haven't been arrested. That is not the
6 argument. But if I want to explore other people's names,
7 Yousef's associates in Iraq or other things like that, it is
8 not the same in limine argument that I think the government
9 is making. I am not suggesting there are matters under
10 investigation that haven't been concluded, and I may want to
11 do that in the World Trade Center part of the case. But I
12 think I am perfectly free to argue that the government knows
13 that Yousef is the mastermind and made argument with
14 witnesses or call FBI agents in my case and suggest that
15 Yousef is responsible for the World Trade Center, things
16 like that. That is not the same thing.

17 OK, I will sit down.

18 THE COURT: Good. The ruling stands. What else?
19 See you tomorrow.

20 (Proceedings adjourned until 9:30 a.m., Thursday,
21 March 9, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----x
20 March 9, 1995
21 10:10 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrowny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

KELLMAN & LONDON
Attorneys for Defendant Tarig Elhassan
BY: JOYCE E. LONDON

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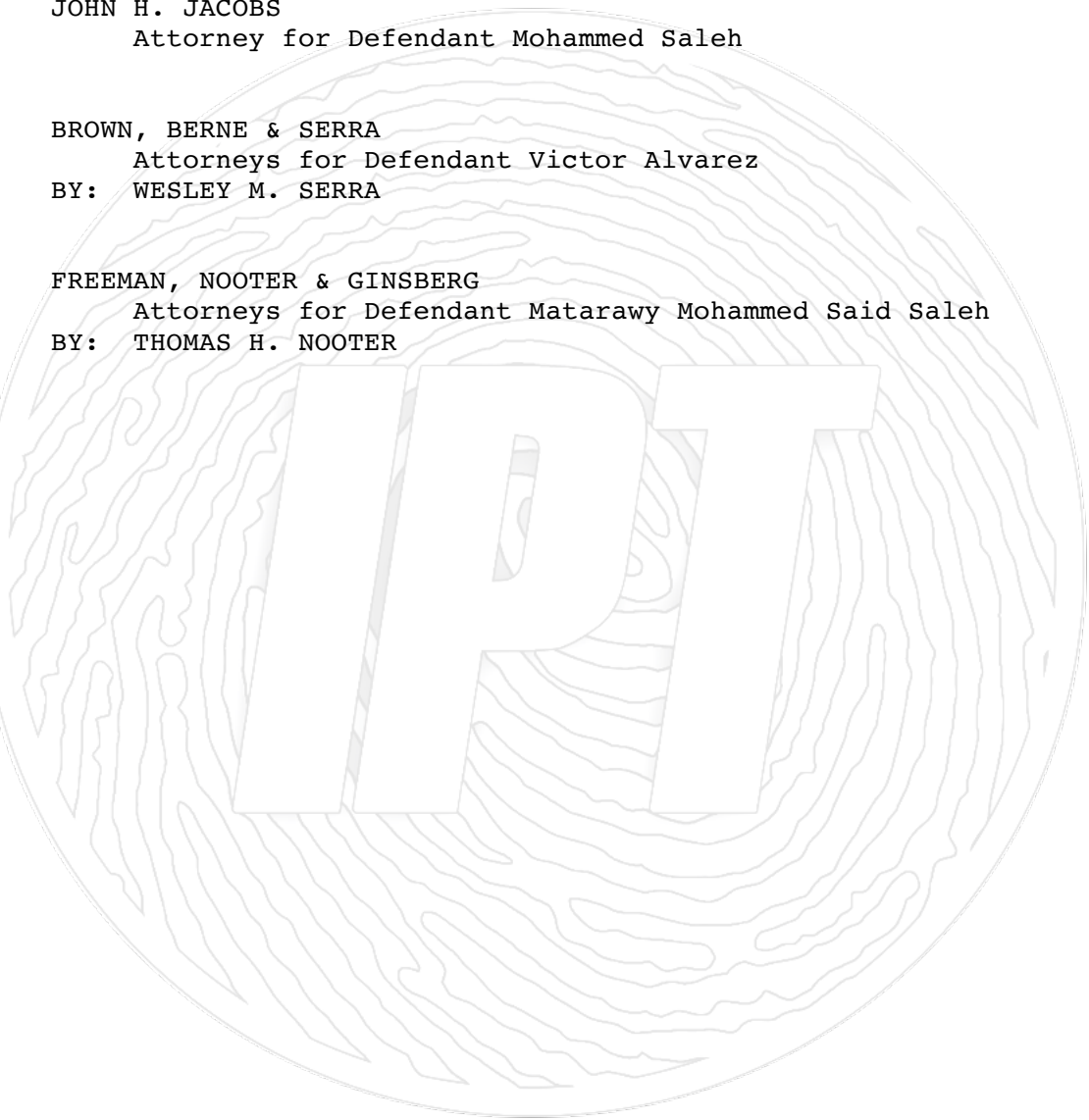
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (In the robing room)

2 THE COURT: All right. Mr. Serra.

3 MR. SERRA: Good morning, your Honor.

4 Mr. Alvarez told me this morning that since sometime in the
5 early morning hours he has had a very bad case of diarrhea
6 to the extent that he's basically unable to sit in one place
7 for more than half an hour or so, that he has had a stomach
8 problem since somewhat earlier than that, and that he's in
9 stomach pain now. For whatever it is worth, Judge, I have
10 something -- he and I are in such close proximity
11 constantly, I have something slightly wrong with my stomach
12 although hardly enough for me to ask the court to go down.

13 I have discussed with Mr. Alvarez whether or not
14 he would be willing to waive, and, in my opinion, quite
15 understandably with the witness who is presently on the
16 stand, he would not be willing to waive his presence for a
17 continuation of this witness's testimony.

18 So what I am asking, I understand the production
19 which your Honor is presiding over, that it is difficult,
20 but I see no alternative other than asking the court to go
21 down for the day so that Mr. Alvarez can recover.

22 THE COURT: I was notified of this this morning
23 when I came down to court. I checked at the MCC and
24 determined that the only complaint Mr. Alvarez made -- and
25 he's made it apparently on a number of occasions -- was of

1 back and shoulder problems, and he was given a full range of
2 motion examination within the last day. In fact, he's had a
3 couple of them.

4 I have also been told that there has been an
5 increase in general in the physical complaints of the
6 defendants within the last couple of days. I took a day off
7 earlier in this case in a situation which I now believe that
8 I was had. I am not about to be had again. I don't think
9 that this complaint is substantial. I think that he can
10 attend, and, therefore, I am not going to adjourn this
11 trial. I am going to go ahead.

12 I have Pepto Bismol or another kind of
13 over-the-counter preparation if he wants to take it to
14 relieve his stomach ache, but I am not going to stop this
15 trial simply because a defendant tells me, when he has not
16 told anybody else, that he has an immobilizing stomach ache.
17 That is not going to do it.

18 DEFENDANT ALVAREZ: I have something to say to
19 your Honor. May I speak directly to you?

20 THE COURT: No, you may not. You have a lawyer.

21 MR. SERRA: If I can have the Court's indulgence
22 for just a moment.

23 MR. McCARTHY: I don't speak any Spanish.

24 MR. SERRA: OK.

25 (Counsel conferred with the defendant)

1 MR. SERRA: Your Honor, basically what Mr.
2 Alvarez has told me and asked me to relate to the court is
3 that what your Honor heard from the MCC about his shoulder
4 and back problems is something that's been going on for
5 months. I verified that, Judge. I have spoken with them
6 about it.

7 Mr. Alvarez has complained to me over a period of
8 time about those problems. I have complained to the MCC
9 about it. We haven't involved the court because the MCC was
10 having someone look at him. But the problem with his
11 stomach, it was something that came up just in the last ten
12 hours, just since the middle of the night last night. He
13 tells me that there wasn't time for him to complain to a
14 doctor that he saw yesterday about his back. This is
15 something that is just --

16 THE COURT: People have complained in the morning
17 about things. I have over-the-counter kinds of medications
18 here if he wants to take them and give it a try. But I am
19 not simply going to call it off because he has a case of the
20 runs.

21 MR. SERRA: Your Honor, Mr. Alvarez still wishes
22 your Honor to do what your Honor has said you are not going
23 to do, to go down for the day. But, failing that, if I rise
24 to get the court's attention, what Mr. Alvarez has told
25 me -- it is a common complaint, someone who needs to use the

1 bathroom quickly, if I rise to get the court's attention,
2 may we have a break as quickly as possible?

3 THE COURT: There is another alternative, which
4 is that there is, as you may know, a television monitor in
5 the cell block which would allow him to watch and get a
6 translation and confer with you during the breaks.

7 There is another alternative, and -- what was the
8 response?

9 MR. SERRA: Mr. Alvarez wants to be in court when
10 Mr. Salem is testifying, Judge, and that I understand
11 without any question.

12 THE COURT: I can understand that, as well.

13 There is another alternative. For this, I want
14 you to go outside and confer with him. First of all, I
15 assume you know your client and wouldn't be making this if
16 you thought this was some light and transient kind of thing.

17 MR. SERRA: Your Honor, if that is a question,
18 when I have a client who tells me that he is not well enough
19 to sit, I have to present that to the court. I certainly
20 have no reason to believe that Mr. Alvarez is faking.

21 THE COURT: OK. If I take the day on his say-so,
22 I am going to have him monitored at the MCC. If it turns
23 out that this is malingering, we are going to sit Fridays in
24 the future to make up the time, and it is going to be on his
25 tab. You can talk to him about it outside.

1 MR. SERRA: May I, Judge?

2 MR. McCARTHY: Would you like me to wait outside,
3 your Honor?

4 THE COURT: Yes.

5 (Pause)

6 (Defendant Alvarez not present)

7 MR. SERRA: Judge, just so you know why we are
8 not coming right back in, my client told the marshals that
9 he has to go to the bathroom right now, and the marshals are
10 taking him to the cell block.

11 THE COURT: Fine. When he goes to the bathroom
12 is there a marshal present?

13 THE MARSHAL: He goes into the cell, yes.

14 THE COURT: But there is a marshal present?

15 THE MARSHAL: Yes.

16 THE COURT: Off the record.

17 (Discussion off the record)

18 THE COURT: I can just tell you the bulletin that
19 I have is that it looks like this is for real. He is still
20 in there on the commode, but --

21 MR. SERRA: I will rule by the day, Judge.

22 THE COURT: There are other things we can do. We
23 will do them, that is all.

24 MR. SERRA: I think you probably also know that
25 we and the government are basically working around the

1 clock.

2 THE COURT: I know that. I am saying there are
3 other things we can do, so the time is not going to be
4 entirely wasted. Off the record.

5 (Discussion off the record)

6 (Defendant Alvarez present)

7 THE COURT: I suppose I owe Mr. Alvarez something
8 of an apology, so I should give it. I am sorry to have
9 expressed skepticism at your illness. On the other hand,
10 you have to understand that one of your co-defendants or
11 more, but certainly one of them, said he was ill and we took
12 a day off and it turned out that he was not really as ill as
13 he suggested. So it then becomes difficult for me to make a
14 proper judgment.

15 All that shows is that everybody's behavior
16 affects what happens to everybody else. But, in any event,
17 I hope you feel better. We are going to break for the day,
18 and we will resume next Monday.

19 DEFENDANT ALVAREZ: I accept your apology. I am
20 sorry that I had to bring this up to your Honor's attention.
21 It was not my intention or my purpose. I hope this doesn't
22 happen again.

23 THE COURT: Me, too.

24 MR. SERRA: Thank you, Judge.

25 THE COURT: Feel better.

1 DEFENDANT ALVAREZ: Thank you.

2 (In open court)

3 THE COURT: Good morning. As some or all of you
4 may be aware, I met in the robing room with Mr. Alvarez and
5 his attorney. It appears he is really not well enough to
6 proceed today, so we are not going to proceed today; that
7 is, we are not going to proceed on the hearing of evidence.

8 I will ask defense counsel to remain available,
9 and the government counsel as well, to see if we can
10 accomplish to some other things that I would like to
11 accomplish. But, in any event, we will not be hearing
12 evidence today.

13 With your permission I thought I would simply
14 make my usual appearance at the jury room door and tell them
15 without bringing them out here and telling them. Is that
16 acceptable?

17 MR. McCARTHY: Yes.

18 DEFENSE COUNSEL: Yes, your Honor.

19 THE COURT: All right.

20 MR. JACOBS: Your Honor?

21 THE COURT: Yes.

22 MR. JACOBS: After the jurors are excused and the
23 defendants are excused, may we stick around for a few
24 minutes? There are one or two matters that we can cover, if
25 that is OK. I think about these things all night, Judge.

1 THE COURT: I know you do.

2 MR. JACOBS: I dream about them. I read the
3 papers all day long, and I think about this.

4 THE COURT: Order decaf next time.

5 (In the jury room)

6 THE COURT: Hi.

7 THE JURY: Good morning.

8 THE COURT: Good morning. I am here for the
9 reason that I am usually here, which is to tell you that we
10 have a problem that we will solve, but that I don't want to
11 have you sit around and wait while we solve it, and,
12 therefore, you won't be sitting to hear evidence for the
13 remainder of the day. I'm sorry for the interruption. We
14 will resume on Monday. Have a pleasant day.

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1 (In open court; jury not present)

2 MS. STEWART: Mr. Bernstein isn't here.

3 MR. LAVINE: He asked me to cover for him, Judge.

4 MR. JACOBS: I thought we would take a few
5 minutes to go back to the World Trade Center applications
6 and the matters about Ramzi Yousef. Not that newspapers are
7 particularly reliable, but the AP reports today in the New
8 York Times that the Kuwaiti government has given the United
9 States government specific information about Ramzi Yousef
10 collaborating with Iraqi troops and, I guess, adopting my
11 theory that this information is important, the paper reports
12 "Information from Kuwait where the suspect spent most of his
13 life could be crucial in a trial as well as in a related
14 trial now going on in New York" --

15 THE COURT: Mr. Jacobs, no.

16 MR. JACOBS: The point I am making, your Honor,
17 is that at some point whenever we finish Salem and we get
18 into the World Trade Center and perhaps our part of the
19 case, we do expect to try to come forward with some
20 affirmative evidence about Yousef's responsibility for the
21 World Trade Center, and sitting here in this case it is
22 difficult for us to get access to information like this. We
23 have done it by subpoena. I know the government is in the
24 process of responding. I know we have asked for the Brady
25 information if it exists. But I don't want a situation to

1 come to pass where the government rests their case and your
2 Honor tells us to go forward and I am scrambling, where I
3 would like to put into evidence -- your Honor will make
4 evidentiary rulings, obviously. But if I can show that the
5 man was operating not with the sheik but on behalf of some
6 foreign government, I want to do it.

7 THE COURT: Mr. Jacobs, if you can show -- it
8 seems to me this is a spear that ought to be carried by Miss
9 Stewart rather than by you, but the question is whether
10 Dr. Abdel Rahman was or was not involved in this. If
11 Mr. Yousef was also talking to the Iraqis or or the Iranians
12 or anybody else, that is of interest to columnists,
13 political scientists and a lot of other people. It doesn't
14 cut any ice here.

15 MR. JACOBS: Your Honor, it is a real simple
16 proposition. I agree, if Yousef worked with the sheik so be
17 it, we are stuck. If he didn't and he never spoke to the
18 man, he ran his own operation, do we have a shot. That is
19 all I am saying.

20 THE COURT: That has nothing to do with an AP
21 report about how he was cooperating with Iraqi troops.

22 MR. JACOBS: Let's step back. We are sitting
23 here and we keep getting press reports, passports, visas,
24 phone records, and everything that seems to be coming out
25 seems to suggest that it is not the defendants in this

1 case -- I don't mean my client in particular but the group,
2 the enterprise that is charged in this case as having done
3 it.

4 THE COURT: Mr. Jacobs --

5 MR. JACOBS: I just want the tools to work with
6 and that is all I am asking for. If I can produce evidence
7 that this man ran it for a government, I think this jury is
8 entitled to hear it, and if the government can't produce
9 evidence that the sheik ordered it, participated in it,
10 approved it, we should be able to do that as well.

11 I am suggesting that I believe Yousef --

12 THE COURT: If the government can't produce
13 evidence, then the trial is over.

14 MR. JACOBS: Let's step back.

15 THE COURT: You keep saying "let's step back."
16 We step back and you step into nonsense.

17 MR. JACOBS: The evidence is as follows: Ramzi
18 Yousef, whether he is talking to the government, what he has
19 said to the government, that is evidence. Documentation
20 that exists that is in the government's possession about
21 non-sheik contacts or non-Nosair contacts or non-Salameh
22 contacts. That is information, that is phone lists,
23 coconspirator lists, computer disks. That is documentation
24 found in his room. That is hard evidence.

25 THE COURT: Mr. Jacobs, put it in writing.

1 MR. JACOBS: We have done it, Judge.

2 THE COURT: Where?

3 MR. JACOBS: It was in our original two
4 subpoenas --

5 THE COURT: And we went through them item by item
6 as to the items you would get which were, as I recall,
7 admissible.

8 MR. JACOBS: With the exception of the things
9 found post World Trade Center, as the government says.
10 Because we have a few minutes -- when I see articles, Judge,
11 that say there is evidence crucial that we don't have and
12 this is the press, I think about it. Maybe I drink too much
13 coffee.

14 THE COURT: Thank you for sharing that with us.
15 Mr. Stavis.

16 MR. STAVIS: If I might carry the spear for the
17 moment, your Honor, yesterday we were provided with
18 government 3534HH, which is part of Mr. Salem's 3500
19 material. It includes a memorandum to the director of the
20 FBI dated June 17, '93. It was Bates stamped number 87, and
21 it is talking about the payment to Mr. Salem and the
22 justification for that payment. At page 89, it says
23 Mr. Salem, and I am quoting, "has documented the role of at
24 least two foreign powers in these planned incidents."

25 What I would like, your Honor, what I would

1 request is that the documentation, if it exists, be provided
2 to the defense in this case.

3 MR. McCARTHY: He's got it: It's the CM's.

4 MR. STAVIS: Two foreign powers. I have the
5 government's position then.

6 THE COURT: The possible involvement of foreign
7 powers, one or more, in the World Trade Center explosion is
8 not news.

9 MR. STAVIS: It is not clear that the reference
10 was to the World Trade Center, your Honor.

11 THE COURT: All right. That was something that
12 was discussed early on. It was discussed at the time of the
13 sentencing in the World Trade Center case. But again, that
14 a foreign power or powers may have contributed in some
15 fashion to that doesn't mean that other people were not
16 involved. Doesn't mean that other people were, either.

17 MR. STAVIS: However, if there is a multiple
18 conspiracy defense to be pursued, we would certainly be
19 interested in pursuing that and we would be interested --

20 THE COURT: Multiple conspiracy has nothing to do
21 with the possible involvement of a foreign power. That is
22 in essence a pun on the phrase "multiple conspiracy."

23 MR. STAVIS: I don't agree with your Honor's
24 position but I do have the government's position now.

25 THE COURT: What I was wondering was whether any

1 or all of you have any -- and I understand it would be a
2 loose fix, but any fix on the length and pattern of
3 cross-examination.

4 MS. STEWART: Judge, I can tell you that we have
5 had, we had one meeting --

6 THE COURT: You, I know, you are a minimalist, so
7 I like the fact that you are the one who got up.

8 MS. STEWART: We have attempted to divide into
9 separate areas, attempting not only for the laws of time but
10 also for the sheer boredom to the jury of repeating things
11 endlessly, and we hope we are not going to do that. I
12 believe we are going strictly in the order of the
13 indictment. I will go first, to be followed by Mr. Stavis,
14 etc.

15 MS. AMSTERDAM: No. As we get further down --

16 MS. STEWART: I am sorry, if Ms. Amsterdam
17 corrects me.

18 THE COURT: As far as the order, I don't care
19 what order you do it in, as long as there is an order and a
20 method. If there are people dividing up the work in a
21 particular fashion, divide up the work. That is fine. And
22 if it is coherent, then fine.

23 Yes.

24 MR. STAVIS: I just want to advise your Honor
25 that there are lines of demarcation with regard to the

1 cross-examination that all defense counsel are familiar
2 with. If at some point during the cross-examination your
3 Honor finds it is repetitive, we will be able to show your
4 Honor how it is different from another cross-examination.
5 What I am telling your Honor is that we are organized with
6 regard to what --

7 MS. STEWART: We think we are organized.

8 THE COURT: This is something you have had some
9 time to think about. Do you have any idea or can you use
10 any time today to give me an idea what is going to happen
11 and how long it will be?

12 MS. STEWART: We will meet and attempt to do
13 that, Judge. The additional gambit we were given yesterday
14 of presenting the CM's ourselves of course blew our earlier
15 calculations off.

16 THE COURT: It will change them somewhat.

17 MS. STEWART: Let us have a chance to meet and we
18 will get back to you on that.

19 MR. JABARA: Your Honor, with regard to the
20 subpoena on the immigration records, I have been in contact
21 with the Immigration Service since we served that, and they
22 have told me that the A numbers that I provided them does
23 not match with the name, and I have also been told that that
24 is probably because he is in the Witness Protection Program.
25 In any case, I have been in contact with the U.S. Attorney's

1 Office regarding records and they have told me that they
2 would try to provide those. I just hope that we can have
3 those by the time that we begin the cross-examination, which
4 I assume will be somewhere Tuesday.

5 MR. FITZGERALD: Your Honor, I received the
6 request from Mr. Jabara and I beeped an INS agent this
7 morning. He will get on it. He understands the urgency.
8 As soon as we hear, Mr. Jabara will hear.

9 MR. JABARA: There is also the matter of
10 telephone records of Mr. Salem that we would like to have.
11 I believe there has been some discussion between some of the
12 counsel and the U.S. Attorney's Office. Those are crucial
13 since there were a number of foreign long-distance calls
14 made by Mr. Salem which will be necessary for the
15 cross-examination as well, and I hope that the U.S.
16 Attorney's Office can provide those.

17 MR. McCARTHY: I think if they were really going
18 to be necessary for the cross-examination, we would have
19 gotten them subpoenaed sometime ago. The problem is, I have
20 told defense counsel that we are going to do our best to
21 help them effectuate their subpoena, but if you wait the
22 amount of time they have waited to go back the amount of
23 time they want to go back, the records often don't exist.
24 They, as I understand it, independently of us tried without
25 success to get them.

1 THE COURT: The telephone company?

2 MR. McCARTHY: Yes, your Honor. Everything we
3 have we turned over.

4 MR. LAVINE: Judge, let me address this issue
5 very briefly, because while I have no argument with what Mr.
6 McCarthy said, Mr. McCarthy was not party to an attempt on
7 my part earlier to subpoena some phone records. The
8 difficulty I had was that I was unable to document for the
9 court the authenticity of all of those phone records.
10 Initially we thought Mr. Salem would come --

11 THE COURT: Document for me?

12 MR. LAVINE: Yes, your Honor. A question had
13 arisen when we had a conference with respect to the phone
14 records we had subpoenaed as to the sources of where I had
15 gotten all those phone records. Some of them I had the CM
16 references for, but not for all the phone records. With
17 other files arising on our part on a daily basis just as
18 they do on the prosecution side, it was postponed somewhat.
19 But I don't know that Mr. McCarthy was aware of that prior
20 history with respect to this issue.

21 THE COURT: I recall a discussion about 17C not
22 being a discovery tool. Is that the discussion you are
23 talking about?

24 MR. LAVINE: Yes, your Honor.

25 THE COURT: Shall we set a time for this

1 afternoon?

2 MS. STEWART: Yes.

3 THE COURT: What is a good time? 3?

4 MS. STEWART: Everybody would like to get out of
5 here and go to work, Judge.

6 THE COURT: Miss Stewart said you were going to
7 have a meeting.

8 MS. STEWART: We ought to be able to get back to
9 you by 11:30.

10 THE COURT: That is fine.

11 MS. STEWART: Is it necessary to reconvene?

12 THE COURT: No. Anybody who is authorized to
13 give me an idea about this, whether you want it on the
14 record or off the record, can come and see me. We don't
15 have to have a plenary session.

16 MR. SERRA: Your Honor, before doing that,
17 particularly if it is going to be by representative, an idea
18 of the problems that clients with involvement face, I will
19 certainly be cross-examining Mr. Salem about Mr. Alvarez's
20 involvement, which means that frequently I will have to play
21 tapes the jury has never heard before. We have had this
22 discussion and I am not making a complaint, but so the court
23 understands that I couch my estimate of cross-examination in
24 terms of hours, a large percentage of that will simply be
25 playing tapes for the first time that the admissibility

1 won't be an issue but that the jury hasn't heard before.

2 MR. JACOBS: Judge, I am going to have to publish
3 parts of maybe 10 transcripts. I don't know what his
4 familiarity is going to be with them. If he is really
5 familiar, I can move the examination along. If he is not,
6 it is going to take sometime. So a lot of the estimates are
7 going to be really up in the air.

8 MS. STEWART: Especially, Judge, since he can't
9 be refreshed, as we understand, since he does not read
10 English.

11 MR. JACOBS: If he is familiar with the CM's and
12 the transcripts and ready to go with them, it will move the
13 examination along. I have to first publish them, then take
14 him through some of the things line by line. It depends on
15 the witness.

16 THE COURT: Your cross-examination is going to
17 consist of more than that.

18 MR. JACOBS: But particularly for myself, I might
19 be relatively narrow on nontape issues, but on transcripts I
20 can't tell how he is going to respond. If he hasn't read
21 them and he has to sit up there and start reading 20 pages,
22 we will be here a long time. I am just telling you where we
23 are at.

24 MS. AMSTERDAM: Is that true, Mr. McCarthy? Will
25 he be able to read the transcripts?

1 MR. McCARTHY: Your Honor, this begins to sound
2 more and more like they want to put in an affirmative case
3 rather than impeach the witness.

4 THE COURT: Yes. Bear in mind the difference
5 between cross-examination and putting in your case. We
6 talked about it a little bit yesterday. We may have to talk
7 about it some more. I don't want to have to talk about it
8 in the middle of cross.

9 MR. JACOBS: Judge, real simple issue. He meets
10 my client and they set June 4 --

11 THE COURT: Mr. Jacobs, don't give me
12 hypotheticals.

13 MR. JACOBS: Not hypothetical, real concrete. He
14 meets my client, they have a couple hours meeting,. He sits
15 in the car with Siddig and they go over it. I believe it is
16 proper cross. It concerns what happened, what occurred,
17 what my client is going to do or not do, whether he is
18 Hamas, things like that. I could take hours with that. It
19 is not affirmative evidence. It is the next conversation
20 that takes place where they talk about my client. You tell
21 me not to do it, I will do it on my case. I will
22 cross-examine on one tape and recall him on my other 10
23 transcripts. It doesn't matter to me. This gives me more
24 time to prepare my questions. It is up to your Honor to
25 decide how to do it.

1 THE COURT: Or more time to prepare fewer.

2 MR. JACOBS: Or fewer. I am up front about what
3 I am doing. This is this is the CM's where they talk about
4 my client.

5 MS. AMSTERDAM: I am actually doing a straight
6 cross-examination, typical, nothing unusual, from the CM's.
7 What I had intended to do was just to ask to have a notebook
8 made up for the prosecution, for your Honor and for the
9 witness, so that if there was any suggestion that he didn't
10 recall, I could point him to the page and ask him to refresh
11 his recollection, and if the government at that point on any
12 of the areas that weren't disputed would say that the
13 parties agree. The only thing that threw me for a loop here
14 was some suggestion that the witness might not be able to
15 read documents in terms of refreshing his recollection, and
16 I just want to -- it doesn't matter. That happens.
17 Sometimes you have to have an interpreter read it to him.
18 But I would be curious to know whether or not that is the
19 case.

20 MR. McCARTHY: And I am curious to know whether
21 or not under the rubric of impeachment what we are going to
22 have is portions of transcripts --

23 THE COURT: No, no, let's not do this exercise
24 here. If you want to talk to each other about what his
25 compass cities are, talk to each other.

1 MR. LAVINE: Judge, I have just been asked about
2 the answer to Valerie's question.

3 THE COURT: I assume they will provide it.

4 MR. McCARTHY: Yes.

5 MR. JACOBS: If your Honor is going to rule that
6 the government plays their four, five, six, we can't use
7 these other CM's, we would like to know as soon as we can.

8 THE COURT: What I said was, as long as what you
9 are doing is cross and not putting in your case, you can do
10 cross and not put in your case. If it gets to the point
11 where what you are doing in essence is putting in evidence
12 that you want to put in, I am going to stop you. I don't
13 know what your cross is like and I am not asking. But
14 caveat emptor.

15 MR. LAVINE: Judge, on that note can I just make
16 one observation? For some of us it is difficult to be able
17 to give you today an estimate of the length of an
18 examination because Mr. Salem in his direct is just really
19 first starting to get to the important part of his
20 testimony.

21 THE COURT: Fine. Do you want to wait on that?

22 MR. LAVINE: We might be in a better position to
23 give you a more intelligent response on Monday.

24 THE COURT: You could also give me a less
25 intelligent response today and a more intelligent response

1 later on.

2 MR. BERNSTEIN: Or vice versa.

3 MR. LAVINE: I will try to get you a less
4 intelligent response today.

5 THE COURT: I would like something today,
6 intelligent as it is.

7 MR. SERRA: Your Honor, I rise to express the
8 same concern the court just did about discussions about the
9 scope of cross-examination, where the middle of an
10 examination is probably not the best place.

11 THE COURT: A lot of this has been planned long
12 in advance.

13 MR. SERRA: Your Honor, if Mr. Salem says, for
14 example, Victor Alvarez was down for a program, or doesn't
15 use those words but clearly implies that, I would argue to
16 the court that it is clear impeachment for me to
17 cross-examine him about and if necessary introduce any parts
18 of conversations in which he implies or other people imply
19 in his presence that Mr. Alvarez was not down for the
20 program. That is not, I would argue to the court,
21 introducing any affirmative defense case. That is
22 impeaching this witness's testimony to the contrary.

23 THE COURT: That I will pass on when it comes.

24 Mr. Stavis, you got the government's letter brief
25 on the issue of the doctor's statement?

1 MR. STAVIS: Yes, your Honor, we received that
2 this morning.

3 THE COURT: When do you think you can get a
4 response?

5 MR. STAVIS: To be candid, which is always
6 dangerous for a lawyer, dangerous and sort of unknown, I
7 would like to file it two days after my cross-examination of
8 Mr. Salem.

9 THE COURT: In other words, you don't want to
10 have to worry about that until you get done with Salem?

11 MR. STAVIS: I would appreciate that. And if it
12 is any indication from the conversations on the record here
13 with my cocounsel, I think that I would be cross-examining
14 after Miss Stewart. There are eight other lawyers after me
15 and I think they will consume a fair amount of time.

16 MR. McCARTHY: Your Honor, my suggestion would be
17 perhaps if defense counsel are going to get back to the
18 court about how long the cross-examination is going to be it
19 might be better to get that afterwards. I don't think
20 Mr. Stavis's estimate is unreasonable.

21 THE COURT: Neither do I, and also we are not
22 talking about anything novel. This isn't going to be any
23 grand opinion style -- I will look at your memorandum and I
24 will look at yours and rule.

25 MR. McCARTHY: If your Honor wants to defer until

1 Monday to make a concrete schedule on that --

2 THE COURT: I would just as soon give him two
3 days until after he finishes Salem's cross.

4 MR. McCARTHY: I didn't think they would come
5 back and say cross would be two days.

6 THE COURT: Send me your emissary whenever you
7 are ready. Thank you.

8 (Proceedings adjourned until 9:30, Monday, March
9 13, 1995)

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IPT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.
6 OMAR AHMAD ALI ABDEL RAHMAN,
7 a/k/a "Omar Ahmed Ali,"
8 a/k/a "Omar Abdel Al-Rahman,"
9 a/k/a "Sheik Rahman,"
10 a/k/a "The Sheik,"
11 a/k/a "Sheik Omar,"

12 EL SAYYID NOSAIR,
13 a/k/a "Abu Abdallah,"
14 a/k/a "El Sayyid Abdul Azziz,"
15 a/k/a "Victor Noel Jafry,"

16 IBRAHIM A. EL-GABROWNY,
17 SIDDIG IBRAHIM SIDDIG ALI,
18 a/k/a "Khalid,"
19 a/k/a "John Medley,"

20 CLEMENT HAMPTON-EL,
21 a/k/a "Abdul Rashid Abdullah,"
22 a/k/a "Abdel Rashid,"
23 a/k/a "Doctor Rashid,"

24 AMIR ABDELGANI,
25 a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.
21 -----x

S5 93 Cr. 181 (MBM)

March 13, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

District Judge

1

2

APPEARANCES

3

4

MARY JO WHITE
United States Attorney for the
Southern District of New York

5

6

BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI

7

Assistant United States Attorneys

8

9

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK

10

Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

11

12

ROGER STAVIS and
ANDREW PATEL

13

Attorneys for Defendant El Sayyid Nosair

14

ANTHONY RICCO

15

Attorney for Defendant Ibrahim A. El-Gabrownny

16

KENNETH D. WASSERMAN

17

Attorney for Defendant Clement Hampton-El

18

STEVEN M. BERNSTEIN

19

Attorney for Defendant Amir Abdelgani

20

VALERIE C. AMSTERDAM

21

Attorney for Defendant Fares Khallafalla

22

JOYCE E. LONDON

23

Attorney for Defendant Tarig Elhassan

24

25

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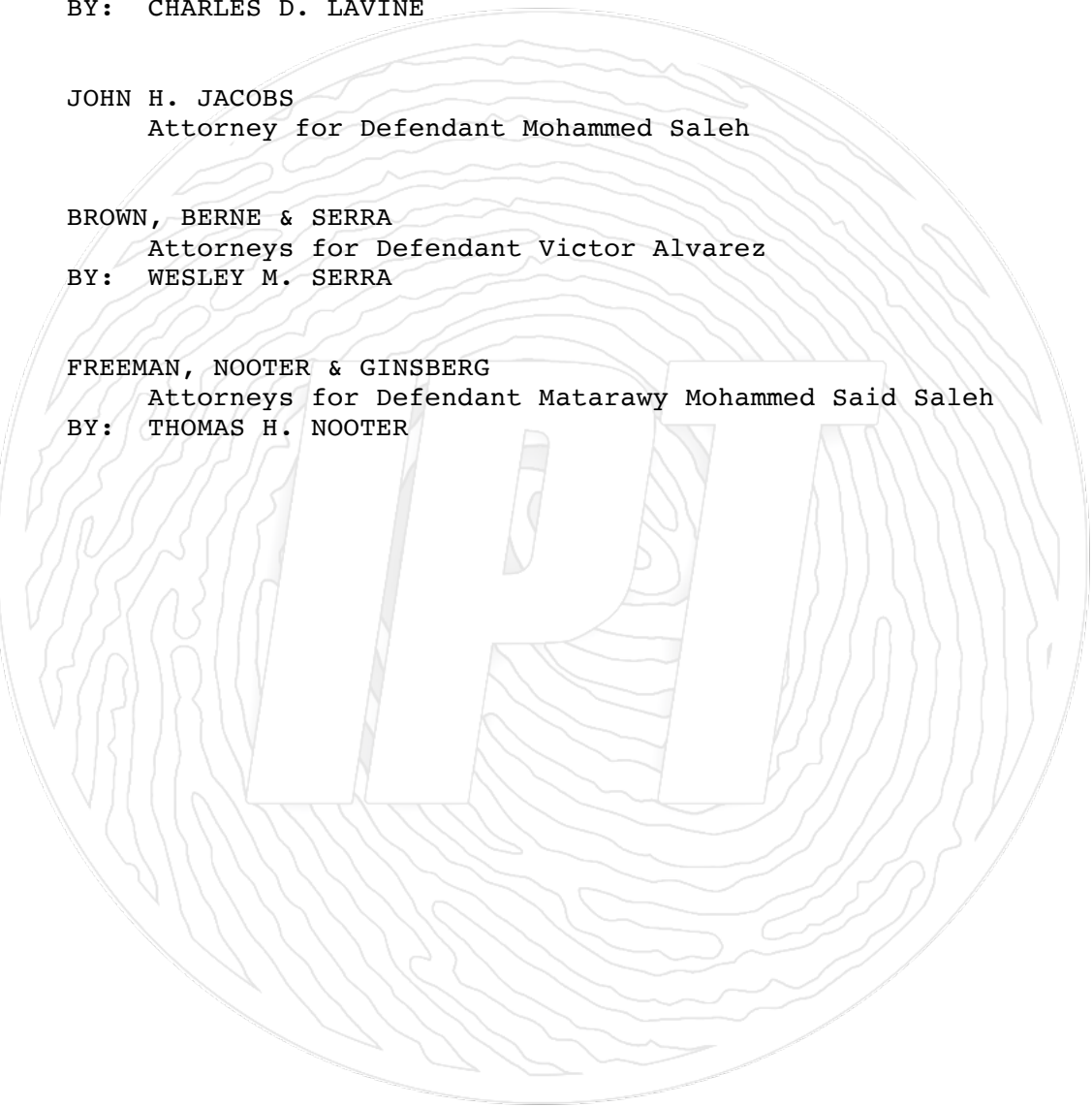
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (Jury present)

3

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 JURORS: Good morning.

8 THE COURT: Mr. Salem, you are still under oath.

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Mr. McCarthy, please.

11 MR. MCCARTHY: May I proceed, your Honor?

12 THE COURT: Please.

13 DIRECT EXAMINATION continued

14 BY MR. MCCARTHY:

15 Q Good morning, Mr. Salem.

16 A Good morning, sir.

17 Q Mr. Salem, in your testimony last week you were
18 telling us about events that occurred during 1991 and 1992.
19 Do you recall that?

20 A Yes, sir.

21 Q Do you recall telling us that you went to the
22 trial of Mr. El Sayyid Nosair in New York State during late
23 1991?

24 A Yes, sir.

25 Q Can you tell us again where that trial was held?

4867

1 A It was in 100 Centre Street, sir.

2 MR. McCARTHY: Your Honor, if I may, I am
3 approaching the witness with a series of photographs.

4 THE COURT: All right.

5 Q Mr. Salem, I am directing your attention to
6 photographic exhibits which are marked 387A through 387J for
7 identification. Do you see those photographs?

8 A Yes, sir, I see them.

9 Q Have you reviewed those photographs at my request
10 prior to testifying?

11 A Yes, sir.

12 Q Do you recognize the scene that is depicted in
13 those photographs?

14 A Yes, sir.

15 Q Do you recognize some of the people who are
16 depicted in those photographs?

17 A Yes, sir.

18 Q What do you recognize the scene in those
19 photographs to be?

20 A That was in front of the courthouse during
21 Mr. Sayyid Nosair's trial.

22 MR. McCARTHY: Your Honor, the government offers
23 387A through J into evidence.

24 MR. STAVIS: May I have a voir dire, your Honor?

25 THE COURT: All right.

4868

1 VOIR-DIRE EXAMINATION

2 BY MR. STAVIS:

3 Q Mr. Salem, did you take the photographs that Mr.
4 McCarthy just referred to?

5 A Yes, sir.

6 Q You took these photographs?

7 A Yes, sir.

8 Q Drawing your attention to Government's Exhibit
9 387F, if you could turn to that photograph.

10 A Yes, sir.

11 Q At the bottom of that photograph it says "2
12 Manhattan," correct?

13 A That is Channel 2 news, yes.

14 Q And you took this from Channel 2?

15 A I had a videotape of Channel 2 News.

16 Q And you made this from a videotape?

17 A Yes, sir.

18 Q The trial of Mr. Nosair lasted approximately how
19 many weeks?

20 A I don't recall exactly.

21 Q Did it last a number of weeks?

22 A Yes.

23 Q What was the day on which you took Government's
24 Exhibit 387F from a video that was on Channel 2 News?

25 A I don't recall the date, sir.

4869

1 Q How about Government's Exhibit 387A? Is that a
2 photograph that you took, Mr. Salem?

3 A It's also out of one of the videotapes from the
4 news broadcasts.

5 Q What day of the trial was this photograph taken?

6 A I have no idea, sir.

7 Q How about 387B?

8 A Yes. It is out of one of the videotapes from the
9 news broadcast as well, sir.

10 Q What day was this photograph taken?

11 A I don't recall, sir.

12 Q How about 387C?

13 A Yes. It is out of one of the video news
14 broadcasts, as well.

15 Q Do you know what day this photograph was taken?

16 A No, sir.

17 Q Do you know what day you took the photograph of
18 the videotape?

19 A No, I don't recall the exact date.

20 Q And you don't know the date that the events
21 depicted in the videotape took place either, do you, is that
22 correct?

23 A It was in the course of the trial of Mr. Sayyid
24 Nosair.

25 Q But you don't know which week of the trial that

4870

1 took place, do you?

2 A No, I don't recall, sir.

3 Q Would you know if it took place in November or
4 December or January?

5 A Sir, I said that I am bad at dates. Dates don't
6 register in my mind.

7 Q Dates are sometimes important, aren't they,
8 Mr. Salem?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q Government's Exhibit 387D.

12 A Yes, sir.

13 Q Is that also a photograph that you made of a
14 videotape?

15 A That is correct, sir.

16 Q Do you know the day that you made the photograph
17 from the videotape?

18 A No, sir, I don't.

19 Q Do you know the day that the events depicted in
20 the videotape took place?

21 A It was during one of the riots for Mr. Sayyid
22 Nosair's -- during his trial.

23 Q You said riots.

24 A Right.

25 Q There was more than one riot?

4871

1 A Yes, sir. There was --

2 Q What -- have you finished your answer?

3 A It was so many riots.

4 Q What were the dates of those riots?

5 A I don't recall dates, sir.

6 Q What was the date of the riot depicted in
7 Government's Exhibit 387D?

8 A I don't recall the exact date, sir.

9 Q Turning your attention to Government's Exhibit
10 387E, is that also a photograph that you took from a
11 videotape?

12 A Yes, sir.

13 Q Do you know the date that that event took place
14 that is shown in this photograph?

15 A Yes. That was the day that Mr. Michael Warren
16 and Mr. William Kunstler who were defending Mr. Sayyid
17 Nosair in front of the courthouse and they were giving a
18 media interview.

19 Q Do you know what they gave a media interview?

20 A No, sir.

21 Q Do you know if they gave media interviews on more
22 than one occasion?

23 A It was a different occasion, sir, yes.

24 Q And you don't know which occasion this interview
25 depicted in Government's Exhibit 387E took place, do you?

4872

1 A It was one of the occasions they left the
2 courtroom in front of the courthouse and the media waiting
3 for them, and they give the interview.

4 Q How about 387F? Do you know what day that took
5 place?

6 A I am sorry. Say it say it again, please.

7 Q Turning your attention to Government's Exhibit
8 387F, do you know what day that took place?

9 A That was one of the riots took place which I was
10 participating in during Mr. Sayyid Nosair's trial.

11 Q Do you know which day this riot that you
12 participated in took place?

13 A No, sir, I don't.

14 Q How about Government's Exhibit 387G? What day
15 did that take place?

16 A That was one of the days, there is a fight
17 occurred between the Muslim community and the Jewish
18 community in front of the courthouse during Mr. Sayyid
19 Nosair's trial as well.

20 Q That one of those riots or is that something
21 different?

22 A That was more than riots. That was a fight.

23 Q Fight is more than a riot?

24 A I would think so.

25 Q What day did this fight take place during the

4873

1 trial?

2 A Sir, again, I don't register dates. I am
3 terrible about dates.

4 Q You started working and going to the Nosair trial
5 in November of 1991, is that correct?

6 MR. McCARTHY: Objection, scope.

7 THE COURT: Sustained.

8 Q Government's Exhibit 387H, do you know what day
9 that took place?

10 A That was one of the riots for Mr. Sayyid Nosair's
11 trial as well, sir.

12 Q But you don't know which riot it was?

13 A It was so many riots. It wasn't only one riot,
14 it wasn't only one fight between the Muslims and the Jews.
15 It's just a number of them, different places.

16 Q 387I appears to be an interview of some sort, is
17 that correct?

18 A That is correct, sir.

19 Q Are you depicted in that photograph?

20 A I was on the left of the photograph at the back,
21 yes, sir.

22 Q Do you know when that photograph was taken?

23 A No, I don't recall dates, sir.

24 Q 387J.

25 A Yes, sir.

4874

1 Q Do you know when that photograph was taken?

2 A This was one of the fights also between the Jews
3 and the Muslims in front of the courthouse during Mr. Sayyid
4 Nosair's trial as well.

5 Q Are you depicted in that photograph?

6 A Yes, sir, I am there.

7 MR. STAVIS: Your Honor, I would object to
8 Government's Exhibits 387A, B, C, D, E --

9 THE COURT: Through J, right?

10 MR. STAVIS: Excuse me, your Honor.

11 THE COURT: Through J or is there one --

12 MR. STAVIS: No, there are exceptions.

13 THE COURT: Do you want to tell me the
14 exceptions. Thank you.

15 MR. STAVIS: The exceptions are Government's
16 Exhibits 387I and 387J.

17 THE COURT: The objections are overruled. 387A
18 through J are received.

19 (Government's Exhibits 387A through J were
20 received in evidence)

21 MR. McCARTHY: May I proceed, your Honor?

22 THE COURT: Go ahead.

23 BY MR. McCARTHY:

24 Q Mr. Salem, can you tell us first, when you use
25 the term riot, what do you mean by that?

4875

1 A We used to gather the Muslim community and keep
2 them demonstration in front of the courthouse --

3 Q Demonstrating is the word?

4 MR. JACOBS: Excuse me, your Honor. I object to
5 the word "we."

6 THE COURT: Overruled.

7 A And keep supporting Mr. Sayyid Nosair and
8 attacking the Jews and the Jewish people.

9 Q In your mind, is there any difference between a
10 riot and a demonstration?

11 A It's the same.

12 Q Directing your attention first to 387A in
13 evidence.

14 A Yes, sir.

15 Q Do you recognize some of the people depicted in
16 that photograph?

17 A Yes, sir.

18 MR. McCARTHY: Your Honor, may I ask the jury to
19 turn to 387A in the books?

20 THE COURT: OK.

21 MR. McCARTHY: Ladies and gentlemen, Mr.
22 Fitzgerald tells me it is the book that says 300 on the
23 side, if that helps. Government Exhibit 387 is the first
24 photograph.

25 Q Mr. Salem, directing your attention to 387, do

4876

1 you recognize some of the people depicted in that
2 photograph?

3 A Yes, sir, I do.

4 Q Can you tell us, please, first, directing your
5 attention to the top left-hand corner as you look at the
6 photograph, who you recognize?

7 A On the top left corner I notice that Mr. Mohammed
8 Saad, the cousin of Mr. Mohammed Sattar.

9 Q Do you see where I have placed some tabs for you
10 right next to the court original?

11 A Yes, sir.

12 Q On the left of this tab where I am putting my
13 finger now, would you please write the name Mohammed Saad.
14 Write "Saad" underneath "Mohammed," if you would.

15 A Yes, sir.

16 Q At this portion where you have written the word
17 "Mohammed," would you put an arrow, please, and point to the
18 person you have identified as Mohammed Saad.

19 A All right.

20 Q Do you recognize anyone else in that quarter of
21 the photograph, the top left-hand corner as you look at the
22 photograph?

23 A Yes, sir.

24 Q Who do you recognize?

25 A Mr. Siddig Ibrahim Siddig Ali.

4877

1 Q Would you please write "Siddig Ali" on the
2 right-hand side of the photograph. And would you put an
3 arrow on the place where you have started to write
4 Mr. Siddig, to the top of the person you have identified..

5 Moving to the center of the photograph, do you
6 recognize anyone in that portion of the photo?

7 A Myself.

8 Q Would you put "Emad Salem" and an arrow. And
9 would you put an arrow, please, toward your head.

10 Is there anyone else you recognize in that
11 photograph?

12 A Yes, there is.

13 Q Who is that?

14 A Some of the people who was working from the
15 security with Muslim forces.

16 Q Who do you recognize that to be?

17 A He is a police officer and in that time he was
18 working with Muslim people to secure the lawyers.

19 Q Would you please put on the right-hand part of
20 that tab "Security." Would you put an arrow showing who you
21 mean by that. Thank you.

22 Anyone else you recognize?

23 A Some individuals, I saw them but I don't know, I
24 didn't have their names.

25 MR. McCARTHY: Your Honor, may I display 387 to

4878

1 the jury with the markings Mr. Salem has made?

2 THE COURT: Yes.

3 Q Directing your attention now to 387B.

4 A Yes, sir.

5 Q Do you recognize any of the persons depicted in
6 that photograph?

7 A Yes, sir.

8 Q Tell us who you recognize.

9 A That's Mr. Mahmoud Abouhalima on the extreme left
10 of the picture.

11 Q That is on the extreme left as you look at the
12 photograph?

13 A Yes, sir.

14 Q Would you please in the tab that I have placed on
15 the bottom of the photograph write "Mahmoud Abouhalima."

16 Anyone else you recognize on that photograph?

17 A Yes, sir. I see Mr. Ibrahim El-Gabrownny,
18 Mr. Wahid and Mr. Nasser.

19 Q Who is Mr. Wahid?

20 A Mr. Wahid, he is individual show up in the trial
21 of Mr. Sayyid Nosair.

22 MR. McCARTHY: Let me interrupt you for a moment.

23 Your Honor, the government stipulates that is not
24 Mr. Wahid Saleh.

25 THE COURT: This is not the defendant Wahid Saleh

4879

1 in this case. Go ahead.

2 MR. NOOTER: Thank you.

3 Q Go ahead. Who is that individual?

4 A He is individual who said he is coming from
5 Canada to support Mr. Sayyid Nosair.

6 Q Who is the person you have identified as
7 Mr. Nasser?

8 A Mr. Nasser, he is a Palestinian individual with
9 the Palestinian scarf on the top of his head, and he used to
10 supply the Muslim community with beepers for communication.

11 Q Would you please on the tab I put on the top put
12 first on the left-hand side "Wahid." Then "IEG" for Mr.
13 El-Gabrowny in the middle. Then "Nasser" on the extreme
14 right. And from the names would you put arrows down to the
15 persons that you are talking about, to the extent you can.

16 Q Which one is Mr. Abouhalima?

17 A If I am looking at the picture, the one on the
18 extreme left, and then Mr. Wahid, the one who is smiling and
19 hugging Mr. Ibrahim El-Gabrowny. And the one on the extreme
20 right is Mr. Nasser, with the Palestinian scarf on his head.

21 Q Thank you. Turning to 387C, who do you recognize
22 in that photograph?

23 A I recognize again Mr. Nasser with the Palestinian
24 scarf on his head at the back of the picture; Mr. Ahmed
25 Abdel Sattar, on the left quarter, and when he was punching

4880

1 one of the Jewish guys.

2 Q Who else do you recognize in that photograph?

3 A There is the attorney for Mr. Sayyid Nosair.

4 Q Under Mr. Sattar, would you just please write
5 "Sattar." Thank you.

6 Directing your attention next to 387D, I want you
7 to answer this question yes or no. Do you recognize any of
8 the people depicted in that photograph?

9 A Yes, sir.

10 Q Who is it that you recognize, without giving us
11 any names?

12 A I recognize the individual in the extreme left of
13 the picture, and the one next to him at the extreme left
14 front.

15 Q The extreme left front of the picture?

16 A Yes, sir.

17 Q During the course of the Nosair trial, did you
18 know these men by name?

19 A No. I saw them attending the trial but I don't
20 know their names at that time.

21 Q Did there come a time that you learned their
22 names?

23 A Yes, sir.

24 Q Without telling us what their names were, can you
25 tell us how you learned their names?

4881

1 A I saw their pictures in the news in connection of
2 the --

3 MR. STAVIS: Objection, your Honor. Hearsay.

4 THE COURT: Overruled.

5 MS. AMSTERDAM: I would object on relevance
6 grounds, your Honor.

7 THE COURT: He is simply describing how it is he
8 learned the names. He is not saying what the names are.
9 Overruled.

10 A I saw their pictures on the TV later on in
11 connection of bombing the --

12 Q No, don't tell us in connection with what. Just
13 tell us where you saw the names.

14 A On TV, sir.

15 Q With respect to the first person that you have
16 identified in the left rear of the photograph, would you put
17 an arrow there and just put the number 1 next to that. And
18 with respect to the second person you have identified, would
19 you just put an arrow and a number 2. How about at the
20 bottom, so we can try to keep it clear.

21 Turning to 387E for identification and directing
22 your attention to the person in the left of that photograph,
23 can you, again without saying the name, if you recognize
24 that person.

25 A Yes, sir, I do.

4882

1 Q Is that a person who was in the previous photo?

2 A Yes, sir.

3 Q How did you identify him in the previous photo?

4 A I saw him --

5 Q Withdrawn. It's a bad question. On the tab that
6 you have written on, how have you identified him in the
7 previous photo?

8 A I put an arrow towards him.

9 Q And what number?

10 A Number 1.

11 Q Would you do the same thing on the next photo,
12 387E. The number 1.

13 Turning your attention to 387F for
14 identification, who do you recognize in that photograph?

15 A I recognize Mr. Hamdi Moussa in the middle of the
16 picture, Mr. Amend abdomen tell Sattar in the right of the
17 picture, and the back of Sheik Ali Shinawy.

18 Q In the bottom left tab, could you put the name
19 Shinawy. And then on the right of that tab would you put
20 the name Sattar, right here, on 387F, on the right.

21 And finally, next to the person who is standing
22 in the middle of the photo, who did you say that was?

23 A That was Mr. Hamdi Moussa.

24 Q Does he appear to be standing on anything?

25 A Yes, I think it's on the top of a car.

4883

1 Q Would you put his name, please, next to him.

2 Turning your attention to 387G, who do you

3 recognize if that photograph?

4 A I recognize Mr. -- in the extreme -- in the left

5 side of the picture, Mr. Mohammed Saad, and the second --

6 the third one is his cousin Mr. Ahmed Abdel Sattar.

7 (Continued on next page)

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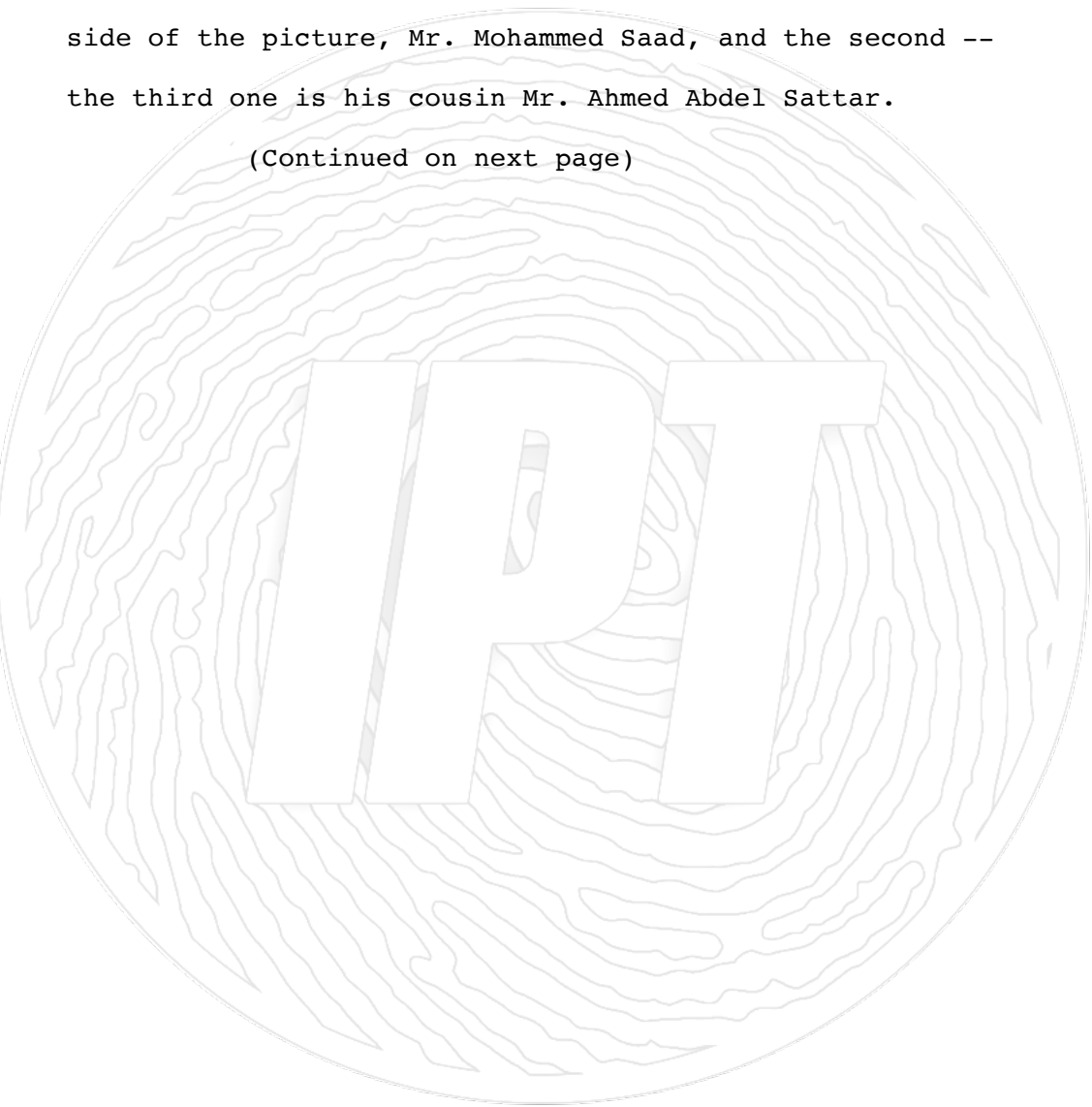
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4884

1 Q All right. You said Mr. Mohammed Saad and
2 Mr. Ahmad Abdel Sattar?

3 A Yes, sir.

4 Q All right. On the left side would you please
5 write "Saad."

6 Put an arrow in that direction. Thank you.

7 On the top, would you please write "Sattar" over
8 Mr. Sattar's head.

9 Turning next to 387H, for identification, do you
10 recognize anyone depicted in that photograph?

11 A Yes, sir, I do.

12 Q Who do you recognize?

13 A In the center, the middle of the picture, there
14 is Mr. Hesham Hemmamy wearing the taquiyya.

15 Q Do you recall testifying last week about a trip
16 that you took to Detroit, Michigan?

17 A Yes, sir.

18 Q Was that individual that you have identified in
19 this photograph one of the individuals who went with you to
20 Detroit?

21 A In the van, yes, sir.

22 Q Would you write "Hammamy," please, on the tab,
23 and an arrow, please.

24 Thank you.

25 387I for identification, who do you recognize in

4885

1 that photograph?

2 A I recognize myself in the extreme picture -- in
3 the extreme left of the picture, and in the middle,
4 Mr. Hamdi Mousa, and in the right, another individual who is
5 one of the Muslim supporters for Mr. Sayyid Nosair.

6 Q Above your picture would you please write "Emad
7 Salem."

8 Under Mr. Mousa's picture, "Hamdi Mousa. That is
9 M-O-U-S-A.

10 Finally, 387J, who do you recognize in that
11 photograph?

12 A In the extreme left, Mr. Nasser, Mohammed Saad,
13 with the Palestinian scarf, a little bit into the middle,
14 myself with the white hat and dark glasses. A little bit
15 after me, the third person after me or second person after
16 me at the back of the picture, Mr. Mohammed Saad.

17 Q Would you please write on the tab on the left
18 Nasser, N-A-S-S-E-R. Above you, would you write your name,
19 please. Write your last name under your first name. Add
20 Saad, S-A-A-D, over Mr. Saad.

21 Thank you. Mr. Salem, you also told us last week
22 in your testimony about a celebration at the Abu Bakr mosque
23 after the Nosair trial?

24 A Yes, sir.

25 Q I am placing before you a tape that's

4886

1 Government's Exhibit 384 for identification. I ask you if
2 you recognize that item.

3 A Yes, sir, I do.

4 Q How do you recognize the item?

5 A I have my initials on it.

6 Q Have you reviewed that item prior to testifying?

7 A Yes, sir.

8 Q What do you recognize that tape to be?

9 A It is a videotape to the celebration party for
10 Mr. Sayyid Nosair's acquittal from the murder charge in Abu
11 Bakr mosque.

12 Q Directing your attention to 384A through 384I for
13 identification, have you reviewed those photographs prior to
14 testifying?

15 A Yes, sir, I do.

16 Q Do you recognize the scene depicted in those
17 photographs?

18 A Yes, sir, I do.

19 Q What do you recognize that to be?

20 A It is still pictures taken out of the videotape
21 in the celebration party which took place in Abu Bakr
22 mosque.

23 MR. McCARTHY: Your Honor, the government offers
24 the video but not the audio portion of Exhibit 384, that is,
25 the videotape, and the government offers the still

4887

1 photographs marked 384A through 384I.

2 MR. RICCO: Your Honor, may I have a brief voir
3 dire on the video?

4 THE COURT: Mr. Ricco, on the video?

5 MR. RICCO: Yes.

6 THE COURT: Go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. RICCO:

9 Q Good morning, Mr. Salem.

10 A Good morning, sir.

11 Q You indicated that 384 is a video of what you
12 call a celebration at the Abu Bakr mosque?

13 A Yes, sir.

14 Q This videotape, however, is not the complete
15 celebration, is it, it is only parts of it, isn't that
16 right?

17 A I think it is most of the celebration from the
18 beginning until close to the end, until the last person
19 talked about it and everybody started to leave the mosque.

20 Q You claim that you watched this video, right?

21 A Yes, sir.

22 Q This video ends with a person speaking, isn't
23 that correct?

24 A Yes, sir.

25 Q The person speaking is Ibrahim El-Gabrownny, isn't

4888

1 that correct?

2 A I am not sure, either Mr. Ibrahim El-Gabrownny or
3 Mr. Siddig Ali. Either or.

4 Q Well, did you watch the video?

5 THE COURT: Excuse me, Mr. Ricco, could you talk
6 into the microphone so they can hear you. Thank you.

7 Q Did you watch the video?

8 A Yes, sir.

9 Q Can you tell us what you saw in the video.

10 A I saw that --

11 Q Let me ask you a question.

12 A Yes.

13 Q The last person who's speaking in this video that
14 is giving a speech --

15 A Yes, sir.

16 Q -- do you know who that person is?

17 A Either Mr. Ibrahim El-Gabrownny or -- it's more
18 likely Mr. El-Gabrownny, but Mr. Siddig took the microphone
19 and talked as well, so I don't want to assure that he was
20 the last person.

21 Q The last person that is speaking on this video --

22 A Yes, sir.

23 Q -- you hear the words, but you don't see them,
24 isn't that right?

25 A That's correct, sir.

4889

1 Q You don't see people leaving on this video, isn't
2 that correct?

3 A No, that's not correct, sir. People start to
4 leave in that time.

5 Q What is the last thing that you see on this
6 video?

7 A The video was going through the ceiling and down,
8 and it wasn't -- it was a random movement for the camera.

9 Q So at the end of the video, it's almost as if the
10 person put the video camera down, but they kept the audio
11 going, isn't that right?

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 Q Do you know how this video was made?

15 A Yes, sir, I know.

16 Q Was it made by you?

17 A I took part of making it, yes.

18 Q Did you operate the camera?

19 A Yes, sir.

20 Q In what parts of this were you operating the
21 camera?

22 A I operated the camera in the part when I am
23 zooming in on certain individuals, I would like to emphasize
24 them later on to the FBI.

25 Q OK. You got this video camera from whom?

4890

1 A There is an individual in the mosque, he was
2 running the camera, and I offered to help him taping, and I
3 took it from him, I did some taping, I give it back to him
4 as well.

5 Q After the evening, you took the VHS out of the
6 camera, right?

7 A No.

8 Q You took the tape?

9 A Pardon me?

10 Q You took the tape, isn't that right?

11 A Yes, sir.

12 Q You took it back to your apartment?

13 A Yes, sir.

14 Q Eventually you gave it to the FBI, isn't that
15 right?

16 A Yes, sir.

17 Q They made copies for you?

18 A Yes, sir.

19 Q You distributed those copies backs to the people
20 at the mosques, right?

21 A Yes -- well, they made like a few copies, I give
22 it back to them, yes.

23 MR. RICCO: Just a couple of questions on the
24 photographs, your Honor.

25 Q The photographs that were taken from the video,

4891

1 did you take those photographs yourself or did the FBI take
2 those photographs?

3 A I think the FBI took them. It is not my
4 pictures.

5 MR. RICCO: I have no further questions.

6 THE COURT: All right. 384 and 3 --

7 MR. RICCO: May I have one second, your Honor?

8 THE COURT: Yes.

9 MR. McCARTHY: We are OK.

10 THE COURT: 384 and 384A through I are received
11 without objection.

12 (Government's Exhibits 384 and 384 A through I
13 for identification were received in evidence)

14 THE COURT: Go ahead.

15 MR. McCARTHY: Your Honor, I don't propose at
16 this time to play from the video, but I would like to ask
17 some questions about the still photographs.

18 THE COURT: Go ahead.

19 DIRECT EXAMINATION (continued)

20 BY MR. McCARTHY:

21 MR. McCARTHY: Ladies and gentlemen, these are
22 photographs which I believe are in your books, tab 384.

23 Mr. Salem, beginning with 384A, who is the person
24 depicted in that photograph?

25 A Mr. Ibrahim El-Gabrownny, sir.

4892

1 Q Can I just ask you to write "IEG" in the tab.

2 Thank you.

3 A You're welcome.

4 Q Who is the person depicted in the photograph
5 marked 384B in evidence?

6 A Mr. Siddig Ibrahim Siddig Ali.

7 Q Would you please write "Siddig Ali."

8 Thank you. Turning to 384C for identification,
9 without telling us the names of the people you see depicted,
10 can you tell us, please, if you recognize anyone?

11 A Yes, I recognize two individuals here.

12 Q Are they the same two individuals you told us
13 about before?

14 A Yes, sir.

15 Q With respect to the individual that you recognize
16 on the right, would you please put the number 1.

17 With respect to the individual on the left, would
18 you put the number 2.

19 Directing your attention to 384D, do you
20 recognize in 384D any of the persons who are depicted in
21 384C?

22 A Yes, sir, I do.

23 Q What number did you use in 384C for the person
24 you see depicted in 384D?

25 A The individual number 2.

4893

1 Q Would you again put number 2 above that person's
2 head.

3 By the way, Mr. Salem, was Mr. Sayyid Nosair in
4 attendance at this party?

5 A No, sir. He was on the trial at that time.

6 Q Directing your attention to 384E, for
7 identification, do you recognize anyone depicted in that
8 photograph?

9 A Yes, sir, I do.

10 Q Who do you recognize?

11 A In the left of the picture, left front, Mr. Ali
12 Shinawy, and, right next to him, next to the next to him,
13 Mr. Tarek Khateria, and, on the extreme right of the
14 picture, myself.

15 Q Let me ask you, on the tab at the bottom left, in
16 the corner of that tab, could you put the name "Shinawy,"
17 S-H-I-N-A-W-Y.

18 To the right of that tab, would you put the name
19 "Khateria," K-H-A-T-E-R-I-A. And then would you put the
20 initials "ES" for yourself on the right tab.

21 Directing your attention to 384F in evidence, who
22 do you recognize in that photograph?

23 A On the extreme left, one of the individuals from
24 the security people from the Abu Bakr mosque. In the middle
25 of the picture Mr. Ahmed Abdel Sattar.

4894

1 Q Under Mr. Sattar's picture, would you write
2 "Sattar." And on the left of the tab would you write
3 "security" and put an arrow.

4 Thank you.

5 A You're welcome.

6 Q 384G for identification, do you recognize the
7 person depicted in that photograph?

8 A Yes, sir, I do.

9 Q Did you ever meet this individual?

10 A Yes, sir.

11 Q Can you tell us where you met this person.

12 A Well, originally he used to live with Sheik Omar
13 Abdel Rahman in his house. He used to drive him to bring
14 him to the mosque. He used to come to the courtroom where
15 is Mr. Sayyid Nosair's trial took place, and he participated
16 in most of the trials or some of the trials for --

17 Q Let me stop you for a minute. When you say he
18 participated in the trial, you mean he went there?

19 A Not trials, I'm sorry. Riots, he took place for
20 Mr. Sayyid Nosair.

21 Q Did he ever identify himself to you?

22 A Yes.

23 Q What did he tell you his name was?

24 A Mr. Ahmed Abdel Rahman.

25 Q Where did he tell you he was from?

4895

1 A Iraq.

2 Q Iraq?

3 A Yes, sir.

4 Q Could you write the name Abdel Rahman, please?

5 Turning your attention to 384H for

6 identification, do you recognize anyone depicted in that

7 photograph?

8 A Yes, sir, I do.

9 Q Who do you recognize?

10 A Mr. Hussein Safwan.

11 Q Could you write the name "Safwan" at the bottom.

12 Can you tell us where you met Hussein Safwan?

13 A I met him in Abu Bakr mosque. He attended some
14 of the trials of Mr. Sayyid Nosair as well.

15 Q That's Safwan, S-A-F-W-A-N?

16 A I think, yes, sir.

17 Q Finally, let me direct your attention to 384I, in
18 evidence. Do you recognize the person depicted in that
19 photograph?

20 A Yes, sir.

21 Q Who do you recognize that to be.

22 A Mr. Mustafa Asadd.

23 Q Could you write Mr. Mustafa Asadd's name,

24 M-U-S-T-A-F-A, A-S-A-D-D.

25 Did you see Mr. Mustafa Asadd at Mr. Nosair's

4896

1 trial?

2 A Yes, sir.

3 Q Thank you.

4 A You're welcome.

5 Q I'm sorry. Mr. Salem, just --

6 MR. McCARTHY: Your Honor, I am not going to ask
7 to pass these to the jury at this time. I just want to
8 clarify by referring to the clothing.

9 Directing your attention to 384E, the photograph
10 you have identified with Mr. Shinawy in.

11 A Yes, sir.

12 Q Can you tell us what Mr. Shinawy is wearing in
13 that photograph?

14 A He's wearing a white taquiyya.

15 Q Taquiyya is that cap that you told us about last
16 week?

17 A Yes, sir. He's white bearded with a brownish
18 sweater and a white shirt underneath.

19 Q Can you tell us what Tarek Khateria is wearing?

20 A Tarek Khateria is wearing a jacket for a suit and
21 a slack different color a little bit.

22 Q In the photograph 384F, where you have identified
23 Mr. Sattar, can you tell us what he's wearing?

24 A A blue T-shirt.

25 Q In 384H, where you have identified Mr. Hussein

4897

1 Safwan, can you tell us what he's wearing?

2 A A bluish jacket.

3 Q Does he appear to be doing anything with his --

4 A He's extending his left hand talking to somebody
5 asking for something.

6 Q Thank you.

7 A You're welcome.

8 Q Mr. Salem, I want to show you some cassette
9 tapes.

10 A Yes, sir.

11 Q Directing your attention to Government's Exhibits
12 850 and 851 in evidence, did you listen to those cassettes
13 prior to your testimony here this morning?

14 A Yes, sir, I did.

15 Q How do you know that you listened to them?

16 A Because I have my -- I wrote down the names of
17 the individuals who's talking on these tapes.

18 Q Did you recognize voices on 851?

19 A Yes, sir.

20 Q Can you tell us, please, whose voices you
21 recognized on 851?

22 A Sheik Omar Abdel Rahman and Mr. Sayyid Nosair.

23 Q Did you write those on the tab at the back of the
24 tape?

25 A Yes, sir.

4898

1 Q Directing your attention to 850 in evidence, did
2 you listen to that tape and recognize some of the voices?

3 A Yes, sir, I did.

4 Q Whose voice did you recognize on that tape?

5 A Sheik Omar Abdel Rahman and Mr. Sayyid Nosair.

6 Q Directing your attention to 852 for
7 identification, an exhibit that is not yet in evidence at
8 this time, did you listen to that tape?

9 A Yes, sir, I did.

10 Q Did you recognize any voices on that tape?

11 A Yes, sir, I did.

12 Q Whose voices did you recognize?

13 A Sheik Omar Abdel Rahman and Mr. Mahmud
14 Abouhalima.

15 Q Were there other voices on that tape that you did
16 not recognize?

17 A There is another two individuals I could not
18 recognize their voices, sir.

19 Q In these tapes, the three tapes, 852, 851, and
20 850, did Mr. Nosair and Mr. Mahmud Abouhalima refer to
21 themselves by a name?

22 MS. STEWART: Objection, Judge.

23 THE COURT: Overruled.

24 A Yes, sir, they did.

25 Q What name did they refer to themselves as?

4899

1 A Abu Abdallah.

2 Q Abu Abdallah?

3 A Abu Abdallah.

4 Q A-B-U, A-B-D-A-L-L-A-H?

5 A Yes, sir.

6 Q Mr. Salem, I want to refer you to a couple of
7 other items you referred to in your testimony last week.

8 I am placing before you 3534L for identification,
9 which I believe you identified last week. What is that
10 item?

11 A This is the certificate Mr. Ferguson give to me
12 when I used to attend the firearms training.

13 MR. McCARTHY: Your Honor, the government offers
14 3534L.

15 MR. STAVIS: Objection, relevance, your Honor.

16 THE COURT: I will allow it. Go ahead. 3534L is
17 received.

18 (Government's Exhibit 3534L for identification
19 was received in evidence)

20 Q Showing you Government's Exhibit 392 for
21 identification, do you recognize what's contained in that
22 item?

23 A Yes, sir, I do.

24 Q How are you able to recognize it?

25 A This is the box of the cartridges, shells for the

4900

1 nail gun which was given to me by Mr. Ibrahim El-Gabrownny.

2 MR. McCARTHY: Your Honor, the government offers
3 392.

4 MR. RICCO: Your Honor, may I have voir dire,
5 please.

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. RICCO:

9 Q These are the carpenter nails that you were
10 talking about last week?

11 A Yes, sir.

12 Q You claim that Mr. El-Gabrownny gave these
13 carpenter nails to you?

14 A Yes, sir.

15 Q When did he give these carpenter nails to you?

16 A He gave it to me, I don't recall the date, but he
17 give it to me during the time when he saw Mr. Ferguson
18 reloading the bullets in the firearm training course and he
19 suggested to me that he will give me these cartridges to get
20 the powder out of it, and he is a contractor, carpenter,
21 licensed, and he can get me thousands of them.

22 Q You were going to get the powder out of these?

23 A Yes, sir.

24 Q This was for the purpose of making bombs, right?

25 A Yes, sir.

4901

1 Q When Mr. El-Gabrownny gave you these carpenter
2 nails, you, of course, reported that to the FBI, isn't that
3 correct?

4 A Yes, sir.

5 Q You took them these carpenter nails didn't you?

6 A I beg your pardon?

7 Q You took these carpenter nails to the FBI, didn't
8 you?

9 A Yes, sir.

10 Q What did they do with them?

11 A One of the agents opened one of them and checked
12 the powder in it and it gives -- an amount of gas and flame,
13 and he said, "It's too small. I don't think it will help
14 build bomb."

15 Q He gave them back to you, isn't that right?

16 A Yes, sir.

17 MR. RICCO: I have no further questions.

18 No objection, your Honor.

19 THE COURT: 392 is received.

20 (Government's Exhibit 392 for identification was
21 received in evidence)

22 DIRECT EXAMINATION (Continued)

23 BY MR. McCARTHY:

24 Q Now, Mr. Salem, when we broke last week, you were
25 telling us about a meeting that you had with Mr. El Sayyid

4902

1 Nosair up at Attica prison.

2 A Yes, sir.

3 Q Do you recall who went with you to the meeting?

4 A Yes, sir, I do know.

5 Q Who went with you to the meeting that you
6 testified about last week?

7 A Mr. Mohammed El-Gabrownny and Mr. Tarek Khateria.

8 Q You told us last week, I believe, that you were
9 unable to put a date on the time of this meeting, do you
10 recall that?

11 A Yes.

12 Q As you sit here today, are you now able to put an
13 approximate date on the meeting?

14 A Approximately, yes.

15 Q What was the approximate date?

16 A Around the springtime in 1992.

17 Q How do you know now that it was around the
18 springtime of 1992?

19 A Over the weekend I reviewed an audiotape for
20 myself. I was making a reservation for a car to go to a
21 trip to Attica around the 4th of July, and I remember that I
22 did two trips prior to this attempt a, month prior to that
23 and another month prior to this trip, so it will be around
24 the springtime 1992.

25 Q That's two trips prior to the 4th of July?

4903

1 A Yes, sir.

2 Q Directing your attention to Government's Exhibit
3 629A for identification --

4 A Yes, sir.

5 Q -- do you recognize that tape?

6 A Yes, sir, I do.

7 Q How are you able to recognize it?

8 A I put some -- name on it here, and my initials.

9 Q Referring to the back of the tape, what is
10 referred to as the B side, did you make any inscription on
11 the B side after you listened to it?

12 A Yes, I did, sir.

13 Q What inscription did you put?

14 A It's July '92.

15 Q Did you do that in English or Arabic?

16 A In Arabic.

17 Q Is this the tape that you listened to to refresh
18 your memory?

19 A Yes, sir, I did.

20 Q Who made that tape?

21 A I did, sir.

22 Q Mr. Salem, did there come a time after your first
23 trip up to Attica that you made a second trip up to the
24 Attica prison?

25 A Yes, sir.

4904

1 Q How long after the first trip did you make the
2 second trip?

3 A Around a month later.

4 Q How did it happen that you went to Attica a
5 second time?

6 A Mr. Ibrahim El-Gabrowny told me that Sayyid
7 Nosair wanted to talk to me, I have to go. Mr. Ali Shinawy
8 made arrangement for one of the buses who goes all the way
9 to Attica, and we went, Mr. Ali Shinawy and myself.

10 Q The "we" who went was you and Mr. Ali Shinawy?

11 A Yes, sir.

12 Q Did you have some conversation with Ibrahim
13 El-Gabrowny before you went on the second trip to Attica?

14 A Yes, sir.

15 Q Can you tell us about that conversation?

16 A He was referring that Mr. Sayyid Nosair is very
17 upset, that we are sitting outside --

18 MR. STAVIS: Objection as to the double hearsay,
19 your Honor.

20 THE COURT: Overruled.

21 Q You can continue your answer.

22 A He was telling me that Mr. Sayyid Nosair mad at
23 him because he did his part and they are sitting outside
24 doing nothing.

25 Q Let me stop you. Who was the "he" who had done

4905

1 his part?

2 A Mr. Sayyid Nosair.

3 Q And who was the "him" that Sayyid Nosair was
4 upset at?

5 A Mr. Ibrahim El-Gabrownny.

6 Q Continue your answer.

7 A He wants me to go to visit him in Attica, in
8 jail. And Mr. Ali Shinawy was present, and he said that he
9 will come with me. I said, "How we going to go?"

10 He said, "There is a bus who goes to the prison
11 in Attica," and he will make arrangements to go.

12 Q Mr. Salem, you told us last week in your
13 testimony that in the first trip that you had taken to
14 Attica the subject of obtaining some items for making bombs
15 came up, do you recall that?

16 A Yes, sir.

17 Q What were you told about where you could obtain
18 items for making bombs?

19 A I was told to obtain these items from Canal
20 Street and Chinatown.

21 Q After you went on the first trip to Attica, did
22 you act on what you were told in any way?

23 A Yes, sir.

24 Q Can you tell us what you did.

25 A I went to the store, which it was described to me

4906

1 by Mr. Sayyid Nosair. I bought the fuse. I went to the
2 other store, the security alarm systems store, I bought the
3 timer.

4 I went to Mott Street; I bought the M80s.

5 Q After you obtained those items, did you have some
6 discussion with Mr. El-Gabrowny?

7 A Yes, sir.

8 Q Can you describe for the ladies and gentlemen of
9 the jury the discussion you had with Ibrahim El-Gabrowny
10 after purchasing those items on Canal Street.

11 A I showed him the items, and he was not happy
12 about the timer. He said the timers -- it used to be used
13 during my grandmother's ages. Right now, there is something
14 called remotes.

15 Q I am sorry?

16 A A remote --

17 Q I am sorry. Did you say "remote"?

18 A Yes, remote.

19 Q Can you explain to us -- just let me stop you in
20 your answer for a moment. Can you explain to us what a
21 remote is.

22 A It is a device can control switch on and off from
23 a distance.

24 Q Did Mr. El-Gabrowny describe to you where you
25 might be able to obtain a remote?

4907

1 A Yes, sir.

2 Q Tell us what he told you about that.

3 A He said that you can get a remote, a remote from
4 Canal Street where if the toys -- there is some toy store
5 over there, they sell airplanes. You can fly them with a
6 remote and that is how you can -- all what you need switch
7 on and off and this remote will do the trick.

8 Q So you are talking about a toy airplane?

9 A Yes, sir.

10 Q That you could fly from a remote control panel?

11 A Yes, sir.

12 Q Did he tell you anything or say anything to you
13 about how long the distance between the remote and the item
14 it was controlling could go?

15 A He said this remote will give you 100 to 150
16 feet, and that's sufficient for our purpose.

17 (Continued on next page)

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4908

1 Q Did Mr. El-Gabrownny give you any example of the
2 use of a remote versus the use of the timer?

3 A Yes, sir.

4 Q Can you tell us about that example?

5 A We were driving with Mr. -- I was in Mr. Ibrahim
6 El-Gabrownny's car. We were driving around some of the
7 Jewish people community in Brooklyn, and we were talking
8 about the remote and the timer. We stopped in front of --
9 at a place. He point to a house. He say, for example, if
10 we want to kill Dov Hikind and we set the timer on 7:00, and
11 it went off at 7, the guy coming out at 7:05, then we lose,
12 we don't accomplish the mission, and we lose it. We make a
13 noise and that's it.

14 Q Did there come a time in this same time frame
15 when you had a discussion with Mr. El-Gabrownny about the
16 subject of underground people?

17 A Yes, sir.

18 Q Can you tell us what was said about underground
19 people in your discussion with Mr. El-Gabrownny?

20 A That was in Abu Bakr Mosque in Brooklyn, and we
21 were talking about the same subject. I told him who going
22 to be helping me building these things and distributing it.
23 Mr. Ibrahim El-Gabrownny told me when the right time comes
24 you going to meet the underground people.

25 Q Did he identify to you at that time who the

4909

1 underground people were?

2 A No, sir.

3 Q Did he ever identify to you who the underground
4 people were?

5 A No, sir.

6 Q Mr. Salem, how long after the first trip that you
7 made to Attica was the second trip to Attica?

8 A A month later.

9 (Continued on next page)

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1 Q How did you go and who did you go with?

2 A Second trip --

3 MR. RICCO: Your Honor, can we approach for a
4 second?

5 THE COURT: Yes.

6 (At the side bar)

7 MR. RICCO: Judge, sorry for the interruption.
8 Judge, I am concerned that Mr. Salem is testifying to
9 conversations in the context of in between his first trip to
10 Attica when Mr. Nosair is supposedly telling him we want you
11 to go out and make bombs, and the second trip, but we are
12 really not clear as to whether or not that is that
13 conversation that he is testifying to that he had with Mr.
14 El-Gabrownny that took place in between those trips or before
15 those trips, and I am just concerned that the jury is not
16 being given the sequence that was in fact something that he
17 remembers happening.

18 MR. MCCARTHY: Your Honor, in fact I am giving
19 them the best sequence that can be given, given the
20 demonstrable limitations of this witness to remember
21 specific dates and times.

22 MR. RICCO: Judge, let me say this, I don't like
23 to jump up and go when, when, when. It becomes --

24 THE COURT: I know. But I think when you change
25 a subject and you ask did there come a time when you talked

4911

1 to underground people, for example, you have some obligation
2 to make it clear again that he can't place it in time, if he
3 can't place it in time. If he can't place it between the
4 two trips, which is what he is talking about, you are
5 creating the situation by talking about a sequence where the
6 impression is created that it occurred between the two
7 trips. If you talk about trip A, underground people, trip
8 B, whether he can recall that it happened at that time or
9 not, the impression is created that that is when it
10 happened. It is a justifiable complaint.

11 MR. McCARTHY: I want to assure the court and
12 counsel that I didn't set up a sequence --

13 THE COURT: He is just saying that is the effect.

14 MR. McCARTHY: I will ask more questions.

15 (In open court)

16 MR. McCARTHY: Your Honor, before I proceed, I
17 just want to clarify the record, I think I erroneously
18 referred to the tape as Exhibit 629A. The tape is actually
19 Exhibit 629, and the envelope in which it was contained is
20 629A.

21 (Continued on next page)

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4912

1 BY MR. McCARTHY:

2 Q Mr. Salem, a couple moments ago you told us about
3 a conversation you had with Mr. El-Gabrowny on the subject
4 of underground people. Do you recall that?

5 A Yes, sir.

6 Q What is your best recollection as you sit here
7 today of when that conversation took place?

8 A That was after the first visit and before the
9 second visit.

10 Q When you say the first visit and the second
11 visit, you are referring to visits to where?

12 A To Attica.

13 Q I think I started to ask you about who you went
14 on the second visit with and how you got there. Do you
15 recall that?

16 A Yes, sir.

17 Q Why don't you tell us with whom you went to
18 Attica on the second visit.

19 A The second visit, I went with Mr. Mohammed
20 El-Gabrowny and Mr. Khatteria, in Mr. Khatteria's car.

21 Q Was that the first visit or the second visit?

22 A To Attica was the second visit.

23 Q Didn't you testify it was --

24 A I am sorry.

25 MR. STAVIS: Objection, your Honor, as to form of

4913

1 the question.

2 THE COURT: Sustained as to form.

3 Q Please let me ask a question. You have already
4 testified to a visit up to Attica, correct?

5 A Yes, sir.

6 Q As you sit here today, the visit that you have
7 already told us about, do you recall which visit to Attica
8 that was?

9 A The first visit, which was Mr. Khatteria and
10 Mr. Mohammed El-Gabrownny.

11 Q Do you recall making a second visit?

12 A Yes, sir.

13 Q Who did you go with on the second visit?

14 A Mr. Ali Shinawy.

15 Q How did you get there?

16 A We went on the bus.

17 Q How did you get the bus?

18 A Mr. Ali Shinawy make arrangements for the bus.

19 Q What do you mean?

20 A You have to register names prior to the trip and
21 you have to make a reservation prior to the trip.

22 Q Do you recall where you left to go on the bus
23 ride to Attica?

24 A It was a place around 57th Street, there is a bus
25 come and pick up the visitors to the jail, the people who

4914

1 register before.

2 Q The people who what?

3 A Who were registered on the list of this bus.

4 Q Did you use the word registered? I am sorry. I
5 just didn't hear your answer.

6 A Yes, sir.

7 Q When you say 57th Street, you are talking about
8 57th Street in Manhattan?

9 A Yes, sir.

10 Q How long is the bus trip from 57th Street in
11 Manhattan up to Attica?

12 A Between 8, 9 hours, 10 hours, something that
13 effect. It's different.

14 Q What happened when you got to Attica?

15 A We visited, we saw Mr. Sayyid Nosair.

16 Q Did you have a conversation with him?

17 A Yes.

18 Q Who was present during the conversation?

19 A Mr. Sayyid Nosair, Mr. Ali Shinawy and myself.

20 Q Can when you started the conversation, did Mr.
21 Nosair take any particular tone with you?

22 A Yes, he was angry with me.

23 Q Describe for us, please, your conversation at the
24 beginning.

25 A He said you told us that you going to do

4915

1 something, you said that you want to be a good mujahed, you
2 said you want to do something for jihad, and here you sit
3 here doing nothing and you didn't do anything. I showed him
4 piece of the fuse, I bought it from Canal Street. I told
5 him, I think I was doing my best but one hand will never
6 clap.

7 Q You said to him one hand will never clap?

8 A Yes.

9 Q What does that expression mean?

10 A It's back in Egypt we say that one hand will
11 never clap but two hands will clap, and I intend to say that
12 by myself I will never do anything, I got the fuse, I got
13 some other things, I couldn't bring it with me, and you got
14 to give me somebody to help me.

15 Q Let me stop you there for a moment. You said you
16 had the fuse and there were other things you couldn't bring
17 with you?

18 A Yes.

19 Q What did you mean by that?

20 A The fuse, I took a piece with me to show him that
21 I am doing something, I am not just sitting, and the fuse
22 can also go through the magnetometer without setting the
23 alarm off in jail.

24 Q Can you give the jury some understanding of what
25 you understood the fuse to be made out of?

4916

1 A It's like piece of rope.

2 Q Rope?

3 A Yes, piece of rope, and it's being soaked in a
4 certain material to keep the -- to be ignited through the
5 wires, and to carry the flame to the bomb, to detonate it.

6 Q What were the items that you couldn't bring in
7 with you?

8 A Of course I could not bring the timer with me,
9 because the timer, it's made from metal and plastic, and
10 it's big and it can show and it can set off the magnetometer
11 in jail.

12 Q When you showed the fuse to Mr. Nosair in jail,
13 was there any conversation?

14 A Yes, I show him the fuse, Mr. Ali Shinawy took it
15 to put in can of soda to hide it, because he don't want me
16 to display there. Mr. Sayyid Nosair said OK, if you have
17 these things you better be careful, don't keep it in your
18 house, because the FBI right now they have very
19 sophisticated things to detect -- to discover these things,
20 and you better get yourself a safe place to work on it.

21 Q Was there any discussion about who if anyone
22 would help you building bombs?

23 A Yes, Mr. Ali Shinawy, he said he will help me,
24 and Mr. Sayyid Nosair suggested Mr. Emad Abdou to help me
25 building the bombs.

4917

1 Q That is Emad Abdou?

2 A Yes, sir.

3 Q That is one of the persons you testified about
4 last week?

5 A Yes, sir.

6 Q Mr. Salem, did the topic of who the main targets
7 of the bombs would be come up?

8 A Yes, sir.

9 Q What was said in that regard?

10 A The same target, he talk about it before. He
11 want to kill the judge and Mr. Dov Hikind.

12 Q Did the topic of Sheik Omar Abdel Rahman come up?

13 A Yes, sir.

14 Q Can you tell us what was said about Sheik Omar
15 Abdel Rahman?

16 A He told Sheik Ali Shinawy to go to Sheik Omar to
17 take a fatwa.

18 Q What do you mean by a fatwa?

19 A Fatwa, it's a religious order or a religious
20 justification for the act.

21 Q What did Mr. Shinawy say what Mr. Nosair told him
22 to get a fatwa from Sheik Omar Abdel Rahman?

23 A He said yes, he will do.

24 Q Mr. Salem, did the topic of Iran, that is, the
25 country Iran, come up?

4918

1 A Yes, sir.

2 Q What was said about Iran?

3 A Mr. Sayyid Nosair told Mr. Ali Shinawy that he
4 had learned lately that Iran had an agreement with United
5 States to switch hostages, and he asked him to contact Sheik
6 Abou El Kasem.

7 Q Let me stop you there.

8 A A-B-O-U, E-L-K-A-S-E-M, or I-M.

9 Q To contact Sheik Abou El Kasem for what?

10 A To contact sheik from the Refugee Kifah Center
11 office in Brooklyn.

12 Q Let me stop you again. From what refugee center?

13 A Refugees Kifah.

14 Q Is that the Alkifah Refugee Center?

15 A Yes, sir, and they arrange to contact the proper
16 authorities in the Iranian government, to make arrangements
17 to switch hostages with Sayyid Nosair.

18 Q Are you saying that is what they did do or that
19 is what he said to do?

20 A I am sorry.

21 Q Are you saying that is what they did do or what
22 he said to do, Mr. Sayyid Nosair?

23 A Mr. Nosair told Mr. Shinawy to contact through
24 Mr. Abou El Kasem the proper authorities in Iran to make
25 arrangements to switch hostages with him, American hostage

4919

1 with Mr. Sayyid Nosair.

2 Q Mr. Salem, I want to ask you, how many times in
3 your life have you visited with Sayyid Nosair in a jail?

4 A I had one Rikers Island and -- three, four times.

5 Q When you answer a question, you have to keep your
6 voice up so everyone can hear you.

7 A Yes, sir.

8 Q How many times?

9 A Four times.

10 Q Where are the places where you visited him in
11 jail?

12 A The first visit was in Rikers Island. The
13 second, the third and the fourth was in Attica prison.

14 Q When you went to visit Mr. Nosair, generally
15 speaking how long did the visits last?

16 A Around five hours.

17 Q Can you tell us whether, and I would ask you to
18 answer this question yes or no -- whether the topic of the
19 United States and Israel came up at any of your visits?

20 A Yes, sir.

21 Q How frequently did it come up?

22 A Constant, it's a constant subject.

23 Q Can you tell us, please, what Mr. Nosair said
24 generally about the United States and Israel?

25 MR. STAVIS: Objection as to form, your Honor.

4920

1 THE COURT: Leave off the word "generally." What
2 did he say?

3 A He said he was mad at United States because
4 United States being run from the political point of view by
5 the Jews. Even the justice system is being run through
6 judges and so on, by the Jews. The political things
7 influenced in the United States on the Middle East
8 controlled by the Jews.

9 MR. STAVIS: Your Honor, I would ask that answer
10 be stricken as unresponsive to the question because it was
11 the original question that he was answering.

12 THE COURT: Overruled. Come to a convenient
13 break point within the next 10 minutes.

14 MR. McCARTHY: I am there now, your Honor.

15 THE COURT: Ladies and gentlemen, we are going to
16 take a short break. Please leave your notebooks and other
17 materials behind. Please don't discuss the case, and we
18 will resume in a few minutes.

19 (Jury excused)

20 (Recess)

21 (Jury present)

22 THE COURT: Go ahead, Mr. McCarthy.

23 MR. McCARTHY: Thank you, your Honor.

24 BY MR. McCARTHY:

25 Q Mr. Salem, when we broke you were telling us

4921

1 about your second trip to Attica. Do you recall that?

2 A Yes, sir.

3 Q How did you come back from Attica?

4 A The same bus who take us to Attica wait until we
5 finish the visit and then bring us back from Attica.

6 Q Can you remind us who the we is that you are
7 talking about?

8 A Yes, sir, Mr. Ali Shinawy and myself.

9 Q How long is the bus ride back?

10 A Around nine hours, 10 hours.

11 Q Did you have some conversation with Mr. Shinawy
12 about the meeting you had with Mr. Nosair during the bus
13 ride back?

14 A Yes, sir.

15 Q Can you tell us, please, when you communicated
16 with Mr. Shinawy, what language did you communicate in?

17 A Arabic language.

18 Q How about with Mr. Nosair?

19 A Arabic language.

20 Q Can you tell us, please, or explain to the ladies
21 and gentlemen of the jury about the conversation you had
22 with Mr. Shinawy on the bus trip back from Attica.

23 A We were talking about the same subject. We were
24 talking about it during our visit to Mr. Sayyid Nosair, and
25 I told him, who going to help me to build these bombs?

4922

1 Mr. Sayyid Nosair told me Emad Abdou. That's not enough.

2 You have somebody else? And he said yes.

3 Q Who did Mr. Shinawy say about who else he had to
4 help you?

5 A Mr. Mustafa Assad.

6 Q Directing your attention to 384I in evidence, the
7 photograph that you identified this morning, who is that?

8 A Mm Mustafa Assad.

9 Q Did Mr. Ali Shinawy identify or propose to you
10 anybody else who could help you?

11 A Yes, sir.

12 Q Who was that?

13 A Mr. Mohammed El Zawan.

14 Q That is El Zawan?

15 A Z-A-W-A-M.

16 Q N as in Nancy?

17 A M as in Mary.

18 Q M as in Mary?

19 A Yes.

20 Q I am sorry.

21 What if anything was said sir, about how many
22 bombs would be needed for construction?

23 A Mr. Ali Shinawy told me 12.

24 Q Did he say anything about the distribution of the
25 12 bombs?

4923

1 A Yes. He said 12 bombs and it will be
2 distributed -- basically there is two bombs, one for the
3 judge, one for Dov Hikind, and the rest will be distributed
4 on different other targets.

5 Q Was anything said about the timing of when the
6 bombs would go off?

7 A Yes. He said it will be -- all of them will go
8 off in one time, we set the timer for all of them to go in
9 one time.

10 Q Any description of what kind of bombs it would
11 be?

12 A When he ask me what kind of materials you need, I
13 told him pipes and powder and fuses and timers.

14 Q Was anything said about where the pipes could be
15 obtained?

16 A Yes, sir.

17 Q Tell us what was said in that regard.

18 A Mr. Ali Shinawy said that he knows a brother
19 Muslim in the Muslim community who works as a plumber, and
20 he will get the pipes from him.

21 Q Mr. Salem, in your conversation with Mr. Shinawy,
22 did the subject of firearms come up?

23 A Yes, sir.

24 Q Can you tell us what was said about firearms?

25 A He was telling me that it's a sunna of Prophet

4924

1 Mohammed to carry a weapon.

2 Q Let me interrupt you. What do you mean by a
3 sunna, S-U-N-N-A?

4 A It's like a habit to be taken after Prophet
5 Mohammed.

6 Q What was said about that?

7 A That he used to carry always something to defend
8 himself with, and Mr. Ali Shinawy said that he had a pistol.
9 He ask me if I have something, I said no. And he said, you
10 know, during distribution these bombs, if the cops stopped
11 us, we should be able to defend ourselves. And he suggested
12 to me that to have a firearm.

13 Q Did you agree to that?

14 A Yes, sir, I did.

15 Q Did he indicate to you any sources he had for
16 firearms?

17 A Yes. He said he have two individuals, a Spanish
18 guy who have a box full of brand new German pistols, and
19 another individual, he is American, brother Muslim, his name
20 is Abdel Rashid.

21 Q When you returned from Attica, did you report
22 what had happened to the agents?

23 A Yes, sir.

24 Q What agents did you report it to?

25 A It was Louie Napoli and Agent Nancy Floyd.

4925

1 Q Did you report it to Agent Anticev?

2 A No, I did not.

3 Q Why not?

4 A He wasn't around that time. He was sick.

5 Q Did you receive any instructions from the agents
6 about purchasing firearms?

7 A Yes, I did.

8 Q What instructions did you receive from the
9 agents?

10 A They told me we cannot let you to purchase
11 illegal weapons with our knowledge. We got to get you the
12 green light first.

13 Q After you returned from the trip from Attica, the
14 trip that you have been telling us about for the last two
15 minutes, did there come a time -- yes or no -- that you had
16 a meeting with Mr. Ibrahim El-Gabrowny?

17 A Yes.

18 Q How long after the trip that you made, the second
19 trip to Attica was your meeting with Ibrahim El-Gabrowny?

20 A It's right after it, couple -- like next day, day
21 after, something like that.

22 Q Can you tell us where that meeting took place?

23 A It took place in front of Mr. Ibrahim
24 El-Gabrowny's house.

25 (Continued on next page)

4926

1 Q Do you recall where his house was?

2 A In front of Prospect Park in Brooklyn.

3 Q How did the meeting start?

4 A I went up to Abu Bakr mosque. Mr. Ibrahim
5 El-Gabrowny wasn't there. I drove by his house. I buzzed
6 him from downstairs. He said, "We coming down," and then he
7 came down.

8 Q He said, "We are coming down"?

9 A Yes, sir.

10 Q Did anyone come down with him when he came down?

11 A Yes.

12 Q Who was that?

13 A Mr. Ali Shinawy.

14 Q Can you tell us about the conversation that you
15 had with Mr. El-Gabrowny and Ali Shinawy outside
16 Mr. El-Gabrowny's house after you came back from Attica.

17 A Yes. I told him, "Guys, I would like to know
18 what we're going to do about -- I got the timer here. I got
19 the M80s, and I need detonators and a safe place to work in,
20 because I cannot keep them in my house.

21 Q What was said on the subject of detonators?

22 A Mr. Ibrahim El-Gabrowny said that he will check
23 if he can bring them from Afghanistan.

24 Q What was said about a safe house?

25 A Mr. Ali Shinawy and Ibrahim El-Gabrowny said that

4927

1 they will try to work on that subject.

2 Q Did there come a time after this meeting that you
3 had another conversation with Mr. Ibrahim El-Gabrownny about
4 detonators?

5 A Yes.

6 Q How long after the meeting that we just
7 discussed, that is, the meeting that you just talked about
8 in front of his home, how long after that occasion did you
9 have another conversation about detonators?

10 A It wasn't a long time. I mean, during the same
11 week or right after we finished, not a long time.

12 Q Can you tell us about that conversation.

13 A He asked me if I will -- since I am explosive
14 expert if I will be able to make detonators, and I told him,
15 "No, I cannot."

16 Q Was anything said about any difficulty in
17 importing the detonators?

18 A Yes, I told him building detonators needs
19 sophisticated equipment and very advanced equipment and I --
20 I won't be able to do that.

21 Q Was anything said on the subject of whether he'd
22 be able to get them from Afghanistan?

23 A He said --

24 MR. RICCO: Objection to the form, your Honor.

25 MR. McCARTHY: I will rephrase it.

4928

1 Q Was anything said by Mr. Ibrahim El-Gabrownny on
2 that occasion about obtaining weapons from Afghanistan --
3 I'm sorry, obtaining detonators from Afghanistan?

4 A Yes, he did.

5 Q Tell us what he said?

6 A He said that it's going to be very difficult to
7 pass them through the magnetometers in the airports.

8 Q Mr. Salem, did there come a time when you met a
9 man named Abdul Rashid?

10 A Yes, sir.

11 Q How long after you came back from the second trip
12 to Attica did you meet Abdul Rashid?

13 A It's not very long.

14 Q When you say "it's not very long," can you give
15 us an estimate in terms of days?

16 A I don't remember, sir.

17 Q Do you recall whether it was less than a month or
18 more than a month?

19 A It was less than a month.

20 Q How did you meet Abdul Rashid?

21 A Mr. Ali Shinawy told me to come on to Abu Bakr
22 mosque to meet with him, and when I went over there he
23 introduced me to Mr. Abdul Rashid.

24 Q After the first time that you met Abdul Rashid,
25 did there ever come another time when you saw him again?

4929

1 A Yes, sir.

2 Q When was that?

3 A That was in the second phase of the investigation
4 in 1993.

5 Q How many times -- withdrawn.

6 Did you see him more than once in the second
7 phase, that is, after 1993?

8 A Yes, sir.

9 Q Or in 1993?

10 A Yes, sir.

11 Q Do you see Mr. Abdul Rashid today --

12 A Yes, sir.

13 Q -- in the courtroom?

14 A Yes, sir.

15 Q Can you point him out, please?

16 A He's wearing a black khufi --

17 MR. WASSERMAN: Your Honor, we --

18 THE COURT: Wait. He hasn't identified anybody
19 yet.

20 Q Mr. Salem, you can complete your answer.

21 A He's wearing a black khufi and a galabia and
22 crossing his hands.

23 MR. McCARTHY: Your Honor, may the record reflect
24 the identification of Mr. Hampton-El.

25 THE COURT: Indicating Mr. Hampton-El. Go ahead.

4930

1 Q Let me return your attention to 1992 and the
2 first time that you met the person known to you as Abdul
3 Rashid.

4 A Yes, sir.

5 Q You say -- withdrawn.

6 Where did the meeting take place?

7 A In Abu Bakr mosque in Brooklyn.

8 Q Who was present?

9 A Ali Shinawy, Mr. Abdul Rashid and myself.

10 Q Can you tell us, please, the conversation that
11 you had -- withdrawn.

12 Where in the Abu Bakr mosque did this meeting
13 take place?

14 A On the street level prayer -- where it takes
15 prayer in the corner, we went and we sat together, three of
16 us.

17 Q About how long was your conversation?

18 A Hour and a half or hour and 45.

19 Q Can you tell us, please, what was said at the
20 beginning after you were introduced to Mr. Abdul Rashid?

21 A Mr. Ali Shinawy told me that Brother Abdul
22 Rashid, he's a very good mujahed, and he have been in
23 Afghanistan, he fought in the Afghan war, and he's one of
24 the good brothers.

25 Q Did you have any direct conversation at that time

4931

1 with Mr. Abdul Rashid?

2 A Yes, sir.

3 Q Tell us about that conversation.

4 A Mr. Abdul Rashid started telling me about
5 himself, that he had been in Afghanistan and he uncover his
6 leg and he showed me a wound from a land mine who hit him
7 during the war in Afghanistan. And he's -- he was bleeding
8 and, according to the Koran say that --

9 Q Let me stop you for a moment.

10 Now, did he make a reference to the Koran, or are
11 you telling us about the Koran generally?

12 A No, he told me, Mr. Abdel Rashid told me
13 according to the Koran said that the martyrs and the
14 mujahideen, when they get wounded, their blood will smell
15 like a musk.

16 Q A musk?

17 A Yes.

18 Q And you said the martyrs and the mujahideen?

19 A Yes.

20 Q Did you show anything to Mr. Abdul Rashid?

21 A Yes, sir.

22 Q What did you show him?

23 A I show him the timer.

24 Q Did you have some conversation about the timer?

25 A Yes.

4932

1 Q Tell us about that conversation.

2 A I told him I have a timer, and we were looking
3 for some more things to complete this project. So he asked
4 Sheik Ali Shinawy, "What's that for?"

5 Sheik Ali Shinawy told him, "We making two bombs.
6 It -- 12 bombs. It will be distributed for the Jewish
7 community."

8 Q Was anything said on the subject of detonators?

9 A Yes.

10 Q Tell us what was said.

11 A I asked him if he can get me a detonator, and he
12 said, "What for? Don't jeopardize yourself if we can get
13 you ready-made bombs."

14 Q Let me stop you for a moment.

15 What did you understand him to mean when he said,
16 "Don't jeopardize yourself with detonators"?

17 A Well, detonators is very sensitive and critical
18 to work with, and it can goes off anytime. So he said if he
19 can get me a ready-made bomb, why should I jeopardize myself
20 building the bombs.

21 Q What, if anything, did the defendant Abdul Rashid
22 say about the availability of ready-made bombs?

23 A He said it is available around \$900 to \$1,000 a
24 piece.

25 Q Did Mr. Shinawy say anything in response to that?

4933

1 A Yeah, he said, "Well, we'll think about it.
2 We'll get back to you."

3 Q What conversation was there, Mr. Salem, about the
4 subject of firearms?

5 A Mr. Ali Shinawy told Mr. Abdul Rashid that Emad
6 would like to have a pistol for protection and Mr. Abdul
7 Rashid said that he's out of pistols for the time being.

8 Q Let me stop you for a moment.

9 When you said, "He's out of pistols. Who was the
10 "he" you were talking about?

11 A Mr. Abdul Rashid.

12 Q Mr. Abdul Rashid said that he, Mr. Abdul Rashid,
13 was out of pistols?

14 A He said, "I am out of pistols for the time
15 being."

16 Q What else did he say?

17 A But he said that he have a rifles, AK 47s, and
18 small machine guns, Uzi type, and he mentioned some other
19 American rifles, I don't recall it.

20 Q Was there any agreement reached at that time
21 about whether he would actually get you a pistol?

22 A He said he will check on it.

23 Q Did there come a time after this meeting when you
24 received a handgun?

25 A Yes.

4934

1 Q How long after the meeting with Abdul Rashid and
2 Ali Shinawy did you receive a handgun?

3 A Not that long. It was like few days after.

4 Q Tell us, please, how it is that you got the gun.

5 A Mr. Ali Shinawy talked to me, and said, "Come
6 over to the mosque. Do the evening prayer with us. Bring
7 somebody with you."

8 I went. He give me a piece of cloth --

9 Q Let me interrupt you. I didn't hear the last
10 part of your answer.

11 You said, "Bring some money with you," and then
12 you said something else, and I didn't hear you.

13 A I took some money with me, and I went to the
14 mosque. After we finished the prayer, we went to the
15 corner, and he gave me a piece of cloth, wrapped, and he
16 said, "Take it to the basement. Check it out. It has a box
17 of bullets with it."

18 Q Let me stop you for a moment.

19 You said you went to the mosque.

20 Which mosque did you go to?

21 A Abu Bakr mosque in Brooklyn.

22 Q What did you do after you received the item he
23 gave you?

24 A I took it, I went to the basement, I opened the
25 cloth, which is wrapped, and I saw a handgun and a box of

4935

1 bullets.

2 Q What did you do after you saw them?

3 A I wrapped it again and I went upstairs. I put it
4 in my pouch, and I told him, "It looks good. Thank you very
5 much, but I notice that the serial number is being taken."

6 He said, "of course. That doesn't concern you in
7 any way."

8 Q Did the subject of Mr. Ali Shinawy's Hispanic
9 course of weapons come up during your conversation?

10 A Yes.

11 Q What was said about the Spanish guy?

12 A He said, "I'm sorry I couldn't get you the German
13 pieces because the Spanish guy's out of it, I mean, running
14 out of these German pistols."

15 Q Did he say anything else to you about where the
16 gun had come from?

17 A No, he did not.

18 Q What did you do with the gun after you received
19 it?

20 A I went out of the mosque. I gave it to the
21 agents.

22 Q What happened to the gun next?

23 A The agents told me, "We got to take it, because
24 it is -- it is a working --

25 Q Let me stop you for a moment.

4936

1 Don't tell us what the agents said.

2 A Yes.

3 Q You gave the gun to the agents?

4 A Yes.

5 Q Did you get it back from the agents?

6 A Yes.

7 Q Did anything happen to the gun between the time
8 you gave it to them and the time you got it back, as far as
9 you knew?

10 A Yes.

11 Q What did you know to have happened?

12 A They took the firing pin out of it so it won't be
13 operative.

14 Q Mr. Salem, I am placing before you for
15 identification Government's Exhibits -- I'm sorry. I am
16 missing one.

17 Before I do that, let me ask you: Was the gun
18 loaded when you received it?

19 A I didn't open it in that time, but later on it
20 was loaded, yes.

21 Q Who loaded it?

22 A It was already loaded.

23 Q I am placing before you 391, 391A, 3491B, and
24 391C for identification. I ask you, sir, if you recognize
25 those items.

4937

1 A Yes, sir, I recognize it.

2 Q What do you recognize them to be?

3 A It's the gun. I received it from Mr. Ali
4 Shinawy.

5 MR. McCARTHY: Your Honor, this firearm has been
6 disabled and it cannot fire at this time.

7 Q How are you able to recognize the gun that you
8 received?

9 A It is a silver color, and the same place the
10 number is being erased at the back of it, it's there.

11 Q That is the same spot where the serial numbers
12 were removed?

13 A Yes, sir.

14 Q What's 391A?

15 A 391A, this is the three bullets were in the
16 magazine.

17 Q 391B?

18 A It's --

19 A SPECTATOR: The man is a liar. Allah will deal
20 with you.

21 THE COURT: Take that man out.

22 A SPECTATOR: I'm leaving peacefully. You a
23 liar. Allah will deal with him. He's lying.

24 THE COURT: Ladies and gentlemen, that is,
25 needless to say, not evidence.

4938

1 Go ahead.

2 Q Would you tell us, please, what 391B for
3 identification is.

4 A That is the box of the bullets. I received it
5 from Mr. Ali Shinawy.

6 Q 391C.

7 A That is the magazine for the pistol. I received
8 it.

9 MR. McCARTHY: Your Honor, the government offers
10 391, 391A, B, and C.

11 THE COURT: Show it to counsel.

12 MR. McCARTHY: Yes, your Honor.

13 THE COURT: All right. 391A, B and C are
14 received without objection.

15 (Government's Exhibits 391A, B and C for
16 identification were received in evidence)

17 Q Mr. Salem, just so we are clear, I would like to
18 ask you to answer this question yes or no.

19 A Yes, sir.

20 Q Was Abdul Rashid around anyplace when you
21 received that gun?

22 A No, sir.

23 Q Mr. Salem, let me direct your attention to the
24 summertime of 1992.

25 A Yes, sir.

4939

1 Q Did there come a time when you stopped
2 participating in the investigation?

3 A Yes, sir.

4 Q Directing your attention to the end of June 1992,
5 did you have some meetings with FBI agents?

6 A Yes, sir.

7 Q Tell us about, please -- withdrawn.
8 Whom do you recall meeting with at the first
9 meeting?

10 A I met with the supervisor of the terrorist squad,
11 and Agent Nancy Floyd and Detective Louis Napoli.

12 Q Do you recall the supervisor's name that you met
13 with?

14 A Yes, Mr. John Crouthamel.

15 Q Can you tell us what discussion you had with
16 those people at that time.

17 A Mr. John asked me how much takes from you to
18 testify, and I told him, "It's not the issue of how much.
19 It is not the issue of money. It's the issue of securing my
20 family. At the beginning, you told me that I will never
21 testify, you're coming now to tell me testify. At the
22 beginning, you told me I don't have to be exposed. Now you
23 coming to ask me to testify."

24 I was angry.

25 Q Did you agree to testify at the meeting?

4940

1 A No, I did not.

2 Q Up to that point, did you have any understanding
3 as to whether -- withdrawn.

4 Up to that point, did you have any understanding
5 about what the extent of your cooperation with the
6 investigation was?

7 A Yes, sir.

8 Q What was your understanding?

9 A Just only gathering information, but never to
10 testify.

11 Q Did you agree to testify at that time?

12 A No, sir, I did not.

13 Q Did there come a time that you had a second
14 meeting?

15 A Yes, I did.

16 Q Who did you have the second meeting with?

17 A With the supervisor of Mr. Crouthamel.

18 Q Who was that?

19 A Agent Carson Dunbar.

20 Q Can you tell us, please, what your discussion was
21 with Mr. Dunbar?

22 A Mr. Carson Dunbar also was talking about the same
23 thing, wants me to testify.

24 Q Did you have some discussion about that?

25 A Yes.

4941

1 Q What discussion did you have about safety?

2 A I told him, "It's not issue of money. Again,
3 it's my family, and my extended family overseas and if I
4 will testify, I will be in jeopardy. I need to secure me,
5 and I don't want to testify."

6 Q What did Mr. Carson Dunbar say about securing
7 you?

8 A He said he cannot assure to me a hundred percent
9 that I won't be exposed as a witness, and he cannot assure
10 to me a hundred percent that I won't be testifying, my
11 family to be protected a hundred percent.

12 Q Did you agree at the time of that discussion to
13 testify?

14 A No, I did not.

15 Q Did you have any discussion about whether the
16 investigation would continue?

17 A Yes, Mr. Carson Dunbar said, "If you won't
18 testify, then we got to stop the investigation."

19 Q Did you agree to testify?

20 A No, sir, I did not.

21 Q Was there any discussion about verifying the
22 information you had given to the FBI?

23 A Yes, sir, there was.

24 Q Can you tell us what was said in that regard.

25 A He said, "You giving us very serious information

4942

1 about killing judge and killing one of the civilians, and we
2 would like to verify this information."

3 Q Was any proposal made to you about how they could
4 verify the information?

5 A Yes.

6 Q What was the first proposal that was made to you?

7 A He said that, "How about if you visit Sayyid
8 Nosair in jail, and we can get a judge permission to get
9 this conversation on tape?"

10 Q Did you agree to do that?

11 A Yes.

12 Q Did you put any conditions on your agreement to
13 tape record a conversation with Mr. Nosair?

14 A Yes.

15 Q What conditions did you put on it?

16 A I said, "I am willing to go. I am willing to get
17 you the tape, but I will keep -- I will let you listen to
18 the tape, but I will keep it with me so you don't have to
19 obligate me to testify."

20 Q Why did you put that condition on it?

21 A For my safety, sir.

22 Q Did Mr. Dunbar agree to your condition?

23 A No, he did not.

24 Q Did you agree to make the recording if the
25 condition was not complied with -- withdrawn.

4943

1 Did you agree to make the recording with the
2 understanding that the FBI would get to keep the tape?

3 A Sir, if they took the tape, I would be
4 obligated --

5 Q Mr. Salem, let me ask you to answer my question.

6 A Yes, sir.

7 Q Did you agree to make the recording with the
8 understanding that the FBI would keep the tape?

9 A No, I disagreed.

10 Q Was any other proposal made about how to verify
11 the information that you had been giving the FBI?

12 A Yes, sir.

13 Q Can you tell us what was proposed to you?

14 A He asked me to take a polygraph.

15 Q A polygraph is a lie detector test?

16 A Yes, sir.

17 Q Did you agree to be polygraphed?

18 A Yes.

19 Q Now, during the course of this investigation, had
20 you ever been polygraphed before?

21 A Yes.

22 Q How long before this conversation that you had
23 with Mr. Dunbar?

24 A It was at the beginning of the investigation,
25 long time ago.

4944

1 Q Was there any conversation in the meeting that
2 you had with Mr. Dunbar about whether you would continue in
3 the investigation in connection with the polygraph?

4 A He wants me to continue, but I refused.

5 Q I'm sorry. You agreed to take the polygraph, but
6 you refused to continue in the investigation?

7 A I said, "You coming at the beginning of the
8 investigation telling me, 'You don't have to testify.' You
9 coming today to tell me, 'You have to testify.'

10 "You coming at the beginning, 'You are not going
11 to be witness.' Today I will be a witness. At the
12 beginning, 'Don't tape anybody.' At the end, 'Tape
13 everybody. Go get us a tape.' I am out of here."

14 Q What was your reaction when it was suggested that
15 you be polygraphed?

16 A I was upset and angry.

17 Q Were you in fact polygraphed?

18 A Yes, sir.

19 Q Did there come a time after the time in July 1992
20 when you were polygraphed that you were polygraphed again?

21 A Yes, sir.

22 Q How long after July 1992?

23 A I don't recall, sir.

24 Q In terms of weeks or months, do you have an
25 estimate of how long it was?

4945

1 A It was September, December, the end of the year.

2 Q At the time in September or December, whenever it
3 was that you were recall being polygraphed, were you working
4 on the investigation?

5 A No, I was not.

6 Q In July 1992, when you took the polygraph, were
7 you working anymore on the investigation?

8 A No, I was not.

9 Q Mr. Salem --

10 A Yes, sir.

11 Q Go ahead.

12 When you had these conversations with Agent
13 Crouthamel and Agent Dunbar --

14 A Yes, sir.

15 Q -- did you take any action with respect to tape
16 recording at the time of those conversations?

17 A Yes, sir, I did.

18 Q Can you tell the ladies and gentlemen of the jury
19 what you did.

20 A Well, I did my best to get everybody talking on
21 tape to prove that I delivered the information to them,
22 because I was concerned about myself.

23 Q Now, that was in July 1992?

24 A Yes.

25 Q Had you ever tape recorded conversations before

4946

1 on your own in this investigation?

2 A Yes, sir.

3 Q Can you tell us when it was that you recall first
4 tape recording conversations?

5 A It was early in the investigation. I had a lot
6 of information coming, and I meet almost with the people who
7 is subject for the investigation on a daily basis, and I
8 used to meet with the agent around once or twice a week.
9 So, I keep to memorize myself and recollect the information
10 to give it to them.

11 MR. JACOBS: I am sorry. I missed the last part.

12 THE COURT: Could the report read it back.

13 MR. JACOBS: Thank you.

14 A I tried to --

15 THE COURT: No. The reporter will read your
16 answer from the tape.

17 (Record read)

18 Q Mr. Salem, first of all, when you first
19 started -- withdrawn.

20 First of all, did the agents ever give you any
21 advice about whether you should be tape recording
22 conversations at the beginning of the investigation?

23 A Yes, sir, they did.

24 Q What, if anything, were you instructed about
25 whether you should be making tapes?

4947

1 A They told me, "Don't tape."

2 Q What did they tell you not to tape?

3 A They tell me, "Don't make tapes because once you
4 make tapes it will -- it could be a discovery material and
5 it could result for you to testify."

6 Q What --

7 MR. JACOBS: Excuse me.

8 May we fix when this was and who he spoke to?

9 THE COURT: Can you get the timing on this?

10 MR. McCARTHY: Yes, your Honor.

11 Q Approximately when in the -- withdrawn.

12 Approximately when in the course of the
13 investigation did you have discussions with the agents about
14 whether you should tape record the people you were
15 investigating?

16 A That was at the beginning of the investigation.
17 Detective Louis Napoli told me, "Don't make
18 tapes, because tapes could turn to be a material and you
19 could testify."

20 Q Were you told at the beginning of the
21 investigation what kind of investigation this was?

22 A Yeah, that's what I said. It's only information
23 gathering. There is no way that I will -- it's not a
24 criminal investigation, only gathering information.

25 Q Now, did anyone else besides Detective Napoli

4948

1 tell you not to tape record people?

2 A I think Mr. -- I think Mr. John Anticev.

3 Q Did there come a time that you had

4 conversations -- and I'll ask you to answer this question

5 yes or no, and then we will flesh it out.

6 Did there come a time that you had conversations

7 with the agents you were working with about whether you

8 could make tapes for your own use?

9 A Yes.

10 Q About when did that happen?

11 A A few months after the investigation started, I

12 find that there is a lot of information which I cannot

13 remember because, like I told you, I meet once or twice

14 during the week, but I am constantly in touch with the

15 people who's subject for the investigation.

16 So I said that I'm making some memorizing myself,

17 recording some information, excuse me, to memorize myself.

18 Q As you sit here today, sir, are you sure that

19 that happened a few months after the investigation started?

20 A Sir, I'm very bad at dates. I know it happened.

21 I don't know when.

22 Q Did you have some conversation with any of the

23 agents about what kind of tapes you were making?

24 A Just to memorize myself, dictate some reports for

25 myself: What's happened today? Who did I talk to? Who did

4949

1 I call? And then relate it to them later on.

2 Q Did you actually make tapes like that?

3 A A couple of times, yes.

4 Q Did there come a time that you started to tape
5 record the conversations on your home telephone?

6 A Yes.

7 Q At the time that -- withdrawn.

8 Do you remember approximately when you started to
9 tape record the conversations on your home telephone?

10 A At the beginning of the investigation.

11 Q Did you tell the agents at the time, at the
12 beginning of the investigation when you started to tape
13 record calls on your home telephone that you were recording
14 the calls that came in?

15 A No, I did not.

16 Q Tell us, please, or explain to the ladies and
17 gentlemen of the jury what kind of tape recording system you
18 used on your home telephone.

19 A It's a small device, you hook it up to the phone,
20 similar to the one being sold in Radio Shack.

21 Q How did it operate?

22 A Once you pick up the phone, it starts to operate;
23 you hang up, it will stop.

24 Q Did you have to choose to record a conversation
25 in order to record the conversation on that system?

4950

1 A No. Most of the time once anybody, my wife, my
2 kids, myself, any kind of calls just being recorded.

3 Q Now, after the calls were recorded, did you have
4 the ability in the system -- withdrawn.

5 Once conversations started to be recorded on the
6 system that you've described, did you have the ability to
7 turn the recorder on and off?

8 A Yes.

9 Q Did you have the ability to rewind tapes and tape
10 over conversations that you didn't want to keep?

11 A Yes.

12 Q Did you do that at times?

13 A Sometimes, yes.

14 Q What tapes did you use?

15 A I had a few tapes I bought from Canal Street, and
16 I asked the agent in a certain time to -- as a matter of
17 fact, Detective Louis Napoli specifically -- to get me some
18 tapes from the Bureau to make some notes.

19 Q What conversation did you have with Detective
20 Napoli about the tapes that you wanted him to give you?

21 A I said, "Well, get me like some tapes, box of
22 tapes or some tapes to make some notes," or something in
23 that effect.

24 Q Did you tell him what you were doing with the
25 tapes?

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1 A Notes for myself.

2 Q Did you use those tapes to tape record telephone
3 conversations?

4 A Yes, I did.

5 Q Mr. Salem, what did you do with the tapes after
6 you finished tape recording conversations?

7 A I had a box on the left side where I put the
8 device. I take it out of the recording device and I throw
9 it in the box.

10 Q You were making an indication as you said your
11 last answer with your left hand.

12 A Yes, sir.

13 Q Can you describe what you were doing, please.

14 A I was describing that I have the recording device
15 from my left-hand side at the floor, right beside it. There
16 is a small box, and I indicated that I took the tapes from
17 the recording device, and I throw it next to it into the
18 box.

19 Q Mr. Salem, after you first started tape recording
20 conversations at the beginning of the investigation, about
21 how long did you continue to tape record?

22 A I don't recall how long, but not very long.

23 Q Can you give us an estimate?

24 A A month, two months.

25 Q Redirecting your attention to July 1992, when you

4952

1 put the tape recorder on on that occasion, was it with the
2 intention of tape recording the agents?

3 A No, not -- no.

4 Q I am talking now -- withdrawn.

5 At the beginning, when you first started to make
6 tapes, was it your intention to tape record the agents that
7 you were working with?

8 A They just accidentally -- anybody who called me
9 in that time came on these dates, any phone conversation
10 happened in my house in that time is being recorded. So the
11 agents called in that time, and they came on the tape. I
12 did not intend to tape the agents.

13 Q Directing your attention to July 1992, when you
14 had these disputes that you told us about with Carson Dunbar
15 and John Crouthamel, did you purposely try to record
16 particular conversations in that time?

17 A Yes, sir, I did.

18 Q Did there ever come a time that you purposely
19 tried to get people on tape making statements?

20 A Yes, sir, I did.

21 Q When was that?

22 A After the argument with the bureau, with the FBI
23 started about making me to be a witness, and I don't want to
24 be a witness and I walked out of the investigation. Another
25 occasion, after I heard that there is an arrest being made

4953

1 on the bombing of the World Trade Center, I start making
2 tapes again.

3 Q Why did you start making tapes again after you
4 heard there had been arrest in the World Trade Center case?

5 A It is -- it was obvious for me that I did give
6 them information about bombs being made prior to the
7 bombing, and then there is a bombing happened, there is
8 people from the Muslim community being arrested. I was so
9 frightened in that time that the FBI will say, "He did not
10 tell us anything. He was cooperating building bombs with
11 them. Lock him up." So I get them on a tape when I am
12 talking to them to prove someday, somehow that I was
13 delivering the information, I wasn't bad guy, or I wasn't
14 building bombs.

15 Q When you got those recordings -- withdrawn.
16 In that period of time, after you heard that
17 there been arrests made in the World Trade Center case, did
18 you put the same device on the machine?

19 A Yes.

20 Q It again started to record every conversation?

21 A Yes.

22 Q In that period of time you purposely recorded the
23 agents?

24 A Yes.

25 Q You got them to acknowledge that you had given

4954

1 them information?

2 A That is the only protection for me --

3 Q I didn't ask you that, sir. I asked you did you
4 get them to acknowledge that they gave you information?

5 A Yes, I did.

6 MR. JACOBS: I would object to that, your Honor.

7 THE COURT: Sustained as to form.

8 Q What was the purpose of tape recording the agents
9 after you heard arrests had been made in the World Trade
10 Center case?

11 A I want acknowledged that I delivered information
12 prior to the bombing to the agents, and I was reporting to
13 them, I was cooperating with them. I wasn't just helping
14 the subject of the investigation to build bombs, and I am
15 one of them.

16 Q What did you do with the tapes after you made
17 them?

18 A I put them in my bedroom.

19 Q Where did you keep them?

20 A I put them in the same box, I wrapped them, and I
21 put them in that chair in my -- inside the chair in my
22 bedroom.

23 Q What were your intentions, that is, what did you
24 intend to do with those tapes?

25 A I said to the agents, "If one day you going to

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1 say that I did not tell you, or I was not cooperative with
2 you, I will give it to the media."

3 It is like insurance policy for me.

4 Q Did there come a time that you told the
5 government that you had the tapes?

6 A Yes.

7 Q Do you recall when that was?

8 A Right after we took the case down.

9 Q When you say "right after we took the case down,"
10 are you talking about the arrests that were made in this
11 case?

12 A Yes, sir.

13 Q At the time that you first told the government
14 that you had these tapes, did you have any intention at that
15 time of giving the tapes to the government?

16 MR. JACOBS: Objection.

17 THE COURT: Overruled.

18 A Can you repeat the question, sir, please?

19 Q Yes. At the time that you told the government
20 about the existence of these tapes, at that time, did you
21 have any intention of giving those tapes to the government?

22 A No, sir.

23 Q How did it occur that you gave the tapes to the
24 government?

25 A It was explained to me that once these tapes is

4956

1 there, it turns to be discovery material and it should -- it
2 must be turned to be in evidence.

3 Q When that was explained to you, did you agree to
4 give the tapes over?

5 A Yes, sir, I did.

6 Q Can you explain to the ladies and gentlemen of
7 the jury how the government got your tapes.

8 A They asked me to give them permission to go to my
9 house in New York to get them.

10 Q Did you give them permission?

11 A I permit Agent Nancy Floyd.

12 Q Did you sign a written permission for that?

13 A Yes, I did.

14 Q Mr. Salem, I am placing before you Government's
15 Exhibit 3534Y for identification. I am asking you to look
16 at the second page of that item. I ask you if you recognize
17 it.

18 A Yes, sir.

19 Q What do you recognize that document to be?

20 A That is my signature, and the permission I give
21 to Agent Nancy Floyd to enter into my apartment.

22 MR. McCARTHY: Your Honor, the government offers
23 the second page of 3534Y.

24 MR. JACOBS: Voir dire, your Honor?

25 THE COURT: Go ahead.

4957

1 VOIR DIRE EXAMINATION

2 BY MR. JACOBS:

3 Q Mr. Salem, my name is Jacobs. I represent
4 Mohammed Saleh, the money man in this case.

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained and stricken. If you have
7 voir dire, ask questions. If you don't, sit down.

8 Q Mr. Salem, on June 29 you signed this piece of
9 paper?

10 A I don't recall when, but I did sign it, yes.

11 THE COURT: Do you want to pose a question, Mr.
12 Jacobs?

13 MR. JACOBS: He is looking at the document.

14 Q What did that give permission for the FBI to do?

15 A Should I read it?

16 Q No.

17 MR. McCARTHY: Objection.

18 Q What did you understand this document to be?
19 Permission to get tapes from your house?

20 A Yes.

21 Q What tapes did you believe that you were giving
22 permission of the FBI to take?

23 MR. McCARTHY: Objection, scope.

24 THE COURT: Overruled.

25 A The tapes in the box inside the chair in my

4958

1 bedroom.

2 Q Are those the tapes that came from this home
3 taping machine, sir?

4 A Yes.

5 Q That is all that was there?

6 A Yes.

7 Q Are you sure about that?

8 A Yes.

9 Q You're saying that the only tapes you made in
10 addition to the FBI tapes are the home taping system, that's
11 it?

12 THE COURT: That is not what he's saying, Mr.
13 Jacobs. You were asking about what the document authorized.

14 MR. JACOBS: OK.

15 THE COURT: Stick to that.

16 Q What was in your house that you authorized in
17 that document?

18 A I authorized them to go to my house to take the
19 tapes.

20 Q Were there other places there were tapes?

21 A Yes.

22 Q Did you tell them about that on June 29?

23 A No, I did not.

24 Q Were these only home tapes that were in your
25 house on June 29, or other tapes?

4959

1 MR. McCARTHY: Objection to form.

2 THE COURT: Sustained.

3 Q Did you make body recordings that were not in
4 your home or in your home on June 29?

5 A Can you repeat the question, please?

6 Q Sure. Your testimony is that the tapes --

7 MR. McCARTHY: Objection to form.

8 THE COURT: Sustained.

9 Q You gave permission to the agents on June 29 to
10 take the home taping system tapes, is that your testimony?

11 A No, sir, that is not my testimony.

12 Q Were there more tapes in your house other than
13 the home taping system?

14 A I'm sorry. Repeat your question, please?

15 Q Sure.

16 Were there additional tapes in your home besides
17 the home taping system? Yes or no.

18 A Yes.

19 Q What were those?

20 A Some music, some tapes for songs and some other
21 tapes.

22 Q When you say "some other tapes," were they tapes
23 of the defendants in this case that were not recorded on the
24 home taping system?

25 A No, sir, it was not.

4960

1 Q Did you do that, sir, record the defendants in
2 this case on a nonhome taping system that you didn't give
3 the FBI?

4 A Could you repeat your question, please, sir?

5 Q Sure.

6 Your testimony is you gave --

7 THE COURT: This is well beyond voir dire.

8 MR. JACOBS: I will try to keep it as voir dire.

9 Q Did you record the defendants in this case on
10 non-FBI tapes that were found on June 29? Yes or no.

11 A Yes, sir.

12 Q What were those?

13 A Tapes.

14 Q You said that the tapes in your home were from
15 the home taping system.

16 THE COURT: This is beyond voir dire of the
17 document, Mr. Jacobs.

18 Q When you signed permission, after the arrests in
19 this case on June 29, you were still withholding additional
20 tapes, is that your testimony, sir, that this is not the
21 complete amount of tapes?

22 A I am not withholding anything. When I mentioned
23 to the government that I have some tapes, the government
24 said, "We would like to obtain it," and they explained to me
25 it is discovery material; it's evidence now in the case, and

4961

1 you have to turn it -- I said, "OK."

2 Q Did you turn over on June 29 all the tapes? Yes
3 or no.

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 May I see counsel at the side.

7 MR. JACOBS: Sure.

8 (Continued on next page)

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1 (At the side bar)

2 THE COURT: What is the nature of the objection
3 to the document that you are pursuing?

4 MR. JACOBS: I am not sure that it is a valid
5 consent because he is not consenting to give --

6 THE COURT: You have no standing to raise the
7 question of the validity of the consent. Anything else?

8 MR. JACOBS: No, one or two more questions,
9 Judge.

10 THE COURT: No. Anything else?

11 MR. JACOBS: I believe there was a condition to
12 this document that only Nancy Floyd could issue.

13 THE COURT: How does it go to the admissibility
14 of the document? It doesn't.

15 MR. JACOBS: I guess not.

16 THE COURT: I guess not. Let's go.

17 (In open court)

18 MR. JACOBS: In light of the side bar, your
19 Honor, I have no further questions.

20 THE COURT: 3534Y has been offered. Is there any
21 objection? Hearing none, 3534Y is received without
22 objection.

23 (Government's Exhibit 3534Y received in evidence)

24 THE COURT: If you come to a convenient break
25 point in the next five minutes or so.

4963

1 MR. McCARTHY: I will, your Honor.

2 BY MR. McCARTHY:

3 Q Mr. Salem, after you gave the permission, after
4 you signed the document that we just saw, did there come a
5 time that you saw tapes that were removed from your house?

6 A Yes, sir.

7 Q Let me ask you this, sir: Did you personally
8 ever go to your house to collect the tapes to give them to
9 the government?

10 A No; sir.

11 Q When did you next see your tapes?

12 A The same day the agents picked up the tapes from
13 the house, they came into the state where I were, and I saw
14 them with them.

15 Q What happened?

16 A They asked me to initial that this is my tapes
17 from the box from my bedroom.

18 Q Did you initial the tapes?

19 A Yes, I did.

20 Q What happened to the original tapes at that
21 point?

22 A The agents took it with them when they leaving.

23 Q Did you ever again, from the time that you told
24 the government about the tapes until this very day today,
25 have you ever again had personal custody, personal physical

4964

1 custody of your original tapes?

2 MR. JACOBS: Object to the word original.

3 MR. McCARTHY: I will rephrase it, your Honor.

4 THE COURT: The tapes that were removed from your
5 apartment, have you ever had physical custody yourself of
6 the tapes from your apartment after the day that Mr.
7 McCarthy mentioned?

8 THE WITNESS: No, sir.

9 MR. McCARTHY: Let me try to be a little more
10 clear on my end.

11 Q After the day that you told the government about
12 the tapes, you were not in your house at that time, is that
13 correct?

14 A No, I was in complete different place.

15 Q From the time that you told the government about
16 the tapes that you had in your house until this very day,
17 have you ever had physical custody of the tapes that were
18 removed from your home?

19 A No, sir.

20 (Continued on next page)

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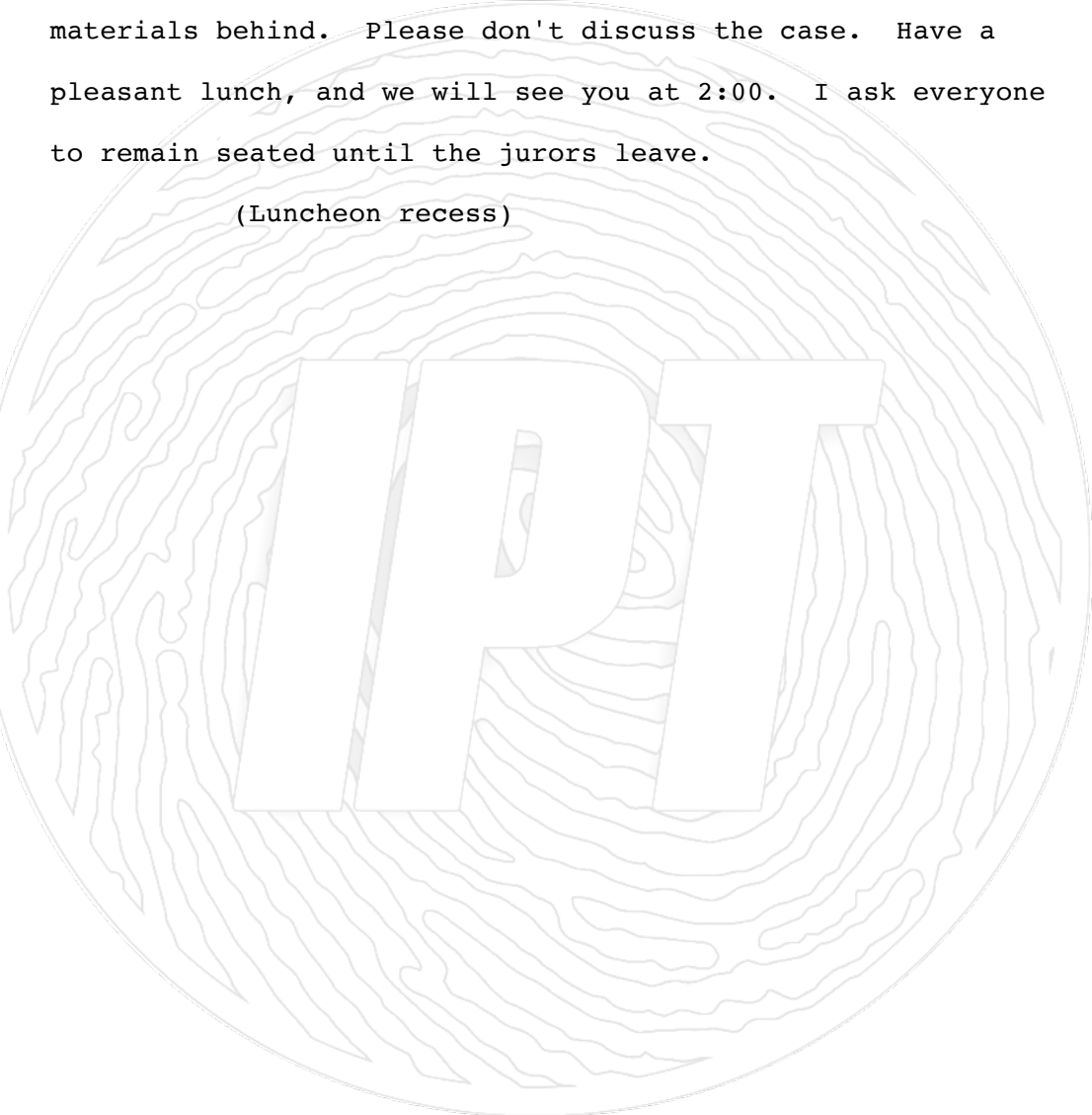
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MR. McCARTHY: Your Honor, I am at a good
breaking point.

THE COURT: Ladies and gentlemen, we are going to
break for lunch. Please leave your notes and other
materials behind. Please don't discuss the case. Have a
pleasant lunch, and we will see you at 2:00. I ask everyone
to remain seated until the jurors leave.

(Luncheon recess)



AFTERNOON SESSION

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2

2:10 p.m.

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(In open court; jury not present)

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THE COURT: Mr. Stavis.

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MR. STAVIS: Yes, your Honor. Over the lunch break I had a series of photographs that were left on my desk, marked Government's Exhibits 385D1 through 36. These photographs appear to have been made from a videotape of a meeting at Attica Correctional Facility on May 21 of 1993. As your Honor may recall, the videotape was a defense exhibit which was served on the government pursuant to Rule 16, sometime last fall, I believe in November, and the government has made still photographs off of that videotape. Mr. McCarthy indicated to me that he was going to play sections of that videotape.

16

Your Honor, I have opened to the jury concerning the videotape, and my application is that the videotape, which should also be marked as a defense exhibit, because I did open on it and I did serve it on the government, must be played in its entirety in order for anything that occurs on that videotape not to be taken out of context.

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For example, your Honor, if my client whispered to Mr. Siddig Ali for a two-second period and you have a photograph of that, there is no context and the jury doesn't know that in that two seconds these people were allegedly

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1 conspiring or whatever. I think it is very, very important,
2 and whatever time this is played, that this exhibit, which
3 should be marked as a defense exhibit as well, be played to
4 the jury in its entirety.

5 THE COURT: Do you want to be heard?

6 MR. McCARTHY: Yes, your Honor. It is my
7 intention to play the portion of the exhibits that the still
8 photographs are taken from. The still photographs make it a
9 little bit easier to have the testimony come out. If he
10 wants the jury to watch three or four or five hours of
11 silent people sitting around a table during his case that is
12 one thing, but the portion that we want to play for the jury
13 is a discrete portion. It doesn't take anything else out of
14 context.

15 THE COURT: You talk about context. As I
16 understand it, this videotape is silent?

17 MR. McCARTHY: Yes, your Honor.

18 THE COURT: What is the context for silence?
19 That question is directed to Mr. Stavis.

20 MR. STAVIS: Your Honor, the timing is very
21 critical, because -- and I will tell the court -- this is
22 the only meeting between Mr. Salem and my client during the
23 period of post World Trade Center until the arrests in the
24 case in June, and if Mr. Salem will testify that my client
25 had discussions with him and the jury can see that those

4968

1 discussions took two or three seconds or 15 seconds, it
2 undermines the government's position that the whole
3 conspiracy was laid bare for Mr. Nosair. Also, I think that
4 the jury is being told about --

5 THE COURT: Then it seems they should be the ones
6 seeking to play the entire length of the tape, not you. I
7 don't understand it.

8 MR. STAVIS: Also, the other reason why the jury
9 has to be shown the whole tape is because they have to see
10 the corrections officers coming in and out at various times
11 of the tape and the reaction of the alleged coconspirators
12 to the presence of the prison guards.

13 Your Honor, really, context is everything on this
14 tape, and your Honor will recall I did open on it, and I do
15 intend to play the tape, and I think if you show select
16 snippets of this tape, your Honor, that the jury is going to
17 receive a misleading impression of what occurred on a
18 critical day.

19 THE COURT: Then you can correct it by playing it
20 on your case. I am not playing five hours of silent tape.
21 You can certainly bring out on cross that prison guards were
22 in and out, if you want to show segments of prison guards
23 going in and out on cross, if the witness denies it, then
24 obviously you may. But I am not playing five hours of
25 silent tape.

4969

1 MR. STAVIS: It is not five hours.

2 THE COURT: How long is it?

3 MR. STAVIS: It is approximately three hours,
4 your Honor --

5 THE COURT: I am not playing one hour of silent
6 tape.

7 MR. STAVIS: Will the government be permitted to
8 take photographs off the videotape of that, your Honor?

9 THE COURT: Of course. I don't understand your
10 outrage of the government taking pictures off a videotape.
11 Are you mad because there is an exhibit tag?

12 MR. STAVIS: Yes, your Honor, because I opened on
13 it, and for my purposes I thought there was something
14 helpful to my case from the whole tape in context.

15 THE COURT: If there is, it will help your case,
16 if there isn't, it won't. It doesn't matter whose exhibit
17 tag is on it, it is what it proves, nothing else. I believe
18 they have already been told that. Do you want them told
19 that you turned the tape over?

20 MR. STAVIS: Yes, your Honor, and that it is a
21 joint exhibit, defense exhibit whatever and government
22 exhibit whatever, 385D.

23 MR. McCARTHY: Your Honor, I have no objection to
24 jointly marking the exhibit, but we also obtained it
25 independently.

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1 MR. STAVIS: It is my understanding that the
2 government may have obtained it independently but they did
3 so after the defense provided it to them, because I was
4 advised they did not have it, which is the reason I gave it
5 over under Rule 16, your Honor.

6 MR. McCARTHY: I have no objection to jointly
7 marking the exhibit if that's what your Honor --

8 THE COURT: Fine.

9 EMAD SALEM, resumed.

10 (Jury present)

11 THE COURT: Good afternoon, ladies and gentlemen.

12 JURORS: Good afternoon.

13 THE COURT: Mr. McCarthy.

14 MR. McCARTHY: Thank you, your Honor.

15 (Continued on next page)

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4971

1 DIRECT EXAMINATION continued.

2 BY MR. McCARTHY:

3 Q Good afternoon, sir.

4 A Good afternoon.

5 Q I want to direct your attention for a moment to
6 the time after the arrests were made in this case in June
7 1993. Do you recall that?

8 A Yes, sir.

9 Q I am specifically directing your attention to the
10 time after your tapes came into the possession of the
11 government.

12 A Yes, sir.

13 Q Mr. Salem, after that period of time did you make
14 additional tape recordings?

15 A Sometimes, yes.

16 Q Can you tell the ladies and gentlemen of the jury
17 who you taped after that time?

18 A I taped my exwife, because she was making a lot
19 of allegations --

20 THE COURT: He didn't ask you why, he asked you
21 who. Go ahead.

22 Q Do you recall over how long a period of time you
23 made tapes of your exwife?

24 A Like couple of months.

25 Q When you mention your exwife, is that Barbara

4972

1 Rogers who you told us about earlier in your testimony?

2 A Yes, sir.

3 Q Did there come a time when you stopped making
4 tapes of Barbara Rogers?

5 A Yes, sir.

6 Q Would you please tell the ladies and gentlemen
7 why you stopped making tapes.

8 MS. STEWART: Objection.

9 THE COURT: Overruled.

10 A Because you told me stop to make tapes.

11 Q What did you do with the tapes you made of
12 Barbara Rogers?

13 A I turned it over to the government.

14 MR. JACOBS: Could we have a date? Request
15 permission.

16 MR. McCARTHY: I will flush it out.

17 Q Do you recall when it was that you turned the
18 tapes over?

19 A No, sir, I don't.

20 Q The arrests in this case were made toward the end
21 of June 1993. Do you recall that?

22 A Yes, sir.

23 Q About how long after that time did you make tapes
24 of Barbara Rogers, if you recall?

25 A I don't recall, sir.

4973

1 Q Mr. Salem, I am placing before you Government's
2 Exhibits 639, 641, 670, 671, and 669. First, let me ask
3 you, at the time that your tapes were recovered by the
4 government, did you have other tapes in your house besides
5 the tapes you had made off the telephone?

6 A Yes.

7 Q What other tapes, if you recall, did you have in
8 your house at that time?

9 A Some microtapes.

10 Q Were all of the microtapes that you had made in
11 connection with this case, if you recall?

12 A Not all of them.

13 Q Showing you first Government's Exhibit 639 for
14 identification, a microtape?

15 A Yes, sir.

16 Q Do you recognize that item?

17 A Yes. It is one of the microtapes I made.

18 Q Have you reviewed that item at my request prior
19 to testifying here today?

20 A Yes, I did.

21 Q Do you recall what that is a microtape of?

22 A To have some conversation for Sheik Omar Abdel
23 Rahman, some other conversation for Dr. Rashid, some other
24 conversation for -- I think there is some other
25 conversations.

4974

1 Q Directing your attention to what is labeled the B
2 side of the tape, do you see the initials in the top of the
3 tape, JJR?

4 A Yes.

5 Q Can you tell us who JJR is?

6 A That is the FBI agent who collected the tape from
7 my house.

8 Q Do you remember what his name is?

9 A Roth, last name is Roth.

10 Q Roth, R-O-T-H?

11 A Yes.

12 Q I am now directing your attention to Government's
13 Exhibit 641.

14 A Yes, sir.

15 Q Have you reviewed that tape at my request prior
16 to testifying?

17 A Yes, sir.

18 Q Do you recall what is own that tape?

19 A It's a conversation between me and Mr. Siddig
20 Ali, Siddig Ibrahim Siddig Ali.

21 Q Turning the tape over to the B side in the upper
22 right-hand corner, do you see a set of initials are?

23 A Yes, JJR.

24 Q Is that Mr. Roth?

25 A Yes, sir.

4975

1 Q Are your own initials also on that tape?

2 A Yes, sir.

3 Q I should have asked you this with respect to 639.

4 Do your own initials also appear on 639?

5 A Yes, sir.

6 Q Mr. Salem, with respect to 641, the tape that you
7 have identified Mr. Siddig Ali on --

8 A Yes, sir.

9 Q Can you tell us how it happened that that was in
10 your house the day of the arrests?

11 A The day I taped that tape, I relayed the
12 information and what happened that day to the agents, and I
13 dropped it in the box because I did it with my own body
14 recorder.

15 Q Did you ever give the tape to the agents before
16 it was taken from your house?

17 A No, I did not.

18 Q Did you ever tell the agents that you had it
19 before it was taken in your house?

20 A I am sorry.

21 Q Let me try another question. Did you ever tell
22 the agents that you had the tape before it was removed from
23 your house?

24 A No, I did not.

25 Q Why not?

4976

1 A I give them the information, I told them what
2 happened, and I went home, I took the body recorder off, I
3 dropped the tape in the box, and once I give the information
4 I am released. I did not intend to keep it from them.

5 Q Let me ask you with respect to 639, how did it
6 happen that 639 was in your house at the time the agents
7 came to take the tapes?

8 A Again I did tape and it was Sheik Omar Abdel
9 Rahman in this conversation, some other conversations. I
10 give the information to the agents. I told them what
11 happened. I went home, I took the body recorder, I dropped
12 it in the box. That's it.

13 Q Directing your attention now to 669, 670 and 671.
14 Directing your attention first to 669.

15 A Yes, sir.

16 Q I would ask you if you recognize that item?

17 A That is a Nagra tape.

18 Q Do you see your initials carved into the tape?

19 A Yes, sir.

20 Q Do you see Mr. Roth's initials carved into the
21 tape?

22 A JJR, yes, sir.

23 Q How did it happen that you had a Nagra tape in
24 your house when the agents came to take the tapes?

25 A It happened couple of times that I was taping

4977

1 some conversation, and I run out of tape. I was meeting
2 with Mr. Sattar, it took five hours, the tape is three
3 hours. It was very important conversation. Two hours I am
4 running out of tape and I could not have it on the tape.
5 Another time I was in Abu Bakr Mosque taping conversations,
6 very important. It's more than three hours. I run out of
7 tape. It was 2:00 at the morning. I have to call the
8 agents. He came down, he delivered some tapes. From this
9 point they decided to give me extra tapes just in case I run
10 out of tapes.

11 Q Is Government's Exhibit 669 one of the extra
12 tapes?

13 A Yes, sir.

14 Q Directing your attention, to Salem, to 670A, is
15 that also a Nagra tape?

16 A Yes, sir.

17 Q Do you see your initials in it?

18 A Yes, sir.

19 Q Do you see Mr. Roth's initials in it?

20 A Yes, sir.

21 Q Finally, 671. With respect to 671, do you see
22 your initials carved in it?

23 A Yes, sir.

24 Q Do you see Mr. Roth's initials carved in it?

25 A Yes, sir.

4978

1 Q Do you recognize these tapes?

2 A Yes, sir.

3 Q What are they?

4 A They are extra, extra Nagra tapes was given to me
5 by the agents as a reserve just in case I ran out of tapes I
6 don't stop.

7 Q Mr. Salem, let me ask you about Nagra tapes for a
8 moment.

9 A Yes, sir.

10 Q During May and June of 1993, did you have any
11 Nagra tape equipment of your own?

12 A No, sir.

13 Q Did you have anything in your house which would
14 allow you to rewind or fast forward Nagra tapes?

15 A No, sir.

16 Q Did you have any equipment in your house that
17 would allow you to over dub over Nagra tapes?

18 A No, sir.

19 Q When you made tapes on your own, that is, when
20 you made body recorder tapes, what kind of taping equipment
21 did you use?

22 A I have a small microcassette recorder, and there
23 is another regular size cassette recorder.

24 Q Is there a reason why you prefer a microcassette
25 recorder to a Nagra recorder?

4979

1 A Yes, sir.

2 Q Could you explain to the ladies and gentlemen of
3 the jury why that is.

4 A The microcassette recorder is like 4 inch by 2
5 inch and a half. So it's very tiny, very small, and supply
6 me with five hours worth of taping. Same time, the Nagra
7 tape is 7 and a half inch by 5 inch, it's very heavy and
8 supply three hours worth of taping.

9 Q Mr. Salem, this morning in your testimony you
10 were telling us about the events of June and July of 1992.
11 Do you recall that?

12 A Yes, sir.

13 Q At the time that you were having your
14 disagreements with the agents that you were working with,
15 can you tell us, please, what was going on with the subjects
16 of the investigation?

17 A In that time we were preparing to go to another
18 trip to visit Mr. Sayyid Nosair in jail in Attica.

19 Q How was it that you knew that you were supposed
20 to go on a trip to Attica to see Mr. Nosair again?

21 A I was told by Mr. Ibrahim El-Gabrownny that
22 Mr. Sayyid Nosair wanted to see me.

23 Q What arrangements were made, if any, for a trip
24 up to Attica at that time?

25 A I started to making arrangements to reserve car,

4980

1 and Mr. Ali Shinawy made arrangements for some other
2 individuals to come with us on the trip.

3 Q Can you tell us, please, who was supposed to come
4 up to Attica with you on this trip?

5 A Siddig Ibrahim Siddig Ali, Mustafa Assad --

6 Q That's A-S-S-A-D?

7 A Yes. Mohammed Shakir.

8 Q S-H-A-K-I-R?

9 A I think yes. And Emad Abdou.

10 Q Did you know Mohammed Shakir?

11 A No, sir, I don't.

12 Q How did you know he was supposed to go?

13 A I think Mr. Ali Shinawy or Mr. Ibrahim
14 El-Gabrownny told me that he going to come with you.

15 Q Mr. Salem, what preparations, if any, did you
16 make for the next trip up to Attica?

17 A I made a reservation to reserve a car, to be
18 enough for the number of people who will go.

19 Q Let me stop you for a moment. Did you have any
20 trouble reserving a car in that time?

21 A Yes, sir, it was.

22 Q What was the trouble?

23 A It was the 4th of July. I had a lot of troubles
24 to reserve a car around Manhattan to pick it up, and finally
25 they directed me to Newark Airport to pick up the car.

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1 Q Did you make a reservation to Newark Airport?

2 A Yes, I did.

3 Q Do you recall what rental company you used?

4 A I believe National.

5 Q Did the dispute that you were having with the
6 agents at that time have any effect on the plans to make the
7 trip?

8 A Yes.

9 Q Tell us what effect it had.

10 A They tell me go, they tell me not to go, I will
11 continue, I will not continue, they will stop the
12 investigation. It was a lot of back and forth and I was
13 just not certain what's going to happen, what should I do.

14 Q Did you end up trying to go on the trip?

15 A Yes.

16 Q Why was it that you tried to go on the trip?

17 A Mr. Siddig Ali trying took vacation from his job.
18 Mr. Emad Abdou trying took vacation from his job. Everyone
19 else made himself available for the trip and if I will
20 cancel it will be bad. So I was obligated to go.

21 Q Did there come a time when you attempted to go on
22 the trip to Attica?

23 A Yes, sir, I did.

24 Q Would you tell the ladies and gentlemen what you
25 did to try to go to Attica.

4982

1 A I talked to Mr. Ali Shinawy on the phone. He
2 said that he would prepare Moustafa Assad. I drove my car
3 to Mr. El-Gabrownny's house. I left my car in front of Mr.
4 El-Gabrownny's house. Mr. El-Gabrownny picked me up with his
5 car, went to Ali Shinawy, picked up Mustafa Assad from
6 there, and drove to New Jersey, picked up Mr. Siddig Ali and
7 Mr. Emad Abdou and drove us to Newark Airport to pick up the
8 car.

9 Q What happened when you got to Newark Airport?

10 A I give them the reservation number. They check
11 my driver's license and they find that there is a car
12 accident, and they refuse to give me the car.

13 Q Did you make any other efforts to obtain a rental
14 car at that time?

15 A Yes, sir.

16 Q What other efforts did you make?

17 A I went to the next agency and there is another
18 two, three agencies in the same place.

19 Q Let me stop you for a moment. This is at Newark
20 Airport?

21 A Yes, sir.

22 Q What did you do?

23 A I tried to get another car but there was no cars
24 at all because I came 4th of July, it was a vacation, a
25 holiday time.

4983

1 Q Were you able to get a car?

2 A No, sir, I did not.

3 Q Did you gentlemen make the trip up to Attica?

4 A No, we did not.

5 MR. McCARTHY: I am sorry, your Honor. I just
6 need a moment.

7 Q Mr. Salem, placing before you Government Exhibit
8 629 for identification.

9 A Yes, sir.

10 Q You have reviewed that tape?

11 A Yes, I did.

12 Q And you identified it earlier in your testimony?

13 A Yes, I did.

14 Q Can you tell us what that tape is?

15 A It's few conversation between Mr. Ali Shinawy and
16 myself, the car rental agency and myself, Mr. Louie Napoli,
17 Detective Louie Napoli and myself, Agent Nancy Floyd and
18 myself. That's as far as I recall.

19 Q Do you recall what the conversations between you
20 and Ali Shinawy were about?

21 A Yes. Mr. Ali Shinawy was telling me that he will
22 make the arrangement for Mr. Mustafa Assad to be ready, and
23 he will give him some videotapes as well.

24 Q To be ready for what?

25 A To go with me on the trip to Attica.

4984

1 Q Do you recall the conversations with the agents
2 on the tape?

3 A Yes, sir.

4 Q Tell us about the conversation with Detective
5 Napoli, if you recall.

6 A He was trying to calm me down. I was so upset,
7 guys, what do you want to do, do you want to go ahead on the
8 trip or not, what do you want, back and forth, it's very
9 upsetting to me, and eventually he told me just go, do the
10 trip, when you come back, call me, page me any time.

11 Q Do you recall a conversation with Agent Floyd
12 after the conversation with Detective Napoli?

13 A Yes, I did.

14 Q What do you recall about that conversation?

15 A I was upset because Detective Louie Napoli --

16 Q Let me stop you. What do you recall about the
17 conversation? Don't tell us what was going through your
18 mind.

19 A I was telling Agent Nancy Floyd what happened
20 with Agent Louie Napoli.

21 Q Did you tell Agent Floyd that you had a tape of
22 Agent Napoli?

23 A Yes, I did.

24 Q Did you try to make any arrangements with Agent
25 Floyd about the trip to Attica?

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1 A Yes, I did.

2 Q Tell us what arrangements you tried to make.

3 A I tried to ask her to make arrangements if it's
4 possible, to bring me a recording device inside Attica jail
5 so I can record my conversation with Mr. Sayyid Nosair to
6 prove to the FBI that the information about what I supplied
7 them is truthful.

8 (Continued on next page)

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1 Q Did you have any conversation with Agent Floyd on
2 this tape about the polygraph?

3 A Yes, sir.

4 Q What do you remember about that?

5 A She was trying to make arrangement with me to set
6 a polygraph test for me.

7 Q Is there any conversation here with the National
8 Car Rental Service?

9 A Yes, sir.

10 Q Could you explain to the ladies and gentlemen of
11 the jury what that is.

12 A I called the car agency. I made a reservation.
13 Before I started to go to the Newark Airport, I called them.
14 They said that they had the dates wrong. I corrected the
15 date. They corrected the reservation number, and they
16 reserved the car for me.

17 Q At approximately this period of time, did there
18 come a time that you went on a vacation?

19 A Yes, sir.

20 Q Is there any conversation on this tape about
21 that?

22 A Yes. There was a conversation with airline
23 tickets, or something like that, to make arrangement to go
24 on a vacation.

25 Q The conversations on this tape that you had as

4987

1 they are recorded on this tape, does this tape contain a
2 fair and accurate recording of those conversations?

3 A Yes, sir.

4 MR. McCARTHY: Your Honor, the government offers
5 Exhibit 629.

6 MR. JACOBS: Voir dire?

7 THE COURT: Yes.

8 MR. SERRA: Your Honor, may I have a moment with
9 Mr. McCarthy, please?

10 THE COURT: Yes.

11 MR. JACOBS: Your Honor, can I have a side bar.

12 (Continued on next page)

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(At the side bar)

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MR. SERRA: Your Honor, first of all, I think

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there are a number of issues involved in this offer.

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The first one --

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THE COURT: Just from the attendance here, it

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sounds like this is going to be a long one rather than a

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short one.

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MR. SERRA: That is probably right.

9

THE COURT: Why don't I send them inside.

10

MR. McCARTHY: I may be able to shorten this. I

11

don't intend to try to play any part of the conversation

12

now, if you want me to go on to something else.

13

THE COURT: Why don't you go on to something else

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and we can do it over the break.

15

MR. JACOBS: I assume your Honor hasn't ruled on

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it obviously.

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THE COURT: Do you want me to?

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MR. JACOBS: No problem, Judge. That is OK.

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(Continued on next page)

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1 (In open court)

2 THE COURT: You will move on to something else,

3 Mr. McCarthy.

4 MR. McCARTHY: I will, your Honor, thank you.

5 Q Mr. Salem, did there come a time that you stopped
6 participating in the investigation?

7 A Yes, sir.

8 Q When you stopped participating in the
9 investigation, what did you do, or where did you go?

10 A I went on a vacation with my wife.

11 Q What did you tell -- withdrawn.

12 Did you have any conversations with
13 Mr. El-Gabrownny about where you were going?

14 A Yes, I did.

15 Q What did you tell Mr. El-Gabrownny?

16 A I told him I am -- I have a jewelry show in Spain
17 and I am going for a while. I won't be around.

18 Q Did you actually go to Spain?

19 A No, I did not.

20 Q Do you recall how long you were gone on vacation?

21 A A couple of weeks, something like that. I don't
22 recall exactly.

23 Q When you came back, did you go back to the
24 investigation?

25 A No, sir, I did not.

4990

1 Q Were you in contact, when you came back from your
2 vacation, with people from the investigation?

3 A Yes, sir.

4 Q In this instance I am talking about the subjects
5 of the investigation, not the agents.

6 A Yes, sir.

7 Q Who were you in contact with?

8 A I find some messages on my answering machine from
9 Mr. Ibrahim El-Gabrownny and Mr. Mohammed El-Gabrownny.

10 Q Did you have conversations with them?

11 A Yes, I returned their calls, and that's it.

12 Q What was the nature of the conversations you were
13 having in that time?

14 A Well, they want me to go back to the mosque, "Why
15 don't you come to have prayer with us. Come. Come on
16 over."

17 Q Did you go to the mosque at that time?

18 A No, sir, I did not.

19 Q Mr. Salem, were you working at that time when you
20 came back?

21 A No, sir, I was not.

22 Q Did there come a time that you got a job?

23 A Yes, sir, I did.

24 Q How did you get a job in that time?

25 A Agent Nancy Floyd introduced me to a detective, a

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1 private detective company, and they hired me for some
2 investigation for them.

3 Q Did you continue to have contact with people who
4 had been subjects of the investigation?

5 A Yes, sir.

6 Q Did there come a time that you had a discussion
7 with some of the agents about taking additional steps to
8 remove you from the investigation?

9 A Yes, sir.

10 Q Do you recall with whom you had those
11 discussions?

12 A I think with Agent Nancy Floyd and Louis Napoli.

13 Q Were arrangements made to take additional steps
14 to withdraw you from the investigation?

15 A Yes, sir, there were.

16 Q Can you describe to the ladies and gentlemen of
17 the jury what additional steps were taken.

18 A It was decided to interview all of the people or
19 most of the people who visited Mr. Sayyid Nosair in jail,
20 and interview me among them, or subpoena me among them.

21 Q Did you eventually get a subpoena?

22 A Yes, sir.

23 Q What happened when you got a subpoena?

24 A I contacted Mr. Ali Shinawy, Mr. Ahmed Abdel
25 Sattar, Mr. Ibrahim El-Gabrownny and everybody.

4992

1 Q After you contacted them, did you meet them at
2 any point?

3 A Yes. We held a meeting in Abu Bakr mosque.

4 Q What was the topic of the meeting?

5 A That the FBI has started to monitor us closely,
6 and we should go to the meeting next morning at the 26
7 Federal Plaza.

8 Q When you say, "Go to the meeting the next
9 morning," what are you talking about?

10 A Where the subpoena -- where the subpoena want us
11 to go.

12 Q Did there come a time that you met with people to
13 answer the subpoena?

14 A Yes, sir.

15 Q Whom did you meet with, if you recall?

16 A Mr. Ibrahim El-Gabrownny, Mr. Ahmed Abdel Sattar,
17 Mr. Emad Abdou. It was around 20 individuals.

18 Q Where did you meet with them?

19 A We met in front of the Warren Street mosque in
20 Manhattan.

21 Q What did you do after meeting at Warren street
22 mosque?

23 A We walked to the federal building, and Mr. Ahmed
24 Abdel Sattar had a federal identification, since he is a
25 postman, he get into the building, called the agents, the

4993

1 agents came downstairs, they came and they accompanied us to
2 upstairs.

3 Q How far is the Warren Street mosque from 26
4 Federal Plaza?

5 A Ten minutes walking.

6 Q What happened when you all got upstairs?

7 A The FBI agents started interviewing us.

8 Q Did you get brought into an interview room?

9 A Yes. I was brought into the interview room.

10 Q Did you actually get interviewed?

11 A No, they did not interview me, because we just
12 sit and talk, and I did not get interviewed.

13 Q Did you make any request of the agents at that
14 time?

15 A Yes, I did.

16 Q Can you tell us what you requested?

17 A I told them, "Please take me through the steps
18 among them exactly, so they see me being treated the same
19 way so they don't suspect me."

20 Q What were the steps that you got taken through?

21 A They took some shots, mugshots for us. They
22 fingerprinted us, and that's about it.

23 Q Did you go through those steps?

24 A Yes, sir.

25 Q After you had your visit up at the FBI offices,

4994

1 did you have some conversation with some of the people you
2 had been subpoenaed with?

3 A Yes, sir.

4 Q Can you tell us some of those who you had
5 conversations with?

6 A Mr. Ibrahim El-Gabrownny, Mr. Ahmed Abdel Sattar,
7 Mr. Ali Shinawy.

8 Q What was the nature of those conversations?

9 A I told them that the FBI was treating me very
10 harshly and they were so nasty to me.

11 Q Did you have any conversation with them about
12 continuing your contacts with them?

13 A Yes, I did.

14 Q What was that conversation, sir?

15 A I told them we have to cool it down for the time
16 being, we are being monitored, and I think I have to step
17 away for a while until they cool it.

18 Q After that point in time, did you continue to go
19 to the mosques?

20 A No, sir, I did not.

21 Q Were you in telephone contact with any of the
22 subjects of the investigation?

23 A Yes, sir, I was.

24 Q Who were you in telephone contact with?

25 A There is a time -- or a few times Mr. Ibrahim

4995

1 El-Gabrowny called me, tried to let me go to the mosque.

2 Mr. --

3 Q Let me stop you for a moment.

4 When you say he tried to let you go to the
5 mosque, what do you mean by that?

6 A "Brother Ahmed why don't you come to do the
7 evening prayer with us tonight?" Something like that.

8 Q Did you return those calls?

9 A I returned the calls, yes.

10 Q Did you go to the mosque?

11 A No, I did not.

12 Q How often were you in telephone contact with
13 Ibrahim El-Gabrowny?

14 A I will say once a week, twice a week.

15 Q How often were you in telephone contact with
16 Mohammed El-Gabrowny?

17 A I will say once a week, twice a week.

18 Q Did you have any telephone contact with
19 Mr. Shinawy?

20 A I think, yes, it happened.

21 Q About how often?

22 A Once each other -- every other week.

23 Q How about Mr. Sattar?

24 A I think -- I am not so sure, sir.

25 Q Did there come a time in 1992 when you heard

4996

1 again from El Sayyid Nosair?

2 A Yes, sir.

3 Q Approximately when was that?

4 A That was close to the end of the year.

5 Mr. Sayyid Nosair called me from jail through Mr. Ibrahim
6 El-Gabrowny, three-way conference, and he said, first thing,
7 he said, "You got to realize we are being taped, OK?"

8 "OK."

9 Q You said "OK", "OK."

10 Who's saying "OK," and who is responding "OK"?

11 A Mr. Sayyid Nosair told me, "First thing you have
12 got to realize we are being on tape."

13 I said, "I understand."

14 Mr. Sayyid Nosair said, "I heard about the
15 subpoena."

16 I said, "Yes."

17 Mr. Sayyid Nosair said, "They have no -- they
18 have no rights to do that for you, and that's called
19 harassment. We are in United States of America, and there
20 is a law. And you don't -- write a report about what
21 happened and give it to me. I will rewrite it in the legal
22 form. I will give it back to you. You will sign it, and
23 notarize it for me. I will take it back to take care of the
24 legal steps for you."

25 Q Did you tell Mr. Nosair that you would make that

4997

1 writing?

2 A Yes, I did. I said yes.

3 Q Did you ever actually make the writing?

4 A No, sir, I did not.

5 Q Did there come a time in 1992, sir, when you
6 heard from Mahmud Abouhalima again?

7 A Yes, sir.

8 Q Can you tell us approximately when that was?

9 A Again, close to the end of the year.

10 Q Did you actually have a conversation with Mahmud
11 Abouhalima on that occasion?

12 A No, sir.

13 Q What was the nature of the contact that you had
14 with him?

15 A Mr. Mahmud Abouhalima called my answering
16 machine. He left a message saying, "Brother Emad, please
17 call me so we can meet to arrange to let our family to come
18 together."

19 Q Now, did you ever actually -- withdrawn.

20 Did you call Mr. Mahmud Abouhalima back?

21 A No, I did not.

22 Q When you had your contact with Mr. Mahmud
23 Abouhalima, did you report it to anyone?

24 A Yes. I reported it to agent John Anticev right
25 away.

4998

1 Q How about your contact with Mr. Nosair?

2 A Yes. I reported to agent John Anticev.

3 Q When Mr. Mahmud Abouhalima called you toward the
4 end of 1992, when was the last time that you had heard from
5 Mahmud Abouhalima?

6 A It was a long time before that. He did not call
7 me for a long time, months.

8 Q I'm sorry?

9 A Months and months.

10 Q Mr. Salem, I want to invite your attention now to
11 the beginning of 1993.

12 A Yes, sir.

13 Q Can you tell the ladies and gentlemen of the jury
14 how you found out that the World Trade Center had been
15 bombed?

16 A In that time I was at the emergency room of St.
17 Claire Hospital.

18 Q How did it happen that you were at the emergency
19 room of St. Claire's Hospital?

20 A I was sick prior to that day for a couple of
21 days. I have troubles with my inner ear, my eye was
22 twitching, I am out of balance. And that day I asked my
23 wife to take me to the hospital because I was out of
24 balance.

25 Q Let me stop you for a moment.

4999

1 Have you ever had those kind of medical problems
2 before?

3 A Yes, sir, I did have it.

4 Q How long before?

5 A At the beginning of my coming to United States.

6 Q You told us early in your testimony you came here
7 in 1987?

8 A Yes, sir.

9 Q How long were you ill before the day you went to
10 the hospital?

11 A I'm sorry. Say it again, please.

12 Q How long were you ill before the day you went to
13 the hospital?

14 A Around two days.

15 Q The day that you went to the hospital, can you
16 tell us where you went first?

17 A I went to the union clinic.

18 Q Can you explain to the ladies and gentlemen of
19 the jury what the union clinic is.

20 A Since I was working in a hotel, I belonged to a
21 certain union. We have a clinic to check us when we get
22 sick. So I went to the union clinic because I wasn't
23 feeling good.

24 Q What happened when you got to the union clinic?

25 A They refused to treat me in that time.

5000

1 Q Why did they refuse to treat you?

2 A Because I was fired from my job, and they said,
3 "Since you're being fired we cannot treat you as a patient."

4 Q Did you have some arguments with them?

5 A Yes, sir, I did.

6 Q Did they ultimately treat you?

7 A Yes.

8 Q Why did they treat you if they said they weren't
9 going to treat you?

10 A I told them that, "Yes, I'm being fired, but
11 there is a case between me and the hotel."

12 They said, "We have no record of that."

13 I told them, "Contact the union representative
14 who taking care of my hotel."

15 By the time they got him and they find him on the
16 phone and verified with him that I have a case against the
17 hotel and I deserve to be treated, it took a while.

18 Q How long were you in the -- withdrawn.

19 How long were you in the union clinic before you
20 finally got admitted to the hospital?

21 A It was a long time. I would say a couple of
22 hours.

23 Q When did you get admitted to the St. Claire's
24 Hospital, if you recall?

25 A Right after they verified that and the doctor

5001

1 checked me out. He said, "You need to go to the hospital to
2 be admitted."

3 Q How did you find out the World Trade Center had
4 been bombed?

5 A When I went to the entrance of the emergency room
6 of St. Claire hospital, they were receiving the injured
7 people from the World Trade Center bombing.

8 Q How long were you in the hospital?

9 A Three to four days.

10 Q Did you have any visitors while you were in the
11 hospital who were related to this case?

12 A Yes, sir.

13 Q Who came to visit you in the hospital?

14 A Mr. Ibrahim El-Gabrowny and Mr. Mohammed
15 El-Gabrowny.

16 Q How did Ibrahim El-Gabrowny and Mohammed
17 El-Gabrowny know that you were in the hospital?

18 A Mr. Mohammed El-Gabrowny was calling me as usual.
19 My wife answered, and she told him, "He's not around. He's
20 in the hospital." He told Mr. Ibrahim, and they both came
21 to visit me next day.

22 Q When they came to visit you, how long did they
23 stay, if you recall?

24 A I will say hour and half, something around that
25 time.

5002

1 Q Who else was present when Mr. Ibrahim El-Gabrowny
2 and Mr. Mohammed El-Gabrowny came to visit you in the
3 hospital?

4 A My wife.

5 Q What language did you speak when you spoke with
6 them?

7 A We spoke in English most of the time.

8 Q Why did you speak in English?

9 A It will be so rude for us to speak in Arabic when
10 my wife is sitting among us.

11 Q Did you have any conversation with either Ibrahim
12 El-Gabrowny or Mohammed El-Gabrowny about the subjects of
13 the investigation that you had been participating in back in
14 the spring and summer of 1992?

15 A Not really, sir, we did not.

16 Q Mr. Salem, did there come a time that you learned
17 that arrests had been made or an arrest had been made in
18 connection with the World Trade Center investigation?

19 A Yes, sir, I did.

20 Q Without telling us what you heard, can you tell
21 us how you heard there had been an arrest in the case?

22 A It was a report. I was watching a talk show on
23 the TV. They interrupted the talk show and they said that
24 the FBI --

25 Q No, don't tell us what they said.

5003

1 A I'm sorry.

2 Q You heard it from television?

3 A Yes, sir.

4 Q Once you heard that an arrest had been made in
5 the bombing of the World Trade Center, what did you do?

6 A I start to calling everybody, and I start to load
7 my tapes in the machine.

8 Q Why was it that you loaded your tapes onto the
9 machine at that time?

10 A I was very nervous. Here is the same -- the
11 information that I supplied that there is bombing could
12 happen, it did happen, and so nervous that the FBI were
13 going to come to me in that time to say, "You did not supply
14 any information, you were helping these people building
15 bombs. You are one of them," and then I get -- they involve
16 me in it.

17 Q When you hooked the machine back up, did you
18 start making telephone calls?

19 A Yes, I did.

20 Q Did there come a time that you spoke with Agent
21 Floyd?

22 A Yes, I did.

23 Q Can you tell us about your conversation with
24 Agent Floyd?

25 A I told her, "Did you hear what happened?"

5004

1 She said, "Yes."

2 I told her, "I am very nervous about it. Nobody
3 listened and I am very concerned that the FBI will involve
4 me in this."

5 She told me, "Don't worry about it. Something
6 happens just page me."

7 MR. JACOBS: Objection.

8 THE COURT: I will allow it. Go ahead.

9 Q She told you what?

10 A She told me, "Don't worry. Something happen,
11 page me."

12 Q Did there come a time that day, that is, after
13 you heard the report about the arrest, that you had a
14 conversation with Ibrahim El-Gabrownny?

15 A Yes, sir, I did.

16 Q Did you also tape record that conversation?

17 A Yes, sir, I did.

18 Q Let me just ask you: Once you put the tape
19 machine on, were all the calls recorded?

20 A Yes, sir.

21 Q What was your conversation with Ibrahim
22 El-Gabrownny after you heard there had been an arrest in the
23 case?

24 A I told him I heard on TV that there is, some
25 people get arrested on connection of Meir Kahane's murder.

5005

1 He said, "I'm receiving some calls. Let me make some phone
2 calls to find out. I will get back to you."

3 I said, "Please let me know what's going on."

4 He said, "Sure, I will."

5 Q Did there come a time later that day that you
6 learned Mr. El-Gabrowny had been arrested?

7 A Yes, sir, I did.

8 Q How you did you find out that Mr. El-Gabrowny had
9 been arrested?

10 A I was in the bedroom lying down. My wife came
11 running from the other room and she said, "I heard on the TV
12 that Ibrahim El-Gabrowny get arrested."

13 Then I opened the TV and I started watching the
14 news.

15 Q Did there come a time that you called
16 Mr. Shinawy?

17 A Yes, sir, I did.

18 Q Can you tell us what happened or what your
19 conversation was when you called Mr. Shinawy after learning
20 about Mr. El-Gabrowny's arrest?

21 A I called him. He said, "Yes, I know about it.
22 They took Ibrahim. But I don't want to talk about it on the
23 phone."

24 Q Did you have much further conversation with him
25 than that?

5006

1 A He was doing the prayer in that time, and in the
2 mosque and that's what I think -- I remember.

3 Q Did there come a time that you called Ahmed Abdel
4 Sattar?

5 A Yes, sir, I did.

6 Q Was that conversation also tape recorded?

7 A Yes, sir, it was.

8 Q Can you tell us what your conversation was with
9 Mr. Sattar?

10 A Yes, I remember, sir.

11 Q Tell us what you remember.

12 A I was telling him, "You heard what happened. You
13 see what happened."

14 He said, "Yes. It seems to me that our
15 communication is being exposed," and just he always being
16 nervous talking on the phone.

17 Q When you said -- withdrawn.

18 When Mr. Sattar said that communications had been
19 exposed, what did you understand him to mean?

20 A There is a way we talk inside the mosque
21 different than the way we talk out of the mosque.

22 Mr. Sattar told me that our communication, the way we are
23 talking inside the mosque, the FBI, that's what I
24 understood, monitoring what we are doing.

25 Q Did you have any conversation with Mr. Sattar

5007

1 about the fact that you had not been around recently?

2 A Yes, I did.

3 Q Can you tell the ladies and gentlemen of the jury
4 what that was about?

5 That is a bad question.

6 Can you describe what that conversation was.

7 A He was telling me that they went to the mosque
8 and he told them -- they asked about me, the people in the
9 mosque, and Mr. Sattar told them, "Leave Emad alone because
10 since the issue of the subpoena he's staying away, or he's
11 kind of frightened, just leave him alone. He's away since
12 then."

13 Q Mr. Salem, did there come a time that you had a
14 conversation on the telephone with Mohammed El-Gabrownny
15 after Ibrahim El-Gabrownny's arrest?

16 A Yes, sir, I did.

17 Q Was that conversation also tape recorded?

18 A Yes, sir, it was.

19 Q Can you explain or describe for the ladies and
20 gentlemen of the jury your conversation with Mohammed
21 El-Gabrownny.

22 A I told him, "Mohammed, did they take Ibrahim?"

23 And he said, "Yes, they did."

24 "What's going on? I heard that they find five

25 Nicaraguan passports on him."

5008

1 He said, "Well, yes, this is for Sayyid Nosair
2 and his family. And I had warned him so many times about
3 it, but he never listened."

4 Q Mr. Salem, did there come a time after you
5 learned of the arrest of Mr. El-Gabrownny that you went to
6 the Abu Bakr mosque?

7 A Yes, sir.

8 Q Did anyone instruct you to go on the Abu Bakr
9 mosque?

10 A No, sir, there is nobody.

11 Q Why did you go?

12 A It is more than a reason. First, Mohammed
13 El-Gabrownny just visited me in the hospital a day, or a
14 couple of days, a few days before. So it will be wise for
15 me to show my face when his brother get arrested.

16 Two, I heard that they are looking for Mahmud
17 Abouhalima all over town, and I felt that if I went there, I
18 will find out where he is.

19 Q What were you going to do if you found out where
20 he was?

21 A Report it to the FBI.

22 Q Who did you see at the mosque when you got there?

23 A I saw Mr. Ali Shinawy, Mr. Mohammed El-Gabrownny,
24 Mr. Mohammed Abouhalima, Mr. Ahmed and Sattar, Mr. Nasser
25 Homosamy.

5009

1 Q Nasser Homosamy?

2 A Yes, sir.

3 Q Did you have some conversation with those
4 gentlemen?

5 A Yes, sir, I did.

6 Q Tell us briefly what the conversation was.

7 MR. STAVIS: Can we know whom he had the
8 conversation with, your Honor.

9 Q Whom did you have the conversation with on that
10 day?

11 A With everybody.

12 Q When you got to the mosque?

13 A Yes.

14 Q What was the nature of the conversation?

15 A They made like fun of me, "Oh, you don't show up
16 your face unless there is a crisis or something like that."

17 I said, "Well, I just wasn't feeling well. I was
18 in the hospital." And Ibrahim visited me in the hospital.
19 I just got to show up my face.

20 Q I am going to ask you to answer this question yes
21 or no.

22 Did you become involved in discussions in that
23 time, that is, back in March of 1993 about what lawyer would
24 represent Mr. Ibrahim El-Gabrownny?

25 A Yes, sir, I did.

5010

1 Q After the time that you went to the mosque, did
2 you speak with the agents with whom you had been working on
3 the investigation?

4 A Yes, sir, I did.

5 Q What did you tell the agents about your trip to
6 the mosque?

7 A I told them that I heard -- I overheard on the TV
8 that they are -- you are looking for Mahmud Abouhalima. I
9 know where he is.

10 Q Before we get to that, let me ask you: Did you
11 have a number of conversations with the agents in the days
12 of early March and forward 1993?

13 A Yes.

14 Q Can you describe the tone of those conversations.

15 A I was very angry at them because that's what I
16 had been telling them all along, there is a 12-bomb -- these
17 guys building bombs, these guys going to bomb the city.
18 They going -- you are going to have a Christmas party, by
19 the Christmas, 12 bombs going in one time, and what I told
20 them, exactly that's what happened. The bomb went off. It
21 takes a bomb with you guys to wake up and start to move.
22 And I was very angry.

23 Q Did you record all those conversations,
24 Mr. Salem?

25 A Yes, sir, I did.

5011

1 Q Mr. Salem did you claim to have reported Mohammed
2 Salameh's name to the agents?

3 MR. JACOBS: I'm sorry. Could you repeat it
4 again?

5 Q Did you claim to have reported Mohammed Salameh's
6 name to the agents?

7 MR. STAVIS: Objection as to form, your Honor.

8 MR. JACOBS: Objection.

9 THE COURT: Overruled.

10 A Yes, sir, I did.

11 Q Had you in fact reported Mohammed Salameh's name
12 to the agents?

13 A No, I did not.

14 Q Why was it that you told them you had reported
15 the name Mohammed Salameh?

16 MR. JACOBS: Objection, your Honor.

17 THE COURT: May I see counsel at the side
18 briefly.

19 (Continued on next page)

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(At the side bar)

THE COURT: Why do we need everybody? One guy made an objection.

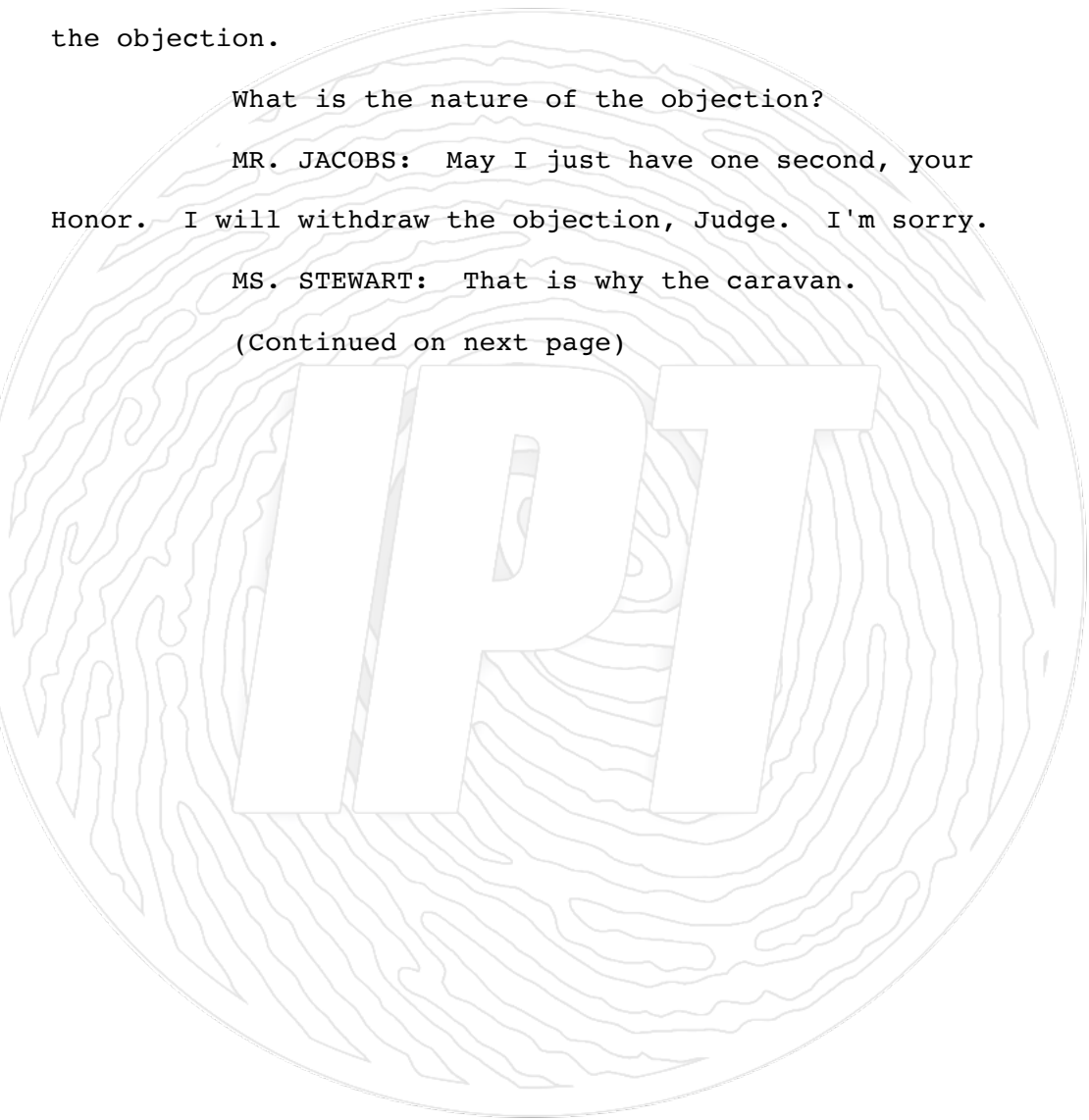
I don't need a whole caravan of people. You made the objection.

What is the nature of the objection?

MR. JACOBS: May I just have one second, your Honor. I will withdraw the objection, Judge. I'm sorry.

MS. STEWART: That is why the caravan.

(Continued on next page)



5013

1 (In open court)

2 THE COURT: The objection is withdrawn?

3 MR. JACOBS: On advice of counsel, yes.

4 Q Why did you tell him you had reported Mohammed
5 Salameh's name?

6 A I have a confusion between two names, Mohammed
7 Salameh, Mohammed Hassan. I thought that I reported
8 Mohammed Hassan. I thought I reported Mohammed Salameh, and
9 in my mind was Mohammed Hassan. It was a confusion. I
10 wasn't --

11 Q Had you in fact reported the name Mohammed
12 Hassan?

13 A No, I did not.

14 Q No? Withdrawn.

15 I will try it a different way.

16 You had not reported Mohammed Salameh, correct?

17 A No, I did not.

18 Q Had you told the agents about Mohammed Hassan?

19 A Yes, I did say that.

20 Q Mr. Salem, a couple of minutes ago you told us
21 about a conversation you had had with Mohammed El-Gabrowny
22 after Mr. Ibrahim El-Gabrowny had gotten arrested.

23 A Yes, sir, I did.

24 Q You mentioned that one of you had said that he
25 had warned Ibrahim a number of times?

5014

1 A Yes, sir.

2 Q Who said that? You or Mohammed El-Gabrowny?

3 A Mr. Mohammed El-Gabrowny told me -- when I told
4 him about the Nicaraguan passports, he said he had warned
5 him so many times but he never listened.

6 Q Did Agent Anticev and Detective Napoli ask you to
7 come see them after the arrests started to be made?

8 A Yes, sir.

9 Q Did there come a time that you went to see them?

10 A Yes, sir.

11 Q Where did you see them?

12 A 26 Federal Plaza.

13 THE COURT: Would you come to a convenient break
14 point in the next five minutes or so.

15 MR. McCARTHY: Your Honor, I am at a new spot
16 now. I could continue for a couple of minutes if you want.

17 THE COURT: Five?

18 MR. McCARTHY: Sure.

19 Q What did you see when you got to the office?

20 A There was a cabinet of jars, and on the top of
21 it, few boards and the top board, few pictures being posted
22 on it.

23 Q Did you see --

24 MS. STEWART: I didn't catch the last part of the
25 answer, Judge.

5015

1 THE COURT: A board, I think he said, with
2 pictures posted on it.

3 Q How many pictures were there, if you recall?

4 A The first board, as far as I recall, was four,
5 five pictures, and the other boards I didn't count how many
6 pictures on it.

7 Q Did you see your own picture?

8 A Yes, sir, I did.

9 Q Did you have some conversation with Agent Anticev
10 about that?

11 A Yes, sir, I did.

12 Q Can you describe that to the ladies and gentlemen
13 of the jury.

14 A I said, "Why you putting my picture here? This
15 is suspects?"

16 And he said, "No, it's the people -- our
17 assistant put this for the people who get mugshots. You are
18 not a suspect." And that was it.

19 Q Did you speak to the agents about resuming your
20 cooperation in the investigation?

21 A Yes, we did.

22 Q Did you agree at that time to resume your
23 cooperation?

24 A I wasn't completely a hundred percent agreeing to
25 cooperate with them. I did not.

5016

1 Q Did there come a time later when you agreed to a
2 hundred percent completely cooperate with the agents?

3 A Yes, sir.

4 Q When you agreed to cooperate, was there any
5 discussion about whether or not you would be a witness?

6 A Yes. There was a lot of discussions about that
7 subject.

8 Q How long did those discussions take place? Over
9 what period of time?

10 A I don't recall how long, but it took a long time
11 until I finally decided.

12 Q Did you ultimately agree to become a witness?

13 A Yes.

14 Q Mr. Salem, did there come a time when you had a
15 conversation in the mosque about Mahmud Abouhalima?

16 A Yes, sir, there is.

17 Q Do you recall approximately when that happened?

18 A That's in the time the FBI were looking for him
19 after the bombing.

20 Q How long after your first trip to the mosque
21 after you heard about the arrests if you recall?

22 A I think next day, right away or --

23 Q With whom do you recall having a conversation in
24 the mosque about Mahmud Abouhalima?

25 A It was Mohammed Hassan Abdou, Ahmed Abdel Sattar,

5017

1 and Mr. Mohammed El-Gabrownny.

2 Q Tell us about that conversation.

3 A We were talking about where is the -- what
4 happened, and where is Mr. Mahmud Abouhalima.

5 Q Who said what to whom?

6 A I was asking. And Mr. Mohammed El-Gabrownny said
7 that he learned from his brother, Mohammed Abouhalima --

8 Q Let me stop you. He learned from whose brother?

9 A OK. Mr. Mohammed El-Gabrownny had learned from
10 Mr. Mohammed Abouhalima, Mr. Mahmud Abouhalima's brother,
11 that he had went to Saudi Arabia.

12 Q Mr. Mohammed Abouhalima is the brother of Mahmud
13 Abouhalima?

14 A Yes.

15 Q And it was Mr. Mohammed Abouhalima who told
16 Mr. Mohammed El-Gabrownny that Mahmud Abouhalima had gone to
17 Saudi Arabia?

18 A Yes.

19 Q What did you do when you learned that
20 information?

21 A I told the FBI.

22 MR. McCARTHY: Your Honor, is this a convenient
23 point?

24 THE COURT: It is a convenient point.

25 Ladies and gentlemen, we are going to break

5018

1 briefly -- actually somewhat longer than we usually do.
2 Please leave your notes and other materials behind. Please
3 don't discuss the case, and we will resume in a while.

4 THE DEPUTY CLERK: Please follow me.

5 THE COURT: I will ask everyone to remain seated,
6 please, until the jurors leave.

7 (The jury was excused)

8 (Jury not present)

9 THE COURT: There was a series of issues about
10 Exhibit 629. Exhibit 629?

11 MR. SERRA: Your Honor, I think --

12 THE COURT: Mr. Serra?

13 MR. SERRA: I think probably many people will
14 want to address that. First of all, so the court has an
15 idea of what we are talking about, that is bootleg tape 29,
16 and a quick search of my records here shows over 40
17 conversations on that tape.

18 Now, from my brief conversation with Mr. McCarthy
19 it could be the government only intends to offer those
20 conversations which the witness referred on the stand, but
21 even that's not enumerated as to which of the 40 those are.
22 Because, for example, I was quickly checking while he was
23 testifying, there are several just with Nancy Floyd on that
24 tape. So it is not clear.

25 There are other objections, your Honor, but,

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1 first of all, it is not clear what he's offering.

2 THE COURT: OK. Let's clear up what he is
3 offering.

4 MR. McCARTHY: Your Honor, the government is
5 offering the conversations that Mr. Salem participated in on
6 that tape. There are some conversations between his wife
7 and I think one between his wife and a client, one between
8 his wife and a friend, if I'm recalling correctly. Those
9 were not offered.

10 There are some calls that came in as messages
11 which we are offering which I think are relevant to showing
12 that it is the period of time that he testified about. But
13 we are offering all of the conversations with the agents and
14 the conversations that he otherwise testified about with
15 Shinawy, El-Gabrownny, and the travel agency people, the car
16 rental people.

17 MR. SERRA: Your Honor, I think now we are
18 getting back to the issue of, although the government has
19 clearly complied with Rule 16 requirements in terms of
20 giving us these conversations at some point, no one among us
21 knew that they were going to be offered today or to that
22 matter that they were ever going to be offered.

23 Therefore, what I think we ought to have at this
24 point are in front of us transcripts of the conversations
25 that the government's offering so that we can make

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1 intelligent objections, if there are any. We didn't know
2 that this offer was going to be made until it was in fact
3 made.

4 MR. McCARTHY: Your Honor, I didn't intend to
5 read any conversations to the jury or have --

6 THE COURT: I know. But if you are making the
7 offer and you want me to pass on the admissibility of all
8 those conversations, then you are going to have to suffer
9 the objections being made at the time of the offer, failing
10 which, you make the offer at some other time.

11 MR. McCARTHY: Yes, your Honor.

12 THE COURT: Which is it?

13 MR. McCARTHY: I will renew the offer when we
14 have transcripts that we can authenticate. But I think it
15 is appropriate to deal with the issue at this point anyway.
16 I don't think we need transcripts in order to put in front
17 of the jury at least the English conversations with the
18 agents, which, of course, as to which the transcript would
19 only be an aid to the jury in any event. But I do agree
20 with Mr. Serra that we should at least itemize for them
21 exactly what's being offered.

22 MR. SERRA: So, your Honor, perhaps at this point
23 we could at least know from the government which numbered
24 conversations in tape 29 they are offering so that we are
25 not arguing in a vacuum.

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1 MR. McCARTHY: Your Honor, I will provide the
2 numbers.

3 THE COURT: All right. Mr. Jacobs?

4 MR. JACOBS: Just to follow up, the government
5 had served on us February 21, 1995 a list of possible
6 bootlegs that they might be offering. It is about, I don't
7 know, 60 or so, whatever is on the list here.

8 Included in that were four conversations for this
9 tape, 29-3, 29-4, 29-17 and 29-36. That is the only
10 notification or possible -- since I have been preparing
11 Mr. Ginsberg and the tape and the voir dire, I have been in
12 constant touch with Mr. McCarthy, and, as of this weekend,
13 the only notification I think any of us have gotten as to
14 the ones on the direct case was 39 and 41. Mr. Ginsberg and
15 I have been working around the clock trying to get some voir
16 dire prepared, etc., etc. 29 has absolutely not been
17 discussed between myself and the government as of this
18 weekend, and since I was, to some extent, going to conduct
19 some of the voir dire on it, I am little surprised that the
20 government in the middle of the direct is now going to
21 proffer a tape that we really haven't focused on at all.

22 In fact, I was very clear with Mr. McCarthy,
23 "Which ones are you going to offer on your direct?" "39 and
24 41."

25 Because obviously I wanted to prepare an

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1 appropriate voir dire, and that was not given to me as a
2 number.

3 MR. McCARTHY: Your Honor, it is correct that I
4 thought that what we would offer on direct was 39 and 41. I
5 did give counsel a letter which contained references to
6 conversations from a number of the other tapes. I do agree
7 with him that the offer that I made today is more expansive
8 than the list that I initially gave him.

9 I didn't think that would be a problem since it
10 was not a situation where I actually intended to stop and
11 play tapes or offer tapes at that time.

12 However, there have been claims made by defense
13 counsel in the case that the agent tapes were a big problem
14 for the government in this case. This is a tape that
15 contains agent tapes that are fairly important. It is a
16 tape that is important to explaining --

17 THE COURT: It may be important, but there is
18 going to have to be a reasonable period of time for any voir
19 dire, and let's understand, as long as we are dealing with
20 that phrase, that it goes simply to the admissibility of the
21 tape, and it isn't throwing warmup pitches for the
22 cross-examination.

23 MR. JACOBS: Your Honor, hopefully when I do have
24 the voir dire, I will try to comply with what method the
25 court has in mind.

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1 THE COURT: What I have in mind is the rules of
2 evidence.

3 MR. JACOBS: I will try, your Honor.

4 THE COURT: It is not like you have to be a
5 psychic to figure it out.

6 MR. JACOBS: I understand.

7 THE COURT: OK.

8 MR. JACOBS: I think I read the Court of Appeals
9 case, and I am prepared to do voir dire. I am just not
10 prepared to do 29 today. One of the objections I have -- I
11 think we would like to have a "heads up" so we can do
12 homework. I have been working a week on these kind of
13 things, and I am a little disappointed at 3:30 to find out
14 that 29 is coming in without any notice.

15 THE COURT: It not coming in until you have had a
16 chance to do whatever homework you have to.

17 MR. JACOBS: Thank you, your Honor.

18 THE COURT: Anything else?

19 MR. McCARTHY: Your Honor, I think there is going
20 to be an issue about the admissibility of the agent
21 conversations. I don't think it is something that the court
22 needs to deal with at this minute, but it is coming.

23 THE COURT: What do you think the issue is going
24 to be?

25 MR. McCARTHY: As I understand it, there is some

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1 issue about whether the agent tapes are admissible under the
2 rules of evidence, given that they contain some prior
3 consistent statements and he hasn't been impeached yet.

4 The government's theory is that the defense
5 attorneys in this case, without objection from any of their
6 number, opened on the agent conversations, opened on a
7 theory that this person had been basically booted out of the
8 investigation because the agents that he was working with
9 found him to be a liar and booted him out of the
10 investigation for that reason.

11 They also suggested in the course of the opening
12 statements and in some of the questioning that we have heard
13 since the case started that the agent conversations are
14 something of a boogey man of this case for the government.

15 It is not a situation -- let me back up on that.

16 I don't think that counsel can take that kind of
17 a position with respect to the tapes and then object when we
18 get to the point where an agent tape becomes relevant and
19 the government offers it.

20 MR. STAVIS: Your Honor --

21 THE COURT: Presumably, when you say "becomes
22 relevant," it becomes relevant to something other than
23 whether the general subject of agent tapes is a problem for
24 the government or not, correct?

25 MR. McCARTHY: I agree with that, yes, your

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1 Honor.

2 THE COURT: All right. So your theory of
3 relevance is something other than that, correct?

4 MR. McCARTHY: Yes. Obviously, we didn't try to
5 offer them until we tied them into something we at least
6 thought was relevant.

7 THE COURT: Mr. Stavis?

8 MR. STAVIS: I am obviously not prepared, not
9 knowing the conversations, but I think that Mr. McCarthy
10 mentioned something about Agent Floyd on some of these
11 conversations and --

12 THE COURT: Correct.

13 MR. STAVIS: -- she was not the case agent on
14 this case, and I don't know to what extent the conversations
15 will bear on the personal relationship between Mr. Salem and
16 Agent Floyd, as opposed to a relationship between an agent
17 and a cooperating witness.

18 MR. McCARTHY: Your Honor --

19 THE COURT: Are you getting up to tell us what
20 you don't know? I don't understand what point you are
21 making.

22 MR. STAVIS: When I know what the conversations
23 are, I may have an objection. If I know if the
24 conversations are with Agent Floyd or with the case agents,
25 Detective Napoli and Agent Anticev.

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1 THE COURT: People they have said he had
2 conversations with on that tape included Shinawy, Napoli,
3 Floyd, the National Car Rental people and some travel agents
4 about his vacation, according to my notes.

5 MR. McCARTHY: That is correct. Your Honor, we
6 won't offer a tape unless I can tie it into something that
7 is relevant. We don't believe that the conversations with
8 the agents are all flying in just because --

9 THE COURT: Because they said agent
10 conversations, right?

11 MR. McCARTHY: Yes.

12 THE COURT: Good. You presumably will talk to
13 them at some convenient time, get material turned over, and
14 then we will figure out when the most opportune to time to
15 deal with this is, right?

16 MR. McCARTHY: Yes, your Honor.

17 THE COURT: Before we take the break, just about
18 what happened this morning, any conduct of the sort that
19 happened this morning by any spectator is now the subject of
20 a standing order to the Marshals Service to take any such
21 person into custody immediately, and they will be summarily
22 sent to jail.

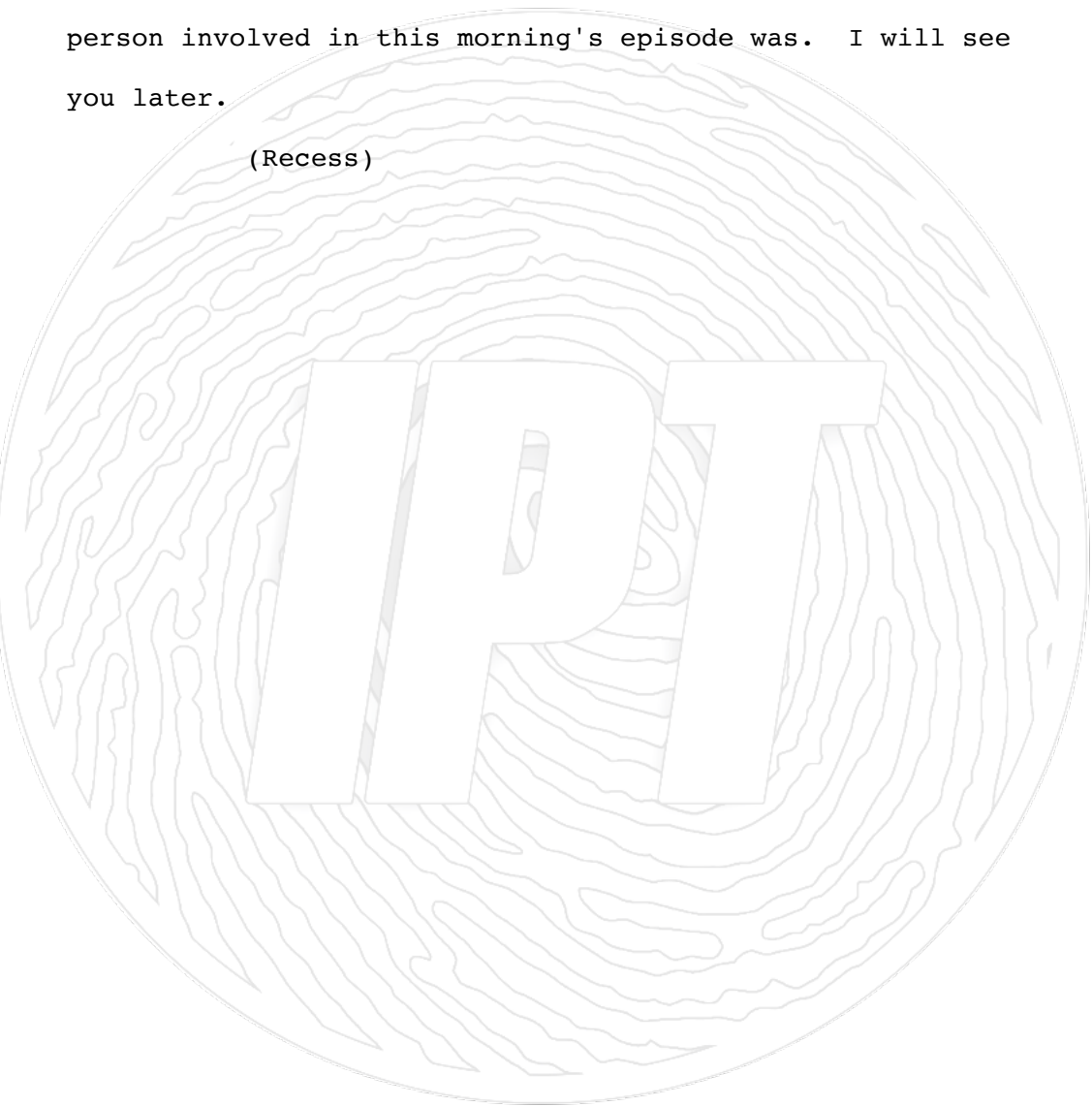
23 I don't think that is anything that anybody has
24 to be warned about before it's done. But it wasn't
25 something I wanted to do in front of the jury, and

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1 understand that as of now it is something that is going to
2 happen. That was and will be treated as a summary contempt.
3 In addition, of course, whoever does it is going to be
4 barred permanently from returning to this courtroom, as the
5 person involved in this morning's episode was. I will see
6 you later.

7 (Recess)

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1 (Jury present)

2 THE COURT: Good ahead, Mr. McCarthy.

3 MR. McCARTHY: Thank you, your Honor.

4 BY MR. McCARTHY:

5 Q Mr. Salem.

6 A Yes, sir.

7 Q When we broke, you told us that you had learned
8 that Mahmoud Abouhalima had gone to Saudi Arabia. Do you
9 recall that?

10 A Yes, sir.

11 Q Did there come a time shortly after that that you
12 learned that he had changed his location?

13 A Yes, sir.

14 Q Can you explain to the ladies and gentlemen of
15 the jury how you learned that Mahmoud Abouhalima had left
16 Saudi Arabia?

17 A It was the next day, I went to Mr. Mohammed
18 El-Gabrowny's house, and I met Mr. Mohammed Abouhalima over
19 there.

20 Q Let me stop you for a moment. You met Mohammed
21 Abouhalima?

22 A Yes.

23 Q At Mohammed El-Gabrowny's house?

24 A Yes.

25 Q And you told us earlier that Mohammed Abouhalima

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1 is the brother of Mahmoud Abouhalima, is that correct?

2 A Yes.

3 Q What happened when you met Mohammed Abouhalima at
4 Mohammed El-Gabrownny's house?

5 A We were talking about what happened and what's
6 going on, and he mentioned that -- I told him, is Mahmoud
7 still in Saudi Arabia? He said no, he went to Cairo and he
8 get arrested over there.

9 Q When you heard that Mahmoud Abouhalima had been
10 arrested in Cairo, what did you do?

11 A I told FBI.

12 Q Did there come a time that you had a conversation
13 with Mohammed Abouhalima about El Sayyid Nosair?

14 A Yes.

15 Q Can you tell us when that was?

16 A It was in the same night, in the same place, at
17 Mr. Mohammed El-Gabrownny's house.

18 Q Can you tell us what your conversation was with
19 Mohammed Abouhalima about El Sayyid Nosair?

20 A He was telling me that he had -- Mr. Mohammed
21 Abouhalima, Mr. Mahmoud Abouhalima and Mr. Mohammed Hassan
22 visited Sayyid Nosair in jail right prior to the bombing of
23 the World Trade Center, and I made myself concern. I told
24 him, I hope you did not talk loudly, guys, because there is
25 a lot of recording devices, and he said no, we were

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1 whispering in each other's ear, nobody heard anything.

2 Q Who were the three people that he said had gone
3 to see El Sayyid Nosair before the bombing?

4 A Mr. Mohammed Abouhalima, Mr. Mahmoud Abouhalima,
5 and Mr. Mohammed Hassan.

6 Q Did there come a time in the Abu Bakr Mosque
7 where you had a conversation with Mr. Mohammed Hassan?

8 A Yes, sir.

9 Q Who else was present at that time?

10 A Mr. Ahmed Abdel Sattar, Sheik Ali Shinawy, and
11 others.

12 Q What was the conversation with Mohammed Hassan
13 about?

14 MR. STAVIS: Can we have a time frame on this
15 conversation, your Honor?

16 Q How long, Mr. Salem, after you heard about the
17 first arrests after the bombing of the World Trade Center do
18 you recall having this conversation with Mohammed Hassan?

19 A Yes. That was the week after the arrest, it was
20 so busy, a lot of meetings, a lot of talks, a lot of
21 conversations.

22 Q Can you tell us about your meeting with --
23 withdrawn. Can you tell us about your conversation with
24 Mohammed Hassan about -- withdrawn. Can you tell us about
25 your conversation with Mohammed Hassan?

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1 A Yes, sir. We were talking about the FBI, and
2 they had been watching and monitoring closely, and then
3 specifically Mr. Mohammed Hassan said yes, I know this bald
4 tall guy, John Anticev, by the way, anybody have his
5 address?

6 Q Let me stop you. When you said tall bald guy,
7 you said John Anticev?

8 A Yes.

9 Q Who is John Anticev?

10 A An FBI agent.

11 Q What happened when Mr. Hassan asked about Agent
12 Anticev's address?

13 A Mr. Ahmed Abdel Sattar, his answer, I got it, I
14 got it. They walk to the corner and they talked about it.

15 Q Can you tell us what time of day this
16 conversation took place?

17 A It was very late, after midnight.

18 Q What did you do after you heard this
19 conversation?

20 A I went to a booth phone and I called Agent
21 Anticev to warn him.

22 Q Mr. Salem, did you take any other steps besides
23 just showing up at the mosque to reintroduce yourself into
24 the people you had been helping the FBI investigate?

25 A Yes, I did.

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1 MR. JACOBS: Object to the word reintroduce.

2 MR. McCARTHY: I will try again.

3 THE COURT: Do you want to rephrase it?

4 MR. McCARTHY: Yes, your Honor.

5 Q Did you take any other steps at the time you went
6 back into the investigation?

7 A Yes, sir.

8 Q Can you tell us what you did?

9 A I start to arranging media interviews, to Sheik
10 Omar Abdel Rahman, to Mr. Sayyid Nosair's wife --

11 Q Let me stop you. You said you arranged
12 interviews to those people.

13 A Yes.

14 Q Do you mean you arranged them for those people?

15 A Yes.

16 Q Who did you arrange interviews for?

17 A Sheik Omar Abdel Rahman, Mr. Sayyid Nosair's
18 wife, Mr. Ali El-Gabrownny, Mr. Ibrahim El-Gabrownny's
19 brother. And I was being interviewed as well.

20 Q Who interviewed you?

21 A Channel 1 New York 1 interviewed me.

22 Q You said Channel 1?

23 A Pardon me?

24 Q Did you say Channel 1?

25 A Yes, sir.

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1 Q New York 1?

2 A Yes, sir.

3 Q Who else interviewed you?

4 A I gave an interview to, I believe the CNN. I was
5 walking out of the courthouse with Mr. Mohammed Abouhalima,
6 and they interviewed me. There is some Arabic magazine, I
7 wrote an article in it about Mr. Sayyid Nosair.

8 Q What kind of public statements were you making at
9 the time?

10 A I was just making good statements about them,
11 and --

12 Q Let me stop you. Who is the "them" you were
13 making good statements about?

14 A About the people who is involved with the
15 investigation.

16 Q When you arranged or when you started to arrange
17 press interviews for Sheik Omar Abdel Rahman, how much
18 access did you have to him at that time?

19 A I start to get busy with him.

20 Q What do you mean you start to get busy with him?

21 A He start to arrange for a press conference, we
22 start to go at night to prepare for the next day press
23 conference. I start to search the reporters when they are
24 coming to his apartment. I start to helping the people who
25 is interpreting to him, to cover them with veils so they do

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1 not appear on cameras. I participate in the whole process.

2 Q During this period of time, Mr. Salem, did the
3 agents give you any instructions about contacts with defense
4 lawyers?

5 A Yes, sir, they did.

6 Q What did they tell you?

7 A They told me, we saw your picture walking with
8 the lawyers in front of the courthouse. I said yes. They
9 said do not approach the lawyers, stay away of the lawyers.
10 And they described to me some big legal problem about the
11 Chinese wall and that's got to isolate --

12 Q Let me stop you for a moment. You used the term
13 Chinese wall?

14 A Yes.

15 Q That's a term they used with you?

16 A Yes.

17 Q Did you understand what they were saying when
18 they told you that?

19 A There was a lot of explanation, sir, but bottom
20 line, stay away from the lawyers. I did.

21 Q How often did they tell you to stay away from the
22 lawyers?

23 A In that time constantly.

24 Q Did you in fact stay away from the lawyers?

25 A Yes, sir, I did.

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1 Q How did you get away from being involved with the
2 lawyers?

3 A I created an argument between Mr. Ahmed Abdel
4 Sattar and myself, and I said OK guys, if that's the way you
5 want to handle it I'm out of here, if you need me, call me,
6 and I withdraw myself.

7 Q Mr. Salem, let me direct your attention to April
8 1993.

9 A Yes.

10 Q Did there come a time in April 1993 that you were
11 at Sheik Omar Abdel Rahman's apartment?

12 A Yes, sir.

13 Q Did you see Siddig Ali on that day?

14 A Yes, sir.

15 Q Can you tell us what happened between you and
16 Siddig Ali, starting in Sheik Omar Abdel Rahman's apartment?

17 A We spent a few hours there talking about what's
18 going on, and the time came when I am leaving, Mr. Siddig
19 Ali followed me and in the elevator said can you give me a
20 lift, do you have a car, yes, can you give me a lift? I
21 said sure, gladly. We left the building, I walking towards
22 my car. He said by the way, is your car clean? I said yes,
23 I have devices, I sweep my car, it's clean, I sweep it every
24 day. And he said OK. We get into the car. We start to
25 drive, and then he said you pull over here, got to talk a

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1 little bit. Pulled over. We start talking. He told me
2 that he overheard that I am explosive experts, and they were
3 planning to kill President Mubarak.

4 Q Let me stop you. Who is "they" who were planning
5 to kill President Mubarak?

6 A In that time told me that Mr. Siddig Ali and
7 Mr. Abdel Al-Rahman Haggag.

8 Q Did you know Abdel Al-Rahman Haggag?

9 A Yes, I saw him a few times in the mosque, and I
10 know that he lives next door to the sheik, Sheik Omar.

11 Q Siddig Ali said that he, that is, Siddig Ali, and
12 Abdel Al-Rahman Haggag were planning to kill President
13 Mubarak?

14 A Yes.

15 Q What was the rest of your conversation about
16 that?

17 A I told him well, that's nothing new because
18 that's what Sheik Omar asking me to do in our trip to
19 Detroit. But in that time nobody helped me to do anything,
20 and one hand will never clap alone.

21 Q What conversation, if any, did you have on the
22 subject of training?

23 A Mr. Siddig told me that he have his own people,
24 who they are very well trained for a suicidal missions, and
25 they were helping and they are willing to help.

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1 Q Did Mr. Siddig Ali and you make any arrangements
2 to meet again?

3 A Yes. He said, you said you have electronic
4 equipments for sweeping and things like that? I said yes.
5 Can you check phone lines? Yes. How about --

6 Q Let me stop you for a moment. You are saying a
7 sentence and "yes" and then another sentence and "yes."

8 A All right.

9 Q Can you tell us who is saying what and what is
10 responding?

11 A Mr. Siddig Ali is saying do you have electronic
12 equipments for sweeps? I said yes. Do you have electronic
13 equipments to check the phone lines? I said yes. Will you
14 check my phone line tomorrow? I said sure, gladly. And he
15 said OK, you come to meet with me tomorrow and do the sweep
16 in my apartment.

17 Q Did you go to Mr. Siddig Ali's apartment the next
18 day?

19 A Yes, sir, I did.

20 Q Who was present when you went there?

21 A It was his wife in the inside room and Mr. Siddig
22 at the front room with me.

23 Q Did you bring anything with you on that occasion?

24 A Yes, I brought some recording device and some
25 gadgets in my briefcase.

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1 Q What kind of gadgets did you bring in your
2 briefcase?

3 A I brought phone line checker, to check the phone
4 line. I brought a body recorder. I brought sweeping
5 device -- different type of devices.

6 Q Did you have a real sweeping device and a real
7 phone line recorder?

8 A It was -- it's not that sophisticated, but yes,
9 it's devices to do that.

10 Q Where had you gotten those things?

11 A I bought them.

12 MS. AMSTERDAM: I am sorry. I didn't hear the
13 answer.

14 A I bought them.

15 Q Where had you gotten them?

16 A The phone checker, I bought it from some store on
17 Canal Street. The sweeping device I bought it out of
18 catalog.

19 Q Out of a catalog?

20 A A catalog, yes. The recording device, I had it
21 since prior to that.

22 Q Those were your own items?

23 A Yes, sir.

24 Q Had you had any conversation with the FBI agents
25 about bringing government items instead of your own items?

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1 A Yes.

2 Q What was your conversation with the agents?

3 A I asked them to supply me with a phone line
4 checker, to check Mr. Siddig's phone line, and they try to
5 buy it.

6 Q Did they buy it?

7 A No, they did not.

8 Q Did you have any argument with the agents?

9 A Yes, I did.

10 Q What was your argument with the agents?

11 A I start meeting with the agents around early
12 morning. We stayed like for four, five hours running around
13 stores, spy stores to buy the device, and they call back to
14 the office, they tell them it's \$600. They say -- and the
15 office say it's expensive. They go back to the store. They
16 bargain with them. They drop \$50. They went back to the
17 phone. They made a phone call. They said it's became 550.
18 The office told them it's still expensive. They say come
19 over to make a meeting. Detective Napoli, after four, five
20 hours, why didn't you hang around here until we go to the
21 office to held the meeting? I said you guys don't know what
22 you doing, I'm out of here, I go home.

23 Q Did you go home?

24 A No, I did not.

25 Q Where did you go?

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1 A I thought in my way home that if I went home -- I
2 know that Siddig in the day before told me about explosives
3 and bombing --

4 Q Mr. Salem, I asked you where you went.

5 A I went back to Canal Street, I bought small
6 device for, like, 3, \$5.

7 Q Not 550 or \$600?

8 A No, sir.

9 Q Where did you go after you bought the small
10 device?

11 A I went to Mr. Siddig's house.

12 Q What recorder did you have?

13 A It was a microcassette recorder.

14 Q Whose was that?

15 A That's fine mine, sir.

16 Q When you went to Mr. Siddig Ali's house, did you
17 tape record the conversation?

18 A Yes, sir, I did.

19 Q I am showing you once again Government's Exhibit
20 641 for identification, which I think you have already seen
21 today.

22 A Yes, sir.

23 Q What do you recognize that microcassette to be?

24 A That's the microtape. I taped it for my meeting
25 with Mr. Siddig Ali.

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1 MR. McCARTHY: Your Honor, the government offers
2 641.

3 THE COURT: Mr. Jacobs.

4 VOIR-DIRE EXAMINATION

5 BY MR. JACOBS:

6 Q Mr. Salem, 641, this microcassette, can you tell
7 the jury the date that you recorded it?

8 A I don't recall the date, sir.

9 Q Could you tell us the month that you recorded it?

10 A I am not sure, sir.

11 Q Can you tell us the year you recorded it?

12 A Yes, that was 1993.

13 Q Before the World Trade Center bombing or after?

14 A After, sir.

15 Q You made your first official tape for the FBI on
16 what date, sir?

17 MR. McCARTHY: Objection, scope.

18 THE COURT: Sustained.

19 Q In connection with your first official tape for
20 the FBI, was this tape before or after, if you know?

21 A Before, sir.

22 Q So before your first official tape with the FBI,
23 you made this tape?

24 A Yes, sir.

25 Q Is this thing I am holding in my hand a copy or

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1 an original of this tape that the government is offering?

2 A The original, sir.

3 Q How do you know that, sir?

4 MR. JACOBS: May I approach the witness?

5 A Because after I finished the tape and I took it
6 out of the recording device, I wrote down in Arabic Sheik
7 Siddig, in red Arabic writing print.

8 Q That signifies to you that that is the original
9 tape, that notation on it?

10 A Yes, sir.

11 Q Did you, after you made this tape with Siddig
12 Ali, did you listen to it?

13 A I don't recall listening to it, because I
14 reported right away what's on it.

15 Q Did you tell the FBI that you made a tape of it?

16 A No, I did not. I reported what happened --

17 Q Did you tell the FBI you made a tape of it? Yes
18 or no.

19 A No, sir.

20 Q Did you withhold that exhibit --

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q Did you keep this exhibit in your apartment for
24 several months, sir? Yes or no.

25 A Yes.

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1 Q Did you listen to it during those several months?
2 Yes or no.

3 A No, sir.

4 Q Is it your testimony it stayed in the same
5 condition for several months in your home? Is that your
6 testimony, sir?

7 A Yes, sir.

8 Q Did you at any time attempt to alter the tape?

9 A No, sir.

10 Q Did you at any time attempt to erase anything on
11 the tape?

12 A Absolutely not.

13 Q When was the last time you listened to it, sir?

14 A I think, I think last week.

15 Q Please, when do you think it was?

16 A I am sorry.

17 Q When did you listen to it the last time, sir?

18 A Last week, approximately.

19 Q Does this tape which the government has offered
20 represent the entire conversation you had with Siddig Ali on
21 the date that you are not sure about?

22 A When you said, sir, the entire conversation --

23 Q Yes.

24 A Means from since I stepped to his apartment until
25 I leave?

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1 Q That is correct. Is it the entire conversation
2 or some portion of the conversation?

3 A Portion of the conversation, sir.

4 Q Could you tell the jury how much of the
5 conversation is missing from that tape, sir?

6 A The first part he ask me to sweep his apartment.
7 I walk around, I sweep his apartment. I wasn't taping that
8 part. I finish sweeping his telephone and his apartment.
9 Then we sit, we start to talk, I flip the switch, I start
10 taping until I start to leave.

11 (Continued on next page)

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1 Q Am I correct, then, that this tape does not
2 represent the entire conversation you had with Siddig Ali,
3 is that fair to say?

4 A Prior to our sitting down and starting the
5 conversation, yes, sir.

6 Q So there is a portion of the conversation with
7 Siddig Ali that is not on this tape, is that correct?

8 A Correct, sir.

9 Q When you say, the tape is fair and accurate --
10 MR. McCARTHY: Objection.

11 Q -- it is fair and accurate of a portion of the
12 conversation, is that fair to say?

13 MR. McCARTHY: Withdrawn.

14 Q Do you understand my question?

15 A Yes, sir, I understand.

16 Q So whatever you take, that is accurate of what
17 was said, correct, it is not the entire conversation?

18 A That was not the entire meeting.

19 Q The decision to turn the machine on and off was
20 your decision, sir?

21 A Yes, sir.

22 Q This tape was made without authorization of the
23 Federal Bureau of Investigation, correct, sir?

24 A Yes, sir.

25 Q Am I correct that this tape that you allegedly

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1 made on a date you are not certain --

2 MR. McCARTHY: Objection as to form.

3 Q -- has no introduction --

4 THE COURT: Sustained.

5 Q Does the tape have an introduction where you put
6 down your name and the date that you are making it, sir?

7 A No, sir.

8 Q Does the tape have an ending where you put down
9 the time and the date that the conversation concludes?

10 A I am not sure, sir.

11 MR. JACOBS: If I may have a moment, your Honor.

12 Q Now, in the intervening time from the time that
13 you made this conversation until June 23 you recorded many
14 conversations with Siddig Ali, correct, sir?

15 MR. McCARTHY: Objection.

16 A Correct.

17 THE COURT: Sustained.

18 Q Did you turn over other conversations with Siddig
19 Ali --

20 MR. McCARTHY: Sustained.

21 MR. JACOBS: May I be heard at the side bar.

22 THE COURT: No, you may not.

23 Q This is a particular conversation you withheld
24 from the FBI --

25 MR. McCARTHY: Objection.

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1 THE COURT: Sustained.

2 Q Would you tell us the reason you didn't give this
3 tape to the FBI?

4 THE COURT: Sustained.

5 Sustained.

6 Q When did you give this tape to the FBI?

7 A The day they went to my house and they take the
8 whole tapes from there.

9 Q What type of cassette is it? A 90-minute?
10 Two-and-a-half hour? How long is the cassette, if you know?

11 A It is 60 minutes.

12 Q Each side?

13 A I think 60 minutes means 30 minutes each side.

14 Q 30 minutes each side.

15 Were you familiar with how to operate the
16 equipment at the time that you used it?

17 A Yes, sir.

18 Q Who put the tape in the machine?

19 A Myself, sir.

20 Q Who removed it from the machine?

21 A Myself, sir.

22 Q Who turned it on and off?

23 A Myself, sir.

24 Q Did you test the equipment?

25 A Test the equipment?

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1 Q Yes, sir.

2 A I know it's working. I put a new battery in it.

3 Q Had you used that piece of equipment before to
4 record somebody?

5 A Yes, sir.

6 Q How many times?

7 A I don't recall.

8 Q More than ten?

9 MR. McCARTHY: Objection.

10 THE COURT: Was it more than ten?

11 Q Did you use it more than ten times to record
12 people?

13 A I don't recall, sir.

14 Q Did you make any notations on a piece of paper?
15 Did you keep any log or entries of this
16 recording, sir?

17 A No, sir.

18 Q You were describing that you were dictating after
19 meetings into some tape about conversations. Did you do
20 that on this occasion, sir?

21 MR. McCARTHY: Objection.

22 Q You dictated your notes?

23 THE COURT: Sustained.

24 Q Did you rerecord over this tape and use it again?

25 A No, sir.

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1 Q How do you know that, sir?

2 A Because that tape, right after I took it from the
3 recorder, from the recording device, I wrote over here, and
4 that's my handwriting, "Sheik Siddig." I dropped it in the
5 box and it's just forgotten.

6 Q May I see the tape.

7 Mr. Salem, are you familiar with the procedure
8 how to break the tab so you can't rerecord over this type of
9 tape? Are you familiar with that?

10 A Yes, sir.

11 Q Am I correct that there are two little tabs on
12 the side that you can break so that the tape can't be
13 rerecorded, is that correct, sir?

14 A Yes, sir.

15 Q Look at this exhibit. Tell me, sir, does the
16 tape have the tabs in their original condition, meaning you
17 could rerecord on it? Correct, sir?

18 A This kind of tape does not have this kind of
19 knobs.

20 Q Do you see two little places on the side where
21 you can break them so that it can't be rerecorded?

22 Yes or no.

23 A There isn't.

24 MR. JACOBS: May I approach the witness, your
25 Honor.

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1 A It's going through.

2 Q Do you see these little spots? Are the tabs
3 there or not?

4 A Where, sir?

5 Q Do you know --

6 A I don't see it, sir, please. Show it to me.

7 Q The question is: Are the tabs there or are they
8 not?

9 A There is no tabs, sir.

10 Q Did you break the tabs?

11 A I believe that this kind of tape does not have
12 tabs, sir.

13 Q So that they can be rerecorded as much as you
14 would like, if you know?

15 MR. McCARTHY: Objection.

16 THE COURT: Do you know --

17 Q Do you know?

18 THE COURT: -- whether you can use them again and
19 again? Can you?

20 Q Do you know if these tapes can be rerecorded
21 again?

22 A Yes, it can be rerecorded.

23 Q Did you duplicate this, sir?

24 A No, sir.

25 Q Did you edit it?

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1 A No, sir.

2 Q This tape stayed in a box for several months, is
3 that correct, sir?

4 MR. McCARTHY: Objection, asked and answered.

5 THE COURT: Sustained.

6 Q Is that correct, sir?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 MR. JACOBS: I'm sorry. It's sustained?

10 THE COURT: I sustained the objection.

11 Q When for the first time did you seek permission
12 from the FBI to record conversations?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 MR. JACOBS: I have nothing further, your Honor.

16 THE COURT: 641 has been offered.

17 MR. JACOBS: Pardon me?

18 THE COURT: I said 641 has been offered.

19 MR. RICCO: Your Honor, just a few questions.

20 THE COURT: Still voir dire, Mr. Ricco?

21 MR. RICCO: Yes.

22 THE COURT: All right.

23 VOIR DIRE EXAMINATION

24 BY MR. RICCO:

25 Q Tape 641, the exhibit, when you recorded this

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1 conversation, were you or were you not authorized to do that
2 by the FBI?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q You decided to record this conversation with
6 Mr. Siddig Ali?

7 A Yes, sir.

8 Q Did you discuss that with the FBI before you did
9 it?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q Did the FBI discuss with you --

13 THE COURT: Sustained.

14 MR. RICCO: I didn't ask the question, Judge.

15 THE COURT: You have asked enough of it to show
16 that it is objectionable. Either you have voir dire or you
17 don't. If you do, proceed.

18 Q Did you discuss with the FBI the method for
19 recording individuals before you made this recording?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 MR. RICCO: I have no further questions.

23 MS. AMSTERDAM: I have some questions, Judge,
24 which I believe are not objectionable.

25 THE COURT: Good.

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1 VOIR DIRE EXAMINATION

2 BY MS. AMSTERDAM:

3 Q Sir, you indicated that this was a fair and
4 accurate representation of part of the conversation, other
5 than the fact that the initial part of the conversation was
6 not recorded, correct?

7 A Yes, ma'am.

8 Q The machine that you had, sir, that you were
9 making this recording on, did it have a rewind button on it?

10 A Yes, ma'am.

11 Q So it was possible at the time you were making
12 the conversation to actually rewind, correct?

13 A Possible.

14 Q It was also possible to record over parts of the
15 conversation, correct?

16 A Possible.

17 Q Sir, have you had an opportunity to review a
18 government prepared transcript of this conversation?

19 MR. McCARTHY: Objection.

20 THE COURT: Overruled.

21 A No, ma'am. I did not review the transcript of
22 this conversation.

23 Q You have not?

24 All right. Sir, let me ask you a question:

25 Would I be correct in saying that there were two times in

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1 this recording that there were glitches -- let me withdraw
2 it.

3 Have you had an opportunity to listen to the tape
4 since the time it was recorded?

5 THE COURT: He said he listened to it last week.

6 MS. AMSTERDAM: Thank you, your Honor.

7 Q During the time that you listened to it, would I
8 be correct in saying that there were two times that there
9 were actually glitches in the tape?

10 A When you say "glitches," what does that mean?

11 Q Where something happened to the tape where it
12 jumped or where it did not continue in a proper fashion?

13 A No, ma'am. There is no jump. What happened,
14 that it was some noise of the paper around the tape when I
15 am moving it because it was being covered with some paper,
16 but it did -- since the recording start until the discussion
17 ended, it did not stop.

18 Q I am not talking, sir, about noise in terms of
19 shuffling papers.

20 A Yes.

21 Q Was there ever a time in the tape that something
22 mechanical happened that there was a break in the recording
23 of the conversation?

24 A Absolutely not.

25 Q Was there ever a time that there was a glitch in

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1 the conversation?

2 MR. McCARTHY: Objection to form.

3 THE COURT: Yes. The last time you asked that,
4 he wanted to know what "glitch" was, and you went off on
5 another tangent.

6 MS. AMSTERDAM: Your Honor, may we have a side
7 bar, please?

8 THE COURT: Sure.

9 (Continued on next page)

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1 (At the side bar)

2 MS. AMSTERDAM: Your Honor, it was my
3 understanding -- this is one of the transcripts that the
4 government has actually prepared as an exhibit. There are
5 two times in the transcript where it reflects an audio
6 glitch.

7 THE COURT: Is that what it says in the
8 transcript?

9 MS. AMSTERDAM: Yes.

10 MR. JACOBS: 17 and 22, Judge.

11 MS. AMSTERDAM: Two separate times. I would like
12 a stipulation from the government that it is a fair and
13 accurate statement of the transcripts that there appear two
14 separate times an audio glitch.

15 THE COURT: Somebody is going to have to tell
16 everybody what an "audio glitch" means. Obviously he is not
17 going to tell you what a glitch means because he is asking
18 you what it means. It may be that --

19 MS. AMSTERDAM: Could I show him this transcript
20 and ask him if it refreshes his recollection as to this part
21 of the conversation, whether or not there was any break?

22 THE COURT: Is that a translation?

23 MS. AMSTERDAM: It is a translation. It is the
24 government's translation.

25 THE COURT: The fact that it is the government's

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1 translation doesn't make it likely that it is going to
2 refresh his recollection about a glitch.

3 Did you listen to the tape?

4 MS. AMSTERDAM: It is in Arabic.

5 THE COURT: I will repeat the question.

6 Did you listen to the tape?

7 MS. AMSTERDAM: Did I?

8 THE COURT: Yes.

9 MS. AMSTERDAM: No, I haven't.

10 THE COURT: So it seems to me --

11 MS. AMSTERDAM: If you are asking whether or not
12 there was what people would call an audio glitch, would
13 Ginsberg say that there is an auto glitch in the tape --

14 THE COURT: It may be that it might be helpful,
15 if you really want to refresh his recollection, for somebody
16 to be able to describe the phenomenon to him rather than
17 simply show him the words "audio glitch," which he's already
18 in essence said don't refresh his recollection about
19 anything, failing which the government can stipulate, and
20 you can then agree on what an audio glitch means in this
21 context. But "glitch" is kind of an all purpose word for
22 thinking that it is not in the normal course.

23 MS. AMSTERDAM: All right. It is not a word that
24 I chose, of course.

25 THE COURT: I understand that.

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1 MS. AMSTERDAM: At this point it would seem to me
2 what I could do -- and I am asking the Court for guidance --
3 I could say that there was a time that you were talking
4 about jihad in the south, and there was a point at which --
5 and I could go back a couple of lines and say, do you recall
6 this and that, and did there come a time that when you said
7 "Oh, God, great," that something occurred in the tape?

8 THE COURT: Do you remember listening --

9 MS. AMSTERDAM: Before Mr. Siddig Ali said --

10 THE COURT: You can ask him if it refreshes his
11 recollection, and, if it doesn't, it doesn't.

12 MS. AMSTERDAM: Then I would ask the government
13 to stand by its transcript.

14 MR. McCARTHY: This is a different transcript
15 than the other man's. Abdel Hafiz testified to this
16 transcript. They could have, if they wanted to, examined
17 him about what he meant by audio glitch. I don't think I
18 should be in a position, when they have had this witness up
19 on the stand and we had to call him to get this transcript
20 in, unlike the other transcripts that are coming in,
21 fundamentally by stipulation, when they could have examined
22 him on what he meant by audio glitch, why should I have to
23 stipulate? I mean, they could have examined him on what he
24 meant by it. Now they want to.

25 THE COURT: Do you know what he meant by it?

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1 MR. McCARTHY: At the moment, no, if I had been
2 raised up to the issue at the time, I would have tried to
3 straighten it out.

4 THE COURT: Why don't you pass on to something
5 else?

6 MS. AMSTERDAM: May I just ask him if it
7 refreshes his recollection, and then I will let it go at
8 that.

9 THE COURT: Keep your voices down.

10 MS. AMSTERDAM: I'm sorry, your Honor.

11 (Counsel conferred off the record at the side
12 bar)

13 MR. JACOBS: Nothing further, your Honor.

14 MS. AMSTERDAM: I just have two more questions,
15 your Honor.

16 THE COURT: All right.

17 (Continued on next page)

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1 (In open court)

2 MS. AMSTERDAM: Thank you for your assistance,
3 your Honor.

4 Q Sir, isn't it a fact that twice during the time
5 that you had the conversation with Mr. Siddig Ali, during
6 the course of the conversation that twice you actually
7 stopped and restarted the machine?

8 A I don't recall that, ma'am.

9 Q You don't recall that?

10 A I did not -- I did not do that. I don't recall
11 that I did that.

12 Q When you listened to the tape yesterday -- last
13 week, I'm sorry -- isn't it a fact, sir that there are two
14 times on the tape when the tape jumps, when the tape does
15 not continue smoothly?

16 A I don't recall that, ma'am.

17 MS. AMSTERDAM: I have no further questions.

18 MS. STEWART: I have just one or two.

19 THE COURT: Go ahead.

20 VOIR DIRE EXAMINATION

21 BY MS. STEWART:

22 Q Mr. Salem --

23 A Yes, ma'am.

24 Q -- this was a recorder you purchased yourself, or
25 this was the recorder the FBI gave you?

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1 A No. That, I purchased it by myself, ma'am.

2 Q When you purchased it, do you remember the brand
3 name of that recorder?

4 A No, I don't.

5 Q Where were you carrying the recorder during the
6 time of this conversation?

7 A It was among the equipment in my briefcase and
8 covered with some papers.

9 Q So it was in your briefcase, is that correct?

10 A Yes, ma'am.

11 Q Do you have any idea as you sit there today what
12 the capacity of that minirecorder was to record distances,
13 or how far away you could be or not be away and still get a
14 recording?

15 A Yes. It's a very sensitive long wire. The
16 microphone is a distance from the recorder itself. The
17 briefcase is open, and it's -- the microphone is directed to
18 Mr. Siddig Ali where he's sitting to my left.

19 Q Could you just describe for us what the
20 microphone looked like.

21 A It's half of my finger size, and it get hooked
22 into wire with some metal legs and a wire going to a small
23 microrecorder.

24 Q Would you say that it was about as big as a dime,
25 the part that did the recording?

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1 A Maybe less.

2 MS. STEWART: I have nothing further, Judge.

3 THE COURT: The exhibit has been offered.

4 MS. STEWART: I have no objection.

5 THE COURT: All right. The exhibit is received
6 without objection. Go ahead.

7 (Government's Exhibit 641 for identification was
8 received in evidence)

9 MR. McCARTHY: Your Honor, it is our intention to
10 read from the transcript, which was a fairly lengthy
11 transcript. What I would ask your Honor is, should I go on
12 to another area that I can cover briefly or --

13 THE COURT: Yes.

14 MR. McCARTHY: OK.

15 DIRECT EXAMINATION (Continued)

16 BY MR. McCARTHY:

17 Q Mr. Salem?

18 A Yes, sir.

19 Q Let me direct your attention to the time after
20 the arrests in -- I'm sorry, March of 1993.

21 A Yes, sir.

22 Q Did there come a time after the arrests that you
23 had a conversation with Dr. Omar Abdel Rahman about money
24 for the defendants in that case?

25 A Yes, sir.

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1 Q Who was present during that conversation?

2 A It was Mr. Ahmed Abdel Sattar, some other
3 individuals, but I recall specifically Mr. Sattar for a
4 reason.

5 Q Can you tell us, please, what your conversation
6 was with Omar Abdel Rahman about money?

7 A Sheik Omar said that Mahmud Abouhalima have
8 brothers and family over here, Ibrahim El-Gabrownny have
9 brothers and family over here, the only one is Mohammed
10 Salameh does not have a family here, and we should send him
11 some kind of support, money, and clothes.

12 MS. AMSTERDAM: And what? I'm sorry.

13 A Clothes.

14 Q Money and clothes?

15 A Yes, sir.

16 Q Like you wear clothes?

17 A Yes, sir.

18 Q What was your reaction?

19 MR. JACOBS: Objection.

20 I would ask for a side bar with respect to this
21 conversation.

22 THE COURT: Come on up.

23 (At the side bar)

24 MR. JACOBS: Your Honor, I am not sure of the
25 purpose of these statements. I am not sure if these are

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1 statements in furtherance of the conspiracy. I am not
2 certain of the relevancy of the fact that the sheik wanted
3 to send some clothes or legal support, how that should be
4 admissible into evidence at this trial. I am not sure what
5 the government's theory is and where this is going. I am
6 objecting, and I would like -- if your Honor would ask the
7 government --

8 THE COURT: Your objection is as to relevance?

9 MS. AMSTERDAM: Hearsay.

10 MR. JACOBS: Absolutely. I mean, the fact that
11 the sheik spoke, is it an admission, is it in furtherance of
12 a conspiracy?

13 MR. MCCARTHY: It is an admission, and it goes to
14 his state of mind. He virtually denied knowing the people
15 who are involved in the bombing of the World Trade Center.
16 While he was making public statements denying knowing them,
17 he was trying to finance them when nobody was looking, and
18 that is what it is about.

19 MS. STEWART: Please argue that in summation, Mr.
20 McCarthy.

21 MR. JACOBS: In light of that, I am still
22 objecting under Rule 403.

23 THE COURT: The objection is overruled. You may
24 finish.

25 MR. JACOBS: I don't believe it is an admission

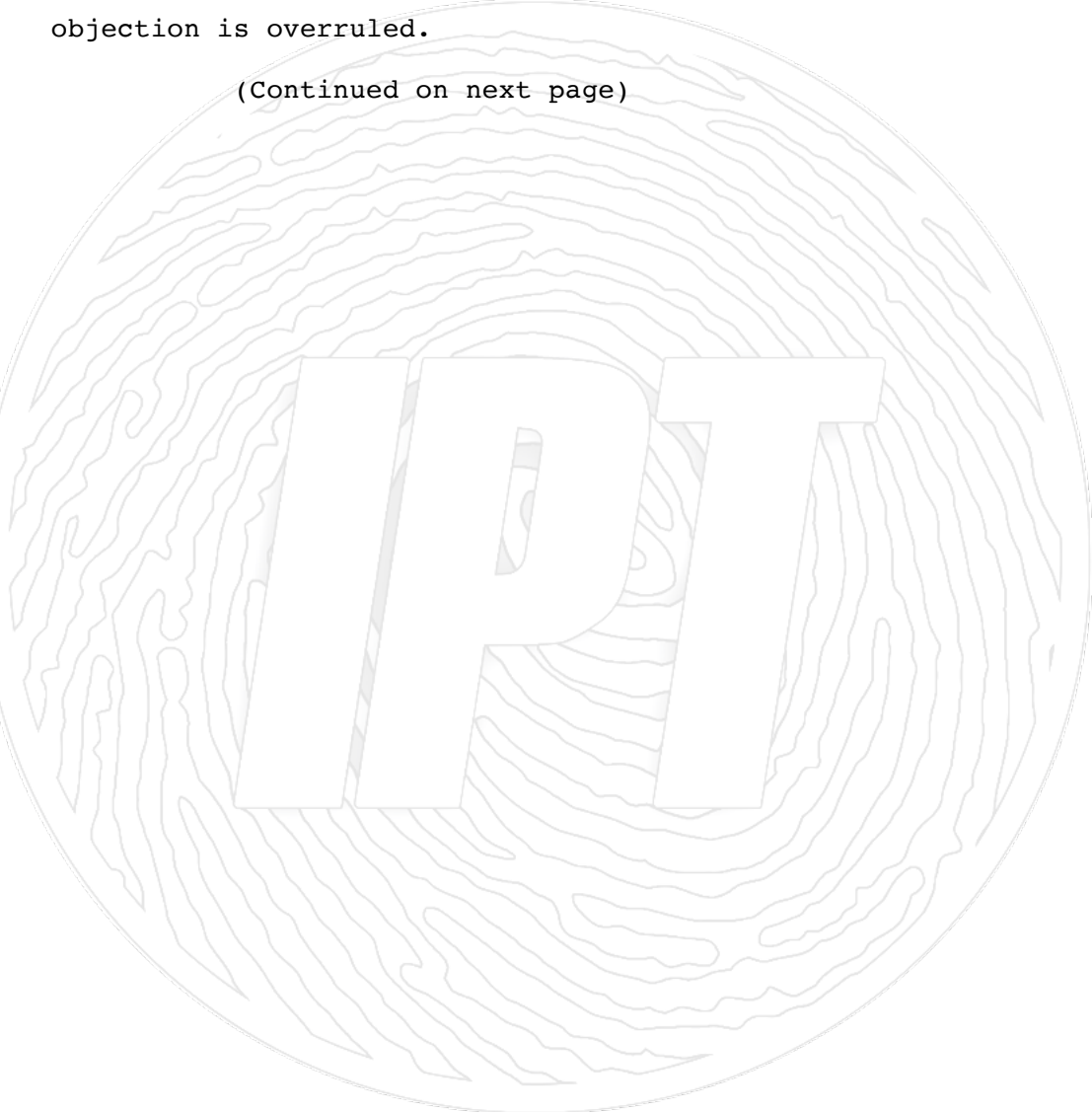
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1 of anything, and I think under 403 it really adds a lot of
2 confusion to the case.

3 THE COURT: At a minimum it tends to show
4 association, which is an element of conspiracy. The
5 objection is overruled.

6 (Continued on next page)

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1 (In open court)

2 THE COURT: Can you come to a convenient break
3 point in, say, five minutes?

4 MR. McCARTHY: Yes, your Honor.

5 Q What was your response when Dr. Abdel Rahman made
6 the statement about sending clothes or money to Mr. Salameh?

7 A I told him I can help Sheik Omar, but, you know,
8 that I don't want to get close to these guys now.

9 He said, Sheik Omar told me, "You can give what
10 you want to contribute to Ahmed Abdel Sattar, and he will
11 deliver it to Mohammed Salameh."

12 Q Did you give any money to Mr. Sattar?

13 A Yes, sir, I did.

14 Q How much money?

15 A \$50.

16 MR. McCARTHY: Your Honor, this would be the
17 point.

18 THE COURT: All right.

19 Ladies and gentlemen, we are going to break for
20 the day. Please don't discuss the case. Please don't see,
21 hear or read anything about the case, if there is anything
22 to be seen heard or read. Have a pleasant evening, and we
23 will see you tomorrow morning. Good night.

24 (The jury was excused)

25 THE COURT: You may step down.

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1 (The witness was excused)

2 THE COURT: Mr. Ricco?

3 MR. RICCO: Yes, your Honor.

4 THE COURT: The reason that I kept hollering
5 "sustained" when you started the questions is simply that
6 each of them started with the predicate of whether there had
7 been FBI approval. In my estimation, FBI approval has
8 nothing to do with the admissibility or nonadmissibility of
9 the tape. That was the reason.

10 MR. RICCO: Judge, I was really getting to the
11 sense of how the tape was generated, what was the custody of
12 it, did they supply him with the tape. But I think
13 enough --

14 THE COURT: The record will show what questions
15 you asked, but that was the reason.

16 MR. RICCO: The questions were to get to that.
17 But I think Mr. Jacobs covered it sufficiently.

18 THE COURT: All right.

19 MR. RICCO: Thank you, your Honor.

20 THE COURT: See you tomorrow morning.

21 (Proceedings adjourned to Tuesday March 14, 1995
22 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----x
20 March 14, 1995
21 9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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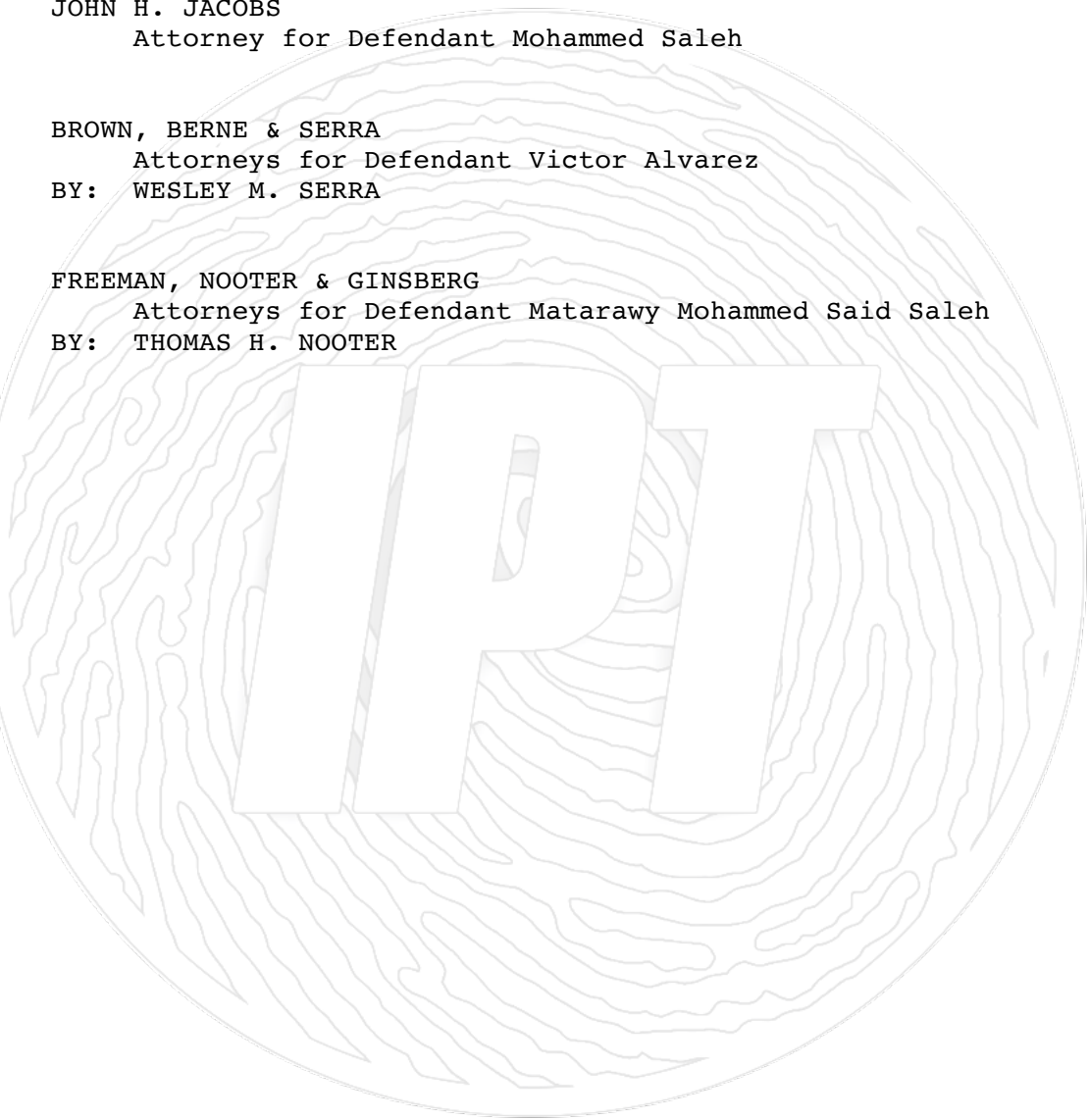
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Good morning.

4 MR. JACOBS: Your Honor, just briefly --

5 THE COURT: My deputy just went to get the jury.

6 MR. JACOBS: I would like at some point during
7 the day today discuss CM32 and authentication questions with
8 respect to it, when you get a chance. The government is not
9 going to offer it until this afternoon, so if you get a few
10 minutes.

11 THE COURT: Is the end of the morning all right?

12 MR. JACOBS: Sure. Whatever is convenient for
13 your Honor.

14 MR. McCARTHY: Your Honor, may I take a moment
15 with Mr. Jacobs while the jury is coming in?

16 THE COURT: Yes.

17 (Counsel conferred)

18 EMAD SALEM, resumed.

19 (Jury present)

20 THE COURT: Good morning, ladies and gentlemen.

21 THE JURY: Good morning.

22 THE COURT: Good morning, Mr. Salem. You are
23 still under oath. Mr. McCarthy?

24 MR. McCARTHY: Thank you, your Honor.

25 Your Honor, I would like to start this morning by

1 offering Exhibits 384 -- let me just read the numbers into
2 the record: 384A1, B1, C2, D2, E1 through I1, and 387 A1
3 through J1.

4 Those, your Honor, are photocopies of the
5 exhibits that Mr. Salem marked yesterday morning at the
6 beginning of his testimony, and I believe they have been
7 placed in the jury's books with the corresponding exhibits
8 that they saw yesterday; that is, the photographs that he
9 identified.

10 THE COURT: All right. Those are received.

11 (Government Exhibits 384A1, B1, C2, D2, E1
12 through I1, and 387 A1 through J1 for identification were
13 received in evidence)

14 MR. McCARTHY: Thank you, your Honor.

15 May I proceed?

16 THE COURT: Yes.

17 DIRECT EXAMINATION (Continued)

18 BY MR. McCARTHY:

19 Q Good morning, Mr. Salem.

20 A Good morning, sir.

21 Q Sir, when we left off yesterday, you told us
22 about a trip that you made to Mr. Siddig Ali's house for
23 purposes of sweeping, do you recall that?

24 A Yes, sir.

25 Q Can you give the ladies and gentlemen of the jury

1 some idea of what you did in terms of sweeping Mr. Siddig
2 Ali's apartment.

3 A When Mr. Siddig Ali and myself were sitting in my
4 car, and he asked me, "Do you have your equipment?"

5 I said, "Yes."

6 "You can check a telephone line?"

7 I said, "Of course."

8 "You can check the apartment if there is bugging
9 device?"

10 "That is my job."

11 He said, "How about if you stop by tomorrow and
12 you can check my house and my phone line."

13 And I said, "OK. I will do that."

14 I went next day. At the beginning I told him, I
15 asked him, "Did you ever have something in your house you
16 would like to clean it up?"

17 He said, "I used to bring the stuff from the
18 Pennsylvania camp, training."

19 Q Let me stop you for a moment.

20 In your meeting the day before, the first
21 conversation with Mr. Siddig Ali you talked about at the the
22 end of yesterday --

23 A Yes.

24 Q -- had he mentioned the Pennsylvania training to
25 you?

1 A He said that he has people he's very well
2 trained, and they are trained for suicidal missions.

3 During this training --

4 MS. LONDON: I'm sorry, your Honor. I couldn't
5 get the last part of that answer.

6 THE COURT: He said he had people who were well
7 trained, trained for suicide missions.

8 MS. LONDON: OK.

9 A And he used to take the stuff from the training
10 place with him home. That is why he want to clean his home
11 from the stuff went into it.

12 Q What, if anything, did you do to help him clean
13 his home?

14 A I told him that, "We can scrub the places you had
15 this stuff with a black pepper, so if the dogs come to
16 sniff, they will sneeze and they won't be able to sniff
17 explosives."

18 I told him, "You can wash your hands with
19 vinegar, and that way, they won't be able to trace the
20 vinegar in your hand."

21 Q They won't be able to trace the vinegar?

22 A I'm sorry. They won't be able to trace the
23 explosive in your hand, because the vinegar smells bad.

24 I told him I will sweep the -- he already
25 prepared some black pepper when I went over there. We got

1 piece of cloth, put some black pepper on it, and I kept
2 scrubbing right behind the TV in one of the -- in one of the
3 drawers in the bedroom, right behind her dresser. And I
4 want to know where he put the stuff. And I scrubbed it with
5 black pepper, and I start carrying -- it was not a sweeping
6 device, but it was an electronic device, and I made myself
7 like sweeping the walls up and down and the places it could
8 be hidden, bugging device --

9 Q Let me interrupt you for a moment.

10 Is this the part of the conversation that you
11 told us yesterday you did not tape record?

12 A Yes.

13 Q Where was your tape recorder?

14 A It was in the briefcase.

15 Q What did you have to do physically in order to
16 scrub?

17 A To scrub? I came on my knees and I hold one
18 of -- a piece of cloth, and we put black pepper on it and I
19 kept scrubbing, scrubbing all over the place. He used to
20 have the stuff, he brought it from the camp.

21 Q I take it you did not take the briefcase from
22 place to place to place where you scrubbed?

23 MS. AMSTERDAM: Objection, your Honor.

24 THE COURT: Sustained as to form.

25 Q Did you take the briefcase with you when you

1 scrubbed?

2 A It would be very funny to --

3 Q Mr. Salem --

4 A No, sir, I did not.

5 Q Other than Mr. Siddig Ali, did anyone else ever
6 ask you to sweep a house?

7 A Yes, sir.

8 Q Who else asked you to sweep?

9 A Sheik Omar Abdel Rahman, Siddig -- Sheik Omar
10 Abdel Rahman, Abdel Sattar and Abdel Rahman Haggag.

11 Q You said Sheik Omar Abdel Rahman?

12 A Yes, sir.

13 Q And Abdel Sattar?

14 A Yes, sir.

15 Q And Abdel Rahman Haggag?

16 A Yes, sir and Mohammed the Spanish.

17 Q Mohammed the Spanish?

18 A Yes.

19 Q When did you meet Mohammed the Spanish?

20 A That was later on. He came to participate with
21 us, but that time when he came he asked me to sweep his
22 house. It is on the tape.

23 Q Do you see Mohammed the Spanish in the courtroom
24 today?

25 A Yes, sir.

1 Q Where do you see him?

2 A He is the fourth person on the line and putting
3 his hand under his cheek --

4 THE COURT: Indicating Mr. Alvarez.

5 Go ahead.

6 MR. McCARTHY: Thank you, your Honor.

7 Q When did you sweep Omar Abdel Rahman's home?

8 A I don't know when, but it's after I sweep
9 Mr. Siddig's home.

10 Q How did it happen?

11 How did you come to sweep Dr. Abdel Rahman's
12 home?

13 A I was sitting with Ahmed Abdel Sattar and Siddig
14 Ali, and I don't recall -- there is another two, three
15 individuals were in that day in the house. Excuse me.
16 Sheik Omar asked me, "Do you have your equipment with you?"

17 He said, "Yes."

18 He said, "Will you check the bedroom for me?"

19 I said, "Yes, I will."

20 That was antisweep device. I took it to the
21 bedroom, and I start sweeping the wall. When the device
22 starts screaming, gives whistle, I told them, "See, there is
23 a bugging device here."

24 And then Sheik Omar said, "Where? Where?"

25 They escorted him from the bedroom to the front

1 room. I let him to hold the device by his hand, and I hold
2 his hand. I went up and down in a certain location on the
3 wall inside his bedroom where is electric wires running
4 through it.

5 Q Yes.

6 A Electric wires produce magnetic field. It can
7 create the whistle into the sweeping device as if there is a
8 bugging device on this wall.

9 So I got this whistle, I told him, "See, see,
10 here is a bugging device in this place."

11 He said, "OK. Let us see where else."

12 We moved to the front room where he used to sit,
13 and I got another place whistling. I showed it to him. He
14 held the device by his hand, up and down, start giving a
15 whistle.

16 Then where else I swept in the door of his
17 apartment, and then I went to the kitchen, and the kitchen I
18 told him, "There is no devices in the kitchen."

19 Q Did you do anything with respect to Sheik Omar
20 Abdel Rahman's telephone?

21 A Yes. He said, check the phone line. I have a
22 phone line checker. It was given to me later on by the FBI.
23 And I plugged it in --

24 Q Let me stop you for a moment.

25 Who had a phone line checker?

1 A I have a phone line checker and Sheik Omar have a
2 phone line checker.

3 Q Which one did you use on this occasion?

4 A At the beginning I used mine. He asked me to
5 check his.

6 Q To check his what?

7 A His phone line antibugs.

8 He has -- he brought -- he let Abdel Sattar to go
9 to the bedroom and I brought a small briefcase.

10 Q Let me stop you.

11 You said Ahmed Abdel Sattar went to the bedroom?

12 A Yes.

13 Q Then what happened?

14 A He brought a briefcase full of electronics
15 similar to what I have, and some of them is more advanced.
16 He asked me to hook up, untie bug on his phone line from
17 what he own.

18 Q You mean his own antibug?

19 A Yes, sir. I hook it up for him, and later on I
20 informed the, the agents, so I won't be able to disturb --

21 Q All right. I didn't ask you what you informed
22 the agents. I just asked you what you did in Dr. Abdel
23 Rahman's home.

24 A I checked his phone; I checked his bedroom; I
25 checked the front room? I checked the entrance of the

1 apartment; I checked the kitchen.

2 I told him the bedroom, yes, is bugged; the front
3 room, yes, is bugged; the entrance, yes, is bugged; the
4 kitchen is not bugged.

5 Q Did there come a time that you did some sweeping
6 for Ahmed Abdel Sattar?

7 A More than once, yes.

8 Q In terms of the time that you did the sweeping at
9 the defendant Abdel Rahman's apartment, at what period of
10 time did you do the sweeping for Ahmed Abdel Sattar?

11 A I don't know when. I don't recall.

12 Q Did you do the sweeping for Ahmed Abdel Sattar
13 before or after the bombing of the World Trade Center?

14 A That was after.

15 Q Tell us how it happened that you did some
16 sweeping for Ahmed Abdel Sattar?

17 A We were in Abu Bakr mosque doing our evening
18 prayer. Ahmed told me, "You have your briefcase with you?
19 You have your equipment?"

20 "Yes."

21 "Can you check my car because you know that the
22 FBI is constantly after me."

23 I said, "Sure, I will."

24 We went outside the mosque; he opened his car.

25 I kept going through the car, and I get hold of

1 one of the wires, gives me whistle, and I told him, "Listen
2 here. There is a device inside here, and it's very
3 sensitive. It's screaming very loud. Be careful. Don't
4 talk about anything in the car."

5 He said, "Now I know the car is not safe."

6 He wants me to go to check his apartment.

7 Q Did you go to check his apartment?

8 A Yes, sir.

9 Q What happened when you went to check his
10 apartment?

11 A He took me from room to room. I kept sweeping
12 the walls, and I finished sweeping the apartment, I told
13 him, "There is nothing in the apartment."

14 I came to the phone. I checked the phone. I
15 have a small button at the bottom of the device. I push it
16 and it gives a light to indicate that there is bugging
17 device. I made him believe that the phone is bugged, be
18 careful.

19 He said, "Well, I know that."

20 And I confirmed to him that the phone is being
21 bugged.

22 Q Did there come a time after the bombing of the
23 World Trade Center that you had a conversation with Ahmed
24 Abdel Sattar about items in his house?

25 A Yes, that was right after bombing the World Trade

1 Center, and when I started to go to the mosque, he was
2 talking, he said, "You know, when I heard about arresting
3 Mohammed Salameh, I run home right away. I cleaned up
4 everything."

5 Little later in that day, he asked me, "Do you
6 know how, if -- how can I clean up from chemicals?"

7 Q What did you tell him?

8 A I said, "Oh, yeah, sure, you can. If it is
9 yourself, you can wash your hands with vinegar."

10 Q I think you told us yesterday that Government's
11 Exhibit 641, the microcassette that you were shown, was a
12 recording that you made of the conversation you had with
13 Siddig Ali in his house?

14 A Yes, sir.

15 MR. McCARTHY: Your Honor, at this time the
16 government would propose to read from Government's Exhibit
17 641-1, the transcript.

18 MR. FITZGERALD: Judge, if the jurors could be
19 asked to look at their books, 641-1T is the transcript.

20 THE COURT: It is under Tab 641 in your books.

21 MR. KHUZAMI: Your Honor, I will be reading the
22 part of Mr. Salem, and Mr. Fitzgerald will be reading the
23 part of Mr. Siddig Ali.

24 THE COURT: OK.

25 "SALEM: Look, eh --

1 MR. KHUZAMI: May we proceed, your Honor?

2 "SALEM: Look, eh --

3 "ALI: Stupidity.

4 "SALEM: It's not stupidity. It's, basically,
5 it's, it's complete lack of thinking.

6 "ALI: Um, bad thinking. They're bad, my
7 brother, by God. By God it's stupidity and the stupidest
8 one of them all is Muhammed.

9 "SALEM: Muhammed or Mahmud?

10 "ALI: Muhammed.

11 "SALEM: Why?

12 "ALI: Why because he is the one who messed the
13 whole thing up.

14 "SALEM: How?

15 "ALI: What do you mean how? If all these
16 people, I mean, did all of these things, hah? And it looks
17 like they're they're all stupid, of course, but he's the
18 stupidest one of them all because he is the one who screwed
19 up the whole thing.

20 "SALEM: How?

21 "ALI: Because he rented the thing in his name.
22 He did all these things.

23 "SALEM: You are referring to Muhammed Salameh?

24 "ALI: Yes.

25 "SALEM: My thoughts drafted towards Mohammed

1 Abouhalima.

2 "ALI: No, no, no.

3 "SALEM: I was thinking what has Mahmud
4 Abouhalima to do with this?

5 "ALI: No.

6 "SALEM: Muhammed Salameh, no. God, but
7 Muhammed -- Mahmud, I know Mahmud, I mean, I spoke a lot
8 with Mahmud and stuff.

9 "ALI: Um.

10 "SALEM: He is rational.

11 "ALI: Mahmud?

12 "SALEM: Yes.

13 "ALI: He is the most rational among them.

14 "SALEM: He is the most rational among them, but
15 he is sentimental. This work is devoid of emotionalism.

16 "ALI: By God my brother I don't think so.

17 "SALEM: If he weren't a sentimental person,
18 sheik, he wouldn't have gone to Egypt.

19 "ALI: Ah.

20 "SALEM: Why did he go to Egypt?

21 "ALI: Um.

22 "SALEM: He is a sentimental American.

23 "ALI: Ah.

24 "SALEM: Why did he go to Saudi Arabia. I am
25 going to tell you why he went to Saudi Arabia. Of course I

1 didn't meet him, but I can tell you how he thinks. He
2 thought, "I don't know what's going to happen."

3 "ALI: After what happened, yes.

4 "SALEM: He'd go to perform a minute
5 mini-pilgrimage, may God bless him, God willing, so that
6 grace may descend upon him. What kind of nonsense is this?

7 "ALI: That's, that's Mahmud's thinking, yes.

8 "SALEM: I know Mahmud.

9 "ALI: Ah.

10 "SALEM: So he went and performed a
11 mini-pilgrimage?

12 "ALI: Basically, that's Mahmud.

13 "SALEM: And he cried.

14 "ALI: Ah.

15 "SALEM: And prayed.

16 "ALI: Ah, ah.

17 "SALEM: And then he said to himself, "I'd like
18 to go to see the kids in Egypt."

19 "ALI: Ah, ah.

20 "SALEM: And he went to Egypt. Can you believe
21 this, would anyone in the world say that?

22 "ALI: That's Mahmud.

23 "SALEM: Ah. Muhammed, Muhammed Salameh I
24 didn't -- because I didn't interact with Muhammed that much.
25 No, I saw Muhammed a few times in court, a few times in the

1 mosque.

2 "ALI: Um.

3 "SALEM: Just exchanged greetings and small talk.

4 So I don't know how he thinks. And also, I don't know, I
5 mean, why, why, why he goes and does -- I mean with this.

6 "ALI: Um.

7 "SALEM: With this naivete. This is not naivete,
8 this, I mean, I can't call it naivete.

9 "ALI: This is stupidity.

10 "SALEM: It's stupidity that's it.

11 "ALI: It's not naivete.

12 "SALEM: No.

13 "ALI: That is stupidity.

14 "SALEM: Ah.

15 "ALI: It is stupidity.

16 "SALEM: So what were they thinking?

17 "ALI: Look here -- pardon me, I mean, the
18 Americans here said, "This is the stupidest terrorist in the
19 world."

20 "SALEM: Ah?

21 "ALI: Ah? Some people say, "No, that is because
22 he's innocent," ah, because he is innocent.

23 "SALEM: He went to get his money back.

24 "ALI: All this proves that he had nothing to do
25 with it, but it does prove the first point, I mean, which is

1 that he is the stupidest, the stupidest, the stupidest of
2 God's creatures.

3 "SALEM: I, I, frankly --

4 "ALI: Um.

5 "SALEM: -- was astonished, I mean --

6 "ALI: Um. No, of course, severe stupidity.

7 They are both stupid, by God. There is no reasoning. Look
8 at Mahmud, is there anybody more stupid than Mahmud.

9 (Continued on next page)

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1 SALEM: That's why I'm astonished. I mean, well,
2 OK, Muhammed Salameh is stupid, but what about Mahmoud?
3 Mahmoud, why didn't you advise him? Ah?

4 SIDDIG ALI: Um.

5 SALEM: Why didn't you say no to him, why didn't
6 you tell him let's get a junk car or something.

7 SIDDIG ALI: But the operation was not done by a
8 single person, I mean, it was a group effort, I mean.

9 SALEM: OK this group didn't think at all?

10 SIDDIG ALI: Ah. We all had confidence in them.
11 This is what they were thinking. From my own analysis of
12 the issue, it appears that they thought that when this
13 matter occurs, explodes, that there will be no evidence
14 to -- (clapping of the hands) meaning, that the car itself
15 would be completely burnt, and could not be traced, that's
16 their understanding.

17 SALEM: Does this make sense man? Man, all you
18 need, all that you need is a part of the chassis, that much.

19 SIDDIG ALI: Yes, of course.

20 SALEM: Nowadays, the crime laboratory, the crime
21 laboratory has the highest legal of technology.

22 SIDDIG ALI: Of course, my brother.

23 SALEM: So now you say that -- it's true that the
24 amount of explosives was enormous, enough to melt iron,
25 fine.

1 SIDDIG ALI: Um.

2 SALEM: But it will not melt the engine.

3 SIDDIG ALI: No.

4 SALEM: The motor will not melt, it will shatter.
5 It will shatter.

6 SIDDIG ALI: The numbers won't melt.

7 SALEM: The numbers are etched in the engine,
8 sheik.

9 SIDDIG ALI: The numbers won't melt, ah.

10 SALEM: It's etched on it.

11 SIDDIG ALI: Ah.

12 SALEM: Think.

13 SIDDIG ALI: Um.

14 SALEM: We basically studied this at the frog --
15 the frog man course.

16 SIDDIG ALI: Um.

17 SALEM: When we come to blow up a vessel.

18 SIDDIG ALI: Um.

19 SALEM: How do we blow up a vessel? You come to
20 the center and you plant your explosive. OK, on your way to
21 the vessel -- see, I am telling you this, because we studied
22 it. You come here in a rubber boat. And you disembark the
23 boat into the water. For example, two kilometers away is
24 your target vessel.

25 SIDDIG ALI: Ah.

1 SALEM: Do you go straight to the vessel to plant
2 your mine and return?

3 SIDDIG ALI: Um.

4 SALEM: The answer is no.

5 SIDDIG ALI: Um.

6 SALEM: Why? Because there is something called
7 radar.

8 SIDDIG ALI: In the water?

9 SALEM: Yes, it reveals the depths.

10 SIDDIG ALI: Um.

11 SALEM: Thus, once the radar operator sees a
12 sliver moving ...

13 SIDDIG ALI: Ah, ah.

14 SALEM: He'll torpedo it right away, and destroy
15 it.

16 SIDDIG ALI: Right. Um.

17 SALEM: Now, because you are an educated man, you
18 do something called dog leg maneuver.

19 SIDDIG ALI: Um.

20 SALEM: What is the dog leg maneuver? This is
21 the vessel that I want to attack. I bring my boat within
22 two kilometers, which is...

23 SALEM: Um.

24 SIDDIG ALI: ... outside the radar's range, and
25 then I take to the water.

1 SIDDIG ALI: The radar is only 2 kilometers?

2 SALEM: An underwater radar, yes, two kilometers.

3 So I go underwater, and I start walking like this -- the

4 vessel is here -- I walk like this.

5 SIDDIG ALI: Um.

6 SALEM: I swim like this far from the vessel.

7 SIDDIG ALI: Far from it? Um.

8 SALEM: And then I go dark towards the vessel to

9 plant the explosive, and leave.

10 SIDDIG ALI: Um.

11 SALEM: What happens here? It's like a

12 helicopter, when it comes to strike at this target -- a

13 radar doesn't detect anything that is lower than 10 meters

14 above ground level.

15 SIDDIG ALI: Um.

16 SALEM: So a helicopter flies below the 10

17 meters.

18 SIDDIG ALI: To avoid detection.

19 SALEM: So it flies low and keeps on flying,

20 flying, flying ...

21 SIDDIG ALI: Very low.

22 SALEM: ... until here ...

23 SIDDIG ALI: Ah.

24 SALEM: Then it goes up and strikes and as it

25 ascends it ascends rapidly, and it strikes and leaves.

1 SIDDIG ALI: Yeah, it bolts, yeah.

2 SALEM: That's how we got tricked during the
3 October war.

4 SIDDIG ALI: Um.

5 SALEM: The war -- how? You look at the radar
6 screen and you see a fixed target. A fixed target, that's
7 all. You think it's a cloud ...

8 SIDDIG ALI: That doesn't move.

9 SALEM: Right. And suddenly the cloud runs
10 towards you, strikes at you and leave.

11 SIDDIG ALI: Oh, my God.

12 SALEM: What's this? We discovered that the
13 airplanes fly very low ...

14 SIDDIG ALI: Ah.

15 SALEM: ... and then begins to climb, like this.
16 The radar tells you where the ...

17 SIDDIG ALI: Unintelligible.

18 SIDDIG ALI: Target area.

19 SIDDIG ALI: Um.

20 SALEM: So when the target pops up like that, you
21 don't see it move.

22 SIDDIG ALI: Um.

23 SALEM: Because it's climbing in a perpendicular
24 fashion.

25 SIDDIG ALI: Um.

1 SALEM: And the ...

2 SIDDIG ALI: Then it goes up, strikes, and goes
3 down, um.

4 SALEM: So this is how the dog leg maneuver get
5 done like such. Like this. You see how a dog's rear legs
6 goes like this?

7 SIDDIG ALI: Um.

8 SALEM: Makes like this.

9 SIDDIG ALI: Yes.

10 SALEM: Just like that.

11 SIDDIG ALI: Um.

12 SALEM: You go like this, you sprint towards your
13 target, stick your bomb, and return.

14 SIDDIG ALI: Um.

15 SALEM: So you are going in the opposite
16 direction of the vessel, and wouldn't be detected. Of
17 course, now, for example, if you bring anyone of our good
18 brothers ...

19 SIDDIG ALI: Um.

20 SALEM: ... to strike at this vessel, he will
21 swim directly towards the vessel.

22 SIDDIG ALI: Then they ask how ...

23 SALEM: He'd probably think, I'll take the
24 shortest route.

25 SIDDIG ALI: Yes.

1 SALEM: And then say, "By God how did they
2 discover me?"

3 SIDDIG ALI: Oh, God.

4 SALEM: How did they detect you?

5 SIDDIG ALI: Um. Now, their radars, the ones
6 sometimes you see, like this.

7 SALEM: Ah.

8 SIDDIG ALI: Even in America, in their bases the
9 radars are like that?

10 SALEM: Of course.

11 SIDDIG ALI: I mean, active?

12 SALEM: Of course.

13 SIDDIG ALI: Of course.

14 SALEM: But if it were anchored ashore and the
15 engine is shut off ...

16 SIDDIG ALI: I don't think ...

17 SALEM: There's none.

18 SIDDIG ALI: They think about it.

19 SALEM: There's none, no.

20 SIDDIG ALI: Um.

21 SALEM: It's not that they didn't think about it,
22 it's just that it's not operational.

23 SIDDIG ALI: No. I mean, they didn't think that
24 anything could possibly happen.

25 SALEM: Not operational. There are other

1 security measures like the entrance and exit gates, etc.

2 SIDDIG ALI: Of course.

3 SALEM: However, the vessel's security in the
4 midst of the ocean is ensured by radar.

5 SIDDIG ALI: Um. Can't we conduct an operation
6 over here? At military places? Do you think the places
7 that are called -- their reserves places?

8 SALEM: No.

9 SIDDIG ALI: There's something called, uh, uh,
10 the armory.

11 SALEM: Armory?

12 SIDDIG ALI: Ah.

13 SALEM: And what is that?

14 SIDDIG ALI: It is considered a place of -- a
15 gathering point for reserves officers.

16 SALEM: Um.

17 SIDDIG ALI: They use them in Los Angeles when
18 the incident occurred, remember?

19 SALEM: OK.

20 SIDDIG ALI: So they call the national guard.
21 These people consist of volunteers of course.

22 SALEM: Yes.

23 SIDDIG ALI: Or retirees. Retired officers or
24 volunteer cores who have regular jobs in the town and when
25 something happens, they tell them, "Let's go." So they stop

1 their regular jobs and go to the emergency spot, then they
2 finish their mission and then go back to their jobs.

3 SALEM: OK.

4 SIDDIG ALI: Well, they gather them in the place
5 that is called the armory. You have one here and they're
6 everywhere. They have one by you in Brooklyn. There's one
7 on, on, on, Atlantic.

8 SALEM: Atlantic Avenue?

9 SIDDIG ALI: With, a, with, a, with, Fesent,
10 phonetic.

11 SALEM: With what?

12 SIDDIG ALI: As you are proceeding on Atlantic,
13 like this. You see a big building.

14 SALEM: Ah.

15 SIDDIG ALI: Very big.

16 SALEM: Ah.

17 SIDDIG ALI: As you are proceeding on Flatbush
18 with Atlantic.

19 SALEM: Ah.

20 SIDDIG ALI: You cross Flatbush and proceed
21 straight on Atlantic, as if you're going towards Al-Taqwah
22 mosque.

23 SALEM: Yes.

24 SIDDIG ALI: On your left, there is one there.
25 Here in Jersey City, at the place that's -- street, a, a --

1 what's the name of it -- pardon me brother.

2 SALEM: Uh-huh.

3 SIDDIG ALI: This -- there's a street, what's it
4 called -- so these are gathering areas -- on Park Avenue, in
5 Manhattan where you are.

6 SALEM: Um.

7 SIDDIG ALI: On 67 or 66 street -- 67th and
8 Atlantic. They have one, I think.

9 SALEM: I have no idea about -- it never --

10 SIDDIG ALI: But of course.

11 SALEM: -- it never caught my attention.

12 SIDDIG ALI: Ah man. Those are like barracks, I
13 mean.

14 SALEM: Ah.

15 SIDDIG ALI: Depot, they're like depot for
16 ammunition and weapons. But of course.

17 SALEM: What's this?

18 SIDDIG ALI: But of course, what do you think.
19 It's the equivalent of an army depot in these areas, so ...

20 SALEM: That's a good one.

21 SIDDIG ALI: They use them as areas of -- I know
22 some people who work there.

23 SALEM: That's a good one.

24 SIDDIG ALI: Ah, what does it contain? It
25 contains trucks, and vehicles that are all unintelligible

1 very big and ammunition supply weapons, and weapons, light
2 weapons.

3 SALEM: Um.

4 SIDDIG ALI: There are no, there are no tanks.
5 There are no unintelligible. There is small artillery.

6 SALEM: In the city?

7 SIDDIG ALI: But of course.

8 SALEM: Sons of bitches.

9 SIDDIG ALI: Yes, but of course. See how? Thus,
10 entering this place is easy.

11 SALEM: That's all.

12 SIDDIG ALI: Not entering it, but bringing
13 something inside it.

14 SALEM: Um.

15 SIDDIG ALI: Is possible.

16 SALEM: You have people.

17 SIDDIG ALI: Yes, we can look into this. I mean,
18 we'll just assess the feasibility of it.

19 SALEM: Um.

20 SIDDIG ALI: We're just not going to let
21 everybody know.

22 SALEM: Well, you are telling me that you have
23 people, I don't.

24 SIDDIG ALI: I have one, a Muslim brother, he's
25 an Arab.

1 SALEM: Um.

2 SIDDIG ALI: He's born here.

3 SALEM: Good.

4 SIDDIG ALI: And he was in the marines.

5 SALEM: He was in the marines?

6 SIDDIG ALI: Yes, now he is a reserve, he's

7 retired.

8 SALEM: Perfect.

9 SIDDIG ALI: See how, now he wants to understand

10 jihad -- and wants, of course, wants to learn more about the

11 religion, I mean, he is very enthusiastic.

12 SALEM: Great is God's will.

13 SIDDIG ALI: Um. He's very active.

14 SALEM: Unintelligible.

15 SIDDIG ALI: He gathered young people of 18 and

16 20 years old and trained them on running and push-ups and

17 such.

18 SALEM: That's good.

19 SIDDIG ALI: And I went training with him several

20 times.

21 SALEM: God willing.

22 SIDDIG ALI: He's good I mean.

23 SALEM: God willing.

24 SIDDIG ALI: One would have to see what is his

25 ...

1 SALEM: Readiness.

2 SIDDIG ALI: Right.

3 SALEM: Yeah, because you can't talk to just
4 anybody and tell them things ...

5 SIDDIG ALI: No, no.

6 SALEM: And create problems.

7 SIDDIG ALI: Of course not. Do you see what is
8 happening over there in Bosnia?

9 SALEM: Agent.

10 SIDDIG ALI: They are burning them, brother, by
11 God ...

12 SALEM: Look.

13 SIDDIG ALI: Alive.

14 SALEM: Right here.

15 SIDDIG ALI: Casualties.

16 SALEM: Right here, a car full of corpses.

17 (Pause) Um.

18 SIDDIG ALI: The Croats are the ones who are
19 burning the, now, my brother.

20 SALEM: By God?

21 SIDDIG ALI: Yes.

22 SALEM: I seek refuge in God.

23 SIDDIG ALI: The Croats who had previously -- I
24 mean, were allies with the brothers, with the Muslims.

25 SALEM: Oh God.

1 SIDDIG ALI: These are people who are apathetic
2 towards their religion.

3 SALEM: As long as you are...

4 SIDDIG ALI: Unintelligible.

5 SALEM: Once you are apathetic towards your
6 religion, you drift away from values.

7 SIDDIG ALI: Of course, of course.

8 SALEM: You are finished.

9 SIDDIG ALI: Of course. Um.

10 SALEM: There's no God but God. One of the
11 things someone said was that God had put Sayyid Nosair in
12 this position for ...

13 SIDDIG ALI: Um.

14 SALEM: ... the purpose of guiding many people
15 ...

16 SIDDIG ALI: Yes.

17 SALEM: ... who weren't ...

18 SIDDIG ALI: From darkness to light.

19 MS. AMSTERDAM: Your Honor, I would object to the
20 noninclusion of a "pause" there.

21 THE COURT: There is a pause.

22 SIDDIG ALI: From darkness to light. Pause.

23 SALEM: Did you think about the matter of the man
24 from Pennsylvania to get the thing from him again?

25 SIDDIG ALI: I haven't called Abdul Rashid. It's

1 possible to call him now.

2 SALEM: The phone is clean, there's no problem.

3 SIDDIG ALI: Ah, we can call ...

4 SALEM: Call Abdul Rashid.

5 SIDDIG ALI: Ah.

6 SALEM: Tell him, Abdul Rashid ...

7 SIDDIG ALI: I'll tell him, I mean, "What
8 happened regarding this matter."

9 SALEM: Ah.

10 SIDDIG ALI: We just want to understand.

11 SALEM: Ah.

12 SIDDIG ALI: Because God forbid. -- I will tell
13 you his story: He -- after he, himself came here -- he has
14 his phone.

15 SALEM: Who?

16 SIDDIG ALI: The Muslim man. The one I told you
17 Abdul Rashid, himself, is suspectng.

18 SALEM: Ah.

19 SIDDIG ALI: Basically, we used to go there for
20 three months, three months training.

21 SALEM: You mean three months ago?

22 SIDDIG ALI: No, three months before the
23 incident.

24 SALEM: Ah ah.

25 SIDDIG ALI: OK? OK, from the month of -- from

1 October, you see how? Until -- the beginning of October,
2 November, December -- when was when was the incident?

3 SALEM: It was in March.

4 SIDDIG ALI: November. What? March?

5 SALEM: The incident was in March.

6 SIDDIG ALI: Is that right.

7 SIDDIG ALI: Ah.

8 SALEM: Ah.

9 SIDDIG ALI: No, we were in November. November,
10 October, November, December.

11 SALEM: November Oc -- November, November,
12 December, ah.

13 SIDDIG ALI: November, December, January,
14 February, the beginning of February.

15 SALEM: Yeah, four months.

16 SIDDIG ALI: Unintelligible so we used to go and
17 then -- I mean, the brother is very good, I mean. He said
18 "I only strain Muslims ...

19 SALEM: That's good.

20 SIDDIG ALI: ... people don't come here." So the
21 entire area consists of nothing but training camps.

22 SALEM: Um.

23 SIDDIG ALI: I'm telling you, this is how the
24 system is. I mean, their culture is ...

25 SALEM: Boot-camp style, um.

1 SIDDIG ALI: Military training. Boot camp.

2 SALEM: Um.

3 SIDDIG ALI: So enthusiasts come, enthusiasts of

4 ...

5 SALEM: Hunting and ...

6 SIDDIG ALI: ... hunting and these things. So
7 the man has a huge encampment. There's even a mountain --
8 that he owns. A very huge, huge, huge mountain and hills
9 and stuff, I mean, that's a very good thing.

10 SALEM: Um.

11 SIDDIG ALI: So we wanted -- the brothers --
12 brother Abdul Rashid -- he was, I mean, in touch with the
13 brothers of a group -- people donated an amount, amounts of
14 money, but we disassociated ourselves from them, I mean.

15 SALEM: American people or Arabs?

16 SIDDIG ALI: Ah, ah, ah, they were Americans,
17 Americans but the money donors were Arabs from the Gulf,
18 from Saudi Arabia. They donate the millions my brother.
19 Yes, by God.

20 SALEM: Great is God's will.

21 SIDDIG ALI: Great is God's -- yes. For what
22 purpose? For the purpose of jihad.

23 SALEM: Well, the jihad, the jihad with money is

24 ...

25 SIDDIG ALI: Yes, of course, it's a jihad, but of

1 course.

2 SALEM: Jihad with money is ...

3 SIDDIG ALI: So the brothers over here, we told
4 them, "Brothers, they want to establish a camp here." They
5 asked me, "What is your opinion." I told them, "In my
6 opinion a camp here will, I mean, be frustrated, anything
7 may be frustrated.

8 SALEM: Ah.

9 SIDDIG ALI: My opinion is to have it.

10 SIDDIG ALI: My opinion to have it in our
11 country.

12 SALEM: The Sudan.

13 SIDDIG ALI: Yes. And thanks be to God we have
14 good facilities.

15 SALEM: In the Sudan?

16 SIDDIG ALI: Yes. I have very, very good
17 connections.

18 SALEM: You have been here for a long time.

19 SIDDIG ALI: Ten years.

20 SALEM: Ten years.

21 SIDDIG ALI: Ah.

22 SALEM: How could you have maintained ...

23 SIDDIG ALI: Oh, no, what do you mean how come?

24 SALEM: By God?

25 SIDDIG ALI: Yes.

1 SALEM: That's good.

2 SIDDIG ALI: All the people are my relatives, I
3 mean.

4 SALEM: Oh, how great.

5 SIDDIG ALI: The leadership of the Islamic
6 movement in Sudan, I mean, they're all, the majority of
7 them -- all of my family members have been members of the
8 Islamic movement a long time ago, brother.

9 SALEM: OK.

10 SIDDIG ALI: Additionally, I am active, I mean,
11 in the endeavor itself, the Islam endeavor and such. And is
12 in constant touch with the leadership. So I, thank God, the
13 lowered has been gracious to us and has granted us good
14 relations with the people.

15 SALEM: Good.

16 SIDDIG ALI: And also my contacts with the
17 brothers in the -- after the new government took over, the
18 Islamic government -- is direct, I mean, direct contact.

19 SALEM: Oh, how great.

20 SIDDIG ALI: Yes. I have. So ...

21 SALEM: So at this rate we're going to certainly
22 need you. God willing ...

23 SIDDIG ALI: God willing.

24 SALEM: ... for the next step.

25 SIDDIG ALI: Yes.

1 SALEM: Certain people.

2 SIDDIG ALI: Basically we are all -- they're all
3 jihading in the south.

4 SALEM: Ah.

5 SIDDIG ALI: Because, by this time, we were
6 supposed to have been completely gone. But the
7 circumstances. I want everything to proceed-.

8 SALEM: With common sense, by using common sense.

9 SIDDIG ALI: Rationally.

10 SALEM: Exactly right. May God be gracious to
11 you. We had enough emotions.

12 SIDDIG ALI: Let us put emotions aside for a
13 little while. Let us -- of there it is a very big country,
14 thank God, and the houses are very big and everything --
15 training is available and everything is available.

16 SALEM: Oh God great. (Audio glitch)

17 SIDDIG ALI: But rationality is a must.

18 SALEM: Yes, rationality.

19 SIDDIG ALI: Not emotion.

20 SALEM: Wise up.

21 SIDDIG ALI: Ah. So he told him, he told him,
22 "No. There is a possibility here." Abdul Rashid told me,
23 "Brother, there is someone here. -- I am responsible for
24 everything. Don't worry about it. I will make everything
25 available is to you. You bring the people.

1 SALEM: Was Abdul Rashid receiving money?

2 SIDDIG ALI: No.

3 SALEM: He wasn't getting any.

4 SIDDIG ALI: No.

5 SALEM: Well, that's good.

6 SIDDIG ALI: No.

7 SALEM: It is just a question -- I'm asking just
8 to put my mind at ease.

9 SIDDIG ALI: No.

10 SALEM: About certain things.

11 SIDDIG ALI: No, no, I, myself look into all of
12 that, I mean.

13 SALEM: That's good.

14 SIDDIG ALI: And he does all these things for the
15 almighty God's sake.

16 SALEM: There's no God but God.

17 SIDDIG ALI: But there is one, the trainer, he
18 takes money.

19 SALEM: He takes money.

20 SIDDIG ALI: The trainer, yes, he doesn't do it
21 for the sake of almighty God, he takes money.

22 SALEM: Now that's worry some.

23 SIDDIG ALI: No, a little at the beginning -- but
24 even in the -- even in Islam, I mean, it's not a problem if
25 you pay someone in exchange.

1 SALEM: Nothing wrong with that, ah.

2 SIDDIG ALI: In return for good deeds.

3 SALEM: Ah.

4 SIDDIG ALI: But later, if became clear that he
5 didn't have the intentions, he himself, I mean, to be
6 unintelligible.

7 SALEM: What's is this man's name? Does he have
8 a Muslim name or an American name?

9 SIDDIG ALI: Ah, ah Abu 'Ubaydah?

10 SALEM: Abu 'Ubaydah?

11 SIDDIG ALI: Yes.

12 SALEM: He gives himself a Muslim name.

13 SIDDIG ALI: No he's Muslim, he appears to be
14 Muslim.

15 SALEM: What did he use to do or ...?

16 SIDDIG ALI: No, basically he was with the
17 marines.

18 SALEM: He was an officer.

19 SIDDIG ALI: Yeah, I think he was.

20 SALEM: Ah ah.

21 SIDDIG ALI: He had two tours.

22 SALEM: What's that?

23 SIDDIG ALI: Tours, two, two tours.

24 SALEM: In Leban -- in e ...

25 SIDDIG ALI: Ah in Vietnam.

1 SALEM: In Vietnam.

2 SIDDIG ALI: You know what Vietnam was all about?

3 SALEM: Of course.

4 SIDDIG ALI: One tour represented hell, I mean.

5 SALEM: Ah.

6 SIDDIG ALI: And this guy served two tours.

7 Thus, he's decorated and has a lot of medals and ...

8 SALEM: I also have -- God willing when you come
9 to visit me, I'll show you, at the house ...

10 SIDDIG ALI: Ah, ah.

11 SALEM: From the '73 war against the Jews.

12 SIDDIG ALI: And also, may God bless, he was, I
13 mean, a great trainer.

14 SALEM: May God bless.

15 SIDDIG ALI: Knowledgeable who communicates with
16 precision.

17 SALEM: Um.

18 SIDDIG ALI: And then when we selected the
19 people -- first it was simple to choose the people so I
20 chose the people. There are set criteria. There are
21 certain conditions that these people must possess. As far
22 as I'm concerned, the most important one is faith.

23 SALEM: Of course. No faith, no, no ...

24 SIDDIG ALI: Yes, of course.

25 SALEM: No, no nothing after that.

1 SIDDIG ALI: That's why there weren't any
2 American soldiers, or infidel soldiers. We -- particularly
3 a mujahid, I mean. It's always better to get someone who
4 has sold himself, I mean, for the sake of God.

5 SALEM: To God.

6 SIDDIG ALI: Ah, of course.

7 SALEM: Has sold himself to God.

8 SIDDIG ALI: It's a ...

9 SALEM: I mean, it is commitment to God.

10 SIDDIG ALI: Yes, yes.

11 SALEM: You aren't committing yourself to --

12 SIDDIG ALI: Yes, yes. So they were -- very
13 strange thing. There's more coffee, God willing.

14 SALEM: No, no, if I need I'll ask.

15 SIDDIG ALI: By God. So we brought the people
16 and everything. So those people were dropping out. Who
17 were those that were dropped out? The people that we got,
18 thanks be to God, were good. Also, I didn't just get
19 anyone. No, only people I know.

20 SALEM: Um.

21 SIDDIG ALI: Emad whom I have known for a long
22 time.

23 SALEM: Um.

24 SIDDIG ALI: Ah.

25 SALEM: And you study his disposition.

1 SIDDIG ALI: But of course.

2 SALEM: Ah.

3 SIDDIG ALI: So I conducted serious investigative
4 work, on all of them, I mean.

5 SALEM: Bravo.

6 SIDDIG ALI: So I spent exactly three to four
7 months gathering people. Around ten or twelve persons, I
8 mean.

9 SALEM: Beautiful.

10 SIDDIG ALI: Some very good young men.

11 SALEM: Bravo.

12 SIDDIG ALI: What was the reason to expedite this
13 thing. They have a goal, and I have a goal, or we have a
14 goal. Our goal is that these people get extensive and very,
15 very, very good training, so that we can get started at
16 anyplace where jihad is needed.

17 SALEM: Where what?

18 SIDDIG ALI: Where there's a benefit for the
19 nation.

20 SALEM: Uh ah.

21 SIDDIG ALI: And after they receive their
22 training, they go to Bosnia, I mean, they depart. We'll
23 see, may God improve the position of the Muslims through
24 them. Or may be he will facilitate it for them, I mean,
25 whomever becomes a martyr, I mean, praised be God. And

1 whomever survives, I mean, could come and ...

2 SALEM: Instruct.

3 SIDDIG ALI: Yes, somewhere else, or Egypt or any
4 other place, etc., I mean.

5 SALEM: Um.

6 SIDDIG ALI: That was my objective.

7 SALEM: Um.

8 SIDDIG ALI: So we went for four -- three, three
9 months. So the people were dropping out. I mean, the
10 people that were out of shape. He was a strict instructor,
11 brother. He applies, he applies, he applies the doctrine,
12 which is the marines' program on these people.

13 SALEM: Um.

14 SIDDIG ALI: But the people were out of shape. I
15 mean, the people didn't have the:

16 SALEM: Yes, they ain't got it.

17 SIDDIG ALI: Only the strong ones made it.

18 SALEM: Exactly.

19 SIDDIG ALI: So actually at the end we had seven
20 left, seven persons, I mean.

21 SALEM: That's good.

22 SIDDIG ALI: But what a team, oh my God Emad.

23 SALEM: God bless.

24 SIDDIG ALI: They became one of the best
25 brothers.

1 SALEM: Are they all Arabs or were there
2 Americans among them?

3 SIDDIG ALI: They are all Arabs.

4 SALEM: Good. That way you put me at ease.

5 SIDDIG ALI: They are all Arabs.

6 SALEM: That way you put me at greater ease.

7 SIDDIG ALI: Ah. They are all Arabs.

8 SALEM: No matter what, the Americans are ...

9 SIDDIG ALI: There were no Americans except the
10 trainer.

11 SALEM: The trainer, right.

12 SIDDIG ALI: Audio glitch. The land is an
13 American.

14 SALEM: Um.

15 SIDDIG ALI: And we thought he is a good guy, I
16 mean. But not right now. This one I don't know.

17 SALEM: Um.

18 SIDDIG ALI: I started to have doubts about him.

19 SALEM: Um.

20 SIDDIG ALI: He is also a trainer, he's a trainer
21 himself ...

22 SALEM: Um.

23 SIDDIG ALI: But what type of trainer is he?
24 He's a hand to hand combat trainer.

25 SALEM: Combat. Hand combat.

1 SIDDIG ALI: Yes, yes, yes, hand combat.

2 SALEM: Kung fu, karate.

3 SIDDIG ALI: Right, right.

4 SALEM: And self, self-defense.

5 SIDDIG ALI: Yes.

6 SALEM: And self-defense.

7 SIDDIG ALI: And so on. So he is very good also.
8 So there and here he would say that he suspects that the FBI
9 might be listening -- people eavesdropping. We asked him if
10 he has any proof. He I have proof and everything and still
11 unintelligible. Thus, throughout his discussions -- I
12 mean -- he use to say -- through his delivery, one feels as
13 if he were trying to tell them something. He used to say,
14 "We don't -- we don't want to perform destructive acts, and
15 we don't want to do terrorism, and so on." As if he were in
16 charge.

17 SALEM: Um.

18 SIDDIG ALI: Fine. So the brothers talked to
19 him. They told him, "We don't have any intentions of doing
20 anything."

21 SALEM: Yes.

22 SIDDIG ALI: Meaning in Bosnia, in Bosnia.

23 SALEM: Ah, ah.

24 SIDDIG ALI: To stop the issue right there. So
25 the incident occurred. Few days before the incident, few

1 days before the incident, he called Abdul Rashid. He told
2 him, "Oh brother, they came to me here, the FBI and they
3 told me what are you doing?" And I mentioned to you the
4 story of the guy who was in the pictures.

5 SALEM: Yes.

6 SIDDIG ALI: And showed us pictures. And told
7 him "What were you doing.

8 SALEM: Is this the Pennsylvania FBI or ...

9 SIDDIG ALI: Yes, yes.

10 SALEM: New Jersey's?

11 SIDDIG ALI: Yes, Pennsylvania's.

12 SALEM: Um.

13 SIDDIG ALI: Coughing. And I suspect that the
14 two or working together. Why? It became clear that they
15 are together. Unintelligible. Together.

16 SALEM: Of course, certainly.

17 SIDDIG ALI: Because when they asked Mohammed
18 they asked him, "This Mahmoud, did he used to take your
19 car?"

20 SALEM: Did they question Muhammad here in New
21 Jersey or there in Pennsylvania?

22 SIDDIG ALI: In New York.

23 SALEM: In New York.

24 SIDDIG ALI: Yes. They -- of course Muhammad did
25 get the hit -- and everything.

1 SALEM: Of course.

2 SIDDIG ALI: So they asked him, "Did you use to
3 give Mahmud your car?" He said, "Once, once something like
4 that." He told them, "No, he has his own car." I mean,
5 there must have been something he uttered. They told him,
6 "Well, don't give him the car again. What was he doing in
7 Pennsylvania? This car ...

8 SALEM: Went to Pennsylvania.

9 SIDDIG ALI: Why did it go to Pennsylvania?"

10 SALEM: Um.

11 SIDDIG ALI: He told them, I don't know." So
12 they showed him the pictures. OK. Thinking that he were
13 Mahmoud.

14 SALEM: Um.

15 SIDDIG ALI: See how? So in a nutshell, the man
16 contacted Abdul Rashid.

17 SALEM: Who is --

18 SIDDIG ALI: He didn't contact him, he didn't
19 call him, he came here in person.

20 SALEM: The Pennsylvania guy?

21 SIDDIG ALI: Yes.

22 SALEM: Abu 'Ubaydah?

23 SIDDIG ALI: Yes, no, not Abu 'Ubaydah.

24 SALEM: The trainer?

25 SIDDIG ALI: The trainer himself -- no, the

1 landlord.

2 SALEM: Who is?

3 SIDDIG ALI: Abd Al-Muhaymen.

4 SALEM: Abd Al-Muhaymen?

5 SIDDIG ALI: Yes.

6 SALEM: Is he a Muslim as well?

7 SIDDIG ALI: Um, um.

8 SALEM: So the entire operation is Muslims, then.

9 SIDDIG ALI: Yes, they're all Muslims brothers,
10 but this one -- I don't know, I mean. He came over here, he
11 came here after the incident.

12 SALEM: Ah.

13 SIDDIG ALI: So, he didn't contact Abdul Rashid.
14 He didn't contact Abdul Rashid, he didn't contact me, and he
15 didn't contact Abu 'Ubaydah. He has the phone numbers of
16 the three of us. And he has instructions. If there's
17 anything, he is to call me ...

18 SALEM: One of ...

19 SIDDIG ALI: ... first. Me first.

20 SALEM: Excellent.

21 SIDDIG ALI: Secondly you be did a, third --
22 there is a defined method of calling. We've agreed upon a
23 defined strategy method.

24 SALEM: Yes.

25 SIDDIG ALI: When you call, first you greet:

1 "May peace be with you" -- I mean, there is a certain
2 procedure. Three times means we'll see another
3 unintelligible two times means no. I mean there is a method
4 so there wouldn't be talk. So he went ...

5 SALEM: So far, there is a very good system.

6 SIDDIG ALI: He came over here and failed to
7 call. He left a note with someone who has no connection
8 with my matter. He even ...

9 SALEM: A notes?

10 SIDDIG ALI: Yes.

11 SALEM: A playing on his house.

12 SIDDIG ALI: Yes. With whom? With a brother --
13 thanks be to God -- with a good brother, Ali Abdul Karim.

14 SALEM: I know Ali Abdul Karim.

15 SIDDIG ALI: Ah, ah.

16 SALEM: The karate guy, the one who is in charge
17 of security, I know Ali well.

18 SIDDIG ALI: Yes, a brother of good deeds, we
19 regard him highly.

20 SALEM: Very, very, very.

21 SIDDIG ALI: So he left a note with him.

22 SALEM: And what did he tell him?

23 SIDDIG ALI: He even advised him in words, I
24 mean, conversationally.

25 SALEM: What did he tell him?

1 SIDDIG ALI: He told him, "Tell Abdul Rashid that
2 the FBI came to me ...

3 SALEM: Ah.

4 SIDDIG ALI: ... and stuff. Even though they
5 warned him and told him not to talk with anyone.

6 SALEM: Of course.

7 SIDDIG ALI: "We have nothing -- we don't
8 have --" yes. So what did he do -- so of course he claims
9 loyalty to them, I mean, over there ...

10 SALEM: Yes.

11 SIDDIG ALI: To Siraj and stuff.

12 SALEM: Uh uh.

13 SIDDIG ALI: So there he told them -- what did he
14 tell them? "The FBI came to me and told me such and such
15 and such. So you tell Abdul Rashid to call me ...

16 SALEM: Ah.

17 SIDDIG ALI: And to tell me that the weapons that
18 you have, I gave it to you as a gift. A gift that we
19 donated to your club."

20 SALEM: Yes.

21 SIDDIG ALI: And he wrote the same words in the
22 note, "That the FBI came to me and that I got rid of the
23 weapons."

24 SALEM: Huh.

25 SIDDIG ALI: "I got rid of them. So call me on

1 the phone, because these people are monitoring the phones.
2 Thus, while on the phone say these things to me so that I
3 will relax, and the matter will be over."

4 SALEM: Um.

5 SIDDIG ALI: So Abdul Rashid made a lot of noise.
6 They called right away and saying, "What is this?" He said,
7 "Is this guy screwed the whole thing up."

8 SALEM: He got Ali Abdul Karim involved in the
9 matter.

10 SIDDIG ALI: He started suspectng him. Abdul
11 Rashid said, "What's this? It seems like he's trying to
12 make a fool out of us."

13 SALEM: Um.

14 SIDDIG ALI: He wants us to call him so that we
15 may go to him and. Clapping.

16 SALEM: To get you involved.

17 SIDDIG ALI: Or -- and he also wants us to donate
18 the weapons to him. These weapons are worth nearly \$20,000
19 brother ...

20 SALEM: There's no God but God.

21 SIDDIG ALI: He wants to have it. He wants to
22 swindle us out of it.

23 SALEM: Um.

24 SIDDIG ALI: So he's either ...

25 SALEM: And he'll claim that he got rid of it.

1 SIDDIG ALI: He's either working for them --
2 those people -- or he's conniving to get the weapons.

3 SALEM: Um.

4 SIDDIG ALI: One or the other.

5 SALEM: Um.

6 SIDDIG ALI: So they suspect that it is one of
7 those two possibilities.

8 SALEM: Um.

9 SIDDIG ALI: But I don't know. Every time I ask
10 him, "Did you call this man?"

11 SALEM: He says, "No."

12 SIDDIG ALI: Yes. So what did we agree upon?
13 Abu 'Ubaydah, I mean, we disagreed with each other, at the
14 end, about the whole method of training and such.

15 SALEM: I understand. Excuse me, I'm gone in a
16 make myself comfortable.

17 SIDDIG ALI: O yes, make yourself comfortable.
18 Praised be God my the brothers. It is spending, we
19 disagreed over spending, I mean, there was no wisdom to
20 spending. Unintelligible.

21 SALEM: This was money that you were collecting
22 from the, unintelligible?

23 SIDDIG ALI: No, no. The money that was here
24 came from over there.

25 SALEM: From Saudi Arabia.

1 SIDDIG ALI: Dollars, many dollars, I mean, a lot
2 of money. And despite the fact that money was there, he
3 continued to collect from the poor brothers.

4 SALEM: That's something, that's something -- I
5 mean, was Saudi Arabia giving the money directly to this man
6 or giving it to you?

7 SIDDIG ALI: Basically, there is a certain
8 committee.

9 SALEM: Ah.

10 SIDDIG ALI: Saudi Arabia, not the government, it
11 is brothers.

12 SALEM: Who? Is it Sami Zaffir of unintelligible

13 SIDDIG ALI: No, I don't know who they are, by
14 God.

15 SALEM: Oh, OK.

16 SIDDIG ALI: I mean, brothers...

17 SALEM: No matter.

18 SIDDIG ALI: Brothers like you and I.

19 SALEM: Fine.

20 SIDDIG ALI: They have money.

21 SALEM: Fine.

22 SIDDIG ALI: In Saudi Arabia.

23 SALEM: OK, bless ...

24 SIDDIG ALI: Yes, thank be to God. I mean, the
25 government doesn't know at all, because governments are

1 afraid of such things.

2 SALEM: Of course.

3 SIDDIG ALI: So what did they do? They collected
4 the money and formed a consultative committee, a
5 consultative council. The American brothers -- I know
6 brothers over there, in Saudi Arabia.

7 SALEM: That's good.

8 SIDDIG ALI: Among them is -- what's his name --
9 the one who writes these books -- a good brother, may God
10 bless. He's a scholar and Saudi Arabia.

11 SALEM: Um.

12 SIDDIG ALI: He speaks Arabic well. He was
13 unintelligible in Afghanistan. His name is Abu Amin.

14 SALEM: Abu?

15 SIDDIG ALI: Bilal Phillips.

16 SALEM: Bilal Phillips? He was an American?

17 SIDDIG ALI: Yes.

18 SALEM: And became a Muslim.

19 SIDDIG ALI: He is originally from Canada, yes.

20 SALEM: Good.

21 SIDDIG ALI: And, I mean, he was one of the very
22 well known brothers, I mean. So these people gathered in
23 Saudi Arabia -- they study over there, I mean, they are
24 residing over there. So they met and collected the money
25 and formed their council and nominated Abdul Rashid to be

1 the camp's supervisor.

2 SALEM: Great.

3 SIDDIG ALI: To help the brothers in Bosnia. He
4 left just like that. He went to Bosnia. So their goal was
5 good. I mean, he goes in any direction, fine?

6 SALEM: Yes, yes.

7 SIDDIG ALI: Frankly, brother Abdul Rashid, I
8 mean, he trusted brother 'Ubaydah very much.

9 SALEM: Ah.

10 SIDDIG ALI: There's nothing wrong with that. We
11 are brothers, we trust each other.

12 SALEM: If there's no trust, there's no work.

13 SIDDIG ALI: Yes, yes, of course. Thus, with
14 great trust, he was giving him a lot of money, as usual, as
15 usual I mean. When I have trust in you, a, a.

16 SALEM: Emad.

17 SIDDIG ALI: Emad, we are brothers, I mean, I
18 give you money and ask you to manage it the way you think is
19 appropriate and you go ahead, whatever, the way your
20 conscientious guides you, that's all, normal. But this guy
21 went, frankly -- I mean, only God knows -- he has a good
22 conscious, I mean, and God knows best -- that's between him
23 and our God.

24 SALEM: Of course.

25 SIDDIG ALI: However, it is apparent -- it

1 appears to us that his conduct is extremely idiotic. His
2 spending is wasteful, extremely wasteful.

3 SALEM: On what?

4 SIDDIG ALI: On training things that are not
5 necessary, I mean?

6 SALEM: OK.

7 SIDDIG ALI: Yes. A suite for \$1,000, a suite, a
8 suite -- what do they call it? There's no need for it. Are
9 we going to the thing -- things like that are not necessary.

10 SALEM: Um.

11 SIDDIG ALI: He says that there is need for it.
12 And we see that people are getting killed and burnt and
13 starving ...

14 SALEM: Of course.

15 SIDDIG ALI: And he goes and buy a \$1,000 suite.
16 And then, unintelligible, dollars, unbelievable. Sticks,
17 each one is \$300. That's unreasonable, brother.

18 SALEM: Oh no, no, no, that's not right.

19 SIDDIG ALI: That's not right, that's not right.
20 A boot costs \$180. I swear to God, a boot, by God brother,
21 things like that. When we saw this, we said to him "No."
22 So I'm gonna get to -- pardon me, I confused you a little.

23 SALEM: That's all right.

24 SIDDIG ALI: That's the reason for the dispute
25 between us and him, that's the reason for dispute. We

1 settled this issue between us and him and everything. But
2 that was the straw that broke the camel's back. We told
3 them, "No there must be guidance to spending."

4 SALEM: Of course, indeed.

5 SIDDIG ALI: So there was -- before this
6 disagreement occurred, when the man came and left the note,
7 he said, "Do such and such and such -- call me and such --

8 SALEM: With Ali Abdul Karim.

9 SIDDIG ALI: Um. We agreed that this man wants
10 to play, wants to sneak and evade.

11 SALEM: Either he wants to take the weapons for
12 himself ...

13 SIDDIG ALI: Yes, OK.

14 SALEM: Or he want -- or he's working with the
15 administration -- the FB --

16 SIDDIG ALI: Right. So we agreed to conduct a
17 commando operation against him.

18 SALEM: Hum. That's it, see, see, see, see, that
19 talk.

20 SIDDIG ALI: We all trained there ...

21 SALEM: OK.

22 SIDDIG ALI: ... for all this, all these thing,
23 these operations, we trained for them. But we agreed to put
24 on our black clothes and go there and go behind the mountain
25 and hoop descending upon him taking his and put him in a

1 fait accompli and take our weapons ...

2 SALEM: Just that.

3 SIDDIG ALI: And leave.

4 SALEM: Yes.

5 SIDDIG ALI: And we'll see what's going to
6 happen, whether he's with them or what.

7 SALEM: Um.

8 SIDDIG ALI: They were about to make a decision.
9 Either to eliminate him or ... but there is a problem that
10 we don't know about, unintelligible.

11 SALEM: How many were you? Seven?

12 SIDDIG ALI: Seven or eight. We said, "No, we'll
13 take our weapons and leave him like that and we'll give him
14 a beating up then leave him, that's it."

15 SALEM: Um.

16 SIDDIG ALI: That's it.

17 SALEM: Um.

18 SIDDIG ALI: That's all. So that was the
19 agreement. So what happened was the thing, the incident.

20 SALEM: By God. Meaning this bomb was not a part
21 of the preparations at all?

22 SIDDIG ALI: No.

23 SALEM: It just happened like that on the way.

24 SIDDIG ALI: Yes, of course, it has nothing to do
25 with the matter.

1 SALEM: Oh God.

2 SIDDIG ALI: Um. It is unrelated.

3 SALEM: But that's -- that's a strange way of
4 thinking, I mean strange, I mean, I'm unable to understand.
5 Does this mean that Mahmoud planned this using his own wit,
6 just like that?

7 SIDDIG ALI: No, I am telling you right now that
8 Mahmoud was not with us.

9 SALEM: He was not with you.

10 SIDDIG ALI: Never.

11 SALEM: Muhammad was with you.

12 SIDDIG ALI: Yes. Mahmoud originally -- Mahmoud
13 was afraid of walking with us. He said that we were under
14 more surveillance than he is. Laughs. Meaning, he was
15 thinking that we were monitored more than he was.

16 SALEM: Yes.

17 SIDDIG ALI: So used to say, "No, you -- it looks
18 like, I mean, you don't take the proper precautions, I
19 mean."

20 SALEM: Mahmoud used to go to Sheik El-Sayyid.

21 SIDDIG ALI: Yes.

22 SALEM: I was in touch with Sheik El-Sayyid and
23 we agreed.

24 SIDDIG ALI: Um.

25 SALEM: He requested that we conduct an

1 operation.

2 SIDDIG ALI: Um.

3 SALEM: The first one which is -- he said,
4 "Kidnap the judge who sentenced me ...

5 SIDDIG ALI: Um.

6 SALEM: And hide him." I told him, "Sheik
7 El-Sayyid if we do that we'll certainly be caught ...

8 SIDDIG ALI: Um.

9 SALEM: But if were to hit and run ...

10 SIDDIG ALI: Um.

11 SALEM: That is feasible."

12 SIDDIG ALI: Um.

13 SALEM: So he said, "Forget about judge. Make it
14 Dov Hikind who is the Jewish assemblyman. Forget the
15 assemblyman and make it a bomb or make it such. So me my
16 guess is that Mahmoud arranged this on his own with sheik a,
17 a, at the other end.

18 SIDDIG ALI: With whom?

19 SALEM: With Sheik Sayyid.

20 SIDDIG ALI: Only God knows.

21 SALEM: God knowest best.

22 SIDDIG ALI: I don't know, God laughing.

23 SALEM: OK, fine, I, I ...

24 SIDDIG ALI: Yes. God knows better.

25 SALEM: But one also can add two plus two, I mean

1 ...

2 SIDDIG ALI: Um, um.

3 SALEM: So the man left a note -- let's get back
4 to the ...

5 SIDDIG ALI: Um, ah. The man with the note?

6 SALEM: Um.

7 SIDDIG ALI: He we were supposed to take the
8 things and come back, I mean. Then the incident happened.
9 And that was it, the plan was ...

10 SALEM: Screwed up.

11 SIDDIG ALI: No, it wasn't screwed up, it
12 stopped.

13 SALEM: Um.

14 SIDDIG ALI: It stopped. All the supplies are
15 present and ready, but there's no work.

16 SALEM: Um.

17 SIDDIG ALI: Our purpose was to move, I mean.
18 The people were supposed to leave here, to move from here,
19 to go ...

20 SALEM: To Bosnia.

21 SIDDIG ALI: Or to do anything over here,
22 anything I mean. Or to move, go to Bosnia or go to such --
23 we wanted to go to Tajikstan, Tajikstan.

24 SALEM: Turkistan?

25 SIDDIG ALI: Tajikstan.

1 SALEM: What's Tajikstan?

2 SIDDIG ALI: One of the, unintelligible.

3 SALEM: Ah. Beeper noise.

4 SIDDIG ALI: Need a phone? Here. See how?

5 SALEM: Ah.

6 SIDDIG ALI: So, I mean, that's what happened.

7 Pause oh God.

8 Sound of emergency vehicles.

9 Emad Salem dials and speaks on the phone.

10 SALEM: Peace be upon you. How are you doing?

11 What's up? OK. Oh. OK. My goodness. That's a good one,

12 that's a good one. OK. All right. OK. So anything page

13 me OK? Ah ah. All right. What kind of system? Security

14 for her apartment or? Ah? Yeah. A ah. All right. OK.

15 Well, ah, we'll see if I, if I have time. All right? All

16 right, sweetheart. Peace be upon you. All right.

17 End of phone call.

18 SALEM: Thank you sheik.

19 SIDDIG ALI: May God bless you brother.

20 Unintelligible. This is the situation right now.

21 SALEM: It's OK, may God offer us what is good.

22 SIDDIG ALI: So this is the situation right now.

23 SALEM: I, of course, my personal opinion, the

24 things -- the weapons in this man's possession should be

25 brought back. Why? For one reason. I mean, as long as

1 they are in his custody -- of course these weapons are not
2 licensed.

3 SIDDIG ALI: Right, they're not licensed.

4 SALEM: They are not licensed. And as long as
5 they are in his custody, that's his problem. But the
6 problem that I have is that your fingerprints are on them.

7 SIDDIG ALI: Um, but, right now, I mean, all this
8 time, if they wanted to take the fingerprints, they would
9 have taken it already from him. Right?

10 SALEM: Ah.

11 SIDDIG ALI: Right?

12 SALEM: Ah.

13 SIDDIG ALI: I mean, all this time, if they
14 wanted --

15 SALEM: I mean we have to talk to this man. Man
16 let's talk.

17 SIDDIG ALI: Unless he's working with them.

18 SALEM: Ah. They would have taken it by now.

19 SIDDIG ALI: By now we would have appeared on
20 television.

21 SALEM: They would have taken it by now and you
22 would have been by now ...

23 SIDDIG ALI: On division.

24 SALEM: In the movies.

25 SIDDIG ALI: Ah, but of course, of course.

1 SALEM: You would have gone to the movies a long
2 time ago, I mean.

3 SIDDIG ALI: Ah, we would have partied.

4 SALEM: Ah.

5 SIDDIG ALI: Um.

6 SALEM: So accordingly this negates the,
7 especially when the phone is clean and the house is clean.

8 SIDDIG ALI: Um.

9 SALEM: That gives you the impression that there
10 is nothing serious, otherwise they would have nabbed you
11 quickly.

12 SIDDIG ALI: Yes, of course.

13 SALEM: So ...

14 SIDDIG ALI: I don't think, I mean ...

15 SALEM: So he wants to keep them.

16 SIDDIG ALI: It looks it.

17 SALEM: OK, if we want to take them -- but they
18 are a lot.

19 SIDDIG ALI: Well, they are free to deal with him
20 as they see fit. We defined our position towards them. Our
21 position was defined towards them.

22 SALEM: With Abdul Rashid?

23 SIDDIG ALI: Yes. We told them, I mean ...

24 SALEM: Ah, that's shameless, shameless.

25 Unintelligible.

1 SIDDIG ALI: We told them, "Everything should be
2 consulted upon."

3 SALEM: Ah.

4 SIDDIG ALI: All of us sat with them, I mean.

5 SALEM: Ah.

6 SIDDIG ALI: At the beginning there was no
7 consultation, they tell us to do this and we did it.

8 SALEM: Ah.

9 SIDDIG ALI: We told them, "No, this is not
10 right, that's not in the spirit of Islam."

11 SALEM: Ah.

12 SIDDIG ALI: And of course because we were
13 passionate about jihad and such for us it was all right, all
14 right:

15 SALEM: Enthusiastic, yes.

16 SIDDIG ALI: Enthusiastic and -- this is a golden
17 opportunity, and we can't find someone. Unintelligible.
18 Siddig.

19 SALEM: Of course.

20 SIDDIG ALI: People have the money and have the
21 weapons.

22 SALEM: Weapons and ...

23 SIDDIG ALI: Can't get a better deal?

24 SALEM: Of course not.

25 SIDDIG ALI: Um. So we rushed forward. And when

1 we saw that the matter was such, we said, no, no, that's not
2 right, we are Muslims, everything should be done by
3 consultation. Even the prophet, may the prayers and peace
4 of God be on him, when he was on his way to Badr...

5 SALEM: Yes.

6 SIDDIG ALI: He consulted with others.

7 SALEM: True. One who consults not loses.

8 SIDDIG ALI: Right. "So, don't spending this
9 money so waist fully, from now on tell us what you spend
10 this money on so that we main. This is not your money, it's
11 Muslims' money."

12 SALEM: Um.

13 SIDDIG ALI: So brother Abdul Rashid agreed 100
14 percent.

15 SALEM: OK.

16 SIDDIG ALI: So we told him, I mean, don't do
17 anything without our opinion. Frankly, I mean, this man,
18 who's Abu 'Ubaydah, apologized.

19 Mrs. Siddig Ali interrupts telling him that
20 someone called. Siddig stated that he'd call them back
21 right now.

22 SIDDIG ALI: You see how?

23 SALEM: Yes.

24 SIDDIG ALI: Pardon me I have to call the sheik.

25 SALEM: Go ahead please. Dials number.

1 SIDDIG ALI: I called the sheik today, the sheik
2 wasn't there by God.

3 SALEM: Sheik Omar?

4 SIDDIG ALI: Yes.

5 SALEM: One hour he's awake one hour he's ...

6 SIDDIG ALI: Yes. So we defined our position
7 towards them and that's it.

8 SALEM: Um.

9 SIDDIG ALI: If they want us again, they would
10 have said come.

11 SALEM: Right now everyone is in his place
12 silent.

13 SIDDIG ALI: Ah, scared.

14 SALEM: Afraid, I don't know.

15 SIDDIG ALI: May God's peace, mercy and blessings
16 be upon you. How are you sheik? Thanks be to God the
17 lowered of the universe, sheik. Sorry to disturb you, by
18 God. Sorry sheik. May be it's noon prayer time now, it's
19 quarter past 1 now. Yes, sheik, thanks be to God. The
20 Sudanese wanted to know from the sheik regarding the lesson
21 given by Wajid Mohammed. They want to know if they could
22 come. Ah, nobody's translating, sheik? Ah, OK. Because I,
23 before that I saw there's two women. Ah. Hani's wife, one
24 time was present. I don't know if ... because they want to
25 attend one of your Excellency's lessons. To come. Ah, that

1 is to say find them there, I mean? Ah, to the side, yes.
2 There's -- a place to the side, I mean, there's a partition.
3 There's a divider for them to sit and do the translation
4 from there. So when are you presenting the lesson, sheik,
5 you are giving it today, right? Do you start immediately
6 after the sun set? OK, may God reward you plenty. Sheik,
7 God willing. Anything you want, sheik? Yes, yes, it's the
8 phone that you have, sheik. I mean, it's a little tough.
9 Shall I get you one, God willing? A better one. Laughs.
10 The receiver doesn't seem to be in its place. Laughs. I
11 know, laughing. Ah, ah, ah. Yes, sheik. No, that's it,
12 we'll get a better one, sheik, God willing. Right away,
13 sheik. No trouble at all, sheik, no trouble, I swear to
14 God. There isn't. I have it here. There's one over here
15 at the house. An extra one, I mean. No trouble at all,
16 sheik. No trouble at all, sheik. All right. May God bless
17 you, sheik. And God willing I'll stop at your place around
18 or before 4:00, God willing? Will your excellency be there,
19 God willing, sheik? I will leave to work around 4:00, I can
20 stop at your place a little before that, and after that, at
21 quarter past 4. I return around 1 or 2. Now what will she
22 do? Brother Yahya's wife, one of the brothers at that
23 mosque. She knows her she's her friend, I mean. She may
24 stop to pick her up. So she sought permission and I told
25 her OK, no objection. If she comes to pick you up in her

1 car, I mean, and takes you to the mosque, and drives you
2 back, I have no objection, I mean. Good, God willing,
3 sheik. Is that OK, sheik or no? Good. May God bless you,
4 sheik. Should I come by, sheik, or if you like, I mean?
5 Like before 4? Ah, ah, for the phone. Yes, sheik. No,
6 sheik, no trouble at all, by God, no inconvenience. No
7 inconvenience. May God reward you plenty sheik. Peace be
8 upon you sheik. May the peace, blessings and immerse seize
9 of God be upon you.

10 SALEM: Poor man.

11 SIDDIG ALI: Ah?

12 SALEM: He's all alone.

13 SIDDIG ALI: Yes, of course.

14 SALEM: He is sick, he is diabetic and he needs
15 insulin.

16 SIDDIG ALI: No, no, they give, they give him,
17 there are brothers who give it to him in the morning, they
18 give him breakfast.

19 SALEM: That's good.

20 SIDDIG ALI: In the morning I mean and they give
21 him the diabetes shot early in the morning and after that
22 they shower him and look after all his needs.

23 SALEM: That's good.

24 SIDDIG ALI: They leave.

25 SALEM: They go to their jobs. Sit.

1 SIDDIG ALI: Ah. He sits a little to rest,
2 because sometimes he stays awake all night.

3 SALEM: OK.

4 SIDDIG ALI: Then he prays and then he does the
5 things he needs to do. He eats and then goes to sleep.

6 SALEM: When do you go to work?

7 SIDDIG ALI: Around 4:00.

8 SALEM: Am I not keeping you?

9 SIDDIG ALI: Oh, no, praised be God, brother, no
10 by God.

11 SALEM: Seriously?

12 SIDDIG ALI: No, by God, not at all.

13 SALEM: Um.

14 SIDDIG ALI: So at dawn while he's still praying,
15 some brothers join him, I mine, two or three brothers, they
16 serve him breakfast, and get him ready, and do whatever he
17 needs.

18 SALEM: Um.

19 SIDDIG ALI: Then goes back to sleep for one, two
20 or three hours.

21 SALEM: This is good.

22 SIDDIG ALI: He takes a lot of insulin my
23 brother, mean.

24 SALEM: It is necessary.

25 SIDDIG ALI: In the morning and at night.

1 SALEM: High blood sugar levels in the
2 bloodstream is dangerous thing.

3 SIDDIG ALI: Um, um.

4 SALEM: When I accompanied him on the Detroit
5 trip ...

6 SIDDIG ALI: Um.

7 SALEM: There we met with Dr. Sami Zaffir and ...

8 SIDDIG ALI: Ah.

9 SALEM: A group there, there were good people God
10 bless ...

11 SIDDIG ALI: Was that on the last trip?

12 SALEM: This was a year ago.

13 SIDDIG ALI: Ah.

14 SALEM: A year ago.

15 SIDDIG ALI: Ah.

16 SALEM: So we used to stop every half hour on the
17 road. He use to say, "Stop I need to go to the bathroom."

18 SIDDIG ALI: Ah, right.

19 SALEM: Because the diabetes causes him to
20 urinate a lot ...

21 SIDDIG ALI: Yes, of course.

22 SALEM: If you'll pardon me.

23 SIDDIG ALI: Um.

24 SALEM: So it's a very painful process, I mean.

25 SIDDIG ALI: Um.

1 SALEM: And he's constantly seeking ablution, the
2 man.

3 SIDDIG ALI: Ah.

4 SALEM: So he goes to the bathroom, then he
5 washes himself and then we drive again. It took us 16 hours
6 to get there. It was me and Hamdi Moussa, Hesham Hamamy ...

7 SIDDIG ALI: Um.

8 SALEM: And sheik Abd Khallek ...

9 SIDDIG ALI: Thanks be to God.

10 SALEM: And Hamdi Ali.

11 SIDDIG ALI: That's at the conference?

12 SALEM: Ah.

13 SIDDIG ALI: Was a conference?

14 SALEM: The Islamic economic conference.

15 SIDDIG ALI: I didn't attend that.

16 SALEM: No you didn't attend that one.

17 SIDDIG ALI: There were Sudanese brothers there.

18 SALEM: There was, yes, yes.

19 SIDDIG ALI: From the Sudan.

20 SALEM: Yes, there was Ahmed Hassan or,

21 unintelligible, Hassan.

22 SIDDIG ALI: Yes, Sheik Idris supporters?

23 SALEM: Sheik Al-Turabi sent a tape from there

24 ...

25 SIDDIG ALI: Yes, he went.

1 SALEM: And it was played, yes, God bless, it was
2 beautiful, I mean.

3 SIDDIG ALI: Yes, the brother in Sudan are good
4 my brother.

5 SALEM: It was a good conference.

6 SIDDIG ALI: But, I mean, you heard me yesterday
7 while I was telling the sheik.

8 SALEM: Ah?

9 SIDDIG ALI: Yes you heard me telling the sheik
10 things.

11 SALEM: Yeah, Islamic conferences, of course,
12 indeed, of course indeed.

13 SIDDIG ALI: And, unintelligible, in Sudan,
14 that's wrong my brother, the worst thing they have ever done
15 in their history.

16 SALEM: Um.

17 SIDDIG ALI: A big mistake I mean. They have in
18 south Sudan, they have created a new country unintelligible.

19 SALEM: Um.

20 SIDDIG ALI: They go to Kenya, Christian nation,
21 send them a minister to go to them in the south, but not
22 come to Khartoum, the capital of an Islamic country, no.

23 SALEM: Right.

24 SIDDIG ALI: All the people are upset about this
25 matter.

1 SALEM: Leave it to God, God willing.

2 SIDDIG ALI: Um.

3 SALEM: I'll leave you alone.

4 SIDDIG ALI: Sit brother.

5 SALEM: No, because I have a long way ahead of
6 me.

7 Tinkering near the recorder. Dedegenerates,
8 records static, distant unintelligible, voices and prayers.
9 End of conversation.

10 MR. McCARTHY: May I proceed, your Honor?

11 THE COURT: Yes.

12 BY MR. McCARTHY:

13 Q Mr. Salem, after the conversation that we just
14 heard the transcript of, did there come a time that you
15 started making recordings under the supervision of the FBI?

16 A Yes, sir.

17 Q Approximately how long after the conversation we
18 just heard?

19 A I believe next day or the day after. Right away.
20 It was very soon after I reported the information on this
21 meeting.

22 Q Can you explain to the ladies and gentlemen of
23 the jury what the procedure was when you made tapes under
24 the supervision of the FBI?

25 A They give me the device. I load the tape.

1 Q Let me stop you for a moment. What device did
2 they give you?

3 A A briefcase.

4 Q OK.

5 A And they told me how to load the tapes inside the
6 briefcase, and how to operate it on and off. And then they
7 told me to put an introduction, say my name is Emad Salem,
8 today is date so and so, time is so and so, I am going to so
9 place, and I stop, I go to the place, I start to record the
10 conversation. And they told me after I finish I should say
11 this is Emad Salem, time is so and so, date is so and so,
12 place is so and so, I just met with so and so, and I stop
13 there recording.

14 Q Was there any device that gave you, other than
15 the one they gave you, other than the device and the
16 briefcase, at that time?

17 A That was the only device.

18 Q Was there any device in your car?

19 A At that time, no.

20 Q Did there come a time that a device was put in
21 your car?

22 A Yes.

23 Q Can you explain that to the ladies and gentlemen
24 of the jury?

25 A It came a time Mr. Siddig Ali told me that he

1 will start to introduce me or he will start to let me meet
2 some of his people, and I will pick them up from the mosque
3 at First Street and 11th Avenue.

4 Q Let me stop you for a moment. I am asking you
5 for the moment about the device in the car.

6 A Yes.

7 Q Can you tell us what devices were in the car and
8 where they were initially put in the car?

9 A It was Nagra tapes, two Nagra tapes, recorder,
10 and they placed them first under the back seats of my car.

11 Q Under the back seats of the car?

12 A Yes.

13 Q Did there come a time that the Nagra tape
14 recorders were moved from the back seats of the car to a
15 different location in the car?

16 A Yes, sir.

17 Q Why did that happen?

18 A When the Nagra tapes being put under the seats of
19 the car, it did not work, and then they decided to move it
20 to the trunk of the car.

21 Q When was it discovered that the Nagra tapes in
22 the back seat of the car did not work?

23 A After the first meeting, Mr. Siddig Ali
24 introduced me to Mr. Amir and Mr. Fares. They find out that
25 the tape did not tape the meeting. And then I explained to

1 them that the tapes was under the seats, when they sit on
2 the seats they squashed the recorder and the tape won't be
3 running in that time. And then they decide to move it to
4 the trunk of the car.

5 Q Did you try to tape that conversation with
6 Mr. Amir and Mr. Fares?

7 A Yes, I flipped the switch.

8 MR. McCARTHY: Your Honor, I wonder if I might
9 ask Mr. Salem to step down for a moment and display the
10 Nagra machine for a moment to the jury.

11 THE COURT: Go ahead.

12 Q Mr. Salem, if you would, would you step over
13 here, and please be careful of the wire. Mr. Salem, I am
14 showing you Government's Exhibit 399A for identification.
15 Could you start that machine up, please. On the back panel
16 there is a small window on the extreme right as you look at
17 this exhibit, is that correct?

18 A Yes, sir.

19 Q Through the window, we can see the tape spinning
20 around, is that correct?

21 A Yes, sir.

22 Q Can you show us what happens when you put a
23 little pressure on top of that.

24 A This is two reels. When we feeding other with
25 the tape, if you have somebody sitting up here, it stuck.

1 The battery is there, the electricity is running, but the
2 reel stop. And that's when Mr. Fares sit on the cassette,
3 and it did not come out.

4 Q Can you turn that off for me. You can resume
5 your seat.

6 Mr. Salem, after that incident with Mr. Amir and
7 Mr. Fares, did the Nagra tapes get moved in the car?

8 A Yes, sir.

9 Q Where did they get moved to?

10 A They put it in the trunk of the car.

11 Q They extended the wires to the back?

12 A Yes.

13 Q Do you see Mr. Amir and Mr. Fares in court today?

14 A Yes, sir.

15 Q Can you point them out, please.

16 A Mr. Fares is number 2 from the line behind the
17 barrier, with the glasses and --

18 THE COURT: Indicating Mr. Khallafalla. Go
19 ahead.

20 A -- and Mr. Amir is the last one in the same row.

21 THE COURT: Indicating Mr. Amir Abdelgani. Go
22 ahead.

23 Q Mr. Salem.

24 A Yes, sir.

25 Q I have placed before you the following exhibits,

1 each of which is in an envelope which has a corresponding A
2 number: 301 through 304; 306 through 309; 311 through 320;
3 321 through 337; 339 through 342; 345 through 349; 351
4 through 354; 358, 359, 361 through 365; 366 through 368; and
5 a microcassette tape which is marked 305 and contained in an
6 envelope marked 305A.

7 Mr. Salem, in the weeks prior to your testimony,
8 have you reviewed these items?

9 A Yes, sir.

10 Q Can you tell us what you did when you did, that
11 is, where if at all you placed your initials after reviewing
12 the items?

13 A Yes, I did place my initials on the envelope and
14 on the same tape.

15 Q Other than 305, which is the microcassette tape,
16 are the other exhibits numbers that I have read here, are
17 these Nagra recordings that you made between the beginning
18 of May and late June 1993?

19 A Yes, sir.

20 Q Do the recordings on these conversations fairly
21 and accurately record portions of conversations that you
22 recorded between May and June 1993?

23 MS. STEWART: Objection.

24 A Yes, sir.

25 MR. MCCARTHY: Your Honor --

1 THE COURT: Overruled.

2 MR. McCARTHY: The government offers the Nagra
3 tapes 301 through 368 that I read into the record a few
4 moments ago, subject to connection.

5 MR. McCARTHY: Your Honor, do you want me to
6 finish up with 305 --

7 THE COURT: Why don't you finish with 305 and we
8 will take a break.

9 Q Have you reviewed 305, the cassette tape?

10 A Yes, sir.

11 Q Did you place your initials on it after reviewing
12 it?

13 A Yes, sir.

14 Q Does 305, the microcassette, fairly and
15 accurately record a telephone conversation you had with Mr.
16 Siddig Ali?

17 A Yes, sir.

18 (Continued on next page)

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1 MR. McCARTHY: The government also offers 305,
2 your Honor, subject to connection.

3 THE COURT: Ladies and gentlemen, we are going to
4 take a break. Please leave your notes and other materials
5 behind. Please don't discuss the case. We will resume in a
6 few minutes.

7 (Jury excused)

8 (Witness excused)

9 THE COURT: Mr. Jacobs.

10 MR. JACOBS: Your Honor, I am prepared to proceed
11 with a voir dire on the CM's, and it would be basically a
12 general voir dire as to all except 32. It is my position
13 that 32 has been altered and tampered with by the witness,
14 and I am prepared to do an examination and come forward with
15 evidence immediately concerning that particular tape. As I
16 understand it, the Second Circuit law is that the government
17 has to prove by clear and convincing evidence
18 authentication, and I am prepared to come forward with
19 evidence this morning that that tape has been altered with
20 by the witness and I am prepared to put my tape expert on
21 this morning in front of the jury to do that, forthwith.

22 MR. McCARTHY: I just want to make a request for
23 discovery. The tape expert got the recordings on the basis
24 of the stipulation by which he was supposed to supply the
25 government with whatever scientific reports he made about

1 the tapes prior to trial. I have been supplied basically in
2 the last two weeks and basically because I asked a number of
3 times, with the notes, because there was never a final
4 report made notwithstanding the agreement we made. There
5 has never been, to my knowledge, any report from the expert
6 that indicates that CM 32 was tampered with in any way, and
7 if there is such a report I would certainly like to see it.
8 It was the agreement we had which permitted the expert to
9 look at the tapes in the first place.

10 MR. JACOBS: There is no such report. I think
11 the government has the notes of the witness --

12 THE COURT: In other words, you directed your
13 expert not to prepare a report.

14 MR. JACOBS: No, absolutely not, Judge.

15 THE COURT: He decided to do it on his own?

16 MR. JACOBS: That is correct.

17 THE COURT: The legal standard is that the
18 government has to produce evidence from which a jury has to
19 prove clearly and convincingly that the tapes are authentic.
20 It seems to me that other than that it is credibility. You
21 have your version, he has his, and the jury can decide it.

22 MR. JACOBS: The question is, what does that get
23 before the jury and my position is in front of the Second
24 Circuit I think they are entitled to have that determination
25 before the tape is introduced, played, before this jury has

1 read the tape, and I don't think I am required to come
2 forward in my case although they shift the burden to me at
3 that time. I make the representation -- by the way, the
4 government has been informed, there are several ons and
5 offs, there is no introduction, and I believe Salem went
6 into the bathroom, erased the beginning, and rerecorded it
7 over. It is no secret that there are ons and offs. There
8 is no introduction. The beginning of the tape is missing.
9 There are several ons and offs and I am prepared to go ahead
10 with evidence on that this morning. I think I am entitled
11 to put my expert or not stand right now --

12 THE COURT: I don't.

13 MR. JACOBS: Then your Honor is going to be
14 ruling that the government has established by clear and
15 convincing evidence --

16 THE COURT: No. The government has put on
17 testimony from which it is possible to conclude that it has
18 been clearly and convincingly proved that the tape is
19 authenticated. You can put on evidence that it has been
20 tampered with. It is up to the jury to resolve it.

21 MR. JACOBS: I will cite the cases for the
22 record --

23 THE COURT: Don't cite them for the record. You
24 want me to look at them and make a ruling?

25 MR. JACOBS: Absolutely. Unless I misunderstand

1 the Second Circuit, your Honor has to make a preliminary
2 ruling on clear and convincing evidence that the tape has
3 not been altered or tampered with.

4 THE COURT: I think I have to rule based on what
5 has been offered that it has been clearly and convincingly
6 authenticated.

7 MR. JACOBS: If he denies there are ons and offs
8 on the tape on the beginning, I am prepared to put my expert
9 on to contradict that. I don't see how this transcript can
10 be read to the jury when it is not clear what happened to
11 this tape. I think I have an absolute right before this
12 piece of evidence. If your Honor says I have to wait until
13 it is on my --

14 THE COURT: Let me hear your cases.

15 MR. JACOBS: Sure. United States against
16 Ruggiero, 928 F.2d 1289. I think the page number is 1303,
17 where the Second Circuit lays out the government's burden of
18 proof by clear and convincing evidence. I think I read this
19 quote before to your Honor. I think they then cite back to
20 earlier cases that I have referred to, such as U.S. against
21 Fuentes, 563 F.2d at 528, again citing United States against
22 McKiever. One of the key tests is that the recording is
23 authentic and correct, that changes, additions or deletions
24 have not been made in the recording. I believe that I can
25 establish before this jury now today that such changes and

1 deletions may have been made and the government cannot meet
2 their burden of proof.

3 I also cite, your Honor -- I think those are the
4 main cases These cases are repeated and cited by the Second
5 Circuit.

6 THE COURT: Is there any other case that you want
7 me to look at?

8 MR. JACOBS: No, sir.

9 MS. AMSTERDAM: Your Honor, I would just join in
10 Mr. Jacobs's application and I would indicate that in other
11 tapes there are series of on offs and that we would, I would
12 at this time be also prepared to call Mr. Ginsberg to the
13 stand at the end of the voir dire.

14 MR. JACOBS: Just so we are clear, your Honor --

15 THE COURT: Which other tapes?

16 MS. AMSTERDAM: I will give you a list after the
17 break, your Honor.

18 THE COURT: How about right now?

19 MS. AMSTERDAM: I don't have the list here.

20 MR. JACOBS: This witness was asked the following
21 question yesterday and gave the following answer, page 4978:

22 "Q Did you have anything in your house which
23 allowed you to rewind or fast forward Nagra tapes?

24 "A. No, sir."

25 That's a false answer. This machine rewinds

1 itself very simply. My belief is that the on/off switch
2 indicates that this witness recorded my client, rewind it,
3 takes 30 seconds to rewind, and started the tape again,
4 missing a critical portion. He did it at the end as well.
5 I can put on an expert witness this morning and show that in
6 about five minutes. The government was informed about this.

7 MR. McCARTHY: Your Honor, just two things. I
8 don't have Ruggiero in front of me, but the discussion
9 continues on to the next page, which I think is 1304, about
10 the kind of things that go to weight as opposed to
11 admissibility, and I would refer your Honor's attention to
12 that.

13 THE COURT: I am going to take another look at
14 Ruggiero.

15 MR. JACOBS: Thank you.

16 MR. McCARTHY: I also want to put the court on
17 notice that it is the government's position, number one,
18 that the standard is not the same when there is a witness
19 who can testify that he was present for the conversation
20 that was recorded. I think that is the only point I want to
21 make at this time.

22 MS. STEWART: Judge, I want to inquire as to the
23 government's offer. I had made an objection but I wasn't
24 loud enough, I guess. It seemed to me that the offer is, as
25 I understand it, that these were tapes that were made after

1 May 7, during the course of his investigation, and that is
2 the extent of the offer. It is not as to dates, times,
3 places, just that these were tapes made after May 7. Is
4 that right?

5 MR. McCARTHY: That is what I elicited, from May
6 7 --

7 THE COURT: Till the arrests in June.

8 MR. McCARTHY: Right.

9 MS. STEWART: I just have a problem, Judge, and I
10 am trying to verbalize it. If there are errors with regard
11 to those tapes as to the dates and times that they were
12 made, and I guess we will leave that to cross-examination,
13 since they are not offered for the purpose of verifying the
14 dates and times --

15 THE COURT: Since he hasn't gone into dates and
16 times with this witness.

17 MS. STEWART: Right.

18 THE COURT: Let me take a look at Ruggiero.

19 (Recess)

20 (Continued on next page)

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1 MR. JACOBS: Your Honor, we moved up here just
2 for the voir dire. I will leave.

3 THE COURT: Thank you.

4 OK. I took another look at Ruggiero. It
5 requires that the government lay a foundation by clear and
6 convincing evidence. The foundation question --

7 MR. McCARTHY: Your Honor, I'm sorry. The last
8 thing you said was not clear.

9 THE COURT: I'm sorry. It requires that the
10 government lay a foundation by clear and convincing
11 evidence. Foundation determinations are for me, not for
12 them.

13 Therefore, you can do obviously whatever voir
14 dire -- as long as it's voir dire -- you want to do. If you
15 want to put your expert on the stand to testify to attack
16 the foundation showing, I will hear him. But I will hear
17 him; the jury won't.

18 If you then want to put him on on your case to
19 attack it further, you may. Ultimately, I think, the
20 question of whether a tape was or wasn't tampered with here
21 is likely simply a credibility issue like any other, or at
22 least from what I have heard so far it is. But I am
23 certainly willing to listen to you and to the testimony and
24 to your expert.

25 I had this problem once before, I should tell

1 you, and dealt with it in essence this way, as a credibility
2 issue. Like most of my affirmances, it was a summary order.
3 The Circuit didn't think enough to publish on the subject,
4 so I can't cite the case.

5 MR. JACOBS: I only disagree with your Honor as
6 to whether the jury hears it to this extent. If I read
7 Ruggiero correctly, starting at 13 --

8 THE COURT: I have the case, and I can read.

9 MR. JACOBS: Just where it says this requirement
10 is satisfied by "if sufficient proof has been introduced so
11 that a reasonable juror could find in favor of authenticity
12 or identification."

13 THE COURT: That is a statement about general
14 evidentiary showings which precedes the discussion of tapes.
15 There has certainly been enough evidence introduced up until
16 now from which a reasonable juror could conclude that the
17 tape is what he says it is. You may introduce evidence that
18 it isn't. That then becomes a credibility issue as between
19 him and whatever you introduce.

20 MR. JACOBS: Well, it is not credibility, if your
21 Honor -- let me give you the example. It's concrete here.
22 If I play 32, the first minute, and there are what my expert
23 is prepared to say is clear on and off indications, and I
24 confront the witness now, and he says, "I don't have a clue
25 what that is," which he might do, at that point, the

1 testimony, I believe, is not sufficient with that basis, and
2 my proffer is for the court to make a ruling that the
3 government has not established it by clear and convincing
4 evidence.

5 If he would admit that he turned it on and off
6 several times, and I could confront him with that, then I
7 can understand perhaps the ruling that the testimony is not
8 necessarily needed. I don't know what he is going to say.
9 What I am suggesting is that it is not correct for the
10 defense to be required -- not credibility -- to put on in
11 their case, when the government offers an exhibit, and I
12 have direct --

13 THE COURT: Mr. Jacobs -- well, go ahead.
14 Give me the short form.

15 MR. JACOBS: The short form is, I think I am
16 entitled to call Mr. Ginsberg in front of the jury and
17 proffer that evidence.

18 THE COURT: It isn't any more burden shifting to
19 require you to do it on your case than it is to let you do
20 it now. The only gain is a tactical gain. Let the record
21 reflect that Mr. Jacobs smiled.

22 MR. JACOBS: I certainly understand that, your
23 Honor. In any event, we have a couple more little problems
24 to deal with.

25 THE COURT: Go ahead.

1 MR. JACOBS: Counsel for the defense through me
2 have asked the government sometime ago to produce the
3 original briefcase or an identical one, knowing that the
4 Bureau may have put that other one back in circulation, and
5 I don't actually need the exact one, but one with the same
6 location where the Nagra is, so I can question on the voir
7 dire how this witness turned the machine on and off, for
8 example, in my conversation.

9 I believe Mr. McCarthy may be -- and I don't want
10 to speak for him -- may be having some difficulties
11 producing the briefcase. It is an important part of my voir
12 dire, and I need it.

13 MR. McCARTHY: Your Honor, there was some talk
14 earlier in the trial about the briefcase. It wasn't made
15 clear to me that it was needed for the voir dire, and I
16 learned that it was needed for the voir dire a few minutes
17 ago. The briefcase is a method. On the other hand, there's
18 been quite a bit of information about it. I am trying to
19 obtain the briefcase. I think I will be able to do that by
20 lunchtime. But I was not --

21 THE COURT: Were you planning to play the tape
22 before lunch?

23 MR. McCARTHY: I am not planning to play the tape
24 at all, your Honor.

25 THE COURT: All right.

1 MR. McCARTHY: Let me step back from that a
2 little bit.

3 THE COURT: Yes.

4 MR. McCARTHY: I may play a portion of the tape
5 because there is a factual sound issue, but, other than
6 that, it is not our intention to play the tape.

7 THE COURT: All right.

8 MR. McCARTHY: But I am trying to get the
9 briefcase. I hope to have it at lunchtime.

10 THE COURT: OK.

11 MR. JACOBS: I am more than happy to go forward
12 with as much as I have, your Honor, and wait for the
13 briefcase until after lunch, whatever your Honor's pleasure
14 is.

15 THE COURT: Why don't you go ahead with what you
16 have. Please don't extend it simply to wait for the
17 briefcase. If you finish the voir dire, we will take an
18 early lunch.

19 MR. JACOBS: I understand completely.
20 Additionally, your Honor, and I have indicated this to the
21 government, and I think the courtroom deputy, I am going to
22 play just the first minute or so of 31 and 32. I think the
23 government has 31 in an enhanced version. We have one of 32
24 here so that I can ask some questions of the witness. I am
25 not playing the whole thing --

1 THE COURT: You are going to play it to him?

2 MR. JACOBS: Yes, sir.

3 THE COURT: So he can hear it?

4 MR. JACOBS: Correct.

5 THE COURT: But not anybody else?

6 MR. JACOBS: I don't think it is necessary to
7 play it for the jury. I need to ask some questions whether
8 the tapes are accurate, the way they are supposed to be, and
9 authentic.

10 THE COURT: Fine.

11 MR. JACOBS: And I need his answers.

12 THE COURT: Fine.

13 MR. JACOBS: Just to let you know.

14 MR. McCARTHY: Can I have a minute to figure out
15 how this works so he don't fumble and bumble in front of the
16 jury.

17 MR. JACOBS: We have our own tape recorder and a
18 headset ready to go.

19 THE COURT: Fine.

20 MR. McCARTHY: Are we going to be able to hear?

21 MR. JACOBS: I don't think so. But if the
22 government wants to have it all available, they can take a
23 minute or so to do it.

24 THE COURT: Why don't we give them a moment.

25 (Pause)

1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: All right. Mr. Jacobs, this is voir
4 dire examination on the exhibits that were shown to the
5 witness. Go ahead.

6 VOIR DIRE EXAMINATION

7 BY MR. JACOBS:

8 Q Mr. Salem, you taped quite a number of Nagra -- I
9 call them Nagra conversations -- in May and June 1993, is
10 that correct?

11 A Yes, sir.

12 Q If I were to give you a number of about 60, would
13 that seem fair to you?

14 A Probably, yes, sir.

15 Q Would I be correct in stating you have no
16 documents or logs to indicate the exact number of Nagra
17 tapes that you made or anything else like that, is that
18 correct, sir?

19 A Yes, sir.

20 Q There came a point in early May that you agreed
21 to, under FBI supervision to make some, what they call
22 consensual recordings with a number of defendants in this
23 case, correct?

24 A Yes, sir.

25 Q Siddig Ali being the first one, correct?

1 A Yes, sir.

2 Q When you arrived at that decision with the FBI,
3 did they present you with a form to sign where you
4 voluntarily gave consent to do these tape recordings?

5 MR. MCCARTHY: Objection, scope.

6 THE COURT: Sustained.

7 MR. JACOBS: May I preserve some legal argument
8 on that at some point, your Honor?

9 Q Would I be correct in stating that the first tape
10 that you made was CM1? Would that be fair to say, if you
11 know?

12 A There is a tape --

13 Q I am talking about the Nagra tapes.

14 Forgetting other tapes that you may have made in
15 earlier years, I am talking about the FBI Nagra tapes.

16 A Yes.

17 Q Would I be correct that CM1 is the first, is that
18 correct?

19 A Yes, sir.

20 MR. JACOBS: With the Court's permission, may the
21 jurors open up that book with the various charts of the
22 tapes and the numbers.

23 THE COURT: That is the thin --

24 MR. JACOBS: It is a book that says -- I don't
25 know what colors it is. It says in the front page, "CM Tape

1 Chart." It only has a couple of pages in it, like four or
2 five pages. It is a very thin book.

3 THE COURT: Go ahead.

4 Q Mr. Salem, CM1 is a conversation with Siddig Ali
5 on or about May 7, 1993, correct, sir?

6 You can look at it.

7 A Yes, sir.

8 Q Would I be correct that the white envelope that
9 is in front of you has your handwriting all over the front
10 of the envelope, is that correct, sir?

11 A Yes, sir.

12 MR. JACOBS: I am not sure whether it is in
13 evidence, but I would offer the envelope into evidence at
14 this time, your Honor, for purposes of the voir dire and all
15 purposes.

16 THE COURT: All right. Any objection?

17 MR. McCARTHY: No objection, your Honor.

18 THE COURT: What is the exhibit number on the
19 envelope?

20 MR. JACOBS: I think the government --

21 MR. McCARTHY: If I may, your Honor.

22 MR. JACOBS: Do we need a special number for
23 that?

24 MR. McCARTHY: Your Honor, the envelope is
25 marked, the brown evidence envelope is marked 301A, and my

1 suggestion would be that we mark the next one 301A1.

2 THE COURT: 301A1?

3 MR. McCARTHY: Yes, your Honor.

4 THE COURT: All right. The white envelope is the
5 one you want in.

6 MR. JACOBS: Yes, your Honor.

7 THE COURT: That is received. Go ahead.

8 (Government's Exhibit 301A1 for identification
9 was received in evidence)

10 Q Mr. Salem, you can take a look at it, please --

11 A Yes.

12 Q -- this original envelope.

13 A Yes, sir.

14 Q Am I correct that you put the date, May 7, '93,
15 you put the location "NJ" for New Jersey, and you put the
16 subject, "The World Trade Center."

17 Under "Notes" you wrote, if I am reading your
18 handwriting, "Meeting with Siddig Ali in his house in New
19 Jersey," correct?

20 A Yes, sir.

21 Q If you look at the top, there is a serial number
22 on the envelope, 38732, correct, sir? S/N? Do you see the
23 numbers?

24 A 38732?

25 Q Right.

1 A Yes.

2 Q Would you open up the envelope and read the
3 number of the reel and tell me if it matches, 38732.

4 A 38732, yes, sir.

5 Q With respect to your taping procedure with the
6 FBI, did you receive instructions from the Bureau how to
7 safeguard the tapes that you were making? Were you given
8 instructions?

9 A What do you mean, sir, by "safeguard"?

10 Q Sure. Did Napoli or Anticev tell you how to
11 handle the envelopes and the actual reels? Were you given
12 any such instructions?

13 A No, sir.

14 Q This envelope and reel match. Do you know
15 whether any other of the envelopes and reels match?

16 A I don't know, sir. This is one of the things I
17 wasn't paying attention to.

18 Q So you didn't pay attention to the envelopes with
19 respect to the numbers on them, or the reels with respect to
20 them, correct?

21 A I don't understand the question. Will you
22 please --

23 Q I'm sorry.

24 The reel that's in front of you has a number,
25 correct?

1 A Yes.

2 Q That number on CM1 matches the envelope, correct,
3 sir?

4 A Yes, sir.

5 Q If I were to tell you that, other than CM4, none
6 of the other reels or envelopes match, would that surprise
7 you, sir?

8 A I don't know.

9 Q You don't know.

10 So you were not keeping track of this, correct?

11 A No, sir.

12 Q If envelopes and reels got mixed up, you just
13 weren't following that procedure?

14 MR. McCARTHY: I object to the form of the
15 question.

16 MR. JACOBS: I'm sorry. I will withdraw it.

17 Q Were you given a procedure by the FBI to keep
18 track of the envelopes and reels? Yes or no.

19 A No.

20 Q Were you given any instructions how to handle the
21 tapes after you made them?

22 A Yes.

23 Q What were the instructions you got and from whom?

24 A It was Agent John Anticev, Agent Louis Napoli.

25 After I finished taping I will come to meet with them in a

1 certain place, and we opened the device, we take it out,
2 they put it in an envelope, and they take it.

3 Q Were there occasions where you would take the
4 tapes off the machine, the Nagra, and just hand the tapes to
5 the agents?

6 A Yes, sir.

7 Q You have no record on which dates you happened to
8 open the equipment, take the reel off and just give it to
9 the agents, correct?

10 You wouldn't know which dates you did that, is
11 that fair to say?

12 A No, sir, I don't.

13 Q There was no specific time period, as far as
14 instructions, when you were supposed to give these CM's --
15 by the way, my examination is only on these consensuals that
16 the government is offering, do you understand?

17 A Yes, sir.

18 Q I am not talking about any personal tapes you may
19 have made. We will save that for another time.

20 MR. McCARTHY: Objection. I withdraw it.

21 Q Were you told that you had to give them back
22 within an hour, a day, three days? Any instructions on when
23 you had to get them back?

24 A No, sir.

25 Q Were there days that you kept several tapes and

1 you might give three or four to Louis Napoli on a particular
2 day, is that fair to say?

3 A No, sir.

4 Q Was there any recordkeeping that you maintained
5 about what tapes you made and what tapes you turned over?

6 A Could you please repeat the question, sir.

7 Q Sure. Did you maintain any record of the dates
8 you made tapes and what you turned over?

9 A No, sir.

10 Q Did the FBI -- and I include Detective Napoli in
11 that -- did Detective Napoli or Anticev or anybody else ever
12 ask you to sign for tapes when you were given a tape? In
13 other words, when you were given CM1, you had to sign your
14 name that you received CM1 on this date, anything like that?

15 A No, sir.

16 Q Would you agree with me that the operation of the
17 machinery, the Nagra, was 100 percent in your discretion, is
18 that fair to say?

19 A After I put the tape, yes, sir.

20 Q In other words, on none of the tapes that the
21 government's offered did an agent ever turn on the equipment
22 or turn off the equipment, is that fair to say, either in
23 the car or in the briefcase, correct?

24 A Yes, sir.

25 Q So the starting of the equipment, whether it be

1 in the car or the briefcase, and the stopping of the
2 equipment was left solely to you, correct, sir?

3 A Yes, sir.

4 Q I would assume you were given instructions by the
5 FBI to record everything that was said by the participants,
6 is that fair to say?

7 A As much as I can.

8 Q As much as you can.

9 If a tape happened to go longer than three hours,
10 you might miss the end of the conversation, fair to say?

11 A It happened, yes, sir.

12 Q It happens.

13 You weren't able to control the length of the
14 meetings, correct?

15 A No, I could not.

16 Q But you certainly could control when you turned
17 it on at the beginning, is that fair to say?

18 A Yes, sir.

19 Q You testified a few minutes ago -- if I am not
20 stating it correctly, please tell me -- did you tell Mr.
21 McCarthy that on all the tapes you put an introduction, a
22 date and the parties, is that correct, sir?

23 A Not all of them.

24 Q Can you tell us how many of the tapes you put
25 down what they call -- did you ever hear the expression

1 "preamble"?

2 If you don't understand it, I will rephrase it.

3 A I would appreciate it if you do, please.

4 Q Sure, not a problem.

5 On some tapes you put down your name, the date,
6 and who you were about to meet with, correct?

7 A Yes, sir.

8 Q You might say, "June 4, and I am going to now
9 meet with Mohammed Ali, and we are going to discuss this and
10 that," correct? You would do that on occasion?

11 A Yes.

12 Q And sometimes at end of the meetings you might
13 say the meeting just concluded with this person or that
14 person and the date and the time, correct, sir?

15 A Yes, sir.

16 Q But those are instructions given to you by the
17 FBI to do that, wasn't that correct?

18 A Yes, sir.

19 Q You understood that these tapes might be played
20 in court like they are going to be played over the next few
21 weeks, correct?

22 A Yes, sir.

23 Q Would it be fair to say you were following, to
24 the best of your ability, the instructions of the agents,
25 correct, sir?

1 A Yes, sir.

2 Q Unlike the personal tapes you made, you knew
3 these might be played in court, correct, sir?

4 A Yes, sir.

5 Q Now, at this time, let me show you CM31.

6 MR. JACOBS: I would ask the ladies and gentlemen
7 of the jury to turn to Defendants' Exhibit D in evidence,
8 which is a copy of the white envelope that's in evidence,
9 your Honor. That one's in already, and I would ask -- 331.
10 The government's actual exhibit is 331. I have it as CM31.
11 Do you have the envelope, ladies and gentlemen of the jury?
12 It says Defendants' D, Defense D. It has "CM31" on the
13 right-hand side of the page.

14 Q Do you have the envelope in front of you,
15 Mr. Salem?

16 A Yes, sir.

17 Q Am I correct that this envelope, CM31, reflects a
18 conversation on June 4 -- please put your glasses back on,
19 take your time.

20 Am I correct that it reflects a conversation,
21 June 4, 1993, in Mohammed Ali's apartment upstate, correct?

22 A Yes, sir.

23 Q The subject of CM31 is financing the bomb,
24 correct?

25 A Yes, sir.

1 MR. McCARTHY: Your Honor, may we have it
2 clarified whether he is referring to the envelope.

3 MR. JACOBS: I am sorry, Mr. McCarthy. He's
4 referring to the white outside envelope that he is holding
5 in his hand.

6 MR. McCARTHY: I think the record may reflect the
7 wrong exhibit number at this point.

8 MR. JACOBS: Let me take a look. I hope I didn't
9 make a mistake.

10 MR. McCARTHY: It is on the brown envelope.

11 MR. JACOBS: The outside envelope is 332A. My
12 apologies, gentlemen.

13 THE COURT: So the white envelope is going to
14 be -- it is already in as D?

15 MR. JACOBS: Yes.

16 THE COURT: Fine. Let's leave it as D.

17 Q Just so that we are clear, the serial numbers of
18 the outside envelope, 38869, and the actual tape, 38707,
19 don't match, is that correct, Mr. Salem?

20 Take a look.

21 A No, it does not match, sir.

22 Q You don't have any particular reason why they
23 just don't match, correct? You can't explain to the jury
24 how they don't match, no reason?

25 A I won't speculate. I don't know.

1 Q OK. This says -- if I am not reading it
2 correctly, please correct me. That is your handwriting. It
3 says, "financing the bomb, Emad and Siddig," and below it it
4 says, "Briefcase."

5 That is your handwriting, sir?

6 A Yes, sir.

7 MR. JACOBS: I would ask at this time that we
8 just play the first minute or so of CM31 with Mr. Ginsberg's
9 assistance. Could you get that up there. Do you have 31
10 here?

11 THE COURT: You are going to play it for the
12 witness?

13 MR. JACOBS: For the witness, your Honor.

14 THE COURT: All right.

15 MR. JACOBS: Are we using this equipment here?
16 Set that up, Mr. Ginsberg. That should be the
17 beginning.

18 MR. JACOBS: I think Mr. Salem should put a
19 headset on.

20 Your Honor, I think, and I would ask your Honor
21 just to tell the jury for legal reasons they are not
22 listening to it.

23 THE COURT: The tape is not in evidence yet. He
24 wants to ask the witness a question about it so that the
25 witness has to listen to the tape before he answers the

1 question. That is why they are playing it now. If it is
2 received in evidence, you will listen to it, but not until
3 then. Go ahead.

4 MR. JACOBS: Thank you, your Honor.

5 MR. McCARTHY: Let me make sure the witness's
6 headset works.

7 MR. JACOBS: Yes. Make sure it works.

8 MR. McCARTHY: Mr. Salem, is that plugged in?

9 THE WITNESS: Yes, sir.

10 MR. JACOBS: Wait a second.

11 Let the witness get his headset.

12 Q Mr. Salem, would you put your headset on, please.
13 We are going to play the first minute or so for
14 you, OK?

15 A All right, sir.

16 Q If you are not hearing, would you just signal and
17 we will try to get it working correctly?

18 A Yes, sir.

19 Q All right.

20 MR. JACOBS: Go ahead.

21 (A portion of Government Exhibit 331 was played)

22 Q Mr. Salem --

23 A Yes, sir.

24 Q -- would I be correct in stating that this tape
25 you have just listened to the first few minute or so of is

1 not the conversation in Mohammed Ali's apartment, isn't that
2 fair to say?

3 A Yes, sir.

4 Q So what you wrote here is wrong, correct, sir, on
5 the envelope that's in evidence? Yes or no.

6 A What I wrote here is correct when I had that
7 envelope on the day of the recording. But what I heard
8 right now it is not what I recorded according to this.

9 Q The question, sir, is --

10 MR. JACOBS: And Mr. McCarthy I assume will agree
11 that the tape that was played was a copy of that CM31.

12 Mr. McCarthy?

13 MR. McCARTHY: I would agree to that, your Honor.

14 Q Mr. Salem, what you heard on the tape is not
15 what's on the envelope, correct?

16 A Yes, sir.

17 Q So somehow when you gave a tape to the FBI
18 something happened to the tape and it is not the same tape,
19 is that what you are saying?

20 MR. McCARTHY: Objection.

21 Q I am not sure.

22 Is this the tape that was made in Mohammed Ali's
23 apartment that's in the envelope?

24 A No, sir, it's not.

25 Q Are you saying that you gave the correct tape and

1 envelope to the FBI and somehow they messed it up, is that
2 fair to say?

3 A I gave the correct tape and envelope to the FBI,
4 yes, sir.

5 Q Somehow something happened, correct?

6 A Yes, sir.

7 Q Not of your doing, correct?

8 A Yes, sir.

9 Q Now, on the tape you just listened to, did you
10 hear an introduction where you stated your name and the date
11 and what was going on? Did you hear that, sir?

12 A No, sir, I did not.

13 Q So on or about June 4, 1993, on the tape you just
14 listened to -- and that is a conversation between you and
15 Siddig?

16 A Yes, sir.

17 Q In a car?

18 A Yes, sir.

19 Q There is no introduction, no date or anything
20 else like that, correct?

21 A Correct, sir.

22 Q And would you take a look at -- let me give it to
23 you.

24 MR. JACOBS: Ladies and gentlemen, it's
25 Defendants' Exhibit E in evidence, the white envelope for

1 CM32. Mr. McCarthy, is that now Government Exhibit 331?

2 I don't know. I am lost with the exhibit
3 numbers. Thank you.

4 MR. McCARTHY: Your Honor, the envelope is
5 Government's Exhibit 333A. The tape would be Exhibit 333.

6 THE COURT: 333.

7 MR. JACOBS: Thank you.

8 Ladies and gentlemen, it is Defendants' Exhibit E
9 in your books, CM32, the white envelope. The last page in
10 your book.

11 Q Let's look at the white envelope, Mr. Salem.

12 You agree with me that the serial number, 38862,
13 doesn't match the reel number, 38737, correct, sir?

14 A Correct, sir.

15 Q On the envelope it states, I guess something,
16 "New Jersey, New York, Siddig Ali." I guess you wrote "Emad
17 and Siddig," and then somebody wrote, "conversation in car
18 either before going to Yonkers or after."

19 Correct, sir?

20 A Correct, sir.

21 Q I'd like you to listen to the first couple of
22 minutes of this exhibit that's been offered into evidence by
23 the government, and I am going to ask you a number of
24 questions, OK?

25 A Yes, sir.

1 Q If you don't hear again, just give us a hand
2 sign, OK?

3 A All right, sir.

4 MR. GINSBERG: Just the beginning you said?

5 MR. JACOBS: Yes, the beginning. I'm sorry.

6 (A portion of Government Exhibit 333 was played)

7 MR. JACOBS: Your Honor, I would ask that the
8 first 30 seconds of this tape be admitted into evidence at
9 this time so that the jurors can hear it when I am examining
10 the witness.

11 MR. McCARTHY: No objection.

12 THE COURT: All right. Do you want everybody to
13 put on their headsets?

14 MR. JACOBS: Yes, sir.

15 (A portion of Government's Exhibit 333 for
16 identification was received in evidence)

17 MR. JACOBS: We will just need a minute.

18 MR. McCARTHY: Perhaps the jurors could give us a
19 hand signal if anybody can't hear once the tape has started.

20 MR. JACOBS: We haven't started yet.

21 MR. McCARTHY: The volume is controlled on the
22 panel here, your Honor.

23 (A portion of Government Exhibit 333 was played
24 for the jury)

25

1 MR. JACOBS: May I proceed, your Honor?

2 Q Mr. Salem, for those who don't speak Arabic, who
3 is that conversation with that we just heard a few seconds
4 of?

5 A In the background, Mr. Mohammed Saleh's wife,
6 Mr. Siddig's wife, and the conversation was Mr. Mohammed
7 Saleh, Mr. Siddig Ali, and myself.

8 Q That is a conversation that is recorded on or
9 about June 4, 1993 -- do you remember the date as you sit
10 here now?

11 A No, sir, I don't.

12 Q No dates?

13 A No dates.

14 Q The envelope itself, did you write the actual
15 date that it is recorded on? Does your handwriting appear
16 that says June 4 on it?

17 A One second.

18 Q Please take your glasses, put your other glasses
19 on.

20 MR. McCARTHY: The white envelope.

21 MR. JACOBS: I am sorry.

22 Q Looking at the white envelope that is Defendant's
23 Exhibit E in evidence, do you see your handwriting with June
24 4, 1993?

25 A No, sir, that is not my handwriting. "6/4/93,"

1 that is not my handwriting.

2 Q Would I be correct in stating that this tape is
3 the tape with my client Mohammed Saleh, correct, Ali?

4 A Yes, sir.

5 Q It is not the car tape, correct?

6 A No, it is not, sir.

7 Q Somehow the FBI mixed up envelopes and tapes, to
8 your knowledge?

9 A I don't know, sir.

10 Q When you wrote on this tape Emad and Siddig, that
11 the not correct, because the tape itself is in Mohammed
12 Ali's apartment, correct?

13 A Yes, sir.

14 Q So somebody made an error, correct, not you?

15 A Yes, sir.

16 Q Would I be correct in stating that the tape that
17 you just heard does not have a date, correct?

18 A Yes, sir.

19 Q Does not have the name of the parties, correct?

20 A Yes, sir.

21 Q Does not have the location, correct?

22 A Yes, sir.

23 Q Does not have the time, correct?

24 A Yes, sir.

25 Q In listening to that tape, and if we would like

1 to listen to it again we can do it, did you hear something
2 that sounded like kachunk three times, kachunk, kachunk?
3 Did you hear, sir?

4 A Yes, sir.

5 Q Is that you turning the machine on and off?

6 A Yes, sir.

7 Q Would I be correct in stating you did that at
8 least three or four times? Correct, sir?

9 MR. McCARTHY: Objection, unless he specifies
10 when.

11 THE COURT: You mean on this particular tape?

12 MR. JACOBS: Yes, I am sorry.

13 Q On the beginning of the tape that was just played
14 to you, sir, the question is, did you turn the machine and
15 on and off?

16 A Yes, sir.

17 Q At least three times, correct?

18 A I would say yes.

19 Q If you would like to listen to it again, I don't
20 want to put words in your mouth. I would be happy to play
21 it again.

22 THE COURT: He has already said yes.

23 Q Would I be correct in stating that after the
24 three or four ons and offs, the conversation starts with my
25 client in the middle of some conversation, is that correct?

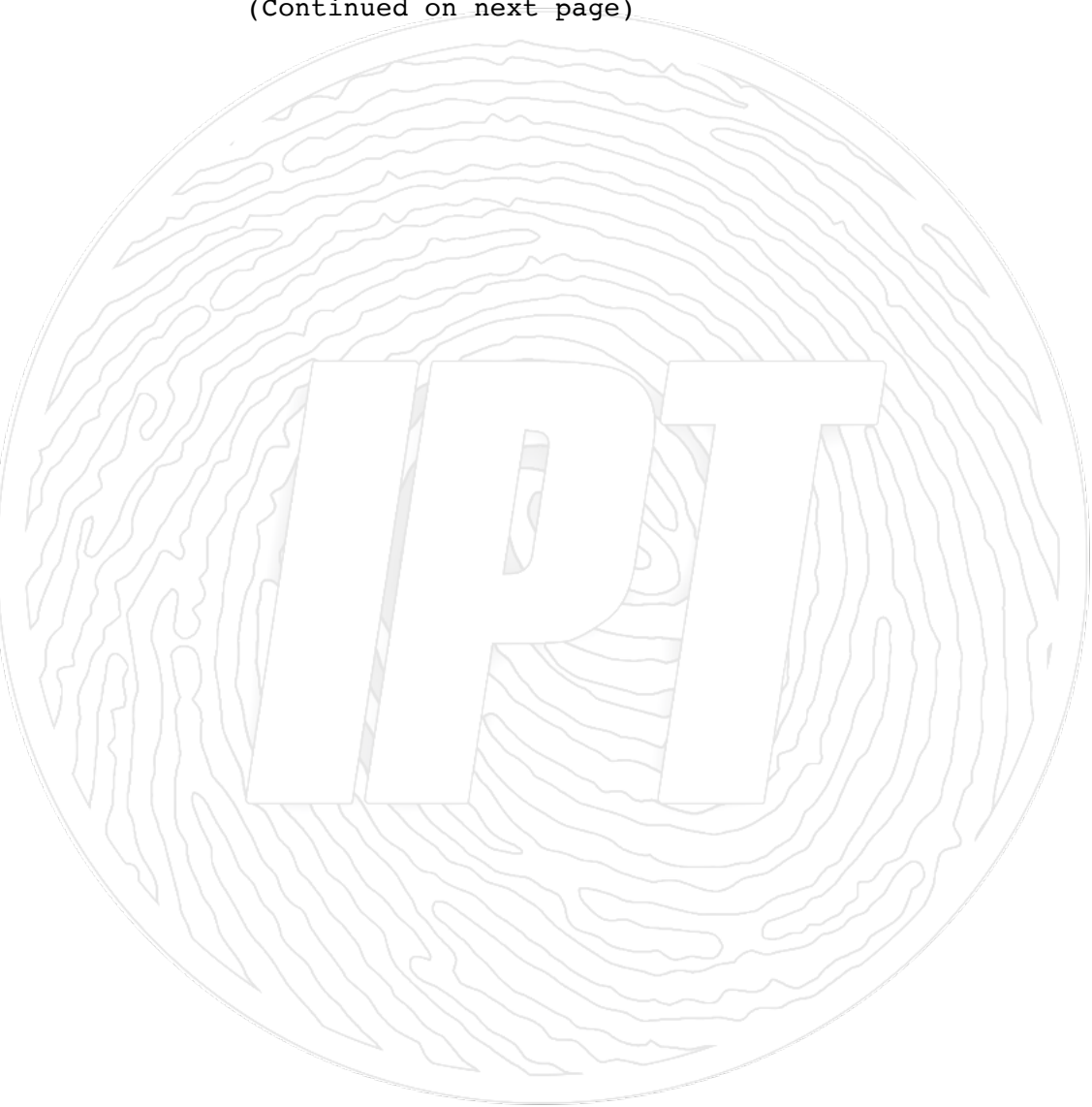
1 A Yes, sir.

2 Q So some portion of the conversation is missing,
3 correct?

4 A Yes, sir.

5 (Continued on next page)

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1 Q With respect --

2 MR. JACOBS: Your Honor, I would need the
3 briefcase at this -- I am sorry. I don't want to speak out.
4 My apologies. I think I have some additional matters to
5 discuss with the court.

6 THE COURT: Then let's take an early break for
7 lunch. Ladies and gentlemen, please leave your notebooks
8 and other materials behind. Please don't discuss the case.
9 Have a pleasant lunch. We will resume at about 2:00.

10 (Jury excused)

11 MR. JACOBS: I need the briefcase.

12 THE COURT: I understand.

13 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted: 2:05

EMAD SALEM, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: Mr. Jacobs.

VOIR DIRE EXAMINATION (continued)

BY MR. JACOBS:

Q Mr. Salem, the tape with Mohammed in his apartment we were discussing when we broke for lunch, I call it CM32, we were discussing the ons and offs in the beginning of the tape. Do you recall that examination when we broke for lunch?

A Yes, sir.

Q I was asking you whether -- and I think you have testified there was no introduction on the tape that you have examined, is that correct?

A Correct, sir.

Q Thinking back to on or about June 4, 1993, when you made the recording, did you put an introduction on that no longer exists, if you can recall?

A No, sir, I did not.

Q So you have a distinct recollection that on or about June 4, you did not put an introduction on this tape,

1 is that correct?

2 A Correct, sir.

3 Q You made this recording from an attache case that
4 was given to you by the FBI?

5 A Yes, sir.

6 Q It was all FBI equipment, the case, the Nagra,
7 the microphones, and the tapes, correct?

8 A Correct, sir.

9 Q Let me show you 394 for identification, the
10 briefcase in front of you. Does that appear to be similar
11 to the briefcase that the FBI gave to you back in May and
12 June, 1993?

13 A It's similar, yes.

14 Q Would you tell me if this briefcase -- did you
15 see this briefcase over lunchtime?

16 A I saw it with somebody passing by, but I did not
17 see it.

18 Q Would you open the briefcase up, please.

19 Am I correct that if you remove the back of the
20 inside, or lift it up, there is a Nagra inside the briefcase
21 in the upper portion, is that correct, sir?

22 A Yes, sir, that's correct.

23 Q Would it be fair to state that the one you used
24 was similar to this exhibit? It may not be the same one, I
25 understand, but similar?

1 A Yes, sir.

2 MR. JACOBS: I would offer this into evidence. I
3 have no objection to using the government's number, 394, if
4 that is OK with your Honor.

5 MR. McCARTHY: No objection for demonstration
6 purposes.

7 THE COURT: Fine. It is received for
8 demonstration purposes. Let's go.

9 (Government's Exhibit 394 for identification was
10 received in evidence)

11 MR. JACOBS: For demonstration purposes.

12 THE COURT: Right.

13 MR. JACOBS: And, with your Honor's permission
14 and with the government's permission, may the witness come
15 over in front of the jury so we can move this along?

16 THE COURT: Yes.

17 MR. JACOBS: Thank you.

18 MR. McCARTHY: Your Honor, may I just move for a
19 moment?

20 MR. JACOBS: Sure. Sure. I have no problem with
21 that.

22 THE COURT: Sure.

23 THE WITNESS: Shall I bring the briefcase, sir?

24 MR. JACOBS: Yes, please.

25 THE COURT: Can somebody move the microphone.

1 MR. JACOBS: Sure.

2 THE COURT: If you are going to ask him questions
3 about it, I would like him to have the microphone.

4 MR. JACOBS: Sure.

5 Q Mr. Salem, understanding that this is not the
6 identical one, but would you turn the briefcase around, if
7 you might and -- OK.

8 Would I be correct that the briefcase contains a
9 concealed section, in fact, where the Nagra would go, is
10 that correct?

11 A Yes, sir.

12 Q The microphones go someplace inside, concealed as
13 well, is that correct?

14 A Yes, sir.

15 Q You could just shut it and let me just ask you
16 this: The on/off switch that you have described in your
17 previous testimony, do you know where it is on this
18 particular item?

19 A No, sir, I don't.

20 Q The one that you had, where was the on/off switch
21 as best you could recall?

22 A It was at the top here.

23 THE COURT: Indicating the top of the briefcase?

24 Q Do you see a clasp here on the top, above the
25 handle?

1 A Yes, sir.

2 Q Was it in that place on yours?

3 A That's correct, sir.

4 MR. JACOBS: Mr. McCarthy, would you agree that
5 this one has the same on/off switch, the clasp, as I think
6 someone indicated?

7 MR. McCARTHY: I can't agree because I haven't
8 seen the other briefcase. I agree that the on/off switch is
9 on top.

10 MR. JACOBS: I think Mr. Fitzgerald indicated to
11 me out of the presence of the jury that this one has the
12 on/off switch on the same spot on the clasp.

13 Q In other words, Mr. Salem, if I am correct, you
14 were able to turn the tape on and off externally without
15 having to open the briefcase, correct?

16 A Yes, sir.

17 MR. FITZGERALD: May I have a moment with Mr.
18 Jacobs, your Honor?

19 THE COURT: Yes.

20 MR. JACOBS: I'm sorry. Sure.

21 (Counsel conferred)

22 Q Do you know whether the on switch and the off
23 switch are separate or was it part -- in the one you had,
24 would you know?

25 A Would you repeat the question, please?

1 Q Sure. Was there a separate on switch and a
2 separate off switch, or was it the same, where you just
3 flipped it back and forth, if you can remember?

4 A No, the on switch is a single button. The off
5 switch is a double -- it's a place to touch.

6 Q A second place to touch?

7 A Yes, sir.

8 MR. JACOBS: May the witness go back on the
9 witness stand, your Honor.

10 THE COURT: If you will resume the stand,
11 Mr. Salem. Thank you.

12 (The witness resumed the stand)

13 Q Mr. Salem, if I am correct, in order to operate
14 the equipment you would load the tape inside the machine,
15 correct?

16 A Yes, sir.

17 Q The tape itself, the machine itself has an on
18 and off switch as well, is that correct?

19 A I'm sorry, sir, your question again?

20 Q I'm sorry.

21 The Nagra itself has an on and off switch,
22 correct?

23 A Yes, sir.

24 Q The outside external of the briefcase had an on
25 switch and a separate off switch, is that correct?

1 A Correct, sir.

2 Q Would I be correct that you had operated this
3 briefcase on at least 20 or 30 occasions, is that fair to
4 say, over 20 occasions?

5 A Yes, sir.

6 Q You in fact loaded the tapes in and out of this
7 briefcase on numerous occasions in May and June?

8 A Yes, sir.

9 Q In connection with the tapes that are being
10 offered by the government, is that correct?

11 A Yes, sir.

12 Q Were you familiar with the operation of the
13 Nagra, how it worked?

14 A It was explained to me, yes, sir.

15 Q Who explained it to you and when?

16 A Agent John Anticev in the presence of Detective
17 Louis Napoli, and when I -- I cannot recall.

18 Q But you would agree with me it was probably
19 before the first CMI?

20 A Yes, sir.

21 Q Had you been familiar with the equipment, had you
22 ever seen a Nagra before May of 1993?

23 A No, sir.

24 Q You had never used one in your background?

25 A No, sir.

1 Q In handling the equipment, were you aware of how
2 the machine could be rewound?

3 A Yes, sir.

4 Q Am I correct that it could be rewound manually,
5 is that fair to say? Do you understand what I mean?

6 A Yes, sir.

7 Q In fact, you would do that on occasions when you
8 had to take the tape off the machine and give it to the FBI,
9 correct?

10 A Yes, sir.

11 Q Were you aware of the mechanism that you pull out
12 to rewind at a high speed or manually quickly? Are you
13 aware of that mechanism?

14 A Yes, sir.

15 Q When you answered the question yesterday on
16 direct examination -- Mr. McCarthy, 4978, line 13 -- you
17 were asked the following question and you gave the following
18 answer:

19 MR. McCARTHY: May I just have a second.

20 MR. JACOBS: Sure, Mr. McCarthy. Tell me when
21 you're ready.

22 MR. McCARTHY: Your Honor, I would ask to if it
23 would begin on line 10.

24 MR. JACOBS: Sure.

25 Question by the government:

1 "Q During May and June 1993, did you have any
2 Nagra tape equipment of your own?

3 "A No, sir.

4 "Q Did you have anything in your house which
5 would allow you to rewind or fast forward Nagra tapes?"

6 Your answer was: "No, sir."

7 Well, in fact, the machine itself --

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q Am I correct that you can rewind the machine
11 manually without any additional equipment needed, is that
12 fair to say?

13 A The Nagra itself?

14 Q Yes, sir.

15 A Yes, sir.

16 Q In connection with your work for the FBI and the
17 tapes that are offered, did you ever play back in May and
18 June for yourself any of the tapes that the government has
19 offered from CM1 through CM60, whatever the number is up to?

20 Did you ever do that during May and June?

21 A No, sir.

22 Q Do you know how you play back a Nagra, if you
23 know?

24 A Now I know. In that time, I don't.

25 Q So is it your testimony that you were unaware of

1 the fact --

2 MR. JACOBS: Where is the Nagra? Is it in there?

3 MR. McCARTHY: One moment.

4 MR. JACOBS: Thank you.

5 Q Are you saying, Mr. Salem, that you are aware now
6 that you take a listening device, put a jack into the Nagra
7 and you can listen to it. You are aware of that now, that
8 you can do this without any other equipment, you are aware
9 of it now?

10 A With this way, it won't work. When I try to do
11 that last couple of weeks it didn't work, and we have to
12 bring a specific box from the FBI to hook it up to operate
13 the machine.

14 Q Is it your testimony that this method does not
15 work in playing back a Nagra conversation?

16 MR. McCARTHY: Objection.

17 THE COURT: All he said was he tried it and it
18 didn't work.

19 MR. JACOBS: OK.

20 Q To your knowledge, this method doesn't work then?

21 A I thought that it will work. I tried to put it,
22 it didn't work, and the agent has to go back to the Bureau
23 and bring a special box, then it works.

24 MR. JACOBS: Can you give me a speaker box?

25 MR. McCARTHY: Sure.

1 MR. JACOBS: Thank you.

2 May I approach the witness, your Honor.

3 THE COURT: Yes.

4 MR. JACOBS: G?

5 THE DEPUTY CLERK: G.

6 Q Mr. Salem, have you ever seen -- and I will mark
7 it as Defendants' G for identification -- such a device?

8 A Yes, sir.

9 Q Is that fair to say, that is an independent
10 speaker for a Nagra?

11 A Yes, sir.

12 Q Am I correct that during the months of May and
13 June you did not have such a device at home or wherever you
14 were?

15 A Yes, sir.

16 MR. JACOBS: May I approach the witness --

17 THE COURT: Yes.

18 MR. JACOBS: -- with Government Exhibit 399A.

19 Q Would you put that on, Mr. Salem, and tell me if
20 it works, using just the headset and a jack, is it working,
21 sir?

22 MR. McCARTHY: Objection, relevance.

23 THE COURT: I will allow it. Go ahead.

24 Q Is it working?

25 A Yes, sir, it's working.

1 Q Is it your testimony that in the two months that
2 you made the CM's in this case you are unaware of the
3 capabilities of the machine to play back as I have just
4 demonstrated to you, sir? Is that your testimony?

5 A I did not try to play it back. I did not listen
6 to any of the tapes.

7 Q Did the FBI agents from the Joint Terrorist Task
8 Force tell you not to do it?

9 A They did not tell me not to listen tapes. They
10 did not instruct me with that, no.

11 Q Is it your testimony that you did not play back
12 any of the tapes the government has offered into evidence to
13 see if they were recording? Is that your testimony, sir?

14 MR. McCARTHY: Objection.

15 A In my home, no.

16 Q Did you, during May and June, review any tapes
17 with the FBI and listen to the originals?

18 A Yes, sir.

19 Q Where was that and when was that, if you can
20 recall?

21 A That was in the 26 Federal Plaza.

22 Q Is it your testimony that no FBI agent ever
23 explained to you the playback features of the Nagra during
24 May and June of 1993?

25 A Could you repeat the question, please?

1 Q I am asking you whether any agent -- Napoli,
2 Anticev or anybody -- ever told you, "Emad, this is how you
3 play back a Nagra and listen to it."

4 Nobody ever told you?

5 A No, sir.

6 Q Mr. Salem, do you recall ever seeing on the
7 Nagras that you had a jack that said "phones" on the Nagra?

8 Do you ever recall seeing that on 399?

9 Did you ever see that word written in English?

10 MR. McCARTHY: Objection. 399 is the exhibit
11 that was received for demonstration purposes.

12 THE COURT: Correct.

13 MR. JACOBS: I am asking Mr. Salem.

14 Q Would you take a look at 399, and I direct you to
15 the -- if you want to switch glasses -- where it says
16 "phones" and there is a jack. Did the equipment you had
17 have that in English, phones, P-H-O-N-E-S.

18 A I don't recall seeing it, sir.

19 Q In connection with the taping of CM32 with my
20 client, did you intentionally erase or alter the beginning
21 of the conversation, sir?

22 A Absolutely not.

23 Q You say "absolutely not." You have a
24 recollection of turning the tape on and off several times
25 and then placing it on again when the conversation was

1 already underway, correct, sir? You have an independent
2 recollection?

3 A Can you please repeat your question, sir?

4 Q Sure, of course.

5 The question, sir, is: Did you in connection
6 with CM32 erase, alter the beginning --

7 THE COURT: That is not the same question.

8 MR. JACOBS: I'm sorry, your Honor.

9 THE COURT: He wanted the last question repeated.

10 MR. JACOBS: Perhaps the court reporter can read
11 it back.

12 THE COURT: Fine.

13 Why don't you read back the question.

14 (Record read)

15 A Yes, sir, I do remember.

16 Q It is your testimony that at no time did you
17 alter or erase the beginning of the conversation with my
18 client on or about June 4, 1993?

19 A Yes, sir.

20 Q Is it your testimony that you did not rewind and
21 dub over the introduction and a portion of the conversation
22 where my client is recorded?

23 Is that your testimony, sir, you did not do that?

24 A I did not do that, sir.

25 Q Am I correct, sir, that if you rewound the tape

1 and started it again, it would overdub right over another
2 portion, is that fair to say?

3 A Yes, sir.

4 Q How would you know that, sir, that if you rewound
5 it and started the conversation in the beginning that you
6 would overdub? How would you know that, sir?

7 A Just sense.

8 Q You were asked the following question yesterday
9 and gave the following answer.

10 MR. JACOBS: Mr. McCarthy, reading again from
11 4978, line 16 through 18.

12 MR. McCARTHY: Can I have a moment, your Honor.

13 MR. JACOBS: Sure, I'm sorry.

14 MR. McCARTHY: Your Honor, I object to the
15 question.

16 THE COURT: May I see it.

17 (Pause)

18 THE COURT: Sustained.

19 Q Mr. Salem, in connection with any of the tapes
20 that the government is offering, is it your testimony that
21 you at no time rewound any beginning portion and overdubbed
22 over any portion of the tape in connection with the tapes --

23 THE COURT: Mr. Jacobs, could you move away from
24 the microphone a little bit.

25 Q In connection with the tapes being offered by the

1 government this morning, is it your testimony you never
2 rewound the tape and overdubbed on any introduction?

3 A I don't recall introduction. I don't recall.

4 Q Am I correct that there are some tapes with
5 introductions and some tapes that don't have introductions,
6 correct?

7 A Correct, sir.

8 Q You had been given, you said, instructions to put
9 an introduction, correct?

10 A Yes, sir.

11 Q What happened to the introduction on 32?

12 MR. McCARTHY: Objection.

13 Withdrawn. I will withdraw the objection.

14 Q What happened to the introduction on 32?

15 A There is certain circumstances I didn't -- I did
16 not expect certain meetings to happen and occasions that we
17 have been started the conversation, I have to switch the
18 device on, I wasn't expecting this conversation to take
19 place, so I cannot just take it and put introduction first.

20 Q Well, didn't you make a special trip in the car
21 with Siddig Ali to go to Yonkers to see my client on a
22 prearranged meeting, sir?

23 A Yes, sir.

24 Q You knew you were going to my client's apartment
25 on June 4 to talk to him? Yes or no.

1 A No.

2 Q It wasn't a meeting that was prearranged?

3 A It was.

4 Q You put an introduction on the car tape then, 31,
5 correct?

6 A I don't recall.

7 Q Would you like to have it played again, sir?

8 A Which tape, sir?

9 Q I am saying, did you make an introduction on any
10 tape saying that you were going to see my client on or about
11 June 4, 1993?

12 A Yes, sir.

13 Q What tape was that?

14 A I don't recall.

15 Q You had the Nagra briefcase loaded and ready on
16 June 4 to operate, 1993?

17 A Yes, sir.

18 Q You anticipated conversations, that's why you
19 brought the briefcase?

20 A Yes, sir.

21 Q Did you put any introduction, whether it be about
22 my client or anybody, on the tape?

23 A Again, I did not put introduction, sir.

24 Q When you turned the equipment on and off three or
25 four times, where did you do that, sir?

1 A Different places, sir.

2 Q Which was the first place you turned it on?

3 A Before I left my home, I loaded the tape and I
4 turned the machine on to make sure it's rolling. That was
5 the first time. And then I'm -- because putting the tape
6 from the wheel to the other wheel and put it, to catch it
7 and turn it, you got to make sure that it's really catching
8 the other side.

9 Sometimes slip the wheel and don't catch the
10 tape. Then I have to turn it on to make sure it's running,
11 close the bag, close the briefcase, and then I turn the
12 briefcase on to see the light, if it is on or if it's not
13 on. Because probably after I close the briefcase, and I
14 operate the machine, it won't operate, it won't work.

15 So, to make the light on, carry the briefcase, go
16 my trip, I meet with the subjects, and, if I get a chance to
17 check the light, it's going on and off, I make the last
18 check, then I am ready to go.

19 Q Well, there are three or four checks in this
20 tape, CM32, so when you did the first check, assuming in the
21 morning, did you put an introduction on the tape when you
22 did your first check, June 4, 1993 when you tested the
23 equipment?

24 A No, I did not put introduction, sir.

25 Q When did you do the second check?

1 A I don't recall exactly, but I recall you can hear
2 that on the tape after one of these checks, you are going to
3 hear "ahem," and that's my way of seeing the pointers on the
4 counter with almost the first check. Because when I close
5 the machine and say "ahem," I see the pointer moving, I know
6 that it's taping.

7 Then I close it, I place it in the briefcase,
8 close the briefcase, and then turn it on to check if the
9 light will go on or off. If the light is on, now I'm sure
10 the last check after I move and handle the briefcase, once I
11 am sure it's working, I will start taping.

12 Q So on this particular day you checked the
13 equipment three or four times during a car ride with Siddig
14 Ali where you finished the car ride, got out, walked into my
15 client's apartment, is that your testimony, sir?

16 MR. McCARTHY: Objection to form.

17 THE COURT: Sustained.

18 Q Would you tell us the second time when you
19 checked it, where that was?

20 A As far as I heard on the introduction you played
21 it to me, it was a lot of traffic noise. So probably when
22 I'm sitting in the car I turned it on, I looked to the
23 light, I made sure it's working. That was it.

24 Q With Siddig Ali present is it your testimony that
25 you -- is it your testimony with one of the targets present

1 you opened up the equipment and checked to see if it was
2 working, with Siddig present in the car, is that your
3 testimony?

4 A That's not my testimony, sir.

5 Q Why don't you tell us when you did the second
6 check.

7 A You said, sir, I opened the equipment. I don't
8 have to open the equipment, sir.

9 MR. JACOBS: May I approach the witness.

10 Q Showing you the briefcase, sir, would you show us
11 how you can test to see if the equipment is working without
12 opening it up.

13 A I can be sitting in the car, that way, and all
14 what I have to do, just move my hand to touch the center
15 place. Then I have to look that way because underneath this
16 center button there is a red light. This red light almost
17 put me in troubles, so I blocked it from the top with a
18 piece of gum so nobody can see it, because in a dark place,
19 if I'm carrying it, you can see a red light, can jeopardize
20 my safety. So I blocked it with the gum.

21 Then, to make sure it's working, the only thing
22 that I look between the center button and the briefcase,
23 there is a little tiny crack here where you can see crack of
24 light, and that's when I make sure -- sometimes I have to
25 put my hand to put shadow on it, and then when I make sure

1 it's working, I keep it on my lap.

2 Q You did that in the vehicle?

3 A Yes, sir.

4 Q Who was driving?

5 A I don't recall, sir.

6 Q Weren't you driving?

7 A I don't recall, sir.

8 Q If you were driving that would have been pretty
9 difficult, wouldn't it, sir?

10 A Yes, sir.

11 Q How about the third time that you turned it on
12 and off, what was the reason for doing that?

13 A There is no reason except to make sure it's
14 working.

15 Q Do you recall on June 4 that you were having some
16 problems where you might have been driving the car where you
17 had to do it a third time, sir?

18 A I did not say that I was driving the car. You're
19 putting words now, sir, in my mouth. You said, "While
20 you're driving," and I say I don't recall that I was
21 driving.

22 Q Did Siddig ever drive your car, sir, the one with
23 the tapes in the back?

24 A Yes, sir.

25 Q Do you know if he drove it on this day?

1 A I don't recall, sir.

2 Q Weren't you driving, and wasn't Siddig giving you
3 directions on how to go and what turn to make in Yonkers,
4 sir? Do you recall the tape?

5 A Yes, sir, I recall that part.

6 Q So you were driving, correct, sir?

7 A At the beginning, yes, sir.

8 Q So what was your explanation for the third time
9 you turned it on and off, sir?

10 A I have no --

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q Let's try the fourth.

14 How about the fourth time you turned it on and
15 off. What was the reason then? You were checking it again?

16 A I don't know if they are four or three, but no
17 matter how many times it's on and off, it's the beginning of
18 the tape, I am catching the tape, I am operating the machine
19 to make sure it's working, period.

20 Q You didn't go into the bathroom at Mohammed's
21 house, rewind the tape, and start it again, did you, sir?

22 A Absolutely not.

23 MR. JACOBS: May we now play the concluding
24 portion of the tape, your Honor, for the witness. We are
25 ready to go with that.

1 THE COURT: All right.

2 MR. JACOBS: I would offer the concluding portion
3 so that everybody can hear it.

4 MR. McCARTHY: No objection.

5 THE COURT: Fine. We can all listen in.

6 (Government Exhibit 333 was played)

7 Q Mr. Salem, did you hear an on, off before a car
8 door slammed?

9 A Yes, sir.

10 Q Am I correct that you did that intentionally,
11 turned the machine off and then put it back on again?

12 Yes or no.

13 A No.

14 Q What happened?

15 A This is at the beginning of the tape or in the
16 middle of the tape?

17 Q I'm sorry. This is towards the end of the tape
18 before a car door slams. There is an on, off that you have
19 just testified to, and I'm trying to find out what the
20 reason was that you turned it on and off towards the end of
21 the tape, if you can recall.

22 A I would like to listen to the last --

23 Q The last portion?

24 A The last portion, to try to figure it out.

25 Q Sure.

1 MR. JACOBS: Mr. Ginsberg, would you rewind it.

2 MR. GINSBERG: Yes.

3 (Government Exhibit 333 was played)

4 Q Would you like to go further back?

5 A Yes. Further back to see where this part coming
6 from, please.

7 MR. JACOBS: Sure, no problem.

8 (Government Exhibit 333 was played)

9 MR. JACOBS: Put it back put further. He wants
10 it back further.

11 THE WITNESS: Yes.

12 (Government Exhibit 333 was played)

13 THE WITNESS: Can we please move to the last
14 portion of the conversation in Mr. Saleh's house, and from
15 there I will pick up where this part is coming from.

16 MR. GINSBERG: I hope I can find it.

17 (Pause)

18 MR. JACOBS: Can we ask everybody to remove their
19 headsets a minute while we find a portion, your Honor?

20 (Pause)

21 MR. JACOBS: OK. We're ready, your Honor. Thank
22 you.

23 (Government Exhibit 333 was played)

24 THE WITNESS: We are still in the car.

25 MR. GINSBERG: Yes.

1 THE WITNESS: Right now we are in the car. The
2 last portion --

3 MR. JACOBS: I'm sorry?

4 THE WITNESS: In this section, sir, we are in the
5 car. I would like to take it, if you please, from the time
6 we start to leave his apartment. Then I would imagine I
7 will try to recollect after we left the apartment what
8 happened exactly and then I will tell you.

9 MR. JACOBS: Fine.

10 Run it back.

11 MR. GINSBERG: I believe we are ready, your
12 Honor.

13 (Government Exhibit 333 was played)

14 THE WITNESS: Continue. We did not come to the
15 part, but begin, sir. We are doing fine now.

16 MR. GINSBERG: I am turning the tape over, your
17 Honor, and continuing.

18 (Government Exhibit 333 was played)

19 THE WITNESS: Excuse me. Stop. Could you please
20 stop here for a second.

21 MR. JACOBS: Sure.

22 THE WITNESS: Then we will continue the rest.

23 You will notice that Mr. Mohammed Saleh's is with
24 us in the car, and that's Mr. Mohammed Saleh's car. When he
25 is driving us back from his home to the gas station where is

1 my car, left there to be gassed up.

2 Q Sir, the question is: Did you turn the machine
3 on and off at the end of the tape? Yes or no.

4 A Apparently, yes, but I am coming to this part. I
5 answered your question, sir, when you asked me, "You was
6 driving", "It's hard to carry the briefcase." I was not
7 driving. Mr. Mohammed Saleh --

8 Q Mr. Salem --

9 A Yes, sir.

10 Q -- I asked you --

11 MR. McCARTHY: Objection to cutting off the
12 witness.

13 THE COURT: Why don't we stop this dialogue right
14 now. If you want to continue the tape to the point where --

15 THE WITNESS: Yes, sir, please.

16 THE COURT: Let's go.

17 (Government Exhibit 333 was played)

18 (Continued on next page)

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1 MR. JACOBS: Mr. Salem, at this point have you
2 heard the off and on?

3 A Yes, sir.

4 MR. JACOBS: I believe the tape continues for
5 another half hour, so I don't know if there is a need to do
6 it.

7 THE WITNESS: All right, sir.

8 THE COURT: All right, fine.

9 Q Mr. Salem, did you turn the machine off and then
10 on again at the end of the tape? Yes or no.

11 A Yes.

12 Q You testified a few minutes ago that at the tape
13 in the car that you made on the way to Mohammed's house, you
14 put an introduction on the tape. Is that your testimony?

15 MR. McCARTHY: Objection.

16 THE COURT: Is that your testimony?

17 Q Is that your testimony?

18 MR. JACOBS: Thank you.

19 MR. McCARTHY: Now?

20 THE COURT: Forget it. The question is, did you
21 put an introduction on the tape that was made of the
22 conversation that took place in the car going up to
23 Mohammed's house? Do you remember that, whether you did or
24 not?

25 Q Did you?

1 A I don't remember, if you let me listen to it.

2 Q Sure.

3 MR. JACOBS: Let the record indicate I am going
4 to play CM 31. I believe we played it this morning, but I
5 will play it again. I would offer that beginning portion
6 and ask that everybody listen to it, with your Honor's
7 permission.

8 MR. McCARTHY: No objection.

9 (Tape CM 31 played)

10 Q Sir, is that a tape of the car conversation that
11 you had with -- beginning portion of the car conversation
12 that you had with Siddig Ali on the way to Mohammed's house
13 on or about June 4, 1993?

14 A I am not sure that is the car tape to Mohammed
15 Saleh's home. It could be the briefcase, it could be the
16 car. But I did not put an introduction for this tape.

17 Q On the tape that you just heard, didn't you just
18 hear a car door slam, and didn't Siddig Ali say, in English,
19 or at least the interpretation, OK, we have about a half
20 hour God willing, we will get about 20 minutes to get there?
21 Didn't you hear Siddig saying that when he got into your car
22 on or about June 4, 1993? Did you hear that, sir?

23 A Yes, sir, I heard.

24 Q Would it be fair to say that then the tape that
25 you just heard is a car tape in your car, with you driving?

1 Correct, sir?

2 MR. McCARTHY: Objection.

3 A Not correct.

4 Q Who was driving?

5 THE COURT: Mr. Jacobs, are you trying to
6 distinguish between the tape that was made on car recording
7 devices or on briefcase recording devices, or is it simply
8 your desire to find out whether it was a tape recording in
9 an automobile ride?

10 MR. JACOBS: I am trying to find out what CM 31
11 is that the government has offered into evidence.

12 THE COURT: Mr. Jacobs, listen.

13 MR. JACOBS: I am asking, is it a briefcase or a
14 car, if he knows.

15 MR. McCARTHY: May I have a moment with Mr.
16 Jacobs?

17 MR. JACOBS: Sure.

18 (Pause)

19 MR. McCARTHY: Thank you, your Honor.

20 BY MR. JACOBS:

21 Q Mr. Salem, is it your testimony that this is a
22 conversation in the car but you are not sure if it is the
23 car tape running or your briefcase running? Is that fair to
24 say?

25 A Yes, sir.

1 MR. JACOBS: Thank you, your Honor.

2 Q Whatever it is, would I be correct in stating
3 that the car tape operated by you loading the tapes in the
4 car -- I think it's a dual tape, double Nagra tape?

5 A Yes, sir.

6 Q And am I correct that you were one of the persons
7 loading the tapes in the car?

8 A Yes, sir.

9 Q Whether it be a briefcase or a car tape, you were
10 in the car alone before Siddig Ali came in the car, correct?

11 A Correct.

12 Q Then you did not put an introduction on it,
13 correct?

14 A Correct.

15 Q And based upon your listening to the tape just
16 now, wouldn't it be fair to say that you were driving?

17 A Yes, sir.

18 Q And it was on this conversation -- during this
19 conversation, while you were on your way to Siddig Ali's
20 house that you checked your equipment, is that fair to say?

21 A Yes.

22 MR. JACOBS: Your Honor, I would like to play the
23 beginning of CM 32 again, and then I will be completed with
24 my examination. I just want to ask one or two other
25 questions. And I am offering it at this time, the

1 introductory portions. Mr. McCarthy, is that without
2 government objection?

3 MR. McCARTHY: I don't object to the playing of
4 any tape at this point.

5 THE COURT: Fine.

6 (Tape CM 32 played)

7 Q Mr. Salem, on CM 32 -- that's the one in my
8 client's home -- how many on/offers did you just hear?

9 A I would think five.

10 Q Five. Would I be correct in stating your manner
11 in operating the equipment, be it the car tape or the
12 briefcase, was basically the same throughout this two-month
13 period on the tapes the government has offered --

14 MR. McCARTHY: Objection, form.

15 MR. JACOBS: I will try to rephrase it.

16 Q Would it be fair to state that as the jury
17 listens to these tapes there may be some with introductions,
18 there may be some with not, correct?

19 A Correct.

20 Q There may be tapes with on/offers in the beginning,
21 correct?

22 A Correct.

23 Q There may be some with on/offers at the end?

24 A I am not certain --

25 Q Certainly 32 has one, correct?

1 A Correct.

2 Q By the way, on 32, isn't it true that you didn't
3 give this tape to Agent Napoli until three days later, June
4 7, 1993?

5 A I don't recall that, sir.

6 Q Is there any document that might refresh your
7 recollection on when you gave it to him?

8 A No, sir.

9 Q If Agent Napoli, Detective Napoli testified he
10 got it three days later on June 7, would you disagree with
11 that?

12 A I simply cannot recall, sir.

13 Q So would it be fair to state that CM 32 is only a
14 partial recording of the conversation with my client, it is
15 not the full conversation? Is that fair to say?

16 A Which conversation, sir?

17 Q I am sorry, please. The one in Mohammed's house.

18 A In Mohammed's house, full conversation, no
19 interruption, no stops.

20 Q I am stating to you, sir, is it the entire
21 conversation from the time you said hello until the time
22 that you had your last conversation? Yes or no.

23 A I don't hear myself saying introductory sir.

24 Q So there is some portion of the conversation in
25 the beginning, five seconds, 30 seconds, a minute, 30

1 minutes, an hour, that is missing, correct?

2 MR. McCARTHY: Objection to form.

3 THE COURT: Sustained.

4 Q Is there some portion of the conversation, some
5 unknown amount missing -- yes or no -- that is not recorded?

6 A On which location?

7 Q From the house.

8 A Yes, from the door until we sit on the floor,
9 this, I will say, minute is missing, yes.

10 Q You say it is a minute, correct, sir?

11 MR. McCARTHY: Objection.

12 Q Do you have anything -- I am sorry.

13 THE COURT: Go ahead.

14 Q Is there anything on the tape that you can point
15 to that indicates that only a minute is missing?

16 A No, sir.

17 Q Do you have any notes that you made of the
18 conversation?

19 A No, sir.

20 Q Did you go back at home at night and dictate into
21 a microcassette your notes of the conversations?

22 A No, sir.

23 Q Never did that in this case?

24 A No.

25 MR. McCARTHY: Objection.

1 THE COURT: You are talking about this
2 conversation or are you now changing the subject, Mr.
3 Jacobs?

4 MR. JACOBS: I was changing it but I will take
5 the question back.

6 THE COURT: Good.

7 Q With respect to this conversation, did you go
8 back and dictate into a microcassette?

9 A No, sir.

10 Q Am I correct, sir, that there are other missing
11 beginnings of other tapes that you heard that the government
12 has offered, and other CM's? Correct?

13 A Could you repeat the question, please.

14 Q Sure. Are there other tapes that you have heard
15 that are missing the beginnings of the conversations?

16 MR. McCARTHY: Objection, form.

17 Q If you know?

18 THE COURT: I will allow it.

19 Q If you know, sir.

20 A You mean the introduction, sir?

21 Q Sure.

22 A Yes, there is.

23 Q How about where the conversation picks up in
24 midstream? Does that occur on the tape, sir?

25 MR. McCARTHY: Objection to form.

1 Q If you know.

2 THE COURT: Are there conversations -- are there
3 recordings where the recording begins and the conversation
4 is already ongoing?

5 MR. JACOBS: Thank you, your Honor.

6 Q Does that happen on more than one occasion?

7 A Would you repeat the question, please.

8 Q Are there other tapes besides CM 32 with my
9 client where the conversation picks up in midstream, that
10 some beginning portion is not recorded?

11 A Correct, sir.

12 Q And that is because you decided when to turn it
13 on and off, correct?

14 A Yes, sir.

15 Q And you could decide if you wanted to rewind,
16 correct?

17 A Yes, sir.

18 Q And you could decide if you wanted to overdub,
19 correct?

20 A No, sir, not correct.

21 Q The equipment you had, given to you by the FBI,
22 was capable of overdubbing, correct, sir?

23 MR. McCARTHY: Your Honor --

24 THE COURT: Sustained.

25 Q And am I correct there are some ends of

1 conversations missing, correct?

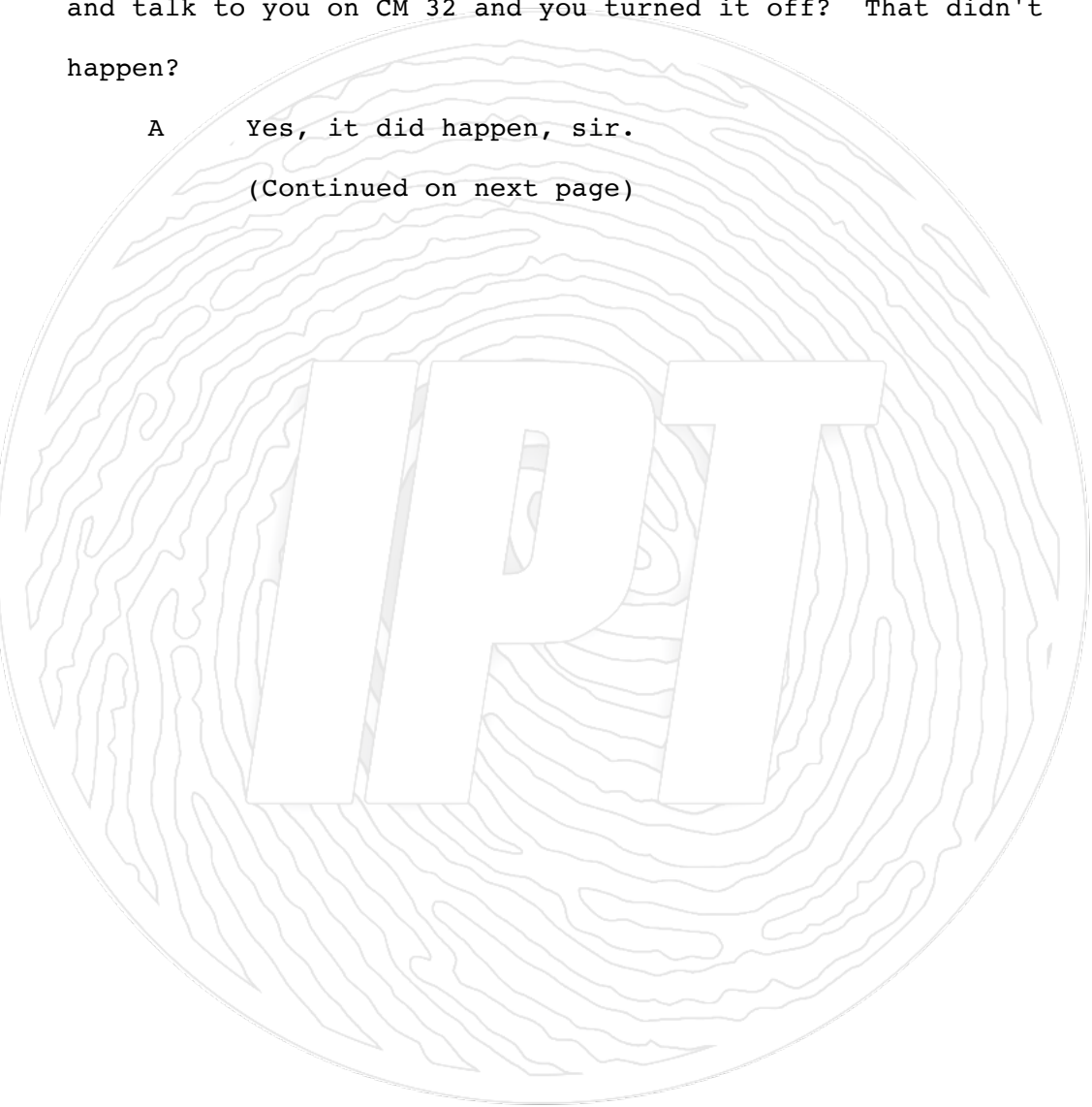
2 A I didn't hear the end -- show me end of a
3 conversation and I can tell you yes or no, sir.

4 Q Didn't you, didn't my client get out of the car
5 and talk to you on CM 32 and you turned it off? That didn't
6 happen?

7 A Yes, it did happen, sir.

8 (Continued on next page)

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1 MR. JACOBS: I have nothing further.

2 MR. McCARTHY: Your Honor, may we approach,
3 please?

4 THE COURT: Yes.

5 (At the side bar)

6 MR. JACOBS: Everybody is coming, I think.

7 THE COURT: Can't we do this with some subset?

8 MR. McCARTHY: I could.

9 THE COURT: So could I.

10 MR. McCARTHY: I would like the court to find out
11 what the good faith basis is for overdubbing. These
12 tapes --

13 THE COURT: Stop right there. What is it?

14 MR. JACOBS: The good faith basis, your Honor, is
15 that this conversation starts in the beginning --

16 THE COURT: Mr. Jacobs, did you have your expert
17 do an analysis of that tape?

18 MR. JACOBS: Absolutely.

19 THE COURT: Did he find overdubbing? Did he find
20 overdubbing?

21 MR. JACOBS: The answer is you cannot tell. I am
22 explaining exactly what it is. This machine is capable of
23 being rewound and then starting from scratch, and you cannot
24 tell. It is my position that this witness went and rewound
25 it --

1 THE COURT: Mr. Jacobs, I don't care what your
2 position is. I asked a simple question and I want a simple
3 answer. What is it?

4 MR. JACOBS: He cannot testify that it is
5 overdubbed. He cannot say it is not overdubbed.

6 MR. McCARTHY: He had two Nagra tapes that he
7 characterized as virgins in his report, which is certainly
8 suggestive, especially given the lengthy description of the
9 testing that was done, of the fact that he can determine
10 whether something has been taped over or not. Your Honor,
11 this is an expert who has been paraded back and forth in
12 front of the jury for a considerable period of days.

13 THE COURT: So far his expertise has consisted of
14 showing people where the jack and the on/off switch is. My
15 mother, were she alive today, could have done that.

16 MR. McCARTHY: Given the fact that Mr. Jacobs is
17 asking these questions with the very apparent assistance of
18 this expert under circumstances where -- I have interviewed
19 this man. There is no evidence of overdubbing.

20 THE COURT: Do you want to call him as a hostile
21 witness?

22 MR. McCARTHY: At this moment?

23 THE COURT: Yes.

24 MR. McCARTHY: I would rather get a little
25 prepared to do it, and we may do it shortly. I don't want

1 to interrupt Mr. Salem to do that. I think there is no
2 basis to ask these questions.

3 MS. AMSTERDAM: Your Honor, I was going to ask to
4 take a break before we start. I need to use the ladies'
5 room. I wonder if you would want to discharge the jury
6 while we are having this conversation rather than have them
7 wait out here. I know you are always mindful of that.

8 THE COURT: I am mindful.

9 (In open court)

10 THE COURT: We are going to take an afternoon
11 break at this point. Please leave your notes and other
12 materials lined. Please don't discuss the case. We will
13 resume in a while.

14 (Jury excused)

15 THE COURT: You can step down.

16 (Witness excused)

17 THE COURT: Let me suggest that we resolve the
18 problem with an instruction and simply move on.

19 MR. JACOBS: An instruction --

20 THE COURT: An instruction that a lawyer's
21 questions, whether they are asked through a lawyer or on
22 yellow slips of paper, are not evidence.

23 MR. JACOBS: I thought we had it.

24 THE COURT: We have had it at certain times when
25 I thought it was necessary to drive it home with a

1 sledgehammer. This is one of those times.

2 MR. JACOBS: Just to clarify what took place at
3 the side bar --

4 THE COURT: I am entirely clear on what took
5 place at the side bar. If you want to do it for public
6 consumption, go ahead.

7 MR. JACOBS: No, your Honor. I just want to say,
8 if the government wishes to call Mr. Ginsberg, feel free to
9 do so. He normally testifies for the government, let them
10 call him.

11 THE COURT: If he is called, he will be called
12 with rights of cross-examination when you get to him because
13 he is associated with a party. You recognize that.

14 MR. JACOBS: I have no doubt about that.

15 THE COURT: I doubt it will happen.

16 MR. JACOBS: Whatever. The government tries
17 their case as they wish.

18 THE COURT: I am sure they are grateful to you.
19 Is there anything else we have to go over?

20 MR. McCARTHY: No, thank you.

21 THE COURT: Have a nice break.

22 (Recess)

23 (Continued on next page)

24

25

1 (Jury not present)

2 THE COURT: Get the witness.

3 MR. JACOBS: Your Honor, I have a couple of more
4 questions, but I have no objection if your Honor tells the
5 jury lawyers' questions are not evidence right now, if that
6 is your Honor's --

7 THE COURT: Can you ask them without him or not?

8 MR. JACOBS: Pardon me.

9 THE COURT: Can you ask them without him?

10 MR. JACOBS: Sure, he can go back. I will move
11 back as soon as I finish my questions.

12 THE COURT: All right.

13 EMAD SALEM, resumed.

14 (Jury present)

15 THE COURT: OK. Ladies and gentlemen, I just
16 want to tell you again something I have had occasion to tell
17 you a couple of times during this trial, and, that is,
18 lawyers' questions are not evidence. Regardless of whether
19 they seem to suggest that the lawyers know about evidence,
20 regardless of whether they are handed to the lawyers on
21 little slips of paper, the lawyers' questions are not
22 evidence. The only evidence is the answers that come from
23 the witness.

24 So, even if a lawyers' questions suggest
25 evidence, until you see the evidence, it is not there.

1 MR. JACOBS: And the exhibits as well, your
2 Honor, besides just the testimony?

3 THE COURT: And exhibits.

4 MR. JACOBS: May I continue?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION (Continued)

7 BY MR. JACOBS:

8 Q Mr. Salem, the car that you were operating in May
9 and June of 1993 was equipped by the FBI with this dual
10 Nagra system, is that correct?

11 A Yes, sir.

12 Q The on/off capacity, was it inside the vehicle as
13 well as in the back seat or trunk, to your knowledge?

14 A It was inside the vehicle.

15 Q Where was it inside the vehicle, the on/off
16 switches?

17 A In my left bottom side.

18 Q When you say "left bottom side," I assume that
19 means the driver's side of the vehicle?

20 A Correct, sir.

21 Q So if you were in the passenger's side of the
22 vehicle you could not turn it on and off, correct?

23 A Correct, sir.

24 Q You could reach down under the seat or on the
25 side of the seat -- I don't mean the actual -- it was on

1 your left-hand side someplace?

2 A Yes, sir.

3 Q Was it one button or two buttons?

4 A Two buttons.

5 Q Did those two buttons operate the tapes together
6 or separate? How did they work, to your knowledge, the
7 system in the car?

8 A The first button will operate the first device.
9 I will try to figure out approximately three hours and then
10 I flip the other switch. Then the second tape will start to
11 operate.

12 Q Did each switch, if you can tell us, have the
13 capacity to be turned on and off?

14 A That's correct, sir.

15 Q So you could, if you choose, turn a tape on or
16 off at the beginning, middle or end, correct, sir, if you
17 chose to do so?

18 A Yes, sir.

19 Q That would be for tapes A and B, correct?

20 A Correct, sir.

21 Q Did you ever have an occasion on any of the tapes
22 that have been offered into evidence to run them together?

23 A No, sir.

24 Q The purpose, to your knowledge, of the second
25 tape was in case it ran longer than three hours and ten

1 minutes?

2 A That's correct, sir.

3 Q To your knowledge, that is the length of a Nagra
4 tape?

5 A Not all of them, sir.

6 Q Some are a little shorter?

7 A Yes, sir.

8 Q I trust that all the tapes that are involved here
9 are tapes that were given to you -- by "all here," I meant
10 the ones the government has offered.

11 A Yes.

12 Q That you were shown this morning, those were all
13 supplied by the FBI, correct?

14 A Yes, sir.

15 Q When you were given them, they were in the white
16 envelopes, correct?

17 A I don't know, sir.

18 Q Well, for example, I think we looked at CM1,
19 which is now in evidence, CM31, and CM32, at least those
20 three were given to you in white envelopes, is that correct?

21 A I did not check the envelope with the tape when I
22 received it, so --

23 Q OK. I understand you didn't check the envelope?

24 When you say "checked it," is it your best

25 recollection that all the Nagras -- I am not talking about

1 cassettes or micros -- all the Nagras came in a similar
2 white envelope to the ones that are in evidence?

3 A Similar white envelopes, yes, sir.

4 Q If you take a look at --

5 MR. JACOBS: Ladies and gentlemen, open up to
6 page 5 of the book.

7 May I approach the witness, your Honor.

8 THE COURT: Yes.

9 MR. JACOBS: Page 5, where it says on the top,
10 "Number of serial numbered reels for which envelopes are
11 missing or do not match.

12 May I proceed from here, your Honor --

13 THE COURT: Yes.

14 MR. JACOBS: -- with your Honor's permission.

15 Mr. McCarthy, do you have it in front of you, the
16 sheet?

17 MR. McCARTHY: I do, thank you.

18 MR. JACOBS: Page 5.

19 Q Let me ask you, drawing your attention to the two
20 reels that the government has offered into evidence, Reel
21 No. 38707, for CM31, and Reel No. 38737, for CM32, I think I
22 showed you them this morning.

23 Do you know where the envelopes are that match
24 those two reels?

25 A No, sir.

1 Q You have no knowledge of where there are
2 envelopes, for example, No. 38696, which we can't find a
3 matching tape, you don't know where those tapes might be, is
4 that correct?

5 A Could you repeat the question, please?

6 Q Sure. We have looked at some of the government
7 exhibits here that the government's offered into evidence,
8 for example, envelope --

9 MR. McCARTHY: Objection to the form of the
10 question.

11 MR. JACOBS: Well, I can --

12 THE COURT: What he's telling you is that there
13 are six envelopes, the numbers of which appear on this
14 chart, for which there are no tapes that correspond in
15 number. Do you know where the corresponding reels are with
16 those numbers on them?

17 THE WITNESS: I don't know, sir.

18 MR. JACOBS: I have nothing further, your Honor.

19 THE COURT: Ms. Amsterdam?

20 MR. JACOBS: With your Honor's permission I will
21 move back.

22 THE COURT: -- representing Mr. Khallafalla.

23 VOIR DIRE EXAMINATION

24 BY MS. AMSTERDAM:

25 Q Good afternoon, sir.

1 A Good afternoon, ma'am.

2 MR. JACOBS: I'm sorry, Judge. I have to take my
3 chair.

4 Q Just to follow up on this area that Mr. Jacobs
5 was just asking you about, sir, there was never an occasion,
6 was there, when an agent gave you an envelope that didn't
7 have a tape in it, was there?

8 A I wouldn't know, ma'am.

9 Q Well, I mean, if you got an envelope that was
10 missing a tape, presumably you would have said, "It's
11 empty." Wouldn't you?

12 A No, I never get empty envelope.

13 Q You never got an empty envelope?

14 A None.

15 Q So when you indicated that you had no knowledge
16 of where the matching tapes were to those envelopes, we can
17 rule out the possibility that you got empty envelopes,
18 correct, you never got empty envelopes?

19 A No, I never did.

20 MS. AMSTERDAM: May I approach the witness.

21 THE COURT: Yes.

22 Q Sir, also, on this chart, which has been received
23 in evidence, there are 11 reels, 11 Nagra reels with the
24 serial numbers listed here for which we can find no matching
25 envelope.

1 A Yes.

2 Q Do you have any information as to what happened
3 to those envelopes?

4 A No, ma'am.

5 Q Sir, I want to draw your attention to the car
6 recording device that you spoke of.

7 First of all, who put the Nagras in the car?
8 Who actually equipped the car?

9 A The FBI, ma'am.

10 Q The agents themselves?

11 A There is special agents for equip the -- making
12 these technical things.

13 Q Do you know who that was?

14 MR. McCARTHY: Objection.

15 THE COURT: Did you see him do it?

16 THE WITNESS: No.

17 Q Did you see them do it?

18 A No, I did not.

19 Q Originally the Nagra equipment was placed beneath
20 your, or underneath your back seat, correct?

21 A Yes, ma'am.

22 Q In order to do that, did the back seat simply
23 lift out?

24 A I didn't see, ma'am.

25 Q You did not see that?

1 A They took my car. After a certain amount of
2 time, they brought it back equipped.

3 Q Did they -- well, withdrawn.

4 Was there ever an occasion that you personally,
5 unrelated to this case, ever had to remove the back seat of
6 your car?

7 A No, ma'am.

8 Q What kind of car were you driving at that time?

9 A It was Pontiac 1989.

10 Q A Pontiac -- I'm sorry?

11 A 1989.

12 Q Two seats in the front?

13 A That's correct, ma'am.

14 Q A bench seat in the back, correct?

15 A Yes, ma'am.

16 Q Do you know whether or not the back seat actually
17 comes out so that you can --

18 A Yes, I know that.

19 Q It does?

20 A Yes.

21 Q When did the agents first place the recording
22 Nagra equipment in your automobile?

23 A When? I don't recall when, ma'am.

24 Q Was it at the beginning, towards the beginning of
25 the investigation?

1 A When I started the second phase of the
2 investigation, and -- I don't recall the dates. Right after
3 the second phase of the investigation.

4 Q When --

5 A After I received the briefcase, after that.

6 Q When you say "the second phase of the
7 investigation," do you mean, in terms of dating that, May 7,
8 the first time of the consensual monitors, or do you mean,
9 when you say "the second phase of the investigation," when
10 you agreed with the agents that you would go back to work
11 with them?

12 A When I agreed to go back to work with them.
13 That's what I meant.

14 Q So at that point -- withdrawn.

15 Yesterday, we received in evidence a minicassette
16 that you had made on your own, correct?

17 A Yes, ma'am.

18 Q Was that before or after you entered the second
19 phase of the investigation?

20 A Which one is that?

21 Q The very first recorded conversation that you
22 indicated that you made with Siddig Ali which you made on
23 your own.

24 A That --

25 MR. McCARTHY: Objection, scope.

1 MS. AMSTERDAM: I am just trying to get a time
2 frame, your Honor. I am not going into this area. I am
3 just trying to limit by reference to other activities.

4 THE COURT: I will allow it. Go ahead.

5 Q When you made that conversation, was that the
6 beginning of the second phase of the investigation?

7 A Yes.

8 Q You know now that was in April 1993, correct,
9 that that conversation was in April 1993?

10 A I won't agree on the date, but they do not
11 register in my mind, numbers, dates just do not register in
12 my mind.

13 Q But you do know that that conversation was made
14 before the first consensually monitored tapes in this case,
15 correct?

16 A That's correct.

17 Q The first consensually monitored tape you know
18 now was May 7, correct?

19 You know that now, correct?

20 A Yeah, by now --

21 Q The government will so stipulate, Mr. Salem.

22 A Yes.

23 Q Salem, I apologize.

24 So the beginning of the second phase of the
25 investigation is before, sometime immediately before May 7,

1 correct?

2 A Will you repeat the question, please?

3 Q The second phase of the investigation was
4 sometime immediately preceding --

5 MR. McCARTHY: Objection to form.

6 Q -- May 7, 1993?

7 THE COURT: I will allow it.

8 Q Sometime preceding May 7, 1993, correct?

9 A Yes, ma'am.

10 Q It was at the beginning of the second phase of
11 the investigation that you were given a briefcase, correct?

12 A Yes, ma'am.

13 Q It was at the beginning of the second phase of
14 the investigation that your car was taken from you and
15 equipped with recording devices, correct?

16 A That's correct, ma'am.

17 Q You indicated, sir -- correct me if I'm wrong --
18 that there came an occasion that you first met my client,
19 Fares Khallafalla, right?

20 A Yes, ma'am.

21 Q On the day that you first met him, you went to
22 the garage in Queens, correct?

23 A Correct, ma'am.

24 Q You stated in answer to Mr. McCarthy's questions
25 this morning that after that meeting you learned that the

1 recording equipment in your car had failed to function,
2 correct?

3 A That's correct, ma'am.

4 Q Was that the first time that that recording
5 equipment had been used in your car?

6 A No, it was not.

7 Q It was not, correct?

8 A Yes.

9 Q In fact, it was a previous occasion earlier that
10 month that that recording equipment had been used, correct?

11 A Can you repeat the question, please?

12 Q There had been at least one prior occasion when
13 the recording equipment in your car had been activated and
14 had worked properly, correct?

15 A That's correct, ma'am.

16 Q Isn't it a fact that there was more than one
17 occasion when it worked properly -- withdrawn.

18 There were occasions when it worked properly when
19 Mr. Ali was the only person in the car, correct?

20 A Correct, ma'am.

21 Q There was an occasion that it worked properly
22 when there was more than simply you and Mr. Ali in the car,
23 correct?

24 A I am not sure of that, ma'am.

25 MS. AMSTERDAM: May I approach the witness, your

1 Honor.

2 Could I have CM14, please. Just this envelope.
3 It is an Anticev exhibit. It is here, I know it is here.

4 MR. McCARTHY: 315.

5 MS. AMSTERDAM: 315.

6 Q Sir, I show you what has been previously marked
7 and received in evidence as Government 315A.

8 MS. AMSTERDAM: Correct?

9 MR. McCARTHY: The envelope is 315A.

10 Q Sir, this envelope, this white envelope contains
11 a Nagra conversation, correct?

12 A Yes, ma'am.

13 Q That Nagra conversation has your initials on it,
14 does it not?

15 A Yes, ma'am.

16 Q Just for purposes of the record, the serial
17 number on that Nagra is 38739, am I reading it correctly?

18 A Correct, ma'am.

19 Q It is in a corresponding envelope with Serial No.
20 38682, correct?

21 A Correct ma'am.

22 Q On this envelope it indicates that this
23 conversation was made, correct me if I'm reading it
24 improperly, it was made on March -- withdrawn -- May 24 to
25 May 25, right, 1993?

1 A That's what is being registered, yes.

2 Q And that it was made from the late evening to
3 approximately 1:30 a.m. in the morning?

4 A Yes, ma'am.

5 Q It was made in New Jersey?

6 A Yes.

7 Q It was taken at the -- the recorder was taken
8 from your car, correct?

9 A That is what it is being written here, ma'am.

10 MR. McCARTHY: This is on the white envelope, not
11 the brown envelope?

12 MS. AMSTERDAM: That's correct.

13 Q It indicates here, does it not, that this
14 conversation or conversations were in the vehicle with
15 Salem, which is you; Siddig, Siddig Ali; Sheik Rahman;
16 Mohammed Adnan --

17 A Yes.

18 Q -- Constantine, et al., which means "and more,"
19 correct?

20 A That's what's being written, yes.

21 Q Sir, would I be correct in saying that there was
22 an occasion when you actually drove to Sheik Omar Rahman's
23 house and gave him a ride to the mosque?

24 A Yes, ma'am.

25 Q That was approximately May 24, corresponding to

1 this tape, correct?

2 A I cannot say correct.

3 Q When you drove Sheik Rahman to the mosque, isn't
4 it a fact that there was another person in the car, somebody
5 by the last name of Khalid, K-H-A-L-I-D?

6 Do you recall that?

7 A I don't recall, ma'am.

8 Q Wasn't there a recorded conversation of you
9 driving Sheik Rahman to the mosque?

10 A It was a conversation when I was driving Sheik
11 Omar Abdel Rahman to the mosque, yes.

12 Q In your car, correct?

13 A I recall, yes, it was in my car.

14 Q Thank you.

15 Isn't it a fact, sir, that there was a subsequent
16 conversation when you picked up Sheik Rahman at the mosque
17 and drove him home the same day?

18 A I don't know if same day, but I remember that I
19 took him from the mosque sometimes to his home, yes.

20 Q That conversation took place in your automobile,
21 did it not?

22 A Yes, ma'am.

23 Q Present in your automobile was yourself, Sheik
24 Rahman, a person by the name of Adnan Constantine, and
25 another person whose last name is Z-A-W-H-R-I, Zawhri?

1 Do you recall that, sir?

2 A Can you spell it again, please?

3 Q Z-A-W-H-R-I.

4 A I got to listen to the tape, ma'am.

5 Q All right. But you do remember driving Sheik
6 Rahman home to his apartment, correct?

7 A Yes, ma'am.

8 Q You do remember that there were other passengers
9 in the car, correct?

10 A I don't remember.

11 Q On the time that you drove Sheik Rahman to the
12 mosque, to the best of your knowledge, the recording
13 equipment worked, is that not true?

14 A Which one, the briefcase or the car?

15 Q The car tape worked.

16 A I don't know if this handwriting on the envelope
17 "car tape" does not mean that it's really car tape. It
18 could be a briefcase tape, and it's written car tape. Then
19 it is not going to be correct.

20 Q Let me ask you this, Mr. Salem: When you got in
21 the car, you had the ability to activate the recording
22 equipment, correct?

23 A Yes, ma'am.

24 Q So presumably when you were in the car you would
25 turn on the recording equipment, correct?

1 A Which one, ma'am?

2 Q The car recording equipment. You were in the
3 car, weren't you?

4 A But it's not necessarily because I am in the car
5 I will turn the car equipment on. Sometimes I am coming
6 from outside the car with the briefcase, recording certain
7 conversation. I get into the car and I continue recording
8 with the briefcase.

9 That doesn't mean that I have to turn --
10 sometimes I turn the car on, yes, sometimes not.

11 (Continued on next page)

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1 Q Weren't you aware, sir, when they took your car
2 to have it equipped with this Nagra equipment, that they had
3 put microphones in the car, correct?

4 A Yes, ma'am.

5 Q So isn't it a fair statement that the quality of
6 the recording of the tapes were better when you were in the
7 car in general, correct?

8 A That is incorrect, ma'am.

9 Q Weren't there times that you asked the people to
10 roll up their windows so that you could get a nice clean
11 recording?

12 A I did try that many times, yes.

13 Q And you relied very heavily on the car recording
14 system, did you not?

15 A Could you say it again, please.

16 Q You relied on the car recording system, did you
17 not?

18 A Lie?

19 Q I will withdraw that. I will withdraw that.
20 You indicated that there were instances in which
21 the recording equipment in the car had functioned correctly,
22 right?

23 A Yes, ma'am.

24 Q And you do recall an instance where there was
25 recording of people in your car, where there was more than

1 one person, correct?

2 A When?

3 Q I have just shown you the tape. On May 24, when
4 you drove the sheik to and from the mosque, there was a
5 recording that involved more than one person, so that
6 somebody had to sit in the back seat, correct?

7 A I cannot say correct until I hear the tape,
8 ma'am.

9 Q Prior to the day that you met my client for the
10 first time, did you ever have any other occasion in which
11 the car recording system had failed to operate properly?

12 A No, ma'am, I don't recall.

13 Q That was the first time, correct, that you
14 recall?

15 A I think it did not fail before.

16 Q And I would be correct in saying that there were
17 other times that you were in your car making recordings when
18 there were other passengers in the car, correct?

19 A Other passengers, yes.

20 Q And there were times that you made a recording,
21 although you are not sure if they were made by your
22 briefcase or by the automobile taping system, but there were
23 other occasions when you made recordings in your car when
24 there were more than two people in the car, correct?

25 A I cannot confirm that until I hear the tape,

1 ma'am.

2 Q When did you first learn that the recording
3 system in the automobile had failed to record the
4 conversation with my client? When did you first learn that?

5 A After I took it off the car, give it to the
6 agents, and later they told me nothing on it.

7 Q You removed it from the car yourself?

8 A I don't recall. I believe that the agents
9 received it because there is a certain procedure to receive
10 the tapes. In a certain point we meet, they come, we
11 removed the tapes. I don't want to say that I removed it by
12 myself or the agent removed it by myself.

13 Q But you had the ability to remove it from the car
14 yourself, correct?

15 A Yes, ma'am.

16 Q You knew where the equipment was?

17 A Yes.

18 Q You knew how to move the seat up?

19 A I did not remove the seat by myself prior to this
20 incident.

21 Q Sir, I asked you, didn't I just ask you, when was
22 the first time that you found out that the equipment had
23 failed to record the conversation with my client, and didn't
24 you say to the jury just now, when I took the tape out of
25 the car?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q Isn't that what you said, sir?

4 MR. McCARTHY: Objection.

5 THE COURT: Whatever he said is in the record.

6 Ask a question.

7 Q To whom did you give that tape?

8 A I don't recall.

9 Q Do you recall an agent by the name of Michael
10 Ernst?

11 A Yes, I recall.

12 Q Do you recall that there was a time that Michael
13 Ernst actually came to you to pick up tapes? Do you recall
14 that?

15 A I recall I met this agent, yes, but I don't
16 recall if I give him tapes or not.

17 Q By the way, did both Nagra recorders fail to work
18 that day, the car Nagra recorders?

19 A I never turned the second Nagra on, because when
20 I turned the first one on, my feelings -- my understanding
21 in that time that it's running. I don't know that Mr. Fares
22 sitting on it, squashing it and it's not taping.

23 Q By the way, who told -- withdrawn. How did you
24 decide, how did you come to the opinion that that's why the
25 machine did not function correctly?

1 A When the agents told me nothing on the tapes, I
2 said why, and they said it's nothing on it, and I start
3 thinking why, and I tried to imagine what happened, I
4 remember that the first Nagra tapes to be turned on with the
5 first button, the right Nagra tape, and I recall that
6 Mr. Fares Khallafalla was sitting on the back right.
7 Mr. Fares is something, very tall and heavy, and that's
8 why I assumed that he squashed the machine and that's when
9 the machine stopped.

10 Q So it was your opinion that it hadn't worked
11 because my client had sat on it, scrunched it, correct?

12 A It was my opinion and agents' as well.

13 Q And you told the agents that, that that was your
14 opinion?

15 A I don't recall the exact conversation.

16 Q Did you tell the agents -- when you found out the
17 tape hadn't worked, did you tell the agents that there had
18 been other people in your car and that the tape had
19 functioned properly? Did you have any discussion to that
20 inequity?

21 MR. McCARTHY: Objection.

22 A Could you please repeat the question.

23 Q You said you had a discussion with the agents and
24 you told them in part in that conversation that you thought
25 it hadn't worked because my client had sat on the machine,

1 correct?

2 A Yes, ma'am.

3 Q Did you ask them why they installed equipment in
4 the car under a seat where one would have to sit?

5 THE COURT: Sustained, sustained. Ms. Amsterdam,
6 this is supposed to be voir dire, isn't it?

7 MS. AMSTERDAM: May I approach the witness? I am
8 sorry.

9 Q Sir, I show you 399 in evidence. Would I be fair
10 in saying that this is on now?

11 A Yes, ma'am.

12 Q I would ask you to lean on it, you know, put
13 pressure on it to see if it stops.

14 And it stops, correct?

15 A Correct.

16 Q When you take your hand off it, what happens?

17 A It works again.

18 Q It works again?

19 A Yes.

20 Q Is there any recording on the Nagra of my client
21 getting into the car?

22 A Can you say the question again, please.

23 Q Yes. You stated that it was your opinion that
24 the Nagra didn't function correctly because my client was
25 sitting on it, correct?

1 A Yes, ma'am.

2 Q Is there any recorded conversation of my client
3 getting into the car before he sat down?

4 A I got to listen to the tape. Ma'am, that was
5 three years ago or two years ago. I don't recall if I
6 flipped the switch when he opened the door or when he sat
7 on. I cannot.

8 Q Is there any recording, any recording of the
9 conversation with my client before you got to the garage in
10 Queens?

11 A Any recording?

12 Q Any recording.

13 A Yes, I flipped the switch and I assumed that the
14 machine is taping.

15 THE COURT: That wasn't her question. Her
16 question was, is there any tape recording?

17 A No sound came on the tape, no recording.

18 THE COURT: That is what she is asking.

19 MS. AMSTERDAM: That's what I am asking.

20 THE COURT: There is no tape recording?

21 THE WITNESS: No, it turned blank.

22 Q And as my client exited the car and presumably
23 got off of the recording, there is no recorded conversation
24 of that either, is there, sir?

25 A I didn't listen to the tape, ma'am.

1 Q Is there any recorded conversation -- and I
2 believe your answer to this is no -- is there any recorded
3 conversation of my client before being in the Queens garage?

4 A No, ma'am.

5 Q So there is no recording of him getting in the
6 car or out of the car, correct?

7 A I cannot say correct until I listen to the tape,
8 ma'am.

9 Q Which tape -- the tape that you are requesting to
10 listen to would be the blank tape, correct?

11 A It could be blank until he gets off the seat. I
12 am not sure. I listened to it until the time,
13 approximately, he get off the seat, if there is a recording
14 or there isn't, and I flipped it off.

15 Q Did you give the agent -- withdrawn. You had a
16 briefcase with you that day also, correct?

17 A I think so. I am not sure.

18 Q The first day that you met my client
19 Mr. Khallafalla, where did you meet him, sir?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 MS. AMSTERDAM: I am just trying to lay a
23 foundation here, your Honor.

24 THE COURT: No.

25 Q On the first day, what recorded conversations

1 were made between you and my client, on the first day you
2 met him?

3 A I attempt to record it, it didn't work.

4 (Continued on next page)

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1 Q What else did you have? Are there any other
2 recorded conversations between you and my client that day?

3 MR. McCARTHY: Objection.

4 THE COURT: Miss Amsterdam, may I see you at the
5 side.

6 (At the side bar)

7 THE COURT: I asked for one lawyer, that is all I
8 am getting.

9 (At the side bar)

10 THE COURT: If you want to establish that they
11 have no tape recording, do it on cross or on summation, do
12 not do it on this voir dire. Number one. Number two, there
13 is one thing that you do consistently and I want it stopped.
14 That is, if I holler sustained because I think something is
15 improper, don't talk over me.

16 MS. AMSTERDAM: I apologize for that.

17 Your Honor, I am really in a quandary here,
18 because I have never had a witness on the stand who has just
19 no sense of what happened on any particular day. Let me
20 back up a moment.

21 THE COURT: Yes.

22 MS. AMSTERDAM: There is no recording of the
23 first meeting. There is a recording at the safe house and
24 there is a recording in the car on the way back. I want to
25 make a point not because I want to go into that, but I want

1 to make a point as to other factors as to why there is not a
2 recording at the beginning, because my point is that when he
3 says that this is a fair and accurate representation of the
4 conversation that he had with my client that day, I want to
5 establish that there is not just one portion that is missing
6 out of inadvertence but that it is clear by the way the
7 facts evolve that there are portions missing because of
8 deliberate misconduct. When you have somebody who won't
9 even acknowledge that on that day he remembers being at the
10 safe house without the government at least saying we
11 acknowledge that he is there -- to set the framework --

12 THE COURT: He hasn't said that he doesn't
13 remember being at the safe house.

14 MR. McCARTHY: The other thing, your Honor, if I
15 may, I don't agree with anything Miss Amsterdam says but
16 assuming it to be true, I don't think it goes to the
17 integrity of any portion of the tape. This is only voir
18 dire.

19 THE COURT: It is only voir dire, and what you
20 are doing is, in essence, cross-examination.

21 MS. AMSTERDAM: In fairness, it is not my
22 intention, honestly. I am trying to back up to get him to
23 focus on what happened in a day, but when you have
24 conversations, well, I don't even know if I was there that
25 day --

1 THE COURT: You are not having conversations I
2 don't know if I was there that day.

3 MS. AMSTERDAM: Then maybe I am not feeling well,
4 and if I hear it that way, I apologize.

5 Can we get some stipulation from the government
6 that this happened on May 28 and that there is a recorded
7 conversation at the safe house?

8 MR. McCARTHY: I really don't like being asked
9 for stipulations in the blind.

10 MS. AMSTERDAM: See, we have agreed on these
11 transcripts.

12 THE COURT: Whatever you need on voir dire to
13 argue for admissibility you have got. Let's move on to
14 something else.

15 (In open court)

16 MS. AMSTERDAM: I just want to say to the court
17 and to the witness, I haven't been feeling great today and I
18 am sorry if there are any problems.

19 THE COURT: Ms. Amsterdam, please. Move on to
20 something else.

21 MS. AMSTERDAM: May I approach the witness, sir?

22 THE COURT: Yes.

23 (Continued on next page)

24

25

1 BY MS. AMSTERDAM:

2 Q Sir, I show you what has been previously marked
3 as Government's Exhibit 318A, 319A, 320A, 316 and 317A.

4 A Yes.

5 Q These are all envelopes where the tapes were
6 returned to Agent earnest, correct?

7 A When you say returned, I did not return these
8 envelopes to the agents. I never took them from the agents.

9 Q The Nagras were returned to Agent Ernst, correct?

10 A That's not the envelopes, no. I return it, the
11 tape itself inside the white envelope, in to the agent or
12 the agent put it inside the envelope, white envelope, and
13 that's it.

14 Q Just so I understand, you wouldn't have returned
15 them in the brown envelope, you would have returned them in
16 the white envelope, correct?

17 A That is correct.

18 Q I ask you to take a look at first 316A. Is there
19 a white envelope with this exhibit, sir?

20 A No, ma'am.

21 Q Do you know what happened to that white envelope?

22 A No, ma'am.

23 Q I ask you to take a look at 317A. Is there a
24 white envelope with that Nagra?

25 A No, ma'am.

1 Q Do you know what happened to that envelope?

2 A No, ma'am.

3 Q I ask you to take a look at 318A. Is there a
4 white envelope with that Nagra?

5 A No, ma'am.

6 Q Do you know what happened to that envelope?

7 A No, ma'am.

8 Q When you wrote notes, sir, if you were to write
9 notes, did you write them on the white envelope?

10 A If I wrote notes, I wrote on the white envelope,
11 yes.

12 Q I ask you to take a look at 319A and ask you to
13 indicate whether or not there is a white envelope there.

14 A No, there isn't.

15 Q On these four Nagras that I have just placed in
16 front of you, I would ask you to read for the record the
17 serial numbers on those.

18 A The first one is 38681.

19 Q That is for 316A, correct? And the last two
20 digits are 81? 681?

21 A Correct, ma'am.

22 Q 681. The next one in order, the digits are?

23 A 38682.

24 Q The next one in order is?

25 A 38683.

1 Q And the next one in order, sir, is?

2 A 38685.

3 Q Do you have any knowledge as to what happened to
4 Nagra serial number 38684?

5 A No, ma'am.

6 Q Can you tell, sir, by the markings on these
7 Nagras which of the Nagras was the Nagra that you deduced
8 was not working when you met with my client?

9 A No, ma'am.

10 Q On the first day you met with my client, sir, how
11 long in total did you stay with him that day?

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 Q To the best of your knowledge, sir, what portion
15 of the conversation that you had with my client Fares
16 Khallafalla that day was recorded?

17 A Was recorded?

18 Q Yes.

19 A In the safe house.

20 Q In the safe house?

21 A Yes, ma'am.

22 Q Was the ride out there recorded?

23 A The ride out, no, ma'am.

24 Q And was your meeting with him originally before
25 you got into the car recorded?

1 A Will you repeat the question, please.

2 Q And was your meeting with him at first, before
3 you got into the car, recorded?

4 MR. McCARTHY: Objection.

5 THE COURT: I will allow it.

6 A No, ma'am.

7 Q How did you get to the safe house? In your car?

8 A Yes.

9 Q Did you pick up my client at some spot?

10 A He came to my car in front of the mosque at First
11 Street and 11th Avenue.

12 Q In Manhattan?

13 A That's correct, ma'am.

14 Q And he came with Mr. Siddig Ali and Mr. Amir
15 Abdelgani?

16 A That's right, ma'am.

17 Q And they came in my client's car?

18 A In your client's car?

19 Q If you know.

20 A No.

21 Q To the mosque.

22 A No, that was my car.

23 Q You drove them to the mosque?

24 A Yes.

25 MR. McCARTHY: Objection.

1 Q Where did you pick them up?

2 THE COURT: Sustained.

3 Q Where did you first meet my client that day?

4 A We went to the mosque, we did the prayer, I left
5 ahead of Mr. Siddig to my car, Mr. Siddig brought Mr. Fares
6 Khallafalla and Mr. Amir Abdelgani, three of them came to my
7 car, they get into the car, I drove to the safe house.

8 Q So you all went together to the mosque?

9 A No, ma'am.

10 Q Where did you first meet my client? At the
11 mosque?

12 A In my car.

13 Q In your car?

14 A Yes, ma'am.

15 Q You didn't meet him in the mosque?

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q Did you speak to him on the street?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q Were any of those conversations recorded, sir?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 MS. AMSTERDAM: I have no further questions.

25 MR. NOOTER: I have a few questions, your Honor.

1 THE COURT: Your colleague in the back.

2 VOIR-DIRE EXAMINATION

3 BY MR. BERNSTEIN:

4 Q Sir, just so we clarify, on this occasion that we
5 have discussed what the tape didn't work or the tapes didn't
6 work, Mr. Amir Abdelgani was present that night also,
7 correct?

8 A Yes, sir.

9 Q Is it fair to say that Mr. Abdelgani was in the
10 same vehicle that you were driving in, going from, as you
11 have described, First Avenue and 11th Street out to the
12 Queens garage?

13 A Yes, sir.

14 Q And was he in the car throughout that whole time
15 period?

16 A Yes, sir.

17 Q Where was he seated during that time period?

18 A As far as I recall, at my back, sir.

19 Q Meaning sitting directly behind you?

20 A As far as I recall, yes, sir.

21 Q And, sir, was there conversation during that
22 period that you were going from Manhattan out to Queens?

23 Was there conversation amongst the four people in that car?

24 A Yes, sir.

25 Q And none of that conversation is recorded, to the

1 best of your knowledge, is that correct?

2 A That is correct, sir.

3 MR. BERNSTEIN: Nothing further.

4 THE COURT: Mr. Nooter, representing Wahid Saleh.

5 Go ahead.

6 VOIR-DIRE EXAMINATION

7 BY MR. NOOTER:

8 Q Good afternoon, Mr. Salem.

9 A Good afternoon, sir.

10 Q You testified that you usually try to make an
11 introductory little speech on the tape, identifying the date
12 and the time, is that correct?

13 A Yes, sir.

14 Q To the best of your knowledge, did you use
15 accurate dates and times?

16 A I did my best.

17 Q Do you know of any occasion where it was wrong?

18 A Yes.

19 Q Do you remember specifically which?

20 A It was sometimes I put on a statement, I wrote a
21 date, my watch was off, and the agents said you wrote that
22 date, that's not the right date, I looked my watch, I said
23 it's off, and then we --

24 Q You are talking about writing on the envelope, is
25 that correct?

1 A Writing on the envelope and dictating the
2 microphone.

3 Q And the dictation.

4 A Yes, sir.

5 Q You have also testified that at times you would
6 stop the recorder and then start it again, is that correct?

7 A Sometimes, yes.

8 Q With the same tape.

9 A Yes.

10 Q On those occasions, if you could, did you often
11 try to again state the date or at least state the time?

12 A It's not necessarily, sir.

13 Q You have listened to the tapes recently, is that
14 correct?

15 A I point-checked it, yes.

16 Q Do you recall hearing sometimes times in which
17 you would specifically say, OK, now it's 1:20 p.m. or now it
18 is 5:40 in the afternoon, things like that just to give a
19 reference, is that correct?

20 A I recall something like 245, yes.

21 Q My question is, do you know whether any of those
22 are wrong? I will rephrase the question. Did you do your
23 best to give the right time when you did that?

24 A Yes, sir.

25 Q To the best of your knowledge, was there any

1 occasion on which you started recording -- let's say on any
2 given day you started recording on one of the machines,
3 stopped, continued recording something else on another
4 machine or on another tape, stopped, and then went back and
5 continued recording some more on the first tape? Do you
6 recall anything like that?

7 A It could have happened. I am not sure if it
8 happened or not, but it could happen that I turned the
9 briefcase on for a conversation, we are out in front of the
10 car, I came to the car, I turned the briefcase off, somehow
11 later on somebody came into the car, I turned the car on, we
12 get off the car to buy something, I don't know how long we
13 going to be out of the car, probably half an hour, probably
14 an hour, so I turn the car off, I put my briefcase on, we go
15 out to the store, we do the purchasing, I gather the
16 conversation, we come back to the car. Things like that
17 happened, yes.

18 Q To the best of your recollection, on the last
19 full day of your investigation, June 23, did something like
20 that happen, where fertilizer was bought, you recorded the
21 purchasing of the fertilizer on a different machine from the
22 car machine?

23 A I think, yes, purchasing the fertilizer was on
24 the briefcase and it was another conversation in the car.

25 Q And on those tapes, if you recall, did you make

1 an effort as you restarted another tape to say what time it
2 was or maybe work it into the conversation, say to whoever
3 you were with what time is it now, something like that?

4 A If we can listen to the tape I will tell you
5 exactly what happened, sir.

6 Q I am not going to play the tape now, but you
7 don't recall if there is anything specifically like that?

8 A No, sir, I don't.

9 Q One final area. Were there times when you
10 recorded, let's say in your briefcase recorder, while you
11 were inside the safe house?

12 A Yes, sir.

13 Q Is that true even though the agents may have also
14 been recording using videotape equipment?

15 A Yes, sir.

16 Q If you recall, did that occur as well on the last
17 night in the hours just before everybody was arrested?

18 A I don't recall it happened the last night or not,
19 but I recall that yes, I did record at sometimes.

20 Q On some occasions?

21 A Yes, sir.

22 MR. NOOTER: No further questions.

23 THE COURT: Miss Stewart.

24 MS. STEWART: Thank you, Judge.

25

1 VOIR-DIRE EXAMINATION

2 BY MS. STEWART:

3 Q Good afternoon, Mr. Salem.

4 A Good afternoon, ma'am.

5 Q As I understand it, your briefcase had a setup
6 that would play three-hour tapes, is that right?

7 A Three hours 10 minutes, some tapes 2 hours 10
8 minutes.

9 Q Could you tell me how you would turn that off on
10 the briefcase when the briefcase was closed?

11 A I have to touch two points to turn it off.

12 Q But the briefcase would remain closed while you
13 did that?

14 A That's correct, ma'am.

15 Q Sometimes you had to change the tape in the
16 briefcase in the midst of an ongoing investigation, is that
17 right?

18 A What do you mean change it in the midst of an
19 investigation? In the midst of the tape?

20 Q No, in the midst of the investigation, while you
21 were in the field, sometimes your tape ran out and you would
22 have to go out someplace to change the tape, is that right?

23 A It happened, yes.

24 Q And you would always have to find a place where
25 you couldn't be observed doing that, is that right?

1 A I could not be observed.

2 Q Right.

3 A Yes, ma'am.

4 Q You had two tape recorders in the car, is that
5 right?

6 A Right, ma'am.

7 Q And each one of those would play for 3 hours and
8 10 minutes, I think you said, is that right?

9 A Yes, ma'am.

10 Q How did you actually start those operating? What
11 did you physically do to start them up in the car?

12 A I am sorry. I don't understand the question.

13 Q You just testified that you could start this tape
14 recorder in the car and stop this tape recorder. How did
15 you actually do that?

16 A I just stretch my left arm and flip the switch.

17 Q And that switch was under the dashboard, I think
18 you are indicating?

19 A In that area, yes.

20 Q In that area?

21 A Yes.

22 Q To stop it, you would flip the switch the other
23 way, is that right?

24 A Yes, ma'am.

25 Q The microphones in the car, where were they?

1 A I have no idea.

2 Q You have no idea.

3 MS. STEWART: If I could have Exhibit 311, the
4 envelopes.

5 May I approach the witness, Judge?

6 THE COURT: Yes, you may.

7 Q Mr. Salem, I am showing you what is marked 311A
8 and the white envelope which is marked 311 -- not marked,
9 but T?

10 MR. McCARTHY: A1.

11 Q These refer to CM 10, you may know it as. I am
12 asking you, it is your handwriting on the white envelope, is
13 that correct?

14 A Yes, ma'am.

15 Q And on the brown envelope, that is not your
16 handwriting, is that correct?

17 A Yes, ma'am.

18 THE COURT: Miss Stewart, try to use the
19 microphone.

20 MS. STEWART: I am sorry. We will have to share.
21 Good.

22 A On the white envelope part of the writing is my
23 handwriting but there is another part, it's not my
24 handwriting.

25 Q Would it be fair to say that the handwriting from

1 the place on the envelope where it says case down to where
2 it says subject is your handwriting?

3 A Yes, ma'am.

4 Q Was this written at or about the time that you
5 turned the tape over to the FBI?

6 A I don't recall.

7 Q On the yellow envelope, is any of this your
8 handwriting?

9 A No, ma'am, except my initials.

10 Q ES up at the top.

11 MS. STEWART: I would move both of those into
12 evidence.

13 MR. McCARTHY: No objection, your Honor. I think
14 311A is in, your Honor. 311A1?

15 MR. McCARTHY: Yes.

16 THE COURT: Anything else?

17 MR. McCARTHY: I would like the tape in.

18 THE COURT: No, that is stricken.

19 311A-1 comes in, 311A is already in.

20 (Government's Exhibit 311A-1 was received in
21 evidence)

22 THE COURT: Go ahead.

23 Q Mr. Salem, you will notice that on 311A there are
24 names, participants, allegedly, in this conversation. Is
25 that your handwriting?

1 A No, ma'am.

2 Q Did the FBI ask you to identify the people on
3 this tape, if you remember?

4 A They ask me who is on this tape, I said yes.

5 Q So this would have been your recollection of who
6 was on this tape: Emad Salem, yourself, is that correct?

7 A Yes, ma'am.

8 Q Siddig Ali?

9 A Yes.

10 Q Ahmed Sattar?

11 A Yes.

12 Q Nasser Homosamy.

13 A Homosamy.

14 Q Homosamy?

15 A Yes.

16 Q And then one, two, three, four, five, six people
17 who are unknown to you, is that right?

18 A Yes, ma'am.

19 Q Thank you.

20 A You are welcome.

21 Q Is it fair to say, Mr. Salem, that after you
22 turned the tapes in to the FBI, you no longer ever had
23 custody of that tape, sole custody again, is that right?

24 A Right, ma'am.

25 Q With regard to this particular tape, CM 10,

1 Exhibit 311, did you have occasion to go to FBI headquarters
2 and listen to this tape?

3 A Yes, ma'am.

4 Q How long after you turned it in did you do that?
5 Was it a couple of days? Was it a week? Do you have any
6 recollection?

7 A Right after I recorded, we went straight to the
8 office and we listened to it.

9 Q You recorded this, did you not, at about 2:00 in
10 the morning, is that right? Do you mean after you recorded
11 it or after you turned it in to Mr. Anticev?

12 A Could you please repeat the question.

13 Q OK. You testified a moment ago that as soon as
14 you recorded it, you went to the FBI and listened to it, is
15 that right?

16 A Not immediate -- I don't recall exactly how fast,
17 an hour, two hours, three hours. I don't recall exactly.

18 Q Was it at the same time that you handed it to
19 Special Agent Anticev?

20 A I don't get the question.

21 Q Did you hand it to the agent, John Anticev, and
22 go to FBI headquarters and listen to it? Was it all at one
23 time?

24 A I think we met -- I don't recall where we met.
25 All what I recall in my recollection now, that we met at

1 the -- I recall in the inside the Bureau we are listening to
2 it, and this tape, and that was at the beginning of the day.

3 Q There were times when you had two tape recorders
4 going at the same time, isn't that right?

5 A Yes, ma'am.

6 Q That would be one in the car and one in the
7 briefcase at the same time, is that right?

8 A It's not only that.

9 Q Let's start with that. Is that true?

10 A Sometimes, yes.

11 Q And even after May 7, in the course of the
12 investigation, you sometimes were unofficially wearing a
13 body wire as well as carrying the briefcase and having the
14 tapes in the car, is that right?

15 A Yes, ma'am.

16 Q And sometimes you had the briefcase on at the
17 same time you had the body wire on, is that right?

18 A I don't recall, but it could happen.

19 Q Do you remember an incident where you were taping
20 sheik, yourself, Mr. Haggag and Siddig Ali?

21 A The location where, ma'am?

22 Q In the sheik's apartment.

23 A Yes.

24 Q And do you remember both a body wire on and
25 carrying your briefcase at that point?

1 A Yes.

2 Q Directing your attention to May 23, 1993, at
3 about 1:00 in the morning, is that the time when CM 10 which
4 I just showed you, Exhibit 311, was made?

5 A I don't recall when I taped it.

6 Q If I showed you the envelope, would that help to
7 refresh your recollection?

8 A No, ma'am.

9 Q You remember it was at 1:00 in the morning that
10 you made this tape?

11 A I don't remember that.

12 Q But you remember that you listened to it with
13 John Anticev the first thing the next morning, is that
14 right?

15 A That's right, ma'am.

16 Q When you arrived at Fairview Avenue, when you
17 were making CM 10, Exhibit 311, you first tested, you said
18 testing, testing on this tape, is that right?

19 A I don't recall, ma'am.

20 Q If in fact you said that, what exactly were you
21 testing for?

22 A If I would listen to the tape, probably I would
23 recall.

24 Q Well, you testified that on numerous occasions
25 you turned the machine off and on to test whether or not it

1 was working, is that right?

2 A Yes, ma'am.

3 Q Had there been occasions when the machine didn't
4 work for you?

5 A Which machine, ma'am?

6 Q The Nagra in your briefcase.

7 A Yes, ma'am.

8 Q When would that have been, if you can recall?

9 A I recall an occasion I was in a meeting with
10 Mr. Ahmed Abdel Sattar, and I turned the machine on and at
11 the end of the meeting, nothing was on the tape.

12 Q Did that happen on any other occasion?

13 A I don't recall, ma'am.

14 Q Could that have been approximately on Mother's
15 Day 1993?

16 A I have no idea.

17 Q Do you remember if on the next tape you said I am
18 leaving, Ahmed Sattar, I am loading a new tape?

19 A I don't recall, ma'am.

20 Q In any event, when you got to the sheik's
21 apartment on that occasion, there were numerous people at
22 the apartment?

23 A Yes, ma'am.

24 Q Were you carrying the tape recorder in the
25 briefcase?

1 A Could you repeat the question, please.

2 Q Were you at that point carrying the tape recorder
3 in the briefcase?

4 A Yes, ma'am.

5 Q Were you also wearing a body wire that night?

6 A I don't recall, ma'am.

7 Q Is there any way that you could refresh your
8 recollection as to that?

9 A I wear the body recorder so many times, and I did
10 not wear the body recorder so many times as well. It was a
11 long time.

12 Q After you exchanged greetings with the people at
13 the sheik's apartment, you went into the kitchen with the
14 sheik, is that right?

15 A Yes, ma'am.

16 Q And you went alone, is that right?

17 A At the beginning, yes, ma'am.

18 Q And you carried your briefcase into the kitchen?

19 A Yes, ma'am.

20 Q That is your testimony?

21 A Yes, ma'am.

22 Q Where did you put the briefcase when you got to
23 the kitchen?

24 A I am sorry, in my right hand.

25 Q And when you got to the kitchen you left it in

1 your right hand?

2 A Still in my right hand.

3 Q Wasn't there a period when you were crying and
4 weeping in the kitchen?

5 A Yes, ma'am.

6 Q And you held on to the recorder during that, is
7 that right?

8 A Could you say the question again, please.

9 Q And you held on to the briefcase with the
10 recorder during that?

11 A Yes, ma'am.

12 Q Then there came a period when you were whispering
13 into the sheik's ear, is that correct?

14 A Yes, ma'am.

15 Q And you held on to the recorder during that
16 time?, Is that right?

17 A Yes, ma'am.

18 Q You are saying that it is that recorder that
19 recorded that conversation, is that correct?

20 A The briefcase, yes, ma'am.

21 MS. STEWART: I have nothing further, Judge.

22 (Continued on next page)

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1 THE COURT: May I see you at the side briefly.

2 (Discussion at the side bar off the record)

3 THE COURT: Ladies and gentlemen, we are going to
4 break for the day. Please leave your notes and other
5 materials behind. Please don't discuss the case and do not
6 see or hear anything about the case. I will see you
7 tomorrow morning.

8 (The jury was excused)

9 (Jury not present)

10 THE COURT: Other than Mr. Wasserman, is there
11 anybody else who has not examined who is going to?

12 MR. LAVINE: I may potentially have just one or
13 two questions, but I am not even so sure about that.

14 THE COURT: All right. Is there anything we can
15 do with regard to this now so we won't have to do something
16 tomorrow?

17 MS. LONDON: I'm sorry, your Honor?

18 THE COURT: Is there anything productive that we
19 can do now with regard to the issue or issues that we were
20 talking about before so that we won't have to do something
21 tomorrow?

22 Mr. Jacobs, you are uncharacteristically quiet.

23 MR. JACOBS: The government has the burden of
24 proof by clear and convincing evidence, and I will wait to
25 see what they are going to do.

1 THE COURT: This is voir dire, so at some point
2 the voir dire is going to be over and the offer is going to
3 be renewed.

4 MR. JACOBS: I understand. They can decide what
5 they want to do. When they make their decision, I just want
6 a couple of minutes for argument, that is all.

7 THE COURT: Barring a withdrawal of the offer, we
8 will do it tomorrow morning. Good night.

9 MR. FITZGERALD: Good night.

10 (Proceedings adjourned to March 15, 1995)

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IPT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

March 15, 1995
9:30 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

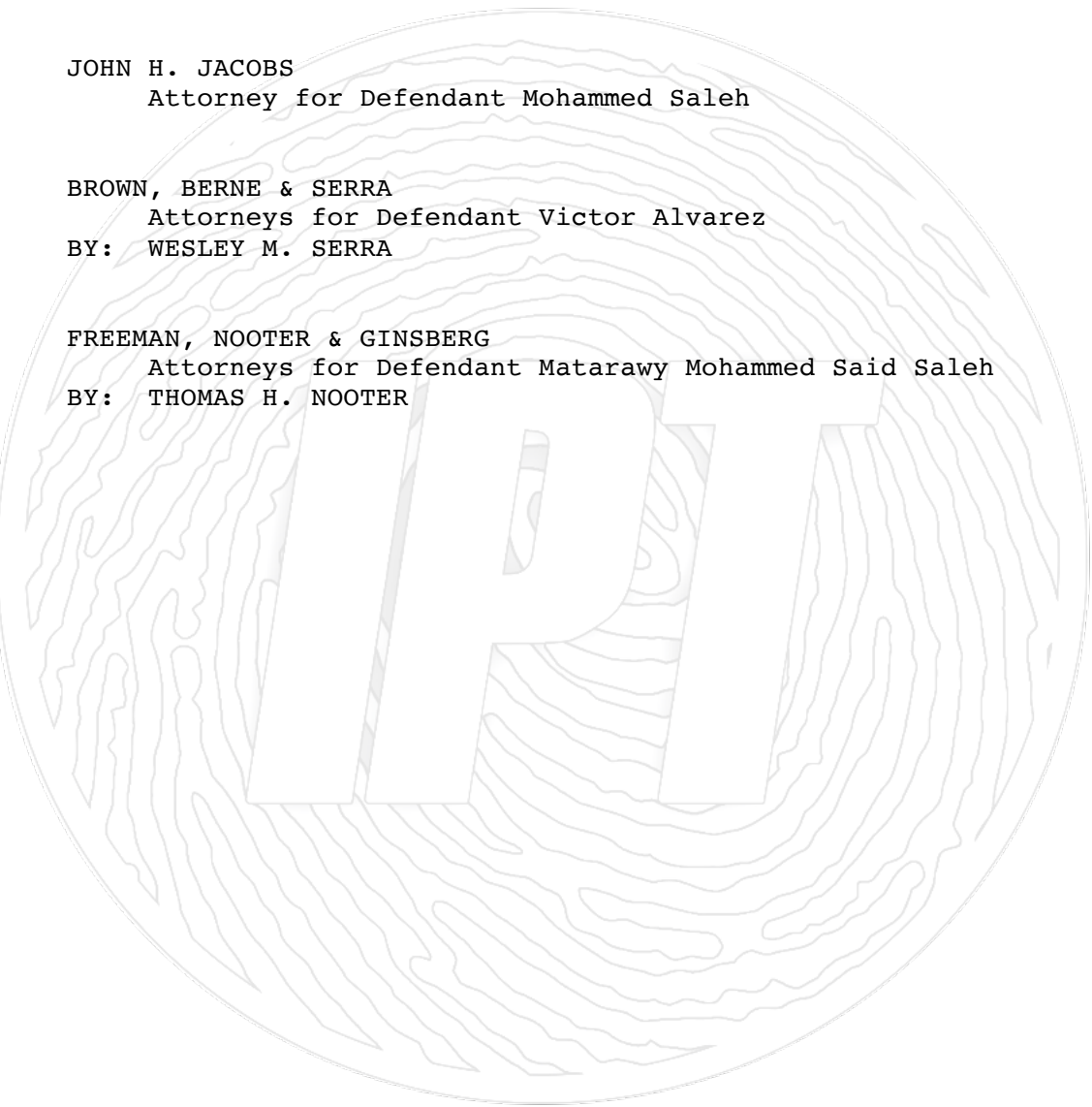
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Some of you may be aware that Ms.
4 Amsterdam is really ill, and since we are going to be
5 getting to the safe house -- as I understand it, the
6 government is planning to put in evidence relating to the
7 safe house portion of the case?

8 MR. McCARTHY: Yes, your Honor.

9 THE COURT: Even by my callous standards I think
10 it would be unconscionable to either require her to stay her
11 when she is not functioning well or to ask somebody else to
12 provide fill-in representation. It is just not that kind of
13 representation. So what I want to do is have Mr. Wasserman
14 do his voir dire, which is, I gather, the last voir dire
15 with regard to the tapes -- is that right?

16 MR. WASSERMAN: Yes, your Honor.

17 THE COURT: We will do that, send the jurors
18 home, deal with whatever issues we have to deal with and
19 break for the day, and I assume other people can find
20 something productive to do.

21 Mr. Jacobs.

22 MR. JACOBS: Your Honor, I don't know what the
23 government's plans were, but if the government is not going
24 to conduct any redirect on the voir dire, perhaps we can do
25 the legal arguments and conclude the tape offer --

1 THE COURT: That was my idea.

2 MR. JACOBS: Because I would like to finish Mr.
3 Ginsberg this morning. If they are going to do more voir
4 dire -- I don't know what your Honor's thoughts are.

5 THE COURT: Let me find out what their plans are.

6 MR. McCARTHY: Your Honor, I don't plan any
7 redirect at this point.

8 MR. LAVINE: Judge, I am going to have one or two
9 questions on voir dire.

10 THE COURT: That is fine. When I said
11 Mr. Wasserman, I wasn't excluding any other brief
12 questioning. But that is all we are going to do this
13 morning.

14 MR. McCARTHY: Your Honor, before we bring the
15 jury in, could your Honor just address Mr. Khallafalla on
16 this point and ask him if it is all right if we proceed in
17 this fashion -- I apologize. I didn't realize Ms. Amsterdam
18 was here.

19 THE COURT: She is here.

20 MR. McCARTHY: I apologize.

21 EMAD SALEM, resumed.

22 (Jury present)

23 THE COURT: Good morning, ladies and gentlemen.

24 JURORS: Good morning.

25 THE COURT: Mr. Salem, you are still under oath.

1 THE WITNESS: Yes, sir.

2 THE COURT: Mr. Wasserman.

3 I think perhaps before Mr. Wasserman examines I
4 should explain something to the jury that perhaps I should
5 have explained before. It sometimes happens before an
6 exhibit is introduced, when we are in the middle of direct
7 examination by the government that defense counsel get up
8 and examine about the exhibit. That is not really
9 cross-examination. It is simply an examination so as to
10 enable me to determine whether the exhibit can be received
11 in evidence, and it is called voir dire. That is why we do
12 that, and that is the nature of that examination.

13 Go ahead.

14 MR. WASSERMAN: Thank you, your Honor.

15 VOIR-DIRE EXAMINATION

16 BY MR. WASSERMAN:

17 Q. Mr. Salem, you were asked by Mr. McCarthy whether
18 you had reviewed the, I believe it is 58 Nagras that are
19 being proposed for submission as exhibits in this case, and
20 you answered that you had, is that correct?

21 A. Repeat the question, please.

22 Q. Yes. Did you review the Nagras that the
23 prosecution wants to introduce through you in the recent
24 weeks preceding your testimony?

25 A. Yes.

1 Q. Mr. Nooter asked you yesterday if you had
2 reviewed them and you said that you had point checked them,
3 correct?

4 A. Yes.

5 Q. What does point check mean?

6 A. Listen to the first few minutes, fast forward
7 next, fast forward next, until the end of the tape.

8 Q. Can you give some idea of the gap between listen
9 and fast forward, listen and fast forward? What are we
10 talking about in terms of time?

11 A. No, sir, I can't.

12 Q. How much time did you spend reviewing the tapes
13 in total?

14 A. Over the weekend.

15 Q. Over a weekend?

16 A. Prior to the weekend also, the last week.

17 Q. That about a week?

18 A. I can't tell you how much exactly. I can't
19 recall time how much.

20 Q. This is relatively recent. Approximately how
21 many hours did you spend over that week reviewing the tapes?

22 A. I didn't pay attention to time, sir.

23 Q. Would it be fair to say that in the 58 Nagras,
24 that each Nagra runs between two hours and 10 minutes and
25 three hours and 10 minutes, generally?

1 A. Yes, sir.

2 Q. So that if you take 58 Nagras you are talking
3 about approximately, ballpark, 150 hours of tape.

4 A. Yes, sir.

5 Q. Of that 150 hours of tape, how many hours did you
6 listen to?

7 A. I didn't figure out the time, sir.

8 Q. Then how can you be sure that a tape is a fair
9 and accurate representation of the conversation if you
10 didn't listen to the entire tape?

11 A. Because I heard copies of these tapes before.

12 Q. And you recalled the conversations before you
13 listened to the tapes last week or the week before, is that
14 correct?

15 A. Can you repeat your question, please, sir.

16 Q. Yes. In other words, what you are saying is that
17 you had listened to the tapes before you reviewed them last
18 week?

19 A. Yes, sir.

20 Q. So when you listened to the tapes, you recalled
21 the conversations, and you were able to validate the tapes
22 because you recalled the conversations, is that correct?

23 A. Yes, sir.

24 Q. So it is really that the -- let me withdraw that.
25 You have a conversation with Hampton-El, Dr. Rashid, on May

1 30 of 1993, correct?

2 THE COURT: Mr. Wasserman, if you want to move to
3 the side that is fine. Just move the microphone with you.

4 MR. WASSERMAN: Thank you, your Honor.

5 Q. Did you have a conversation with Hampton-El,
6 Dr. Rashid, on May 30, 1993, CM 35, to refresh your
7 recollection?

8 A. I remember that I talked to him but I don't
9 remember when, sir.

10 Q. Would it be fair to say that this conversation
11 that you had was in person, that you saw him?

12 A. Yes, sir.

13 Q. Would it be fair to say that this was the first
14 time that you had seen him for about a year?

15 A. I don't know how much time I did not see him but
16 it was a long time prior to that.

17 Q. You testified the other day that you had seen him
18 at the Abu Bakr Mosque in June of '92.

19 A. Yes, sir.

20 Q. If I were to suggest that at the time that you
21 meet him next is May 30, 1993, that would be about right in
22 terms of time, correct?

23 A. Correct, sir.

24 Q. Prior to meeting Dr. Rashid on May 30 of 1993,
25 did you discuss recording strategy with Detective Napoli?

1 MR. McCARTHY: Objection.

2 THE COURT: If he understands the question, he
3 can answer it. Go ahead.

4 A. I don't understand what you mean discuss the
5 strategy of taping, sir.

6 Q. Did you discuss how you would record the
7 conversation with Detective Napoli prior to your meeting
8 with Dr. Rashid on May 30?

9 THE COURT: You mean that particular
10 conversation?

11 MR. WASSERMAN: Yes, your Honor.

12 A. Detective Louie Napoli told me don't take
13 recording devices with you because they are very
14 surveillance conscious, and they probably will frisk you
15 when you are getting into the safe house.

16 Q. The safe house, you are talking about what place?

17 A. The place at Rogers Avenue.

18 Q. You had the conversation with Detective Napoli
19 and he told you not to take any recording devices?

20 A. Yes, sir.

21 Q. And you disobeyed his instructions and took a
22 Nagra with you?

23 A. Yes, sir.

24 Q. And he did not know that you were taking the
25 Nagra with you?

1 A. He didn't know that I am taking it with me, no,
2 he did not.

3 Q. Did you tell him that you were frightened to take
4 a recording device with you?

5 A. I did not say that.

6 Q. It was he that initiated the instruction that you
7 should not take a recording device, correct?

8 A. Could you repeat it, please, sir.

9 Q. I will withdraw it.

10 He told you not to take the recording device
11 because they were surveillance conscious, correct?

12 A. Yes, sir.

13 Q. You took the Nagra with you, correct?

14 A. Yes, sir.

15 Q. In your briefcase, correct?

16 A. Yes, sir.

17 Q. Did you not take also a microcassette recorder as
18 well?

19 A. Yes, sir.

20 Q. That microcassette recorder you used to record
21 the conversation, or at least a portion of it, with
22 Dr. Rashid that day, correct?

23 A. Yes, sir.

24 Q. So in fact you took two recording devices with
25 you that day.

1 A. Yes, sir.

2 Q. Did you ever tell the FBI that you had recorded
3 that conversation on two different recording devices?

4 A. I don't recall telling them two recorder, but I
5 gave them the Nagra only.

6 Q. You gave them the Nagra only. Did you tell them
7 that you also had a microcassette recording of that
8 conversation?

9 A. I do not recall telling them that, sir.

10 Q. Did you not testify that you never told the FBI
11 about any microcassette recordings between May 7 and June
12 23, 1993 until after --

13 MR. McCARTHY: Objection, scope.

14 THE COURT: Sustained.

15 Q. When you recorded this conversation --
16 incidentally, was there any connection between the devices?
17 Was the Nagra and the microcassette connected in any way?

18 A. No, sir.

19 Q. The Nagra was in the briefcase?

20 A. Yes, sir.

21 Q. And the microcassette is on your person?

22 A. Yes, sir.

23 Q. Where on your person?

24 A. I don't recall exactly where, but I was hiding it
25 very well to -- well, it was down here, sir.

1 Q. Down here meaning referring to your underpants?

2 A. Yes, sir.

3 Q. In the groin area?

4 A. Yes, sir.

5 MR. McCARTHY: Your Honor --

6 THE COURT: Sustained.

7 MR. McCARTHY: May we approach briefly in the
8 interests of saving some time?

9 (At the side bar)

10 MR. McCARTHY: Judge, I don't want to be in a
11 position of making a bunch of technical legal objections on
12 the voir dire related to the microcassette and turn around
13 and offer the microcassette, which I intend to do at a later
14 point, and only have the same subject come up again. My
15 suggestion is putting counsel on notice that we will offer
16 it, so I won't make any more objections to the microcassette
17 but I would like if we could consider this voir dire of the
18 microcassette also, at least as far as the conversation with
19 Mr. Hampton-El is concerned. That way I won't make any more
20 objections.

21 THE COURT: You understand that?

22 MR. WASSERMAN: Judge, yes.

23 THE COURT: Good.

24 (In open court)

25 BY MR. WASSERMAN:

1 Q. The microcassette was a device that you had used
2 previously, correct?

3 A. Yes, sir.

4 Q. Could you tell us what kind of microcassette it
5 was?

6 A. I don't recall the brand exactly, sir.

7 Q. The tape that you produced that day of that
8 conversation with Dr. Rashid, the microcassette tape, did
9 you put that in the box that you have previously described
10 to the jury for your other microcassettes?

11 A. I am not sure, but could be.

12 Q. Could be. Did you listen to it?

13 A. I don't recall, sir.

14 Q. Did you listen to the Nagra?

15 A. No, sir -- I mean -- excuse me. When, sir? When
16 did I listen to the Nagra?

17 Q. When did you listen?

18 A. I listened to the Nagra after that, after they
19 took it for evidence and we came to the point of
20 transcribing tapes.

21 Q. When was that, sir?

22 A. I don't recall, sir.

23 Q. That would be a month after June 23, June 23
24 being the date of the arrests, June 24 being the date of the
25 arrests?

1 A. Could be a couple months, could be more.

2 Q. Did there come a time after you gave the Nagra of
3 this conversation to Detective Napoli that the agents
4 listened to it?

5 A. I don't know, sir.

6 Q. Did they ever come back to you and say that the
7 recording quality of this tape --

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. When you made this recording, was there not a
11 great deal of background noise coming from the street?

12 A. From the street?

13 Q. Yes.

14 A. Part of it from the street, part of it from the
15 safe house itself.

16 Q. Part from the safe house. Would you describe
17 what part came from the safe house.

18 A. We were sitting at the beginning of the room.
19 right after we came from the stairs we get in, we sit right
20 at this corner, and it's a tall room, completely empty. At
21 the end of it there is a big radio and some boxes and tapes.

22 Q. And you say the radio was playing?

23 A. As far as I recall, yes.

24 Q. Did you put your briefcase in a position where
25 you could record the conversation in the best manner

1 possible?

2 A. It wasn't that close because I was very concerned
3 to bring it that close to us.

4 Q. So where did you keep your briefcase?

5 A. At the entrance of the room, sir.

6 Q. Did you sit next to Dr. Rashid?

7 A. Yes, sir.

8 Q. So the microcassette recorder was closer to him,
9 correct?

10 A. Was closer, yes.

11 Q. And therefore its reception ability would have
12 been greater, correct?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q. Have you now listened to that microcassette,
16 which is Government's Exhibit for identification 639? Have
17 you listened to that?

18 A. Yes, sir.

19 Q. Have you compared that audibility with what has
20 been marked for identification as Government's Exhibit 325,
21 which is the Nagra recording of that conversation? Have you
22 listened to both?

23 A. I did not compare both of them but I did listen
24 to both.

25 Q. You testified that you listened to the Nagras in

1 recent weeks, correct?

2 A. Yes, sir.

3 Q. And Mr. McCarthy asked you the other day if you
4 had listened to the microtape.

5 A. Yes, sir.

6 Q. And you said you had?

7 A. Yes, sir.

8 Q. Based on your recent review, is there not a
9 difference between the microtape and the Nagra, in terms of
10 audibility?

11 A. You have to struggle to listen to get the words
12 out of it. Some of it is clear, you can listen to it, and
13 some of it some noise there.

14 Q. The struggle you are talking about is the Nagra?

15 A. With the microtape and sometimes with the Nagra.

16 Q. And in your judgment the Nagra is better or worse
17 than the microtape in terms of recording the conversation?

18 MR. McCARTHY: Objection to relevance.

19 THE COURT: Sustained.

20 MR. WASSERMAN: Your Honor, if I am to voir dire
21 on both --

22 THE COURT: Mr. Wasserman, the objection has been
23 sustained, for reasons having nothing to do with voir dire
24 on both.

25 Q. Could you tell us what the reason was that you

1 had two recording devices with you?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q. Did you at any other time during this period of
5 May 7 to June 23 use the double taping technique of
6 microcassette in the pants and Nagra in your briefcase?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 MR. WASSERMAN: Your Honor, could we have a side
10 bar?

11 THE COURT: No, we can't. We are determining the
12 admissibility of an exhibit, or two exhibits. That's all.

13 Q. It is your testimony that you never told the FBI
14 that you had this particular microcassette, correct?

15 A. I don't recall telling them, sir.

16 Q. Did you tell them that you had made any other
17 microcassettes between May 7 and June 23, 1993?

18 A. I don't recall saying it, sir.

19 MR. WASSERMAN: May I approach the witness, your
20 Honor?

21 THE COURT: Yes.

22 Q. I am showing you what has been marked Hampton-El
23 Exhibit A for identification.

24 MR. McCARTHY: Can I see it?

25 MR. WASSERMAN: It has been previously marked

1 Hampton-El Exhibit A for identification.

2 MR. McCARTHY: Can I see it?

3 MR. WASSERMAN: Yes.

4 Q. Would you take a look at this page, and
5 particularly the bracketed area. Read it to yourself.

6 MR. McCARTHY: Your Honor, I object to this
7 procedure.

8 THE COURT: Overruled.

9 A. Yes, sir.

10 Q. Does that refresh your recollection?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained as to that. There is no
13 showing of failure of recollection of anything.

14 MR. WASSERMAN: Your Honor, I had asked the
15 witness if he recalled telling the FBI that he had recorded
16 on microcassette during the period May 7 to June 23, and I
17 am refreshing his recollection through Exhibit A.

18 THE COURT: Fine, you have done it. Now move on
19 to something else.

20 MR. WASSERMAN: Judge, if I may just wrap that
21 up.

22 Q. It is your testimony that that does not refresh
23 your recollection?

24 A. To be quite honest, I didn't read it very well
25 because I am very slow in reading, and I don't recall what's

1 been said.

2 THE COURT: May I see counsel.

3 MR. WASSERMAN: Actually, if I may let him spend
4 more time with it, if I may just give it to him.

5 MR. McCARTHY: Could I have it then.

6 (At the side bar)

7 THE COURT: What is the difference in determining
8 the admissibility of an exhibit whether they told the FBI
9 about it or not?

10 MR. WASSERMAN: Credibility, your Honor.

11 THE COURT: Bullshit. You are going to determine
12 the admissibility of this exhibit and get on with it or
13 else. General credibility as to what he told the FBI and
14 didn't tell the FBI are not going to decide this. Get on
15 with it.

16 MR. WASSERMAN: I will wrap it up.

17 THE COURT: If that's all you are doing -- you
18 seem to get the idea that because we are going to break
19 early today you are entitled to use as much time as you
20 want.

21 MR. WASSERMAN: Not at all. I made a commitment
22 to be short, I will be short. There is credibility. He
23 testified he hopped, skipped and jumped through those tapes.
24 His representation that he has actually done that and being
25 make a representation that he has heard 58 Nagras --

1 THE COURT: Mr. Wasserman, he also testified that
2 he listened to the copies in aid of making transcripts.

3 MR. WASSERMAN: Yes.

4 THE COURT: We are talking about hopping,
5 skipping and jumping through the originals.

6 MR. WASSERMAN: I will wrap it up.

7 THE COURT: Let's get on with this.

8 (In open court)

9 BY MR. WASSERMAN:

10 Q. Mr. Salem, did you not tell one of the agents --
11 I believe it was Detective Napoli -- about a conversation on
12 June 8 and say "I got it on my pants"?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 MR. WASSERMAN: No further questions.

16 THE COURT: Mr. Lavine.

17 MR. LAVINE: Thank you, Judge.

18 (Continued on next page)

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1 VOIR-DIRE EXAMINATION

2 BY MR. LAVINE:

3 Q. Good morning, Mr. Salem.

4 A. Good morning, sir.

5 Q. Mr. Salem, I just want to direct your attention
6 to the evening of June 23 and the early morning hours of
7 June 24, with respect to the events at the garage in Queens.
8 That was the night before and the morning of the arrests, is
9 that correct?

10 A. Yes.

11 Q. Which recording devices did you have at that
12 time?

13 A. The safe house was being --

14 Q. I am sorry, I don't mean to interrupt you. Which
15 recording devices did you have yourself, not including the
16 cameras and whatever had been set up at the safe house by
17 the FBI?

18 A. I recall I had pants, I had briefcase, I am not
19 sure if I have another body recorder or not, in the safe
20 house.

21 Q. I am sorry. Did you say you had the pants?

22 A. Yes.

23 Q. What does that mean?

24 MR. McCARTHY: Objection.

25 THE COURT: Overruled.

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A. It's a device given to me by the FBI.

(Continued on next page)



1 MR. LAVINE: I have nothing further. Thank you.

2 THE COURT: Anything else?

3 MR. McCARTHY: No, thank you, your Honor.

4 THE COURT: Ladies and gentlemen, I've got some
5 issues to deal with with the lawyers, some of which I
6 anticipated and some of which I did not. It would take a
7 vast amount of your time for you to wait till we get done
8 resolving it. So from your standpoint we are going to break
9 for the day. Please understand that in doing this it is not
10 going to be costing you on the other end of the case. We
11 have in fact been saving time, although it may not have been
12 apparent to you straight along, and we are very much on
13 schedule. So please don't draw any conclusions about what
14 this is doing to the schedule. We are going to break for
15 the day. Please leave your notebooks and other materials
16 behind. Please don't discuss the case. We will reconvene
17 tomorrow morning. Have a nice day.

18 (Jury excused)

19 THE COURT: Mr. Jacobs, are you going to have
20 principal responsibility for this?

21 MR. JACOBS: Yes.

22 Your Honor, with respect to the CM's that the
23 government has offered, there is no question that these are
24 the original recordings, there is no allegation that these
25 are copies -- they are the original recordings. So I think

1 we can start with that basis. I think the legal standards
2 we have discussed over the last few days and I have cited
3 the appropriate cases. It is my position that the
4 government needs to produce clear and convincing evidence of
5 authenticity and accuracy as a foundation. Obviously it is
6 a decision for your Honor to make.

7 As to authenticity, I guess that means, is it an
8 original recording of what it purports to be, and the
9 question is what does it purport to be. I think if we take
10 a look at CM 32, which I questioned the witness about, the
11 following observations come into play. It is certainly a
12 portion of the recording that takes place on June 4, and it
13 is an original.

14 THE COURT: You say portion of a recording or
15 portion of a conversation?

16 MR. JACOBS: Portion of a conversation, to start
17 with. There is no question that it is the original. But
18 what is it? It is certainly not the entire conversation.
19 What is clear on the record are two things: Something
20 happened to the beginning of the conversation and something
21 happened to the end of the conversation. I think it is
22 clear from the record of his testimony, and I think for
23 argument's sake if your Honor had 32 in front of your
24 Honor --

25 THE COURT: I don't.

1 MR. McCARTHY: I will get it.

2 THE COURT: Go ahead.

3 MR. JACOBS: And I think for purposes of this
4 legal argument, even though the transcript isn't in evidence
5 yet, I think we can just take a look at the first couple of
6 lines. It is clear that they are in the middle of some
7 conversation. I think the government would certainly
8 acknowledge that. They are talking about some armed forces,
9 Christians, my client first speaks fourth line down where my
10 client says it is possible, I have met with some officers
11 twice.

12 So it is clear at least from this that more than
13 "hellos" have gone on, and some portion is missing.

14 We know additionally from his last question and
15 answer that I asked him this morning in the morning, and I
16 quote from the record as follows, page 52, 23, line 4 as
17 follows: Question by me:

18 Q. Didn't you, didn't you get my client out of the
19 car and talk to you on CM 32, and you turned it off? That
20 didn't happen?

21 "A. Yes, it did happen, sir."

22 So there is a portion missing at the beginning
23 and there is a portion missing at the end. So we start with
24 the proposition that this tape, original, does not reflect
25 the entire conversation. Why? What does the evidence

1 indicate, what it doesn't indicate.

2 (Continued on next page)

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1 I do not claim that he altered the end because he
2 didn't have the means to do it. But by his own admission he
3 tampered with it by turning it on and off, thereby deleting
4 the entire end of the conversation with my client.

5 I don't think the cases speak about what is an
6 alteration or a deletion or things like that. There is no
7 question the witness has admitted intentionally turning it
8 on and off at the end of the conversation.

9 Concerning the beginning of the conversation,
10 this is what the record indicates at this point: The record
11 indicates that the witness stated, he believed on the 4th
12 that he put an introduction on some tapes. The only two
13 tapes that are made on the 4th are 31 and 32. I played the
14 introduction to them on both. They are not there.

15 He states that on 32 he heard, which is in
16 evidence now, five on and offs. I think he tried to give an
17 explanation as to the first one or two. I don't recall --
18 and I read the testimony over this morning again -- any
19 explanation as to the third, fourth, or fifth.

20 The question is: What happened to the beginning
21 portion of the tape? Now that we see the transcript, where
22 did it go? When did he turn it on? I agree that if it was
23 my burden, my burden to prove that the tape was tampered
24 with, I couldn't do it. Understand, if I had to show by
25 clear and convincing evidence that it was tampered with, I

1 couldn't. But I don't have the burden.

2 When you start with the assumption that this
3 witness turned it on and off five times, no introduction,
4 and that the tape starts in the middle, I believe it is
5 reasonable for a juror to conclude that he altered, erased
6 or deleted the beginning of the conversation.

7 I state it as follows: The testimony on the
8 record indicates that this machine is capable of rewinding
9 quickly. I suggest it is reasonable to conclude -- and I
10 don't believe the government can sustain its burden by clear
11 and convincing evidence -- that this person didn't turn it
12 on, off, rewind it, from one minute, two minutes, ten
13 minutes of the conversation, and then start it again.

14 If the introduction was present, if the context
15 of the conversation clearly indicated to the court that it
16 was in the beginning phases, as he seemed to try to suggest,
17 then I think my argument wouldn't have as much weight.

18 But just looking at what takes place, your Honor,
19 it is clear that we are way beyond introductions when this
20 takes place. When one puts it in context of what the
21 lawyers are claiming in this case, that this is an
22 entrapment case, inducements are made, and this is the one
23 and only meeting my client has with the government
24 informant, it is the only one, it is obviously a very
25 critical one on the issues in the case in terms of my

1 client. We are missing the beginning; we are missing the
2 end that he now has intentionally said he turned off.

3 I don't see how the government at this point, on
4 the record, since it is their burden, to your Honor, has
5 established by clear and convincing evidence -- let me just
6 get my notes out here -- the following:

7 Is it correct? Authentic? I guess "authentic"
8 probably means is it an original.

9 I submit it certainly is.

10 Is it correct? No.

11 It can't be correct if he says he turned it off
12 when my client is speaking at the end, and I submit that it
13 can't be correct in light of the transcript of where the
14 conversation begins.

15 While I do agree that the middle of the
16 conversation that begins on 31 and continues at least
17 towards the end of 62 has not been tampered with, and I
18 don't suggest that it has, I don't see how the government
19 has met their burden of proof that this witness has not
20 intentionally tampered with the tape. I don't think the
21 Court of Appeals or the district court decisions that I have
22 read -- and your Honor can correct me if I'm wrong -- deal
23 with: What does "tampering" mean? What does "alteration"
24 mean? What does "addition" mean? What does "deletion"
25 mean?

1 The government can't come forward on a tape case
2 like this, which is the only tape my client is on, where
3 their witness says, "I turned it off at the end of the
4 conversation, and we're missing whatever your client said at
5 the end," and say I want to let the tape come in and let
6 weight decide. That is the standard most district court
7 judges normally follow. They say, "Well I'll let it come in
8 and let the jury determine its weight." I'm certain your
9 Honor knows the standards that most of the judges allow to
10 take place.

11 I think in this particular case, where the
12 witness has intentionally admitted deleting the end of the
13 conversation of my client, I don't believe that the
14 government can sustain its burden by clear and convincing
15 evidence.

16 While your Honor has given me the opportunity to
17 put Ginsberg on the stand -- I agree with that, but I don't
18 have the burden. As I indicated to the Court --

19 THE COURT: You do, however, have the
20 opportunity.

21 MR. JACOBS: Absolutely.

22 THE COURT: I understand from that that you don't
23 intend to take it. Correct?

24 MR. JACOBS: As I --

25 THE COURT: Is that fair?

1 MR. JACOBS: A hundred percent, your Honor.

2 THE COURT: Good.

3 MR. JACOBS: What I am saying is that perhaps if
4 I had the burden of proof I might put him on. But what I am
5 saying is that at this point the government cannot support
6 the on and offs in the beginning; they cannot support where
7 this tape begins, and, most importantly, the fact that this
8 tape has been altered by the on and offs at the end, where
9 my client speaks, I believe that your Honor should reject
10 the government's offer of CM32.

11 If the government wants to renew it later or do
12 what they want to do or call FBI experts and put him back on
13 the stand, I don't believe this jury should be allowed to
14 hear CM32 in the condition that it is in.

15 That is my position.

16 MR. McCARTHY: Your Honor, Mr. Jacobs continually
17 harps on the beginning of the conversation and the end of
18 the conversation. I don't think the government has any
19 burden to show whether there were on or offs or not on or
20 offs. But I do know that the court, under the cases in this
21 circuit, is entitled to consider not only the physical
22 attributes of the tape itself, but the context of the
23 conversation, which is the two hours in the middle that Mr.
24 Jacobs doesn't really address in any of his arguments. On
25 that score, I would refer your Honor to United States v.

1 Fuentes -- which I believe is a case that has been cited
2 before to the court. Let me just give the citation: 563
3 F.2d 527 -- where the court deals with a similar argument
4 and relies heavily on the actual conversation itself, the
5 context, in observing that for one thing it is hard to
6 believe that the person who recorded the conversation in
7 that instance, and I quote "could have effectively changed
8 the character of a running conversation by turning the
9 device on and off without such attempts being immediately
10 obvious to those present as well as to anyone listening to
11 the tapes."

12 The court then goes on to address what the nub of
13 this issue is, which is not whether there were on or offs.
14 If that was the case, then I guess virtually every Title III
15 that comes into this courthouse could be suppressed because
16 of minimization and other commonplace things.

17 The question is: Has the character of the
18 running conversation been changed? Is the exhibit what it
19 purports to be? Which is a conversation between the people
20 who we purport the conversation is between, and that I
21 believe is what the government is required to show.

22 Mr. Jacobs' arguments that the cases don't speak
23 to alteration or deletion and what does it mean to alter a
24 tape really miss the point. The cases quite clearly do
25 speak to the questions of completeness.

1 The Court of Appeals has repeatedly stated that
2 there is no requirement that the government has to show that
3 a conversation is either complete or audible. The question
4 we are dealing with here is tampering. There is absolutely
5 no evidence, despite the resources of the court that have
6 been given to the defense in order to establish that, no
7 evidence whatsoever that any of these conversations have
8 been tampered with. That is, I believe, the issue.

9 We would point the court, in addition to Fuentes
10 and Ruggiero to United States v. Hahn, which is 904 F.2d 803
11 and the discussion that takes place at 809 and 810 where the
12 Court of Appeals deals with --

13 THE COURT: Do you have it?

14 MR. McCARTHY: I do, your Honor.

15 THE COURT: May I see it?

16 (Pause)

17 THE COURT: That was watches, not tapes.

18 MR. McCARTHY: Pardon me, your Honor?

19 THE COURT: That was watches, not tapes.

20 MR. McCARTHY: I understand that, but the
21 principle which the court discusses --

22 THE COURT: In Ruggiero, the court I think made
23 it clear that 901, which deals generally with issues of
24 admissibility, is to be negated only by tampering, and that
25 the standard is somewhat higher for tapes, because it is

1 much more compelling evidence. Why don't you speak to that.

2 MR. McCARTHY: Part of the reason why it's
3 compelling evidence is because you have lengthy statements
4 by people which provide a context in which the court can
5 determine whether something is what it purports to be. The
6 point that hasn't been addressed here, which seems to be
7 addressed again and again in the cases, is that the court
8 can consider the words themselves that are spoken and
9 determine whether what appears to take place is a sensible
10 conversation.

11 There is no question, if your Honor looks at
12 Government Exhibit 333 and all of the other CM's, I guess,
13 five binders full, that the court can see that there are
14 sensible conversations. There is a rational pattern,
15 leaving aside the nature of what's being discussed. In
16 terms of just conversation, there is a rational
17 question/answer or statement/response context that the court
18 can use to determine the issue that's before your Honor,
19 which is, whether these exhibits are what they purport to
20 be.

21 Finally, I just want to point out that I don't
22 think there is any evidence whatsoever that there's been
23 rewinding and playing over or any evidence of tampering in
24 fact. Our understanding of the cases is, even assuming for
25 the moment that there had in fact been rewinding and playing

1 back, if the portion that was played back is what it
2 purports to be, if there is clear and convincing evidence by
3 which a fact finder could determine that that portion which
4 the government is offering is what it purports to be, the
5 rest of it goes to weight. I think in this case we have
6 surpassed that standard.

7 THE COURT: All right.

8 MR. JACOBS: If I can just respond briefly, your
9 Honor.

10 THE COURT: Sure. Is anybody going to address
11 the CM's generally?

12 MR. JACOBS: Yes. I am about to.

13 THE COURT: OK.

14 MR. JACOBS: I guess part of the problem, your
15 Honor, is that if I can't convince your Honor on 32, I am
16 not going to go very far with the rest of them.

17 Let me just address Fuentes for a moment, Judge.
18 The Court of Appeals in Fuentes at 563 F.2d 532, discusses
19 the actual method that -- Fuentes argues because, Hugo who
20 was the informant who taped Fuentes, the Court of Appeals
21 basically discusses how there is no evidence of the on and
22 offs, that it would have been difficult for Hugo to do it
23 because he was wearing a body recorder, he would have to
24 reach in and turn it on and off, threatening himself and
25 things like that. So if the government wants to rely on

1 Fuentes for the principle that there was no evidence of
2 tampering on and offs --

3 THE COURT: Mr. Jacobs, I don't want to stop you,
4 but on and offs where?

5 MR. JACOBS: OK.

6 THE COURT: There are no on and offs in the
7 middle of conversations.

8 MR. JACOBS: I'm sorry. That is not correct.
9 Let me read his answer again because I think it's the most
10 important answer that he gave with respect to this. He
11 turned the machine off at --

12 THE COURT: You mean before your client left?

13 MR. JACOBS: Yes.

14 THE COURT: I know that.

15 MR. JACOBS: What I am suggesting to your Honor
16 is that, unlike Fuentes, where the Court of Appeals had no
17 record, this witness has admitted that he considered to
18 be --

19 THE COURT: Do you have a case that says that you
20 must record the entirety of a conversation from "hello" to
21 "good-bye" before the type is admissible?

22 MR. JACOBS: Absolutely not, your Honor.

23 THE COURT: I haven't found one either.

24 MR. JACOBS: It is difficult to find any cases
25 where the Court of Appeals has ruled after a district court

1 judge has ruled something out for it to come in.

2 But when you look at Fuentes --

3 THE COURT: I think you meant it the other way.

4 MR. JACOBS: What I meant is that there are going
5 to be very few reported decisions when district court judges
6 have ruled against the government because the government
7 obviously isn't appealing them. What we are seeing here,
8 your Honor, are a series of cases over the last, how many
9 years, 20 years, where appellants have come to the Court of
10 Appeals and tried to argue that the district court judge has
11 abused their discretion in allowing these tapes.

12 The one case that seems to talk a little bit
13 about on and offs is Fuentes. The Court of Appeals talks
14 about the fact that the main tape also was a Kel that they
15 were monitoring. So what I am suggesting is this:

16 THE COURT: It also says, doesn't it, that it
17 would have been apparent from the conversation whether there
18 was, as it were, editing on the fly going on, because the
19 conversation would not have been coherent.

20 MR. JACOBS: Your Honor, listen, I don't like to
21 get up here and make specious arguments. There is no
22 question that from page 1 to page 60 there is coherent
23 dialogue going on here. I am not playing games and
24 suggesting that there isn't. But in an entrapment case,
25 where the entire beginning is missing and where my client

1 may have told the informant, "I am not giving you a dollar.
2 And I don't want any part of you," And that's missing, what
3 is the integrity of the main bulk of the tape?

4 THE COURT: Mr. Jacobs, you will agree that Salem
5 would have had to have been a psychic to know that your
6 client was going to say that at the end of the conversation,
7 wouldn't he?

8 If he turns the tape off before the conversation
9 ends, and your position is that sometime after he turned the
10 tape off your client said, "I am not giving you anything,"
11 at the time he turned the tape off he would have had to have
12 had prophetic powers in order to know that he was going to
13 say that.

14 MR. JACOBS: I don't agree with you, your Honor,
15 because my client -- listen, I don't want to argue.

16 THE COURT: Is there anything in the context of
17 the end of the conversation that shows that it was headed in
18 that direction?

19 MR. JACOBS: I'm sorry?

20 THE COURT: Is there anything in the context of
21 the conversation at the end that shows that it was headed in
22 that direction?

23 MR. JACOBS: Absolutely. He says, "I got
24 problems in my business. I am not going to be able to do
25 things."

1 THE COURT: That is on the tape.

2 MR. JACOBS: Agreed.

3 THE COURT: Then argue it to the jury.

4 MR. JACOBS: Your Honor, there is no question --
5 am I capable of arguing 32 to the jury? I don't think that
6 is what we're dealing with here today. This is a legal
7 decision that the court has to make, and I just don't
8 think -- as I said, in Fuentes there was no concession of on
9 and offs. There was no testimony of on and offs. There was
10 no testimony that at least the beginning and end have been
11 deleted, whether he did it on the tape by rewinding it
12 intentionally at the beginning, he certainly did it at the
13 end.

14 What I am suggesting is here Fuentes has no
15 record of it. So in the Court of Appeals review of judge
16 Lasker's ruling that the tape was admissible for abuse of
17 discretion, there was honestly very little that the Court of
18 Appeals had to go on. I am suggesting that in this case
19 your Honor does have information that I believe he said he'd
20 altered, he turned it off at the end, intentionally
21 eliminating part of the conversation. I mean, I think the
22 record is there, and I do agree that the way --

23 THE COURT: If that is a disqualifying
24 alteration, then you have got point one in your brief. I
25 don't think it is.

1 MR. JACOBS: As I said, I haven't addressed the
2 manner in which he made the tapes, because I think it really
3 goes more to weight and to cross-examination. I mean, I
4 don't think there is a legal basis -- because this man kept
5 no records, doesn't have a clue as to how many tapes he got,
6 how many he threw away, where he kept them, how many days he
7 kept them, whether he sat on half the tapes or didn't sit on
8 half the tapes -- goes to admissibility. I think it
9 certainly goes to weight. But where you have half the tapes
10 with no introductions, half the tapes without introductions,
11 half the tapes with no endings, I mean, there is a pattern
12 that's going on here with the tapes in this case.

13 Are they all originals? Yes, they certainly are.

14 I am not here to say that they are not. At least
15 the CMs seem to be originals. We will deal with the
16 bootlegs when they are offered one by one.

17 But I think there is a rational basis for the
18 court to conclude that the government has not met its clear
19 and convincing evidence standard in this case. I think the
20 record supports that, and I don't think this tape should be
21 admitted to the jury at this time based upon his testimony
22 and where the record stands.

23 THE COURT: Does anybody else want to be heard?

24 I understand Mr. Jacobs has a particular interest
25 in CM32, and he's argued in essence that that is the

1 flagship tape.

2 MR. JACOBS: I mean, I don't have to make it
3 obvious, none of the lawyers here are waiving their rights
4 on cross-examination to go into specific tapes as to how he
5 made them, the manner -- I mean, I understand the voir dire
6 was permitted for a legal decision by the court as to the
7 admissibility of the tapes pursuant to the cases and the
8 Federal Rules of Evidence. I just don't want your Honor to
9 think that we have waived or I have waived a normal
10 cross-examination of this witness. I will try not to repeat
11 some of the things that I have done, but --

12 THE COURT: You will please succeed at that
13 because understand that once the point gets made, whether
14 you call it voir dire or call it something else, it remains
15 something that you can argue at the end of the case, and I
16 am not going to have you, as it were, replay the entire voir
17 dire as the cross-examination in addition to whatever else
18 you might do.

19 MR. JACOBS: Your Honor, I am certainly not going
20 to do that. But I don't think that we waive the right to
21 explore with him -- and I know your Honor sustained a lot of
22 objections over the last few days on the manner in which he
23 did certain things and kept records, because it may not go
24 to the admissibility of the recording.

25 THE COURT: Correct.

1 MR. JACOBS: But when we talk about weight to the
2 jury, and eventually these people have to listen to 32 and
3 to all the other tapes in this case and determine whether
4 they can they make a judgment, does the government say it's
5 corroborated, I think we have a right to explore that on
6 cross.

7 THE COURT: Understand that I make rulings during
8 examinations on a question-by-question basis. I am not
9 going to rule categorically except to say that the voir dire
10 is not going to be replayed.

11 MR. WASSERMAN: Briefly, Judge?

12 THE COURT: Mr. Wasserman.

13 MR. WASSERMAN: Thank you.

14 Your Honor, I just want to touch upon the
15 testimony of Mr. Salem concerning the fair and accurate
16 representation that these 58 Nagras, comprising
17 approximately 150 hours of recording, his testimony is that
18 he point checked. He cannot testify --

19 THE COURT: By which I think he meant "spot
20 check." I mean, it is clear what he was talking about.

21 MR. WASSERMAN: No problem with that. That he
22 would start and then stop a tape. He doesn't recall how
23 much time would elapse. He was going to start the tape
24 again and he was spot checking out any ability to estimate
25 for us either the total number of hours out of the 150 that

1 he listened to or the gap between starts and stops.

2 THE COURT: Wait a second. His testimony was
3 also that he was involved in the making of transcripts from
4 the copies of these tapes.

5 MR. WASSERMAN: Understood, your Honor. If I may
6 proceed from that point, though.

7 THE COURT: OK.

8 MR. WASSERMAN: We are dealing with a physical
9 item, which is a 58-tape universe. He hasn't listened to
10 them, and they are being put into evidence. He's asking us
11 to rely upon the fact that his recollection is so good as to
12 all of these 150 hours that he can remember that the space
13 between the stop and the start on a spot check is accurately
14 captured by a tape. He hasn't listened to what is being
15 introduced into evidence. Whatever copy he may have heard,
16 we don't know. He never testified that he heard the
17 original Nagras. That wasn't on the record.

18 If I may, Judge, this is a witness who has
19 repeatedly, 30, 40, maybe 50 times said, "I don't recall."
20 This is someone who was capable of recollecting every detail
21 of 150 hours, and we should trust him to put these tapes in?

22 MR. McCARTHY: Your Honor, I was told in the
23 course of narrowing this process down to the issues that
24 were to be litigated before the court that there was no
25 issue about whether the copies of the tapes were copies of

1 the actual tape. The nub of the issue boils down to the CM
2 Nagra tapes themselves.

3 Salem spent well over a year, or I guess part of
4 a year, going through the enhanced tape recordings that are
5 actually being received in evidence in lieu of Nagras tapes
6 making transcripts, and then check the original Nagras
7 against the copies which, as I understood, there is no
8 dispute as to whether the copies are actually authentic
9 copies of the original.

10 THE COURT: Is there a dispute about that?

11 MR. JACOBS: No. We have examined it, your
12 Honor, and the FBI made enhanced copies correctly from the
13 originals. There is no allegation of that.

14 THE COURT: OK. Then, as far as I am concerned,
15 his having spot-checked the originals was probably an
16 unnecessary exercise to start with.

17 MR. JACOBS: I am just saying the government
18 informed me months ago that they were going to make enhanced
19 copies. We have reviewed them, and there was no dispute as
20 to whether the FBI accurately made a copy of the Nagras. We
21 have made our own copies, but there is no dispute as to
22 that.

23 MR. WASSERMAN: Your Honor, still the universe of
24 what he listened to has not been testified to. I mean, we
25 are to take that he listened to copies of every tape and

1 participated in the making of a transcript with every tape
2 in order to take his representation that he can remember
3 what is between the gaps. He is not even testifying as to
4 as to length of time or cumulative time that he listened to
5 these tapes. He could have listened to these tapes for one
6 hour with a 50-minute gap between starts and stops. We have
7 nothing to narrow it down.

8 THE COURT: What I am saying is he need not have
9 listened to the original tapes at all, having participated
10 in the making of the transcripts from the copies. There
11 being no issue about the copies being copies of the
12 originals, all he is saying is that the tapes in the large,
13 including the copies, are fair and accurate representations
14 of the conversations that he had. That's all that is
15 necessary.

16 MR. WASSERMAN: Judge, if I just may, I don't
17 believe that he testified that he participated in the making
18 of all of the transcripts and he listened to all of the
19 tapes. I think that your Honor's very language "in the
20 large" is not what we are about in terms of these tapes.

21 In a classic case, where you don't have the
22 gigantic amount of material, someone listens to a tape and
23 says, "I've listened to this tape. It is 40 minutes," and
24 that's that.

25 Here you have someone who says, "Well, I listened

1 to the beginning and I listened to the end, and it sounds
2 all right."

3 THE COURT: Right. I understand that is what you
4 are saying the net of this is. I don't agree. Mr.
5 McCarthy, did you want to speak?

6 MR. McCARTHY: No.

7 THE COURT: Yes, Mr. Serra.

8 MR. SERRA: Your Honor asked Mr. Jacobs a
9 question, and I just wanted to make sure the answer was
10 clear for the record. Mr. Jacobs's examination was, on
11 behalf of all of us, directed to all of the CM's.
12 Mr. Jacobs and other counsel, but particularly Mr. Jacobs
13 asked Mr. Salem about stops and starts in the beginning and
14 the middles of other tapes. I am not saying in the middles
15 of conversations, but I am saying in the middles of tapes.

16 THE COURT: Right.

17 MR. SERRA: Those were never specifically
18 enumerated for the record.

19 THE COURT: That's right. He has said that other
20 tapes include the pattern of or something like the pattern
21 of starts and stops that CM32 does.

22 MR. SERRA: Yes.

23 THE COURT: And include some starts and stops in
24 the middle of the tape, and the situation like the traffic
25 noise situation we had in CM32, not necessarily identical to

1 that, but something that is roughly analogous.

2 MR. SERRA: Yes, your Honor.

3 THE COURT: I understand that to be his
4 testimony.

5 MR. SERRA: Your Honor, the only reason I stand
6 is to make it clear for the record that we join -- those of
7 us who have claims on these particular tapes join in the
8 objection. Those tapes have not been specified for the
9 court, I assume awaiting the court's ruling on Mr. Jacobs'
10 application.

11 THE COURT: I understand that. But I also would
12 assume that since you have all listened to the tapes,
13 certainly those that immediately concern you, that if there
14 were a tape that had a start and stop in the middle of a
15 conversation, or an apparent deletion or erasure or
16 something of that sort in the middle of a conversation that
17 somebody would have brought that to my attention. Yes?

18 MR. SERRA: Your Honor, if you are asking me that
19 question, I would have.

20 THE COURT: OK.

21 MR. SERRA: I can't speak on behalf of everyone,
22 but from the tapes I reviewed your Honor would have heard
23 about it.

24 THE COURT: I think it is reasonable for me to
25 conclude that, certainly based on the things that happened

1 that were brought to my attention, that if anything like
2 that were in existence, it would have been brought to my
3 attention.

4 Ms. Stewart?

5 MS. STEWART: Judge, I would just -- I will do it
6 from here if I may.

7 THE COURT: Sure.

8 MS. STEWART: I think that we want to challenge
9 these CM's -- and I have always had a little trouble
10 conceptualizing consensually seizing somebody else's
11 conversation, certainly not with his consent, and there are
12 jurisdictions where there is not permitted under the
13 Constitution so-called consensual tapes. But, be that as it
14 may, I think the very fact that Salem's own rogue character
15 within the seizing of these particular conversations, the
16 fact that he operated outside the parameters of the FBI,
17 that he did not follow their directions, that things were
18 not turned in, that there are missing tapes, that there are
19 missing -- when I say that, I mean missing reels of tapes,
20 tapes that have missing envelopes --

21 THE COURT: I don't know that we know that.

22 You can argue that, I suppose, to the jury.

23 MS. STEWART: I understand that it goes to
24 weight. I also would raise, Judge, that, taken within the
25 entire framework, the integrity of these tapes, which are

1 the cornerstone of the government's case really is highly
2 questionable and is, more than that, susceptible to an
3 interpretation by the court that there were so many, many,
4 miscues from Mr. Salem where he was authorizing, where he
5 was taping without any authorization, using unauthorized
6 equipment, where there are -- I am not going to review all
7 the testimony -- the missing envelopes, the missing reels,
8 all of that just goes to the question of whether or not this
9 evidence can be fairly put before this jury as what it is
10 supposed to be, whether it is what it is being held out as
11 by the government.

12 THE COURT: You have made a reference to missing
13 tapes and missing envelopes. A lot of that, frankly, eludes
14 me. If you have some chain of reasoning telling me what it
15 is --

16 MS. STEWART: Perhaps you will want to hear from
17 Mr. Ginsberg.

18 THE COURT: I am not going to hear from him.

19 MS. STEWART: The chain of reasoning is just
20 that, Judge, we have all had tape cases where there have
21 been Nagras used. They are supervised very, very carefully.
22 The envelope is given, the tape is put in, the tape matches
23 the envelope, the notation on the envelope is made by the
24 agent in the presence -- in other words, it is so carefully
25 regulated that there is not even the slightest sliver of

1 room for a defense lawyer to operate in, if you will.
2 Whereas with these it just seems that the recordkeeping, the
3 way it was done, they just allowed Salem to run the
4 investigation. He did what he wanted with these tapes.

5 THE COURT: I don't think there is any evidence
6 that what you called miscues about the envelopes and the
7 reels was in any way Salem's doing.

8 MR. JACOBS: I'm sorry, your Honor.

9 THE COURT: That what you called the miscues
10 about the envelopes and the reels was in any way his doing.

11 He was given reels; he made recordings; he turned
12 the reels back in. Nobody apparently was keeping track of
13 the serial numbers on the reels. But the fact is that, so
14 far as the tape itself, which is what the evidence is, there
15 is nothing to suggest that any of them were erased, edited,
16 or that anything of that sort was done with them.

17 The recordkeeping is a means to an end. The end
18 is to make sure that what is received in evidence is a
19 recording of something that happened. There's been nothing
20 that I have seen that challenges that.

21 MR. JACOBS: Your Honor --

22 MS. STEWART: Mr. Jacobs will carry the ball.

23 MR. JACOBS: Your Honor, the limited questioning
24 of Napoli and Salem was on the admissibility of certain
25 pieces of evidence. It is not the cross-examination of the

1 defense yet as to how the FBI operated or he did. At the
2 appropriate time when we get a chance --

3 THE COURT: Talk into the microphone.

4 MR. JACOBS: I'm sorry. At the appropriate time,
5 whether it be on cross or on our case, we will show how the
6 FBI conducted this case and the manner in which they
7 conducted it, whether they violated their own rules and
8 regulations, enabling --

9 THE COURT: You are talking about another --

10 MR. JACOBS: As I said, we haven't yet focused
11 completely on this because you have only heard a little
12 piece of how Napoli seemed to have run this case and how
13 Salem did. Are we suggesting that Salem made tapes --

14 THE COURT: Given the amount of time that was
15 lavished on it, it may look like a little piece to you. It
16 seemed at times almost interminable to me.

17 MR. JACOBS: As trial lawyers, your Honor, we
18 will attempt to bring out our positions, argue them to the
19 jury, and the jury will decide whether Salem made tapes and
20 threw them away. It wasn't our purpose to do that at this
21 point, since they are only offering an item. I am certain
22 you will hear a lot more about it.

23 THE COURT: Ms. Stewart was making kind of -- I
24 don't want to call it cosmic, but a larger argument rather
25 than the smaller argument than you now seem to be

1 suggesting. You have to have evidence.

2 MR. JACOBS: Your Honor, we're missing reels.
3 Now, your Honor can take a particular point of view on it,
4 and the government does, and we will see what the 12 folks
5 here have to say about it.

6 THE COURT: Fine.

7 MR. JACOBS: I mean, maybe they will be bothered
8 by the missing reels; maybe they will be bothered by the
9 missing tapes; maybe they will be bothered by the fact that
10 nobody has an idea how many tapes this guy got. It is up to
11 these 12 people to decide to whether they think this was run
12 in an orderly fashion. We will find out from Anticev how he
13 did it and how he supervised what he did. We haven't had
14 our shot at it yet.

15 THE COURT: Thank you.

16 MS. STEWART: Mr. Stavis reminded me, and I just
17 want to add to this that my point is, as your Honor just put
18 it, I macro-point rather than a micro-point, that indeed it
19 seems that the whole investigation is susceptible to an
20 analysis that it was done with less than integrity, and I
21 believe Mr. Lewis when he was part of this case submitted a
22 weighty motion with regard to government misconduct, and I
23 would ask that this just -- I understand your Honor reserved
24 on that until you heard the entire case, and I would ask
25 also that this be considered as part of the entire case --

1 THE COURT: Fine.

2 MS. STEWART: -- when we do prove up what we are
3 alleging here. That this was run differently and unlike any
4 other major tape case that any of us have any experience
5 with. Perhaps you will consider that as well.

6 THE COURT: It was a thick motion. I will give
7 you that.

8 MR. BERNSTEIN: If I can add on behalf of my
9 client Amir Abdelgani, the record, of course, is not clear,
10 but what is clear is that the first conversation and the
11 first meeting between my client and Mr. Salem was on May 27,
12 the conversation in which based upon the testimony of the
13 rear seat cushions, the government claims that Mr. Salem
14 claims that first conversation inadvertently was not
15 recorded.

16 Obviously, that is not our position. The reason
17 it is not our position is that conveniently the same four
18 bodies apparently went back from the safe house in a
19 vehicle, and there is a recording of that conversation on
20 CM18. So that the "inadvertent" seems to not be based on
21 anything other than Mr. Salem's testimony.

22 Judge, my issue --

23 THE COURT: That doesn't go to the admissibility
24 of what's here.

25 MR. BERNSTEIN: Under normal circumstances that

1 is correct. We cannot cite for the court a case in which
2 dealing with an undercover agent and -- for instance, a drug
3 seller, where the first conversations are not recorded
4 precludes normally the government from putting in later
5 conversations which may implicate the criminal behavior of a
6 defendant. I understand that is the general rule.

7 But, given the arguments that have been made,
8 given the other circumstances of the taping process in this
9 case that all the parties have raised, I want the court to
10 know that I am objecting to the admissibility of the tapes
11 on the ground that the first conversation was not recorded,
12 and I think the jury will come to accept at the end of this
13 case that it was done intentionally. Law is made sometimes
14 in the face of existing law. I don't want to waive the
15 argument. I think Ms. Amsterdam would probably be joining
16 this argument were she here, and she should be able --

17 THE COURT: I am assuming that she joins in this.

18 MR. BERNSTEIN: I just want the point to be made.

19 THE COURT: Her point would relate specifically
20 to the conversation in the car regarding her client.

21 MR. BERNSTEIN: We are seeking nonadmissibility
22 of later conversations on the ground that I have set forth.

23 MR. JACOBS: Your Honor, just to add one thing:
24 A very similar argument about the process and the taping and
25 the method that the FBI conducted was raised in United

1 States v. Williams, Arrechetti, Murphy and the Abscam cases
2 where Judge Pratt conducted six months of due process
3 hearings concerning outrageous government conduct back in
4 1980 with very similar allegations that are here. I know
5 because I had to wind up being the prosecutor testifying in
6 that case.

7 The point is that we have reserved on that. Your
8 Honor will hear the trial testimony, and whatever
9 postconviction -- if there are convictions here -- whatever
10 postconviction relief we seek concerning hearings that may
11 have to take place afterwards concerning the way the FBI
12 conducted this investigation.

13 So we have reserved on that. I am not sure it
14 directly pertains to this tape, but we intend to pursue the
15 way the FBI ran this informant both in cross-examination, as
16 I told you before, and calling the FBI agents who supervised
17 this person.

18 THE COURT: Mr. Stavis?

19 MR. STAVIS: Yes. I will be very brief, your
20 Honor.

21 Mr. Serra said he wanted to make clear for the
22 record that all defense counsel whose clients are on the
23 tapes join in the application. I am a defense counsel, and
24 my client's voice is not on the tape. However, he's spoken
25 of on the tape, and they have come in as co-conspirator

1 evidence, and I would join in the application. I would
2 particularly join that portion of the application which
3 refers not so much, your Honor, to the integrity of the
4 tapes but the integrity of the process of the fact that
5 Mr. Salem had virtually complete discretion over which tapes
6 he made or did not make, violated the authorization of the
7 agents when he was told not to tape, and he nevertheless
8 kept tapes of defendants without delivering them to the FBI,
9 and I think that this seriously compromised the process, and
10 it is for that reason specifically that I object to the
11 introduction of the tapes.

12 MR. LAVINE: Judge, not to belabor the point, but
13 I am in much the same position with respect to my client's
14 participation on the tapes as is Mr. Stavis, with the
15 exception of one tape which is still open to some debate. I
16 would just like to be able to be in the position to adopt
17 whatever Mr. Stavis says specifically with respect to Fadil
18 Abdelgani.

19 THE COURT: The only evidence before the court is
20 that the conversations that are being introduced are what
21 they purport to be, namely, portions of conversations
22 between or involving the witness and others. There is
23 absolutely no evidence before the court of any kind of
24 willful editing in a way that would distort the meaning of
25 what is being offered to the jury. At most there is

1 evidence that there is some portion of conversations that is
2 not present on the tape.

3 As far as CM32 is concerned, the topic that opens
4 that tape, at least to my eye, has to do with fighting in
5 the Sudan. In view of the fact that Siddig Ali is one of
6 the speakers at the beginning of that tape and that Siddig
7 Ali was from the Sudan, I don't think that has anything to
8 do with your client. It was a topic that was apparently of
9 interest to him that he was talking about, but I certainly
10 don't detect anything willful in the nature of what was
11 being discussed at the beginning of that tape to suggest
12 that there was something beforehand that was erased.

13 The government has met its burden of proving by
14 clear and convincing evidence that what it seeks to
15 introduce is what it purports to be, namely, a portion of
16 several conversations. Obviously, you are free to argue,
17 and I am sure you will argue, and you have given me the
18 coming attractions of many arguments that there is a lot
19 more to it.

20 But the issue it seems to me is whether the jury
21 is going to be misled by what is introduced about what
22 actually went on during the period that was being recorded,
23 and the answer to that is that there is no evidence to
24 suggest that they wouldn't have given --

25 (Continued on next page)

1 MR. JACOBS: Your Honor, just so that I am clear,
2 am I correct that at least according to my understanding
3 that even though your Honor has made this ruling for
4 admissibility, the question of authenticity, etc., is still
5 before the jury, obviously, because as I read the decision
6 in Ruggiero, the Court of Appeals quotes from Judge
7 Weinstein's evidence treatise, "This requirement is
8 satisfied if sufficient proof has been introduced so that a
9 reasonable juror can find in favor of authenticity."

10 I believe we still have the absolute right on
11 cross-examination to continue to challenge the authenticity
12 of every single tape in this case before the jury, that even
13 though your Honor has made an initial finding it doesn't
14 preclude us.

15 THE COURT: Mr. Jacobs, the portion of Ruggiero
16 that you quoted was an introduction to a discussion, rights,
17 that then went on to say, I believe, that the standard for
18 tape -- that is dealing with Rule 901, correct?

19 MR. JACOBS: They first cite 901A.

20 MR. McCARTHY: That is part of the treatise.

21 MR. JACOBS: And I thank Mr. Stavis.

22 I am certainly considering on my case calling Mr.
23 Ginsberg and pursuing this issue further with the jury. I
24 obviously have declined your Honor's invitation out of the
25 presence of the jury to call Mr. Ginsberg at this time --

1 your Honor invited it and I thought about it and I decline.
2 Other counsel, Miss Amsterdam, I know, is certainly going to
3 be calling Mr. Ginsberg with respect to this man sitting on
4 his rear end and tapes not working.

5 THE COURT: When we may be able to find out what
6 if anything Mr. Ginsberg knows about the back seat of a 1989
7 Pontiac.

8 MR. STAVIS: Or the rear ends of the people
9 involved.

10 THE COURT: Or that.

11 MR. JACOBS: Listen, I don't want to make the
12 record longer than it is. I just want to make sure that by
13 your Honor's ruling we are waiving on our case, for example,
14 we are really pursuing this issue, within the limits of not
15 repeating ourselves too much.

16 THE COURT: Mr. Jacobs, you can call witnesses to
17 create a reasonable doubt about the government's evidence.
18 I am not going to stop you from doing that. But the
19 discussion you quoted had to do with an introduction to a
20 discussion about the finding that I have to make, which the
21 court then went on to say has to be at a much higher
22 standard than Rule 901 because we are dealing with tapes,
23 and I believe the standard has been met. My finding as a
24 legal matter does not control their findings as to the
25 facts.

1 Mr. Ricco.

2 MR. RICCO: I just want to say that on behalf of
3 my client Mr. El-Gabrownny joins in the --

4 THE COURT: Everybody, whether they are lawyers
5 specifically heard from or not specifically heard from is
6 deemed to have joined in the objection to the admissibility
7 of any and all the of the tapes. I have tried to be as
8 explicit as I can about that.

9 Is there anything else we can get done? Hearing
10 nothing --

11 MR. JACOBS: Perhaps the government can tell
12 us -- I am sorry. I don't know how long Salem is going to
13 be on but I gather we are going to get into the World Trade
14 Center. I would still like to know whether the government
15 has submitted anything to your Honor concerning Ramzi Yousef
16 and where we are with respect to that, because that will be
17 my next cause.

18 MR. FITZGERALD: Your Honor, that will be
19 submitted shortly.

20 THE COURT: Thank you very much.

21 (Pages 5343 through 5346 sealed)

22 (Proceedings adjourned until 9:30 a.m., Thursday,
23 March 16, 1995)

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----X
20 March 16, 1995
21 9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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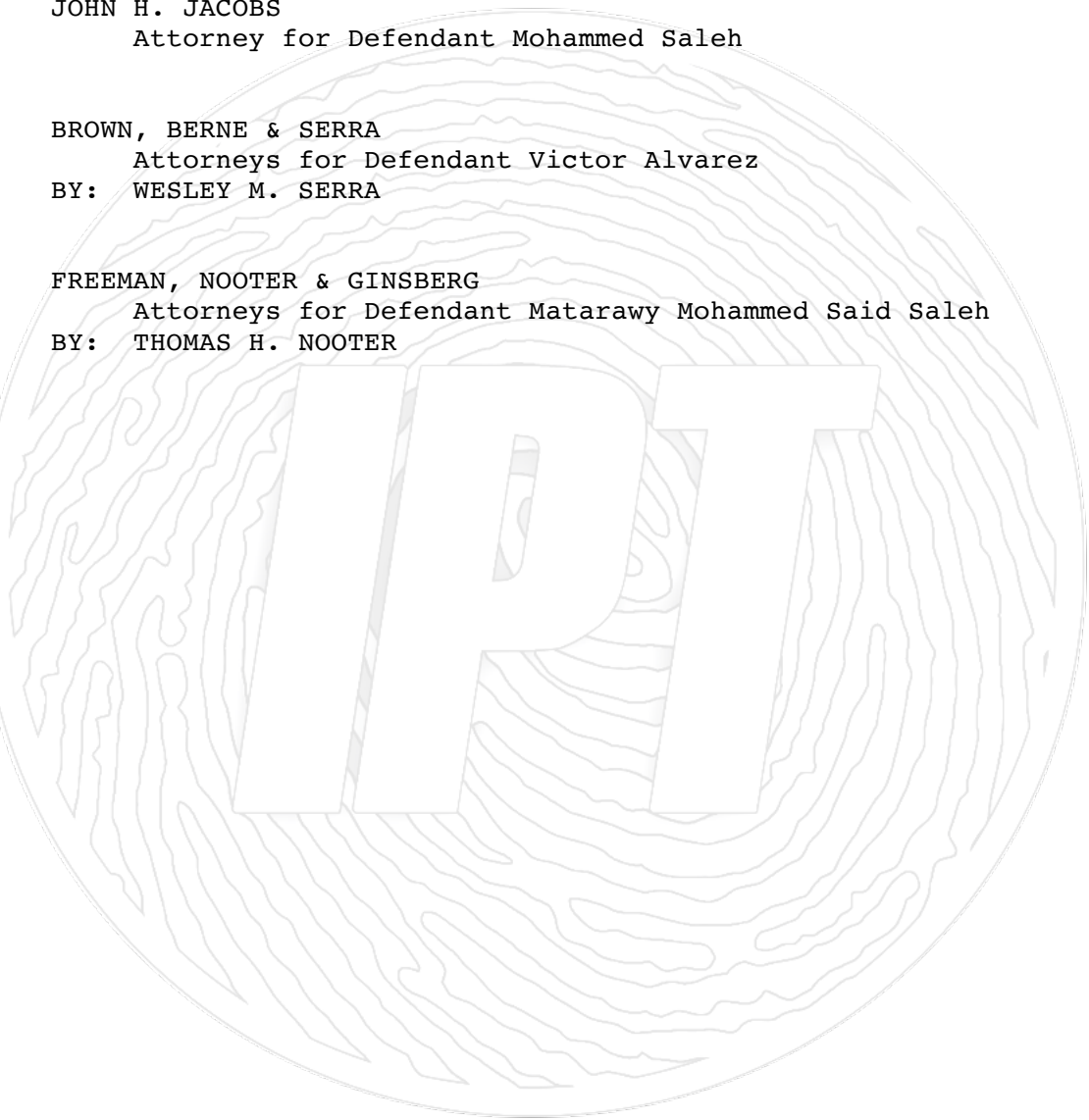
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (Jury not present)

3 (In the robing room, Mr. Ricco present)

4 MR. RICCO: Good morning, your Honor.

5 THE COURT: Good morning.

6 MR. RICCO: He spoke to Mr. El-Gabrownny, he's
7 tired, he's been up since 1 o'clock in the morning. He has
8 some type of stomach condition, I don't know exactly what it
9 is. MCC has given him some medication. He seems more
10 fatigued than anything else in my view. I asked him would
11 he be willing to waive, and he said if there was anybody
12 other than Emad Salem, who was the chief witness against
13 him, he said he would.

14 I asked him would he be willing to try to work an
15 hour or two, try to get through the morning session, and he
16 said he would prefer not to. He basically said if the judge
17 insisted that he would. He said he would like to speak to
18 you if necessary.

19 THE COURT: I will speak to him. The standard is
20 not whether he's feeling a hundred percent, but rather
21 whether he can provide assistance to you in his defense.

22 MR. RICCO: Yes, your Honor.

23 THE COURT: I have been fairly considerate, but
24 there is a point where we are just going to be losing time.

25 MR. RICCO: Valuable time, right.

1 THE COURT: Is he here?

2 THE MARSHAL: I will get him right away.

3 THE COURT: Fine.

4 MR. RICCO: Your Honor, I got the impression that
5 he would be willing to attempt to get some work done.

6 THE COURT: OK.

7 THE MARSHAL: It will be just a moment, your
8 Honor.

9 THE COURT: He is going to have a long weekend to
10 rest up.

11 MR. RICCO: He is not a lazy man. He's usually,
12 you know, very interested and always working.

13 (Defendant El-Gabrownny present)

14 THE COURT: Sit down.

15 Good morning.

16 DEFENDANT EL-GABROWNY: Good morning.

17 THE COURT: I heard you had a rough night.

18 DEFENDANT EL-GABROWNY: Just my stomach.

19 THE COURT: The question is whether you would be
20 able to sit in court and talk to Mr. Ricco about what is
21 going on. Do you feel able to do that?

22 DEFENDANT EL-GABROWNY: I haven't slept since one
23 o'clock in the morning. I -- there was a pain in my stomach
24 and lack of sleep. I am not going to be able --

25 THE COURT: Pardon?

1 DEFENDANT EL-GABROWNY: I am not going to be able
2 to understand or follow anything. I will not be able to
3 follow.

4 THE COURT: Well, you are certainly able to
5 understand me, correct?

6 DEFENDANT EL-GABROWNY: Yes. I am sitting with
7 you two, three, five minutes, but the whole day, I don't
8 think I will be able to do it.

9 THE COURT: Why don't we try to get at least some
10 work done. Obviously you are not feeling as well as you
11 might, but Mr. El-Gabrowny has -- does he use the
12 interpreter or not?

13 MR. RICCO: No, your Honor.

14 THE COURT: He doesn't.

15 (Counsel conferred with the defendant)

16 DEFENDANT EL-GABROWNY: It is not my hearing,
17 Judge, I can hear good. I can talk good. But my brain
18 starts -- for a half an hour I can hear and talk. After
19 that I will not be able to do it. If you'd like to make
20 some job to be done, let us try, I can stay for a while and
21 see what happens.

22 THE COURT: Let's try. We will see how well we
23 do.

24 DEFENDANT EL-GABROWNY: I appreciate that, your
25 Honor.

1 THE COURT: I appreciate it, too.

2 (In open court, jury not present)

3 THE COURT: Good morning.

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 THE JURY: Good morning.

8 THE COURT: Mr. Salem, you are still under oath.

9 THE WITNESS: Yes.

10 THE COURT: Mr. McCarthy?

11 MR. McCARTHY: Thank you, your Honor.

12 DIRECT EXAMINATION (Continued)

13 BY MR. McCARTHY:

14 Q Good morning, Mr. Salem.

15 A Good morning, sir.

16 Q Earlier in your testimony you told us about some
17 conversations that you recorded after you heard that arrests
18 were -- or an arrest had been made in connection with the
19 case involving the bombing of the World Trade Center, do you
20 recall that?

21 A Yes, sir.

22 Q I would like to show you some cassette tapes.

23 I am directing your attention, first, sir, to a
24 cassette tape which contains Government's Exhibit 601-4.

25 Have you reviewed that at my request prior to

1 testifying?

2 A Yes, sir, I did.

3 Q Can you tell us what that is a cassette recording
4 of.

5 A It is a phone conversation with Mr. Ibrahim
6 El-Gabrownny.

7 Q Is that the one you mentioned earlier in your
8 testimony?

9 A Yes, sir.

10 Q Showing you 601-16 --

11 A Yes, sir.

12 Q -- have you reviewed that prior to testifying?

13 A Yes, sir.

14 Q What is 601-16?

15 A It is a phone conversation with Mr. Ali Shinawy
16 on the tape.

17 Q Is that the conversation that you mentioned
18 earlier in your testimony --

19 A Yes.

20 Q -- following the bombing of the World Trade
21 Center and the arrest that was made?

22 A Yes, sir.

23 Q Showing you 601-19.

24 A Yes, sir.

25 Q What is that, sir?

1 A This is a phone conversation with Mr. Ahmed Abdel
2 Sattar.

3 Q Is that also the conversation that you mentioned
4 earlier in your testimony?

5 A Yes, sir.

6 Q Showing you Government's Exhibit 604, did you
7 review the first conversation on that tape prior to
8 testifying?

9 A Yes, sir.

10 Q Can you tell us what the first conversation is on
11 that tape.

12 A It is a phone conversation between Mr. Mohammed
13 El-Gabrownny and myself.

14 Q Is that the one that you mentioned earlier in
15 your testimony that took place after the arrest of
16 Mr. Ibrahim El-Gabrownny?

17 A Yes, sir.

18 Q Thank you.

19 A You're welcome.

20 Q Finally, I am directing your attention, please,
21 to Government Exhibit 606-10.

22 Have you reviewed that item?

23 A Yes, sir.

24 Q You can remove it.

25 A Yes, sir.

1 Q What is that item?

2 A It is a phone conversation between Agent John
3 Anticev and myself.

4 Q Is that the Chinese Wall conversation that you
5 told us --

6 MR. JACOBS: Objection.

7 MR. McCARTHY: Your Honor, I will rephrase the
8 question.

9 Q What was that conversation about?

10 A It was about some legality about being involved
11 with the lawyers.

12 Q Being involved with what lawyers?

13 A With the people -- the subjects in the
14 investigation's lawyers.

15 Q Thank you.

16 A You're welcome.

17 MR. McCARTHY: Ladies and gentlemen, I am going
18 to be referring briefly to the transcript marked 641-1T. It
19 is in the book.

20 MR. JACOBS: Your Honor, I'm sorry. Have these
21 exhibits been received previously?

22 THE COURT: May I see counsel at the side,
23 please.

24 MR. JACOBS: Yes, thank you.

25

1 (At the side bar)

2 THE COURT: I think 641 is in.

3 MR. McCARTHY: 641 is in. That is right.

4 THE COURT: The others are not.

5 MR. STAVIS: Yes. 641 has been read.

6 MR. McCARTHY: The other ones, I figured I would
7 get him to identify them at some point. I am not going to
8 offer them until at some convenient point that we can have
9 whatever argument --

10 MR. JACOBS: OK.

11 THE COURT: Secondly, if you are going to refer
12 to something, talk to me; don't talk to them, please.

13 MR. McCARTHY: Yes, your Honor.

14 THE COURT: That goes for everybody.

15 MR. JACOBS: Yes. So the exhibit being read now
16 has been offered and received.

17 THE COURT: Correct.

18 MR. JACOBS: That is all. Thank you.

19 MR. FITZGERALD: Maybe I can save some time. I
20 think the first exhibit that gets read has underlining in
21 it. Perhaps we can explain to the jury why it is underlined
22 so we don't have to have another side bar. If the defense
23 prefers, we could simply say if the jury sees underlined
24 portions, those are the items in the transcripts that the
25 defense disputes, and that is what the underlining means.

1 THE COURT: And that you may receive evidence
2 later on?

3 MR. JACOBS: Later on.

4 THE COURT: That it should read in some other
5 fashion.

6 MR. JACOBS: Sure.

7 THE COURT: That will be an item in dispute
8 between the parties.

9 MR. JACOBS: All right.

10 THE COURT: OK. Is that now?

11 MR. McCARTHY: In a few minutes.

12 THE COURT: OK. Mr. Ricco, do you have a second.
13 I would like to talk to Mr. Ricco.

14 MR. McCARTHY: Sure.

15 THE COURT: If you could prevail on him to try to
16 have lunch, I gather that he has been fasting?

17 MR. RICCO: Right.

18 THE COURT: I don't want to interfere with his
19 religious observance, but if it is a matter of making up
20 days maybe he can make up some days when he feels better.

21 MR. RICCO: OK.

22 THE COURT: OK.

23 (Continued on next page)

24

25

1 (In open court)

2 THE COURT: Go ahead.

3 MR. McCARTHY: Your Honor, may I ask the court to
4 direct the attention of the ladies and gentlemen of the jury
5 to page 9 of the transcript.

6 THE COURT: All right. Page 9 of 641/T.

7 Q Mr. Salem, a couple of days ago you heard a
8 transcript of a conversation that you recorded between
9 yourself and Mr. Siddig Ali, do you recall that?

10 A Yes, sir.

11 Q Can you remind us, please, where it was that you
12 recorded that conversation.

13 A It was in his apartment, sir, in New Jersey.

14 Q Do you recall a point in the conversation where
15 Mr. Siddig Ali makes this statement to you, reading from
16 page 9: "Um. Can't we conduct an operation over here? At
17 military places? Do you know the places that are called --
18 their reserves places?"

19 And then he continues on, "There's something
20 called, ah, ah, the armory."

21 Do you recall that?

22 A Yes, sir.

23 Q Can you tell us, please, what was going on at
24 that point in the conversation?

25 MR. JACOBS: Objection.

1 THE COURT: Sustained as to form.

2 Q What was your understanding of what Mr. Siddig
3 Ali meant when he said to you the statements that I just
4 read to you from the transcript?

5 A My understanding is that Mr. Siddig Ali telling
6 me that he wants to conduct operation to blow up an armory
7 in New York City.

8 Q Did he mention to you any particular armories in
9 the course of the conversation?

10 A Yes, sir.

11 Q What armories did he mention to you?

12 A He mentioned three armories, but he specified the
13 armory in Manhattan, Park Avenue to be blown up.

14 Q Prior to this conversation, had you made any
15 proposals about a bombing operation to Mr. Siddig Ali?

16 A No, sir.

17 Q Had you had a conversation about bombing on the
18 previous day?

19 A Yes, sir.

20 Q Can you explain to the ladies and gentlemen of
21 the jury what your conversation was about bombing the
22 previous day with Mr. Siddig Ali?

23 A After we left Sheik Omar's apartment, Mr. Siddig
24 Ali asked me if I sweep -- if my car is clean or not.

25 I told him, "Yes, it's clean. I always sweep

1 it."

2 We get into the car and he started to ask -- he
3 said, "I know that you are an explosive expert. And we
4 would like you to help us building a bomb."

5 I said, "That's my profession. That's my
6 specialty. I would be glad to."

7 Q After the conversation you had in your house --
8 withdrawn.

9 After the conversation that you had in Mr. Siddig
10 Ali's house the following day, where he mentioned to you,
11 "Can't we conduct an operation over here?" did there come a
12 time that you had a conversation about different targets?

13 A Yes, sir.

14 Q During what period of time did you have a
15 conversation with Mr. Siddig Ali about different targets of
16 bombings?

17 A After this conversation it was next day,
18 approximately, right next day, I think, he proposed to me
19 different target.

20 Q What different target did he propose to you after
21 this conversation in the transcript?

22 A He proposed to blow up the United Nations.

23 Q Now, in your conversation with Mr. Siddig Ali
24 about bombing the United Nations, was that instead of the
25 armory or in addition to the armory?

1 A That was instead of the armory, sir.

2 Q Did there come a time in the weeks that followed
3 that additional targets were discussed?

4 A Yes, sir.

5 Q Can you tell us what the additional targets were.

6 A Mr. Siddig Ali proposed the Lincoln Tunnel, the
7 Holland Tunnel, the Washington Bridge, the 26 Federal Plaza
8 as additional targets.

9 Q Did he mention what was located at 26 Federal
10 Plaza?

11 A The housing of the FBI.

12 Q In your conversations with Mr. Siddig Ali, was
13 there a division of responsibility between you and him about
14 the bombing plan?

15 MS. STEWART: Objection, Judge.

16 A Yes, sir.

17 THE COURT: Sustained.

18 Q What, if any, division of responsibilities did
19 you arrive at with Mr. Siddig Ali --

20 MS. STEWART: Objection, Judge.

21 MR. McCARTHY: Well, let me step back for a
22 moment.

23 Q What, if anything, did you tell Mr. Siddig Ali
24 that you would do?

25 A Mr. -- I told Mr. Siddig Ali that I am a bomb

1 expert. I will be helping to build the bombs.

2 Q What, if anything, did he say he would do?

3 A Mr. Siddig Ali said that he will supply the
4 people who will help me to build the bombs, and to carry the
5 bombs out. He will supply the explosives; he will supply
6 the weapons for protection during delivering the bombs; he
7 will supply the strategy and the tactic of where is the
8 bombs to be placed and how. My duty was supplying the
9 technical information about building the bomb.

10 Q Did there come a time that Mr. Siddig Ali
11 supplied people in order to further the bombing operation?

12 A Yes.

13 MR. STAVIS: Objection as to form.

14 MR. McCARTHY: I will rephrase it, if you want,
15 your Honor.

16 THE COURT: He said at one point -- he's already
17 testified that he said he was going to provide people.

18 MR. McCARTHY: Yes, your Honor.

19 THE COURT: You can ask him if there came a point
20 when he did that.

21 Q Did there come a point when he supplied people or
22 provided people as he said he would?

23 A Yes, sir.

24 Q Can you tell us who he provided.

25 A He provided Mr. Amir Abdelgani, Mr. Fares

1 Khallafalla, Mr. Tarig Elhassan, Mr. Wahid, to supply the
2 cars, Mr. Mohammed Fadil Abdelgani.

3 Q Did there come a time that you met a man known to
4 you as Mohammed the Spanish?

5 A Yes, yes, sir.

6 Q Who was that?

7 A One of the people, Mr. Siddig Ali introduced him
8 to -- to help building the bombs.

9 Q The people that you have just mentioned, did
10 there come a time that you met those people?

11 A Yes, sir.

12 Q I should say different times that you met those
13 people?

14 A Yes, sir.

15 Q Before you met those people -- withdrawn.
16 How did you meet those people?

17 A Mr. Siddig Ali introduced them to me, sir.

18 Q Did you know any of them before Mr. Siddig Ali
19 introduced them to you?

20 A No, sir.

21 Q With respect to some of the people that you
22 mentioned, Mr. Tarig Elhassan, do you see Mr. Tarig Elhassan
23 in court today?

24 A Yes, sir.

25 Q Can you point him out to me?

1 A He is with the white hat and glasses and a --

2 THE COURT: All right. Indicating Mr. Tarig

3 Elhassan. Go ahead.

4 MR. McCARTHY: Thank you, your Honor.

5 Q You mentioned a Mr. Wahid.

6 Did there come a time that you met Mr. Wahid?

7 A Yes, sir.

8 Q Do you see Wahid in court today?

9 A Yes, sir.

10 Q Can you point him out, please.

11 A He is No. 2 from the row over there with the
12 striped tie.

13 THE COURT: Indicating Mr. Wahid Saleh.

14 MR. McCARTHY: Thank you, your Honor.

15 Q How was Mr. Amir Abdelgani introduced to you?

16 A He was introduced to me under alias Abu Zaid.

17 Q Abu Zaid?

18 A Yes.

19 Q When you met Mr. Fadil Abdelgani, how was he
20 introduced to you?

21 A He was introduced to me under alias Abu Dabiha.

22 Q Abu Dabiha, D-A-B-I-H-A?

23 A Yes, sir.

24 Q Now, after the conversation with Mr. Siddig Ali
25 in his home, did there come a time that you began making

1 recordings for the FBI?

2 A Yes, sir.

3 Q Did you have a conversation with Mr. Siddig Ali
4 after the conversation you had in his home?

5 A Yes, sir.

6 MR. McCARTHY: Your Honor, at this time, the
7 government would offer and read Government's Exhibit 301 and
8 read the transcript that is 301T.

9 THE COURT: That is one of the CM's we discussed
10 yesterday?

11 MR. McCARTHY: Yes, your Honor.

12 THE COURT: That is received.

13 (Government's Exhibit 301T for identification was
14 received in evidence)

15 MR. McCARTHY: Your Honor, that is the
16 conversation with the underlinings that we discussed at the
17 sidebar.

18 THE COURT: Ladies and gentlemen, I should point
19 out to you that in the transcript that is about to be read
20 you will notice that there are certain places where there is
21 underlining in the transcript. At those places the defense
22 and the prosecution have a dispute about the meaning of what
23 was said, and you may hear a later version from one or more
24 of the defendants about the translation of that portion. So
25 you can read it and you can look at it and it will be in

1 evidence, but understand that as to the underlined parts
2 there may be later testimony indicating a different
3 interpretation or translation of that portion.

4 MR. McCARTHY: Your Honor, also, there is
5 underscoring at the voice attributions, and it is the same
6 issue as well.

7 THE COURT: To the extent that there is
8 underlining underneath the name of the speaker, I will also
9 tell you that there is a dispute about the identity of the
10 speaker, so that if it says "Mr. X" on the transcript and
11 that's underlined, the defense may argue and introduce
12 evidence later on that it was really Mr. Y or Mr. Z. OK?

13 MR. McCARTHY: Thank you, your Honor.

14 MR. FITZGERALD: Thank you, Judge.

15 MR. KHUZAMI: Your Honor, Mr. Fitzgerald will be
16 reading the part of Siddig Ali and I will be reading the
17 part of Emad Salem.

18 (Government Exhibit 301T was read to the jury)

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1 THE COURT: All right. We are going to take a
2 short break. Please leave your notes and other materials
3 behind. Please don't discuss the case, and we will resume
4 in a few minutes.

5 (Recess)

6 THE COURT: Mr. McCarthy?

7 MR. McCARTHY: Thank you, your Honor.

8 DIRECT EXAMINATION (Continued)

9 BY MR. McCARTHY:

10 Q Mr. Salem, I want to ask you about some of the
11 terms that were mentioned in the transcript that we just
12 read.

13 A Yes, sir.

14 Q Did you hear the term "big house" used?

15 A Yes, sir.

16 Q Can you explain to the ladies and gentlemen of
17 the jury what the "big house" was?

18 A The big house is the alias name that was picked
19 up by Mr. Siddig Ali for the United Nations.

20 Q It was also mention of a "little house."

21 Do you recall that?

22 A Yes, sir.

23 Q What is the "little house"?

24 A It is the alias name for the safe house.

25 Q What was the safe house?

1 A The safe house is the secure place, garage in
2 Queens, to build the bombs in.

3 Q The term "hadduta" was mentioned a number of
4 times, is that correct?

5 A Yes, sir.

6 Q What was the "hadduta"?

7 A The "hadduta," it is an alias name for the bomb.

8 Q Finally, let me ask you about the term "C-4."
9 Do you recall that term being used?

10 A Yes, sir.

11 Q Can you explain to the ladies and gentlemen of
12 the jury what "C-4" is.

13 A C-4 is a highly powerful explosive, sir.

14 Q What kind of explosive, sir, if you know?

15 A Plastic explosive.

16 Q Mr. Salem, at a certain point in the conversation
17 Mr. Siddig Ali and you were talking about the United
18 Nations, do you recall that?

19 A Yes, sir.

20 Q Mr. Siddig Ali made the following statement. At
21 page 22 of the transcript:

22 "This is the new government which rules the
23 world. It is the 'daghoot' itself."

24 Did you hear that?

25 A Yes, sir.

1 Q What did the word "daghoot" mean?

2 A "Daghoot" means the tyrant who rule the world.

3 Q At another point in the conversation Mr. Salem --
4 and I'm referring to page 48 of the transcript, you asked
5 Mr. Siddig Ali:

6 "What is the reason that caused Mahmud to
7 distance you from the operation?"

8 And Mr. Siddig Ali answered: "He didn't distance
9 me. He didn't. He just figured he will seek God's help and
10 mine at the last stage. You understand?"

11 Then he went on to say: "No, he sought my help
12 at the very last stage."

13 Do you recall that?

14 A Yes, sir.

15 Q Who was the Mahmud that you were talking about?

16 A Mr. Mahmud Abouhalima.

17 Q What was the operation that was being referred
18 to?

19 A Bombing the World Trade Center, sir.

20 Q There was some talk in the course of this
21 conversation about the Sudanese and the United Nations, do
22 you recall that?

23 A Yes, sir.

24 Q What was your understanding based on what
25 Mr. Siddig Ali told you of what the role of the Sudanese at

1 the United Nations was?

2 MR. STAVIS: Objection as to form, your Honor.

3 THE COURT: Sustained.

4 Q All right. Let me direct your attention to a
5 statement at page 55 of the transcript. Mr. Siddig Ali at
6 the bottom of that page says, "Well, to avoid any obscurity,
7 between you and I, from the Sudanese Embassy, which
8 embassy?"

9 You say, "The Sudanese."

10 He says, "The Sudanese."

11 Mr. Salem, you go on to say, "OK. Now I can put
12 it together."

13 Mr. Siddig Ali says: "They have cars,
14 (unintelligible) the ambassador and so, OK?"

15 Do you recall that part of the conversation?

16 A Yes, sir.

17 Q Whom did you understand Mr. Siddig Ali to be
18 referring to?

19 MR. STAVIS: Objection, your Honor.

20 THE COURT: I will allow that. Go ahead.

21 A Mr. Siddig Ali was referring to the Sudanese
22 ambassador and the Sudanese mission in the United Nations
23 they will facilitate the entry of the car which is loaded
24 with the bomb into the United Nations.

25 Q Did there come a time during the course of the

1 second phase of the investigation in May and June of 1993,
2 that you went to the Sudanese Embassy --

3 MR. JACOBS: Your Honor, I am going to object to
4 "the second phase of the investigation."

5 THE COURT: Just take out "phases" and just refer
6 to later times.

7 MR. McCARTHY: Yes, judge.

8 Q Directing your attention to May and June of 1993,
9 do you recall that time?

10 A Yes, sir.

11 Q Did there come a time that you went to the
12 Sudanese mission to the United Nations?

13 A Yes, sir.

14 Q How many times?

15 A Twice, sir.

16 Q Under what circumstances did you go to the
17 Sudanese mission to the United Nations?

18 A Mr. Siddig Ali contacted the Sudanese consul and
19 arranged a meeting.

20 MR. BERNSTEIN: Objection as to his personal
21 knowledge.

22 THE COURT: Did Mr. Siddig Ali tell you this?

23 THE WITNESS: He made the phone call in front of
24 me, sir.

25 THE COURT: Go ahead.

1 Q Go ahead, Mr. Salem.

2 A He called the Sudanese consul, Mr. Ahmed Yusef,
3 in front of me, and told him that he have a good mujahed
4 brother, would like to get him a visa for his family and
5 himself to go to Sudan. And Mr. Siddig and myself went to
6 meet with Mr. Ahmed Yusef, the Sudanese consul in the United
7 Nations mission, and he wasn't available in that time.

8 A little later Mr. Siddig Ali arranged another
9 appointment with Mr. Ahmed Yusef and myself, and I went by
10 myself, and for the second time Mr. Ahmed Yusef was not
11 available.

12 Q Mr. Salem, did there come a time after this
13 conversation that we heard this morning that you went to see
14 Mr. El Sayyid Nosair at Attica Prison?

15 A Yes, sir.

16 Q Whom did you go to see Mr. El Sayyid Nosair at
17 Attica Prison with?

18 A I went with Mr. Ali El-Gabrowny, Mr. Ibrahim
19 Siddig Ali and myself.

20 Q Did you and Mr. Siddig Ali speak about the
21 bombing plan that we heard about in this conversation, did
22 you speak about that in front of Ali El-Gabrowny?

23 A No, sir, we did not.

24 Q Why not?

25 A Mr. Ali El-Gabrowny said so many times that --

1 he's -- he said so many times that he disagree about
2 violence and about -- he disagree about murdering Meir
3 Kahane, he disagree about so many violence of any way of
4 violence.

5 MR. STAVIS: Your Honor, I would ask that that
6 last answer be stricken as hearsay.

7 MR. RICCO: One second, your Honor.

8 THE COURT: Overruled.

9 Q Prior to going --

10 MR. McCARTHY: Withdrawn, if your Honor, please.

11 Q Prior to going on your trip to Attica, did you go
12 to a location in New Jersey?

13 A Yes, sir.

14 Q Where did you go?

15 A I went to the Salaam mosque in New Jersey.

16 Q Did you meet with anyone at the Salaam mosque in
17 New Jersey?

18 A Yes, sir.

19 Q Whom did you meet with?

20 A Mr. Adnan Constantine.

21 Q Had you ever met Mr. Adnan Constantine before?

22 A Yes, sir.

23 Q When, if you recall, did you meet Mr. Adnan
24 Constantine?

25 A I don't recall when, but it's so many times.

1 Q How long prior to this occasion when you saw him
2 at the El Salaam mosque?

3 A It was the day before, the day before, something
4 like that.

5 Q Tell us, where are the places that you saw
6 Mr. Adnan Constantine?

7 A In Sheik Omar Abdel Rahman's house and in El
8 Salaam mosque.

9 Q Did you have a conversation with Mr. Adnan
10 Constantine?

11 A Yes, sir, I did.

12 Q Where did that conversation take place?

13 A It started in El Salaam mosque and it end up in
14 his house.

15 Q During the course of your conversation with Adnan
16 Constantine, did the topic of the World Trade Center come
17 up?

18 A Yes, sir.

19 Q What, if anything, did Mr. Adnan Constantine say
20 about the World Trade Center?

21 MR. JACOBS: Objection.

22 MS. AMSTERDAM: Objection.

23 THE COURT: May I see counsel at the side.

24 (Continued on next page)

25

1 (At the side bar)

2 THE COURT: Who is Adnan Constantine and what is
3 the theory?

4 MR. McCARTHY: It is a co-conspirator theory,
5 your Honor. He is an associate of Sheik Abdel Rahman and
6 other members of the conspiracy. He gave Mr. Salem \$20 to
7 put into Mr. Nosair's commissary fund. He told him, but for
8 a missing link, he, too, would have been arrested in
9 connection with the bombing of the World Trade Center, and
10 he also told him that he was interested in doing a mission
11 for jihad and asked Mr. Salem to keep him in mind for that
12 purpose.

13 MR. JACOBS: I would object. That is not a
14 statement in furtherance of the conspiracy. It may be an
15 admission by this person that he wanted to do something, but
16 I don't --

17 THE COURT: It is not an admission under these
18 circumstances.

19 MR. JACOBS: It certainly is not a statement in
20 furtherance of the conspiracy as charged, the fact that he
21 gave somebody \$20 for -- I don't want to take away from Mr.
22 Stavis, but the fact that he gave somebody commissary money
23 is not a statement in furtherance of a conspiracy.

24 And the statement "but for this," means nothing
25 unless he actually made some statement of what he did with

1 the people involved in the World Trade Center, how he was
2 involved, and I think the statement under 403 is
3 speculative, and should not be admitted at this time.

4 THE COURT: It is not speculative. The man is
5 referring to something he says he did.

6 MR. McCARTHY: May I make a proposal, your Honor?

7 THE COURT: Go ahead.

8 MR. McCARTHY: Here is what I would propose to
9 do: I can move on to another topic. I can just move on to
10 the visit up to Attica. If your Honor wishes -- it will
11 take about two minutes of time -- I can elicit the testimony
12 outside the presence of the jury so that your Honor can hear
13 it, if that helps.

14 THE COURT: It doesn't.

15 MR. McCARTHY: OK.

16 THE COURT: You told me what the substance of it
17 was.

18 MR. McCARTHY: Yes, sir.

19 THE COURT: It seems to me that if somebody says,
20 "I have done 'X' or 'Y' or 'Z,' and keep me in mind for
21 future operations," that is in furtherance. It is in
22 essence talismanic. He is offering up his own credentials.
23 "My credential is I was associated with that. I would have
24 gotten bagged, but for some circumstance beyond anybody's
25 control."

1 MR. JACOBS: Let me give you an example.

2 MR. RICCO: Wait a moment.

3 MR. JACOBS: May I just have a moment to confer.

4 (Counsel conferred off the record)

5 THE COURT: Can I also point out that as far as
6 this man having made the statement, I don't see what the
7 prejudice is to anybody else's client. So on a 403 balance
8 it doesn't --

9 MS. STEWART: He said already he was a friend of
10 the Sheik's. I mean he did preface it by that.

11 MR. JACOBS: And also the money to Nosair's
12 defense fund.

13 MR. STAVIS: No, just the commissary.

14 MS. STEWART: There is a tenuous link there, if
15 nothing else, but no more than there is in CM12, so I don't
16 really see that --

17 MR. JACOBS: Your Honor, hypothetically, assuming
18 he was involved in the hindering of the prosecution or
19 obstructing of justice concerning the arrest of the people,
20 but didn't actually participate in the World Trade Center,
21 it is not in furtherance of the conspiracy. El-Gabrownny was
22 arrested for hindering prosecution after the fact. What I
23 am suggesting is that this statement is not a clear --

24 THE COURT: The statement that he was involved in
25 the past is not in furtherance of the World Trade Center

1 conspiracy because that was over. It is in essence an
2 offering of a credential, "Call on me."

3 MR. JACOBS: I understand.

4 THE COURT: "I have experience in a prior
5 operation."

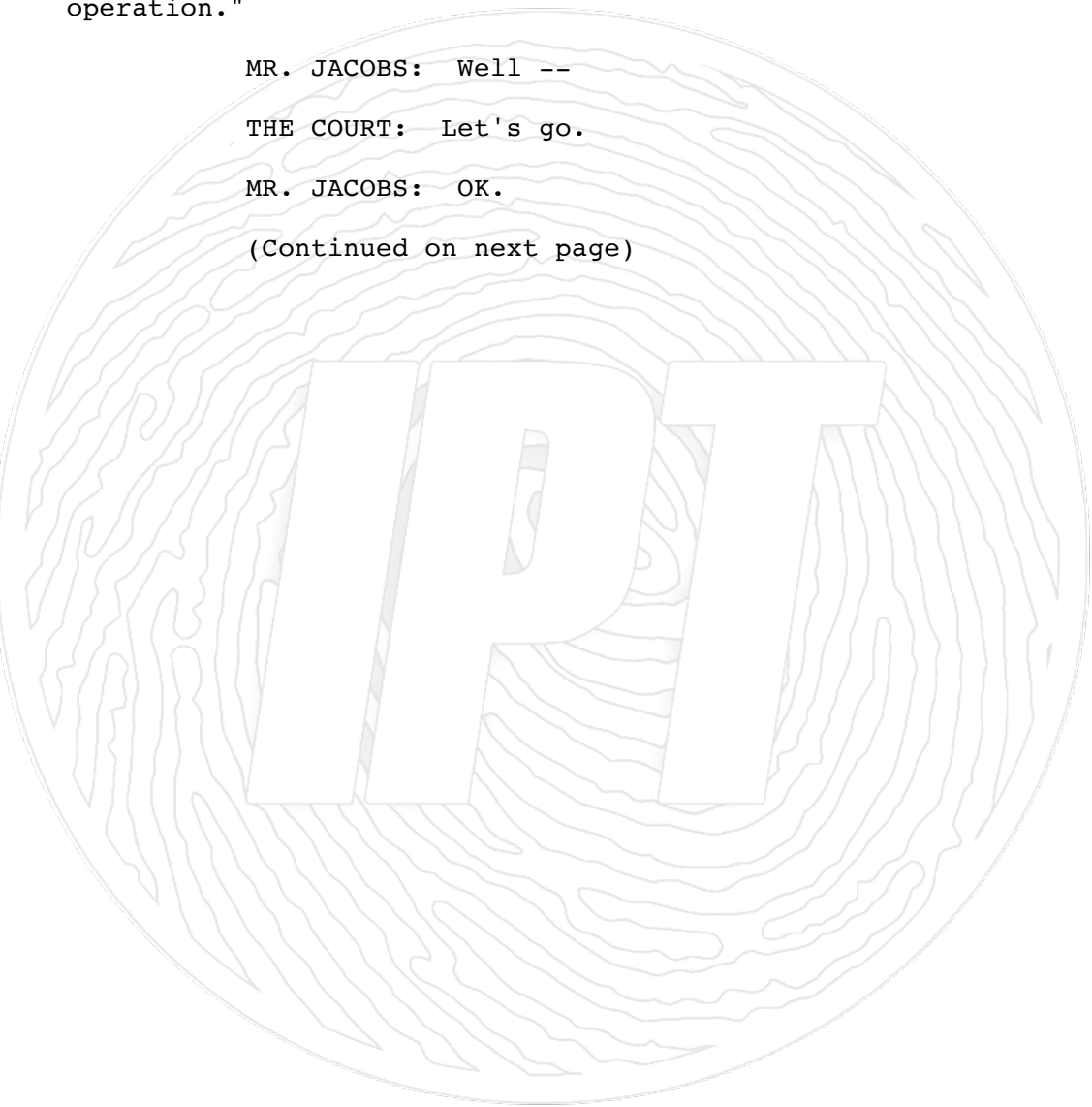
6 MR. JACOBS: Well --

7 THE COURT: Let's go.

8 MR. JACOBS: OK.

9 (Continued on next page)

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1 (In open court)

2 BY MR. McCARTHY:

3 Q Mr. Salem, what was your conversation with Adnan
4 Constantine about the World Trade Center?

5 A Mr. Adnan Constantine told me that thank God it
6 was a little missing link, if it's not this missing link he
7 could be arrested in the World Trade Center bombing.

8 Q Did the topic of jihad come up in your
9 conversation?

10 A Yes, sir.

11 Q What was said by Mr. Adnan Constantine in that
12 regard?

13 A He said that since you doing jihad, I beg you to
14 find me a mission so --

15 Q Let me interrupt you. I am sorry. Since who was
16 doing jihad?

17 A Since I am doing jihad.

18 Q That is, you, Emad Salem?

19 A Yes, sir.

20 Q Continue your statement.

21 A He wants me to keep him in mind for a mission of
22 jihad so probably he can get the martyrship.

23 MR. JACOBS: Object to "probably" -- is that the
24 conversation --

25 THE COURT: No.

1 MR. McCARTHY: I will clarify it.

2 THE COURT: Please do.

3 Q Did the word martyrship come up in the
4 conversation?

5 A Yes, sir.

6 Q What was said in that regard?

7 A That he wants to be a martyr.

8 Q Did the topic of Mr. Nosair come up?

9 A Yes, sir.

10 Q What was said in that regard?

11 A He said since you going to meet Mr. Nosair, here
12 is some money, give it to him for help, and here is an
13 envelope, and he wrote his address on it for Mr. -- to give
14 it to Mr. Nosair so he can send Amir back.

15 Q How much money?

16 A He give me \$20, sir.

17 Q Did you meet with Mr. El Sayyid Nosair?

18 A Yes, sir.

19 MR. STAVIS: Can we have a date on that, or time
20 frame, your Honor?

21 THE COURT: Can you place a time frame?

22 MR. McCARTHY: I was getting to that.

23 Q Approximately when was it that you met with
24 Sayyid Nosair?

25 A I don't recall, sir.

1 Q Was it before or after the conversation that we
2 read this morning?

3 A After, sir.

4 Q Who was with you when you met with El Sayyid?

5 A Mr. Ali El-Gabrownny and, Mr. Siddig Ali, and
6 myself.

7 Q Can you tell us, please, as far as family
8 relationship is concerned, with respect to Mr. Ibrahim
9 El-Gabrownny, who is Ali El-Gabrownny?

10 A Mr. Ali El-Gabrownny is the brother of Mr. Ibrahim
11 El-Gabrownny, sir.

12 Q Can you describe for the ladies and gentlemen of
13 the jury your meeting with Mr. El Sayyid Nosair.

14 MR. STAVIS: Objection as to form, your Honor.

15 THE COURT: The objection is sustained as to
16 form.

17 Q There came a time that you met Mr. Nosair?

18 A Yes, sir.

19 Q Tell us what happened when you first met him?

20 A He start talking about the usual topic: bombing,
21 explosives, weapons, rifles, pistols, killing, kidnapping,
22 murdering -- the same topic, sir.

23 Q Let me stop you. Who was present when he was
24 talking about these matters?

25 A Mr. Ali El-Gabrownny and Mr. Siddig Ibrahim Ali

1 and myself.

2 Q Did there come a time when there was not
3 conversation when the four of you were present?

4 A Yes, sir.

5 Q Explain to the ladies and gentlemen of the jury
6 how that went.

7 A Mr. Sayyid Nosair said will you guys give us a
8 minute, please. So Mr. Siddig I be Ali and myself stepped
9 back with our chairs and he spoke individually with Mr. Ali
10 El-Gabrowny.

11 Q Where were you when that was going on?

12 A Like few feet behind Mr. Ali El-Gabrowny.

13 Q What happened after that?

14 A Then he ask Mr. Siddig Ali or Mr. Siddig Ali
15 stepped forward, and they start talking to each other,
16 Mr. Ali El-Gabrowny stepped back beside me and they start
17 whispering in each other's ears.

18 Q Where were you when that was going on?

19 A I was sitting at the back, a little bit back, few
20 feets from Mr. Siddig Ali.

21 Q Did there come a time after this conversation or
22 after your visit with Mr. Sayyid Nosair when Mr. Siddig Ali
23 told you what he and Sayyid Nosair spoke about?

24 A Yes, sir.

25 Q Can you tell us what it is that Mr. Siddig Ali

1 said when you spoke with him?

2 MR. STAVIS: Can we have a time frame on that
3 conversation?

4 THE COURT: How long after?

5 Q How long after your meeting at Attica?

6 A After we came back from Attica, I believe next
7 day or day after, right away I ask him.

8 Q Can you tell us what he said?

9 A He said that when he told Mr. Sayyid Nosair about
10 the United Nations and the tunnels, he said no, I would
11 rather do kidnap big personalities and bargain with them
12 with the government.

13 Q Who said I would rather kidnap big personalities
14 and bargain with them with the government?

15 A Mr. Sayyid Nosair said that to Mr. Siddig and
16 Mr. Siddig told me that.

17 Q Did Mr. Siddig tell you what personalities
18 Mr. Sayyid Nosair mentioned?

19 A Yes, sir, he did.

20 Q What personalities were those?

21 A Mr. Henry Kissinger and Mr. Richard Nixon.

22 Q What if anything, according to Mr. Siddig Ali,
23 did Mr. Nosair suggest in that regard?

24 A I am sorry. Can you repeat the question, please.

25 Q What if anything did Mr. Nosair suggest,

1 according to Mr. Siddig Ali, that Richard Nixon and Henry
2 Kissinger be held for?

3 A To bargain, to free the brothers and himself.

4 Q Did Mr. Siddig Ali tell you what his response to
5 that was?

6 A Yes. He took the advice from him but he said
7 that Mr. Siddig told me that he disagree about these
8 personnels and he will go for the United Nations.

9 Q Did you ever a conversation with El Sayyid Nosair
10 up at Attica?

11 A Yes, sir, I did.

12 Q I am talking now about you alone as opposed to
13 you with the other two people who came to visit that day.

14 A Yes, sir. Mr. Siddig Ali was sitting back or I
15 think he went out to get some soda, and I said, and I talked
16 to Mr. Sayyid Nosair in that time, and we also whispered in
17 each other's ears.

18 Q What did you and Mr. El Sayyid Nosair speak
19 about, whispering in each other's ears?

20 A I told him that we going to bomb the United
21 Nations and the Federal Plaza, with the help of Mr. Siddig
22 Ali, and he said, depend on God, don't wait for any other
23 people to help, just start by yourself.

24 MR. McCARTHY: Your Honor, if I may, I would like
25 to approach the witness with what is jointly marked as

1 Government's Exhibit 385 and Nosair Exhibit KK.

2 THE COURT: Go ahead. That is a joint exhibit?

3 MR. McCARTHY: Yes, your Honor.

4 THE COURT: Go ahead.

5 Q Mr. Salem, I am placing before you two videotape
6 tapes with the exhibit numbers that I just read to the
7 court. Do you recognize those items?

8 A Yes, sir, I do.

9 Q Have you reviewed them at my request prior to
10 testifying?

11 A Yes, sir, I did.

12 Q What do you recognize these items to be?

13 A It's tapes being made inside the jail in Attica
14 for Mr. Sayyid Nosair and myself and Mr. Siddig Ibrahim Ali
15 and Mr. Ali El-Gabrownny's visit.

16 MR. McCARTHY: Your Honor, at this point the
17 government offers these exhibits.

18 MR. STAVIS: Your Honor, it is a joint offer and
19 it is Defense KK, so naturally I have no objection and ask
20 that it be played to the jury.

21 THE COURT: Go ahead.

22 MR. McCARTHY: Your Honor, at this point I would
23 like to play a portion of the first of the two tapes.

24 THE COURT: Go ahead.

25 MR. McCARTHY: Your Honor, perhaps I could move

1 the podium and ask your Honor to direct the jury's attention
2 to the other monitor, which is working.

3 (Videotape played)

4 MR. McCARTHY: Leave the frame frozen for just a
5 moment.

6 Q Mr. Salem, let me direct your attention to the
7 screen and ask you to describe who the people are and where
8 they are sitting as we look at it.

9 A Mr. Sayyid Nosair across the table at the back of
10 the picture; myself, the first left individual; in the
11 middle, Mr. Siddig Ibrahim Ali; on the right, Mr. Ali
12 El-Gabrownny.

13 MR. McCARTHY: Would you roll the tape, please.

14 (Videotape continued)

15 MR. McCARTHY: You can stop the tape, if you
16 would.

17 Q Mr. Salem, during the point -- withdrawn if your
18 Honor please.

19 How long was your meeting that day with El Sayyid
20 Nosair?

21 A I don't recall how long, but it was a very long
22 one.

23 Q When you say a very long one, can you give us an
24 idea approximately of how long your meeting was?

25 A More than three hours.

1 Q At this point in your conversation, did you see
2 Mr. Nosair make some gesture gestures with his hands, the
3 last point that we saw?

4 A Yes, sir.

5 Q Can you tell us, please, what you saw him do as
6 you were sitting there with his hands?

7 A He at the beginning was describing some sheet on
8 the bottom and wrap four things around the center, and
9 pulling the gun from his side and shooting, and carrying the
10 rifle and shooting, and explosion going to occur up there.

11 Q I am placing before you, Mr. Salem, Government's
12 Exhibit 385D-1 through D-13. Do you recognize those
13 photographs?

14 A Yes, sir.

15 Q What do you recognize them to be?

16 A It's a still picture out of the videotape from
17 the jail in Attica, from my visit to Mr. Sayyid Nosair.

18 MR. McCARTHY: Your Honor, the government offers
19 385D-1 through 385D-13.

20 MR. STAVIS: May I have a voir dire, your Honor?

21 THE COURT: Go ahead.

22 VOIR-DIRE EXAMINATION

23 BY MR. STAVIS:

24 Q Mr. Salem, did you take these photographs?

25 A No, sir.

1 MR. STAVIS: May I approach the witness, your
2 Honor?

3 THE COURT: Yes.

4 BY MR. STAVIS:

5 Q Drawing your attention to 385D-1, in the upper
6 right-hand corner, do you see some people there?

7 A Yes, sir.

8 Q Do you know who those people are?

9 A I don't know them in person, but I know who they
10 are.

11 Q Did you speak to those people at the time that
12 this photograph was taken?

13 A No, sir.

14 Q During the course of the three hours that these
15 photographs were taken, how many other people were in and
16 out of the room where these photographs were taken?

17 A This prisoner and his, I think two or three
18 visitors, was sitting in front of him, and between three of
19 us we went out get some soda and some bag of chips for Mr.
20 Sayyid and some juice, and we came back.

21 Q Would it be fair to say that the other prisoner
22 depicted in this photograph was just a few feet away from
23 the person on the right, Mr. Ali El-Gabrowny?

24 A Yes, sir.

25 MR. STAVIS: Your Honor, I previously had an

1 objection under Rule 106 and I reiterate my objection to
2 this particular exhibit.

3 THE COURT: That objection is overruled. The
4 385D series is received.

5 (Government's Exhibits 385D-1 through 385D-13
6 received in evidence)

7 MR. McCARTHY: Your Honor, I believe those
8 exhibits are in the jury's books.

9 THE COURT: Turn to tab 385. It says 385T but
10 that is not accurate.

11 MR. McCARTHY: Sorry about that. Your Honor,
12 some of the jurors are inquiring about which tab.

13 THE COURT: It is tab 385. It says 385T but you
14 can disregard the T. It is under that tab.

15 BY MR. McCARTHY:

16 Q Mr. Salem, in this conversation that you are
17 having with Mr. Nosair, what language were you and
18 Mr. Siddig Ali and Mr. Ali El-Gabrownny and Mr. Nosair
19 speaking?

20 A Arabic, sir.

21 Q I want to ask you briefly to describe what was
22 going on as you sat there in each of these stills.

23 A The first picture --

24 Q That is Government Exhibit 385D-1?

25 A Yes, sir -- was a time when he said that put a

1 sheet underneath to prevent the explosion from going down,
2 it goes up, and a gesture.

3 Q 385D-2?

4 A He is pointing both hands to us in shape of
5 pistols.

6 Q Pointing your attention to 385D-3 through 385D-8,
7 can you tell us what is going on in those photographs?

8 A The first one, he is pulling the pistol, the
9 second one he is pointing his hand with the pistol. The
10 next one his hand at the grip of the pistol again. The one
11 after pointing the pistol.

12 Q That is 385D-5 and 385D-6 that you are referring
13 to?

14 MR. STAVIS: Your Honor, can I ask that we slow
15 down so that we can follow?

16 THE COURT: Just go photograph by photograph,
17 please.

18 THE WITNESS: Yes, sir.

19 Q 385D-5.

20 A I was sitting on the left side, Mr. Siddig Ali
21 sitting in the middle, Mr. Ali El-Gabrownny on the right,
22 Mr. Sayyid Nosair in the front, and his hand on his
23 right-hand side, making a gesture that he is pulling a gun.

24 Q 385D-6?

25 A He start to point the gun.

1 Q 385D-7?

2 A He is pointing the gun towards Mr. Siddig.

3 Q 385D-8.

4 A He is holding something with the left hand and
5 pointing the gun with the right hand.

6 Q Let me direct your attention next to 385D-11.

7 A Yes, sir.

8 Q What is going on in that photograph?

9 A He was making a gesture with his hand that he is
10 aiming with the rifle.

11 Q Thank you.

12 MR. McCARTHY: Will you put the second tape in,
13 please.

14 Q While they are doing that, Mr. Salem, did Mr.
15 Nosair give you anything that day?

16 A Yes, sir, he did.

17 Q What did he give you?

18 A He give me a magazine, like a catalog magazine.

19 Q Let me stop you. A catalog?

20 A Yes, full of guns, pistols, rifles, and he said
21 that we can contact these companies to obtain silencers.

22 Q Let me direct your attention to the screen where
23 the second of the two videotapes has been put in. Directing
24 your attention to the screen, can you tell us who is
25 depicted at this point?

1 A Yes, sir.

2 Q Who is depicted?

3 A I am sorry?

4 Q Who is depicted at that point?

5 A Mr. Sayyid Nosair talking to Mr. Ali El-Gabrowny.

6 At the bottom of the picture on the right center, a little

7 bit to the right, my head, and at the left Mr. Siddig Ali.

8 Q You tell us that there came a time after Mr.

9 Nosair spoke to Mr. Ali El-Gabrowny that he spoke to

10 Mr. Siddig Ali alone?

11 A Yes, sir.

12 MR. McCARTHY: Can you roll the tape, please.

13 (Videotape played)

14 MR. McCARTHY: Miss Chu, would you stop the tape
15 for a moment. Thank you.

16 Q Mr. Salem, what are we seeing on the tape now?

17 A Mr. Ali El-Gabrowny finish talking to Mr. Sayyid
18 Nosair. He step back, stay beside me. Mr. Siddig Ibrahim
19 Ali step forward and start talking to Mr. Sayyid Nosair.

20 Q Where are you while that is going on?

21 A At the center back, bottom of the picture.

22 MR. McCARTHY: Could you roll the tape, please.

23 (Videotape continued)

24 BY MR. McCARTHY:

25 Q Mr. Salem, the tape stopped at the time marked

1 12:21:10. Can you tell us what we are seeing at this
2 portion of the video?

3 A Yes, sir. Mr. Siddig Ali whispering in
4 Mr. Sayyid Nosair's ears.

5 MR. McCARTHY: Can you continue to roll the tape,
6 please.

7 (Videotape continued)

8 MR. McCARTHY: Would you stop the tape, please.

9 Q Mr. Salem, the tape has been stopped at the time
10 marked 12:22:14. Can you tell us, please, what we are
11 seeing at this portion.

12 A Mr. Siddig Ali and Mr. Sayyid Nosair whispering
13 in each other's ears.

14 MR. McCARTHY: Continue the tape, please.

15 (Videotape continued)

16 THE COURT: Would you come to a convenient break
17 point in the next five minutes or so.

18 MR. McCARTHY: Yes, your Honor.

19 MR. McCARTHY: Your Honor, perhaps I could turn
20 the other monitor down. We only offered the video portion
21 of the tape.

22 Q Mr. Salem, the tape recording has been stopped at
23 12:25:42. Do you see that?

24 A Yes, sir.

25 Q What is going on at that portion of the tape?

1 A Mr. Sayyid Nosair whispering in Mr. Siddig Ali's
2 ear.

3 (Continued on next page)

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1 MR. McCARTHY: Your Honor, would this be a
2 convenient point?

3 THE COURT: Ladies and gentlemen, we are going to
4 break for lunch. Please leave your notebooks and other
5 materials behind. Please don't discuss the case. Have a
6 nice lunch.

7 (Jury excused)

8 (Witness excused)

9 THE COURT: We are adjourned.

10 (In the robing room)

11 (Mr. Ricco present)

12 MR. RICCO: Judge, I spoke to Mr. El-Gabrowny,
13 and he indicated to me that he would like not to be present
14 this afternoon, and he says he is not feeling up to it.

15 THE COURT: Why don't we see how he is doing this
16 afternoon. Is he going to have lunch, I hope?

17 MR. RICCO: Yes.

18 THE COURT: Let's see whether the food fortifies
19 him, and tell him I do hope he feels better but let's visit
20 that afterwards.

21 MR. RICCO: Have a good lunch, your Honor.

22 THE COURT: You, too.

23 (Luncheon recess)

24

25

A F T E R N O O N S E S S I O N

Time noted, 2:05

EMAD SALEM, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: Mr. McCarthy?

MR. McCARTHY: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. McCARTHY:

Q Mr. Salem, when we broke, we were reviewing the second of the two tapes of the trip you made to Attica.

A Yes, sir.

MR. McCARTHY: Will you turn the tape on and pause it, please.

Q Mr. Salem, let me ask you: First, have you listened to the sound that is on this audiocassette and the other one?

A It is background noise. There is no specific sounds.

Q Can you hear the words on the soundtrack of the videotape? Can you hear the words being spoken by the people who are depicted conversing?

A No, sir.

MR. McCARTHY: Could we roll the tape for about a

1 minute and a half or so.

2 (Videotape played)

3 MR. McCARTHY: Ms. Chu, could you just freeze the
4 frame for a moment.

5 Q Mr. Salem, could you tell us, please, this
6 portion of the tape on which the time is marked 12:35:29, I
7 believe, can you tell us what happened at that time?

8 A I was invited to the front to sit beside, on the
9 left side of Mr. Siddig Ali and in front of Mr. Sayyid
10 Nosair.

11 Q You told us earlier that each of the three people
12 who visited that day -- that is, Ali El-Gabrownny, yourself
13 and Mr. Siddig Ali -- spoke separately to Mr. Nosair, do you
14 recall that?

15 A Yes, sir.

16 Q Whose idea was it that you each would speak
17 separately to Mr. Nosair?

18 A It was Mr. Sayyid Nosair's, sir.

19 MR. McCARTHY: Ms. Chu, may I ask you, please, to
20 move the tape forward to about 12:54.

21 (Pause)

22 Q Mr. Salem, while the tape is being moved ahead,
23 is there an item on the table?

24 A Yes, sir.

25 Q Can you tell us what that item was.

1 A It is the magazine for weapons and arms and
2 things like that.

3 Q That is the magazine you mentioned this morning
4 in your testimony?

5 A Yes, sir.

6 (pause)

7 MR. McCARTHY: Can you roll it forward to about
8 12:54 and 50 seconds.

9 (Pause)

10 MR. McCARTHY: Ms. Chu, maybe you could fast
11 forward it to 12:54. Thank you.

12 Q Mr. Salem, as the tape is rolling, what are we
13 seeing now. Let me just state that it is at 12:55 and about
14 10 seconds forward. Go ahead.

15 A Mr. Sayyid Nosair and myself.

16 MR. McCARTHY: Would you freeze the frame for a
17 moment.

18 Q Mr. Salem, what are we seeing at this point, at
19 12:56:38?

20 A Mr. Sayyid Nosair whispering to me, and I am
21 bending over and he's bending towards me.

22 MR. McCARTHY: Could you just keep rolling the
23 tape, please.

24 (Videotape played)

25 MR. McCARTHY: We can stop there.

1 Your Honor, that would end the part I propose to
2 play at this time.

3 MR. McCARTHY: Your Honor, I would like to
4 approach the witness with some photographs.

5 THE COURT: Go ahead.

6 Q Mr. Salem, I am showing you photographs marked
7 385 E1 to 385 E36.

8 Have you seen those photographs before, sir?

9 A Yes, sir.

10 Q Can you tell us what those photographs are.

11 A These are still photographs coming out of the
12 videotape from Attica jail for the visit of Mr. Sayyid
13 Nosair, Mr. Ali El-Gabrownny, Mr. Siddig Ibrahim Ali and
14 myself.

15 MR. McCARTHY: Your Honor, the government offers
16 385 E1 --

17 MR. STAVIS: D?

18 MR. McCARTHY: Let me show Mr. Stavis, if the
19 court please.

20 THE COURT: Please.

21 MR. McCARTHY: I'm sorry, your Honor.

22 385 E1 through 385 E36.

23 MR. STAVIS: Your Honor, I have no voir dire, but
24 I do have the same objection that I had to the 385D series.

25 THE COURT: Same ruling. These are received. Go

1 ahead.

2 (Government's Exhibits 385 E1 through E36 for
3 identification were received in evidence)

4 MR. McCARTHY: Your Honor, would the court direct
5 the jury's attention to these exhibits.

6 THE COURT: These are also behind tab 385T, but
7 they are further along. They are just beyond the D series.
8 They begin with 385 E1.

9 Q Mr. Salem, let me ask you first: Who is depicted
10 in 385 E1? Let's start with at the table.

11 A In the middle of the table that is Mr. Sayyid
12 Nosair, and then on the right, I believe Ali El-Gabrownny,
13 and it is not clear, the other two at the bottom here.

14 Q That is in the bottom left corner it is not clear
15 to you?

16 A Yes, sir.

17 Q What do we see in 385 E2?

18 A Mr. Siddig Ibrahim Ali when he is moving forward
19 to sit with Mr. Sayyid Nosair at the table.

20 Q In 385 E3?

21 A Mr. Sayyid Nosair, and I'm not so sure who is the
22 other. This picture is not that clear.

23 Q Let me direct your attention to 385 E6. Do you
24 recognize who is depicted in that photograph?

25 A Yes, that is Mr. Sayyid Nosair and Mr. Siddig Ali

1 whispering in his ears.

2 Q In 385 E10?

3 A It is Mr. Siddig Ali whispering again in
4 Mr. Sayyid Nosair's ears.

5 Q Let me direct your attention first to 385 E15.

6 Can you tell us who is depicted in that
7 photograph?

8 A Mr. Sayyid Nosair and Mr. Siddig Ibrahim Ali in
9 front of him.

10 Q What is in 385 E16?

11 A Mr. Sayyid Nosair, and on the left -- on the
12 right Mr. Siddig Ibrahim Ali, on the left is myself.

13 Q That is as you look at the photograph?

14 A That's correct, sir.

15 Q Let me next direct your attention to 385 E23.

16 A Yes, sir. In the middle of the picture,
17 Mr. Sayyid Nosair; on the right, Mr. Siddig Ibrahim Ali; on
18 his left, myself; at the back, Mr. Ali El-Gabrownny, and he's
19 moving out of the place of the visit.

20 Q Who is the "he" who is moving out of the place of
21 the visit?

22 A Mr. Ali El-Gabrownny.

23 Q What is depicted, sir, in 385 E24?

24 A That's Mr. Sayyid Nosair at the middle of the
25 table, and I am sitting across the table from him.

1 Q Directing your attention next to 385 E25.

2 Can you tell us what is depicted in that
3 photograph?

4 A That is Mr. Sayyid Nosair bending forward, and I
5 am sitting across the table from him bending forward and
6 he's whispering to me.

7 Q Directing your attention next to 385 E29.

8 A Mr. Sayyid Nosair whispering in my ears, and I am
9 bending toward to hear what he is saying.

10 Q Let me direct your attention finally to 385 E35
11 and the photograph below that, 385 E36. Starting with E35.

12 A That is Mr. Sayyid Nosair sitting across the
13 table, and at the bottom of the picture on the left when I
14 am looking to the picture is Mr. Ali El-Gabrowny standing
15 and on his right I am sitting down and on my right
16 Mr. Siddig Ali making gesture.

17 Q Finally, the last photograph 385 E36.

18 A In the middle of the picture, Mr. Sayyid Nosair,
19 and on the bottom of the picture to the left side when I'm
20 looking to the picture, Mr. Ali El-Gabrowny, on the left,
21 and myself in the middle, and Mr. Siddig Ibrahim Ali on the
22 right, sir.

23 Q Mr. Salem.

24 A Yes, sir.

25 Q You told us earlier that after your trip to

1 Attica you had a conversation with Mr. Siddig Ali.

2 A Yes, sir.

3 Q Do you recall that?

4 A Yes, sir.

5 Q I believe you said that you spoke with Mr. Siddig
6 Ali about his, that is, Siddig Ali's conversation with
7 Mr. Nosair?

8 A Yes, sir.

9 Q Do you recall you mentioned earlier that in the
10 course of their conversation Mr. Siddig Ali reported to you
11 that Mr. Nosair suggested taking people for freeing the
12 brothers and himself?

13 A Yes, sir.

14 Q Who did you understand Mr. Siddig Ali to mean by
15 "the brothers"?

16 MR. STAVIS: Objection as to what Mr. Siddig Ali
17 meant, your Honor.

18 THE COURT: Unless he can establish a basis for
19 it, sustained.

20 Q Did you and Mr. Siddig Ali during the course of
21 May and June 1993 discuss the bombing of the World Trade
22 Center?

23 A Yes, sir.

24 Q Did you discuss people who were in custody in
25 connection with that event?

1 A Yes, sir.

2 Q How, if at all, did Mr. Siddig Ali refer to those
3 individuals?

4 MR. JACOBS: Objection.

5 THE COURT: Overruled.

6 A Mr. Siddig Ali told me that the brothers in jail
7 in connection of bombing the World Trade Center, after we
8 kidnap Mr. Henry Kissinger.

9 MR. STAVIS: Objection. Move to strike as
10 unresponsive to the question.

11 THE COURT: It is not responsive.

12 MR. McCARTHY: I will put another question, your
13 Honor.

14 THE COURT: Would you?

15 MR. McCARTHY: Yes.

16 MR. JACOBS: Can we fix a date, Judge, May and
17 June?

18 THE COURT: No. Not at all. Go ahead.

19 Q I am not asking you at this point about the
20 conversation you had with Mr. Siddig Ali about his
21 conversation with Mr. Nosair.

22 A Yes.

23 Q I am asking you, during the conversations that
24 you have had with Mr. Siddig Ali, how did he refer to the
25 people who were in jail for the World Trade Center?

1 A You mean who he told me about, what the names --

2 THE COURT: No, what he wants to know is whether
3 there was a term or a phrase that he used to refer to those
4 people.

5 THE WITNESS: Yes, "the brothers," "the brothers
6 in jail" or "the brothers in custody." So many terms we
7 used, but we know "the brothers in custody," "the brothers
8 at the infidel side," so many terms, sir.

9 Q Now, when Mr. Siddig Ali mentioned to you or
10 described to you his conversation with Mr. Nosair --

11 A Yes.

12 Q -- and he said that Mr. Nosair mentioned holding
13 permits in order to get Mr. Nosair and the brothers freed,
14 who did you understand him to mean by "the brothers"?

15 MR. STAVIS: Objection.

16 THE COURT: Overruled.

17 A The brothers in jail, sir, in connection with
18 bombing the World Trade Center.

19 Q Mr. Salem, have you ever heard of a term called
20 "bayah," b-A-Y-A-H?

21 A Yes, sir.

22 Q From whom did you hear the term bayah?

23 A I heard it from so many people, and especially
24 Mr. Siddig Ali.

25 Q Can you tell us what you understand bayah to be.

1 A Bayah, it's a pledge of allegiance to a holy
2 person, to dedicate your life to him until death.

3 Q What, if anything, did Mr. Siddig Ali tell you
4 about bayah in the spring of 1993?

5 A Mr. Siddig Ali told me that he gave bayah to
6 Sheik Omar Abdel Rahman.

7 Q What else did he say about it, if anything?

8 A He said that his wife also gave bayah to Sheik
9 Omar Abdel Rahman, and they renewed it from time to time.

10 MS. STEWART: May we have a time frame on this,
11 Judge?

12 THE COURT: The time frame was set at the spring
13 of '93.

14 Q Did Mr. Siddig Ali make any suggestion to you
15 regarding bayah?

16 A Yes, sir.

17 Q What did he suggest to you?

18 A He asked me to do bayah to Sheik Omar Abdel
19 Rahman as well.

20 Q Did there come a time that you had a conversation
21 with Sheik Omar Abdel Rahman after you came back from
22 Attica?

23 A Yes, sir, I did.

24 Q Can you tell us where that conversation took
25 place.

1 A It started at the front room of his house, and it
2 ended up in the kitchen of his house.

3 Q Did you record that conversation?

4 A Yes, sir.

5 Q How did you record it?

6 A I recorded it on the FBI briefcase.

7 Q Can you tell us about what time of the day this
8 conversation took place?

9 A It was very late, after midnight, sometime after
10 midnight.

11 Q How was it that you were able to get the
12 conversation on the FBI briefcase?

13 A We went to the kitchen, I was holding Sheik Omar
14 in my left arm, and I was holding the briefcase in my right
15 arm, and I just made it close to him.

16 Q Did you move the briefcase?

17 A Yes. Sheik Omar was on my left arm, whispering
18 in my left ear, and the briefcase was in my right arm, so I
19 have to move it all the way up to be close to his mouth
20 because he was whispering in my left ear, and that's how I
21 get it.

22 MR. McCARTHY: Your Honor, at this time the
23 government would offer Exhibit 311 and offer to read Exhibit
24 311T.

25 THE COURT: Is that one of the tapes that we

1 dealt with yesterday?

2 MR. McCARTHY: Yes.

3 THE COURT: All right. 311 is received. Go
4 ahead.

5 (Government's Exhibit 311 for identification was
6 received in evidence)

7 MS. STEWART: Judge, may we have a side bar
8 before the reading?

9 THE COURT: Ladies and gentlemen, we are going to
10 take a short break now. Please leave your notes and other
11 materials behind. Please don't discuss the case. We will
12 resume in a few minutes.

13 THE DEPUTY CLERK: Would you follow me.

14 (The jury was excused)

15 (In open court, jury not present)

16 THE COURT: You may step down.

17 (Witness excused)

18 (Continued on next page)

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1 THE COURT: Do you want to come up?

2 (At the side bar)

3 MS. STEWART: Judge, the last time the government
4 did the reading, the translators -- they read very quickly
5 and the translators are not able to switch off between the
6 voices. So the last reading was one translator who read.
7 You couldn't tell who was speaking if you were getting the
8 Arabic translation. We weren't aware of this until after it
9 was over. But if they could just read a little slower and
10 pause between each reader, maybe the translators could be
11 clearer. It does involve the sheik.

12 THE COURT: Absolutely.

13 One of the jurors needed to go inside for a
14 minute. So as soon as they are ready I will come back.

15 (Recess)

16 (Witness resumed)

17 (Jury present)

18 MR. McCARTHY: Your Honor, the exhibit is in the
19 jurors' books, 311T.

20 MR. KHUZAMI: Your Honor, to identify the
21 readers, Mr. McCarthy will be reading the statement of Sheik
22 Omar Abdel Rahman, Mr. Fitzgerald will be reading those of
23 Mr. Siddig Ali, Miss Chu will be reading those of the
24 unidentified males, and I will be reading those of
25 Mr. Salem.

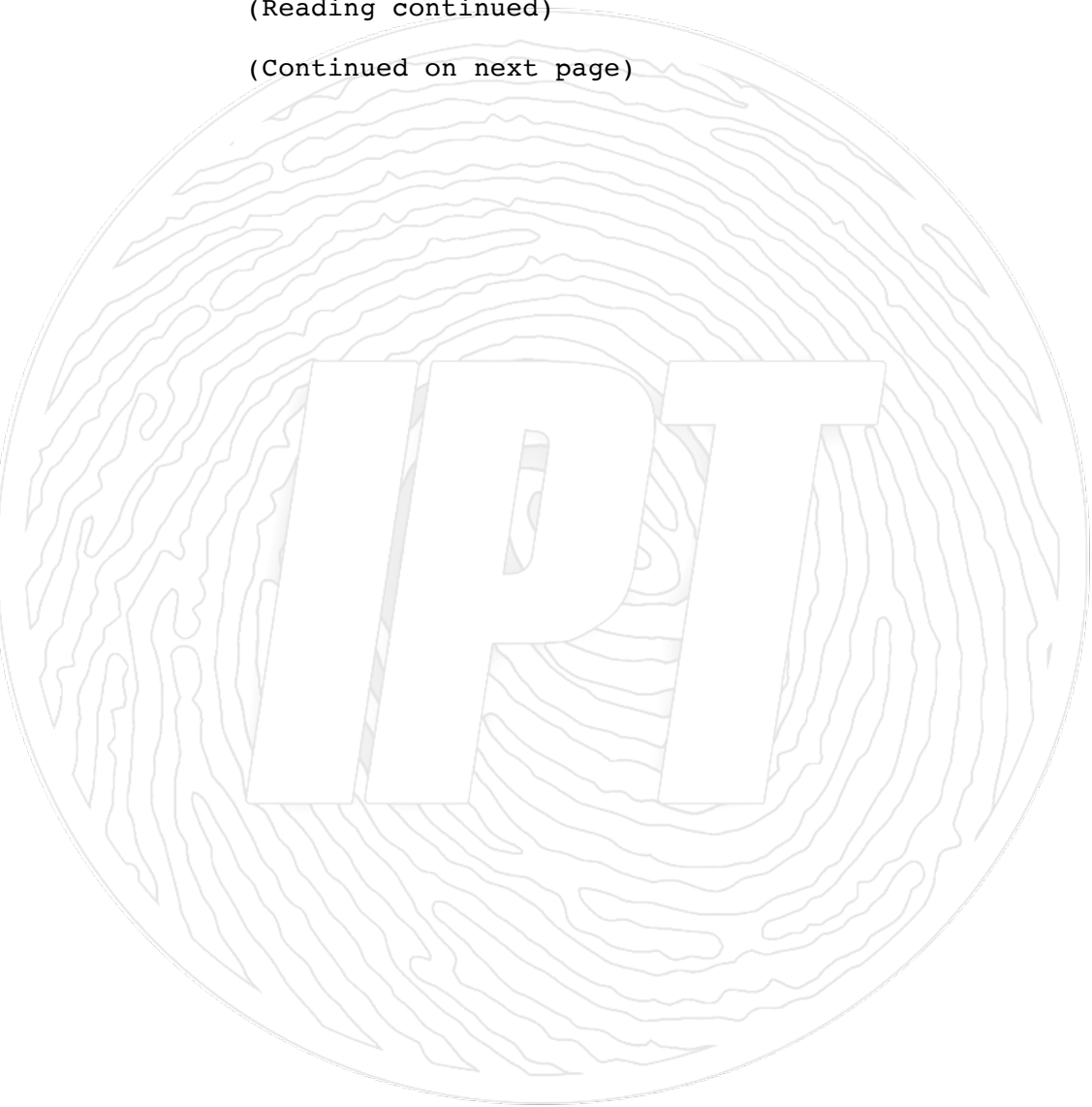
1 (Government's Exhibit 311T read to the jury)

2 THE COURT: Miss Chu can't be heard. You will
3 have to move the microphone back and forth or else this
4 won't work.

5 (Reading continued)

6 (Continued on next page)

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1 THE COURT: May I see counsel at the side,
2 please.

3 (At the side bar)

4 THE COURT: OK. Mr. Ricco, I gather that your
5 client is out of gas.

6 MR. RICCO: Yes. He is out of gas, your Honor.

7 THE COURT: OK. Then we are going to stop for
8 the day at this point.

9 MR. RICCO: Thank you.

10 THE COURT: OK.

11 MS. AMSTERDAM: Thank you.

12 MR. STAVIS: I will have an application
13 concerning a juror, something that occurred this morning.
14 If your Honor wants to do that now --

15 THE COURT: I don't want to do that now.

16 MR. RICCO: Your Honor, can we let the defendants
17 go before we take up those other matters?

18 THE COURT: Sure.

19 MR. RICCO: Thank you.

20 MR. STAVIS: Thank you.

21 THE COURT: Mr. Stavis, before I let them go,
22 what is the nature of the application?

23 MR. STAVIS: The nature of the application are
24 certain loud audible sounds that Juror No. 2 has been
25 making. I would ask as relief -- I will make more of a

1 record on it -- but I would ask as relief that your Honor
2 speak to her and voir dire her concerning some of the things
3 that she's done throughout the trial which I am prepared to
4 state for the record.

5 MR. WASSERMAN: Can we discuss that?

6 MR. BERNSTEIN: There is also a short stipulation
7 that the government wants to put in regarding the first page
8 of this.

9 MR. McCARTHY: What Mr. Bernstein wants, that I
10 agree to --

11 MR. BERNSTEIN: That the person referred to as
12 A-M-R, Amr, on the first page of this is somebody named Amr
13 and is not Amir Abdelgani.

14 THE COURT: Do you want me to say that now?

15 MR. McCARTHY: Mr. Bernstein wants it said to the
16 jury. I have no problem with that, Judge.

17 THE COURT: Fine. Do you want to say it now?

18 MR. BERNSTEIN: Sure. Just because it is the end
19 of this.

20 THE COURT: All right.

21 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, we are going to
3 break for the day and until Monday morning. But before we
4 do, I just want to tell you that with regard to the first
5 page of 311T, which is the transcript that was just read,
6 there was a reference on the first page by Dr. Abdel Rahman
7 to somebody named "Amr." That is not Amir Abdelgani. It is
8 somebody else named Amr, and Mr. Abdelgani's lawyer and the
9 government agreed on that, so I wanted to point that out
10 before you leave. With that, I will wish you a pleasant
11 weekend. Please don't discuss the case, and we will see you
12 Monday morning.

13 THE DEPUTY CLERK: OK, let's go.

14 (The jury was excused)

15 (Jury not present)

16 THE COURT: Do you want to do this in the robing
17 room?

18 MR. STAVIS: Your Honor, I would appreciate it.

19 THE COURT: Then I will see counsel in the robing
20 room.

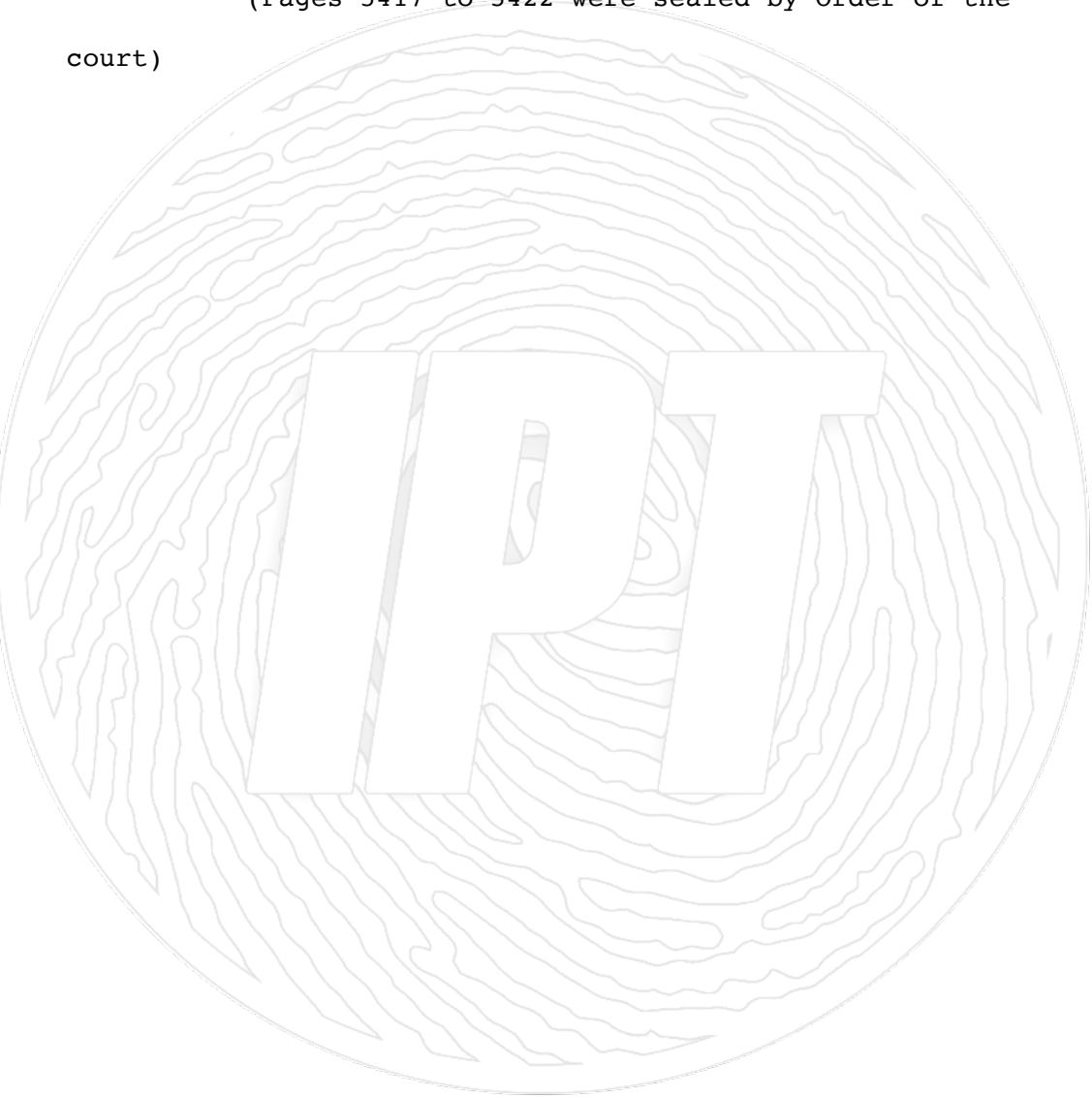
21 MS. AMSTERDAM: May the defendants be excused,
22 your Honor?

23 THE COURT: Yes.

24 MS. AMSTERDAM: Thank you. I just didn't know,
25 your Honor.

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THE COURT: We are not going to come back in.
Mr. Ricco, may I just see you at the side for a
second.
(Discussion at the side bar off the record)
(Pages 5417 to 5422 were sealed by Order of the
court)



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

3 v.

4 OMAR AHMAD ALI ABDEL RAHMAN,
5 a/k/a "Omar Ahmed Ali,"
6 a/k/a "Omar Abdel Al-Rahman,"
7 a/k/a "Sheik Rahman,"
8 a/k/a "The Sheik,"
9 a/k/a "Sheik Omar,"

10 EL SAYYID NOSAIR,
11 a/k/a "Abu Abdallah,"
12 a/k/a "El Sayyid Abdul Azziz,"
13 a/k/a "Victor Noel Jafry,"

14 IBRAHIM A. EL-GABROWNY,
15 SIDDIG IBRAHIM SIDDIG ALI,
16 a/k/a "Khalid,"
17 a/k/a "John Medley,"

18 CLEMENT HAMPTON-EL,
19 a/k/a "Abdul Rashid Abdullah,"
20 a/k/a "Abdel Rashid,"
21 a/k/a "Doctor Rashid,"

22 AMIR ABDELGANI,
23 a/k/a "Abu Zaid,"
24 a/k/a "Abdou Zaid,"

25 FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x

S5 93 Cr. 181 (MBM)

March 20, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

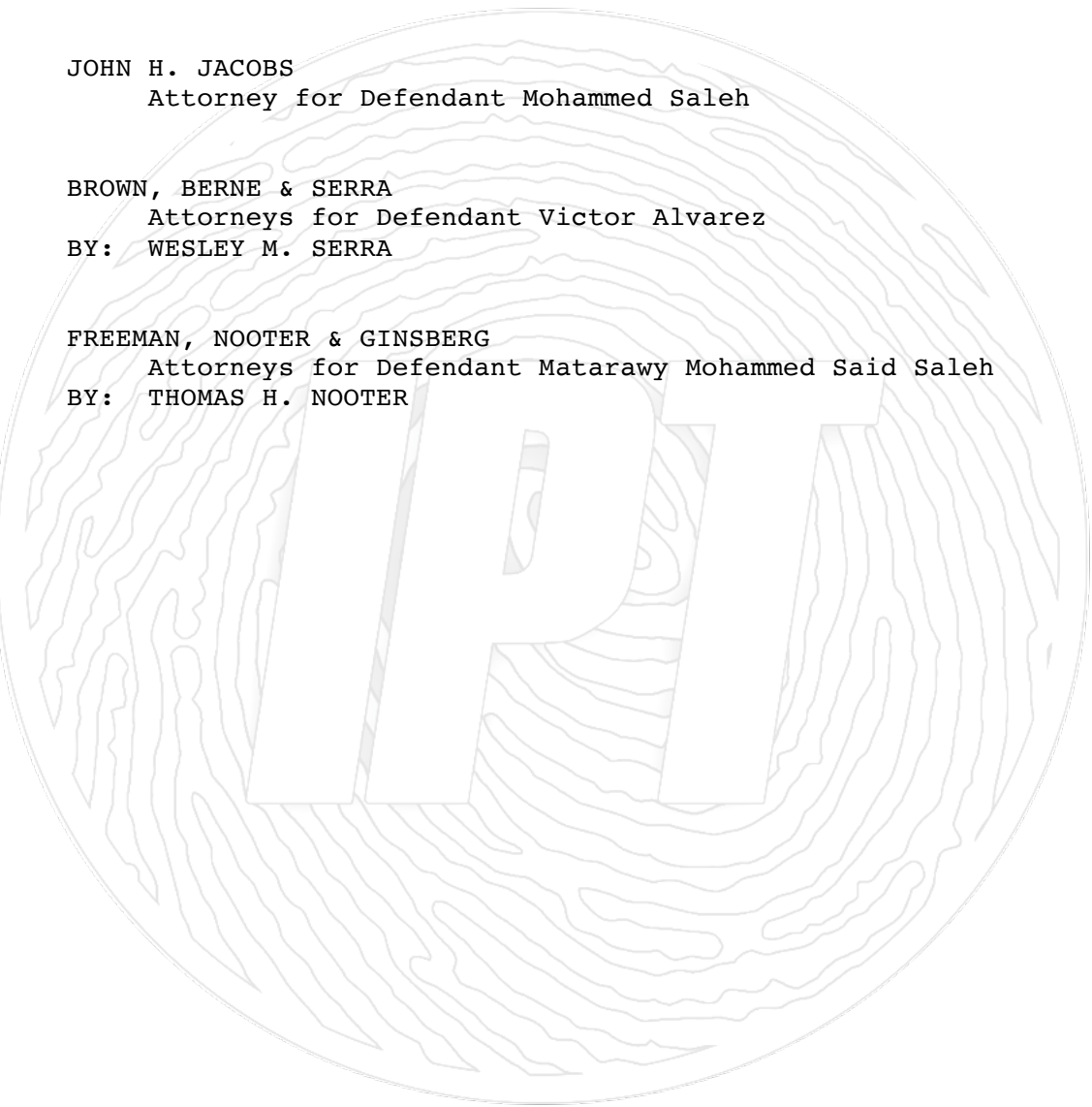
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court; jury not present))

3 THE COURT: As you know, we regrettably have a
4 sick juror this morning, so we can't sit today. Because of
5 time that we have lost, due to nobody's fault particularly
6 but nonetheless time that we have lost, we are going to
7 start sitting alternate Friday mornings beginning April 21.
8 We will sit from 9:30 until about 12:350 or 1, and break at
9 that time.

10 MS. AMSTERDAM: Excuse me, your Honor. Starting
11 when?

12 THE COURT: April 21.

13 MS. AMSTERDAM: That will be the first?

14 THE COURT: That will be the first. That will be
15 April 21, May 5, May 19, etc.

16 MS. LONDON: Excuse me, your Honor. I can't hear
17 you.

18 THE COURT: We will start sitting alternate
19 Friday mornings beginning April 21. So it will be April 21,
20 May 5, May 19, and so on.

21 MS. STEWART: Judge, you are aware that it is
22 Jummah on Friday.

23 THE COURT: I am aware and I have had Friday
24 sessions with your client's participation before. As long
25 as we break in time for extended prayer, which since we will

1 only be sitting half a day, we will, that should not be a
2 problem.

3 MS. STEWART: I will write a letter, Judge, but I
4 think there will have to be some working out with the
5 marshals to get people back to the MCC in time. Apparently
6 we have had some sessions but arrangements were not made --
7 I don't know, Judge. You are springing this on us. I
8 didn't have a chance to talk about it. I am just repeating
9 that there could be a problem.

10 THE COURT: If there is a problem, we will deal
11 with it.

12 I got a long letter from the government over the
13 weekend, relating to the introduction of exhibits or the
14 possible introduction of exhibits during Salem's
15 cross-examination. I thought we had dealt with this before.
16 I am not going to permit people to put in their case through
17 Mr. Salem. Cross-examination is one thing. Putting in your
18 own, or transcripts that you want to put in, is something
19 else. In any event, anybody who is planning to introduce
20 anything through Mr. Salem should so notify the government
21 before they get up to examine.

22 MR. SERRA: Your Honor, for clarification
23 purposes, the government introduced the CM's during their
24 direct examination. They didn't introduce transcripts of
25 the CM's. I have personally and I know my colleagues have

1 been spending hour after hour after hour trading drafts back
2 and forth with the government so that we could have as close
3 as we can a final agreed draft, my understanding was, for
4 use in cross-examination. Perhaps that is not what the
5 government is referring to in their letter.

6 THE COURT: I don't know what they are referring
7 to or not referring to, but I don't see what the problem is
8 telling them what you plan to introduce before you get up to
9 cross examining, if you plan to introduce anything.

10 MR. SERRA: Speaking for myself, I plan to
11 introduce every conversation my client was on tape. If that
12 means I tell the government I plan to use during my
13 cross-examination of Mr. Salem CM's 48 through 56, depending
14 what he says -- perhaps I won't have to use but one or two
15 of those if he agrees with things --

16 THE COURT: Frankly, I don't think the CM's are
17 the problem, but why don't I hear from Mr. McCarthy.

18 MR. MCCARTHY: First of all, we didn't offer all
19 the CM's. We laid the foundations for the CM's. I think we
20 only offered two or three of the CM's up to this point.

21 My only point with respect to the CM's is that is
22 to the extent that counsel in cross-examination want to try
23 to get in parts of the CM's that may not be admissible, that
24 we preserve whatever objections there are to that, just as
25 they have preserved whatever their other evidentiary

1 objections are to the run of the CM's when we get to the
2 point of putting them in at trial.

3 My only request, and it really wasn't of Mr.
4 Serra, who at least has agreed to show me what he wants to
5 put in front of the witness before the witness gets on the
6 stand, is not to be in a position of getting a transcript in
7 front of the jury while the witness is on the stand and for
8 the first time have to run through whether there are hearsay
9 objections or other objections that the government is
10 entitled to make. I would like to be able to hash that out
11 before the witness gets confronted and before I am in a
12 situation of flipping through transcripts in front of the
13 jury.

14 THE COURT: Understand this. Nobody is going to
15 cross-examine on the basis of what somebody other than Salem
16 supposedly said. Normal rules obtain on that.

17 MR. McCARTHY: Let me just give the court an
18 example of what I am talking about. There are many parts of
19 the CM's in which the people on them lapse into conversation
20 which is not particularly relevant to the case. If it is
21 not relevant, if it is not admissible under Rule 106 in
22 order to explain something that we have tried to put in as
23 to the defendants, it is hearsay and it shouldn't come in.
24 I want to be able to take a look at those transcripts before
25 the witness gets confronted with them so that I can --

1 THE COURT: Relevance is one thing, hearsay is
2 something else. I will make the rulings as I have to make
3 them.

4 MS. STEWART: And I would like to say, I read the
5 government's letter but my assumption is that these are on
6 an ad hoc basis. This is, after all, cross-examination. I
7 don't think any defense lawyer would be protecting the best
8 interests of the client to announce in advance exactly what
9 areas one is going into with a witness on cross-examination.

10 THE COURT: Nobody is asking you to do that -- I
11 don't know whether anybody is asking you to do that.
12 Certainly nobody up here is telling you you have to. What I
13 am saying, though, is, if you plan to try to introduce an
14 exhibit through a witness, there ought to be notice.

15 MS. STEWART: Let me ask this. I understand the
16 government does not want to call Mr. Salem back for the
17 defense case.

18 THE COURT: Whether they want to or not, what
19 they have said is, if he has to get called back, he will get
20 called back.

21 MR. JACOBS: Judge, in light of the fact that we
22 haven't seen and your Honor apparently has not reviewed the
23 FBI's internal memoranda and any disciplinary action taken,
24 I want to reserve the right to call Salem back, if we get
25 some material from the Department of Justice indicating

1 that --

2 THE COURT: I will have reviewed that by the end
3 of the day. It is upstairs.

4 MR. STAVIS: Your Honor, if Mr. Salem has
5 testified as to certain events and is contradicted on his
6 own personal tape which he has also testified about on his
7 direct examination, I and perhaps some of the other
8 attorneys intend to cross-examine him not with transcripts
9 but with his actual words.

10 THE COURT: Nobody is saying you can't. It is
11 simply that, there being a large number of those, I don't
12 think it gives anything away, particularly since they can't
13 talk to him, to simply tell them which ones, so we don't
14 have to stop while people rummage through thousands of pages
15 of transcript.

16 MR. JACOBS: With respect to the CM's, I don't
17 think any defense counsel is not going to give the
18 government advance, because there is not going to be any
19 surprise. We have to give the jurors the book a few days
20 ahead of time. The CM's have not been a problem.

21 THE COURT: Mr. Stavis had raised an issue on
22 Thursday that we took up in the robing room, and we can
23 continue to deal with that today for those who wish to
24 attend.

25 MR. STAVIS: Your Honor, I had submitted a

1 letter.

2 THE COURT: I got it.

3 MR. STAVIS: I would request that letter remain
4 sealed.

5 THE COURT: It will.

6 MR. SERRA: Your Honor, before we leave the
7 subject of the tapes, I would like to raise something with
8 Mr. McCarthy for 30 seconds, if I may.

9 THE COURT: Sure.

10 (Pause)

11 MR. SERRA: Your Honor, I think, whether we ought
12 to do this now because of the number of people -- and it may
13 be because of the Rule 12.2 notice that this is an issue
14 that is unique to Mr. Alvarez. It does appear as though
15 there is a conversation that Mr. McCarthy and I ought to
16 have with the court before my cross-examination of
17 Mr. Salem.

18 THE COURT: Fine. Why don't we do that either
19 this afternoon or at some other time. Do you want to do it
20 now?

21 MR. SERRA: I don't need to do it now. I don't
22 believe I will be up this week to cross-examine.

23 THE COURT: I don't imagine you will.

24 I will see counsel in the robing room.

25 MS. AMSTERDAM: Your Honor, are the clients

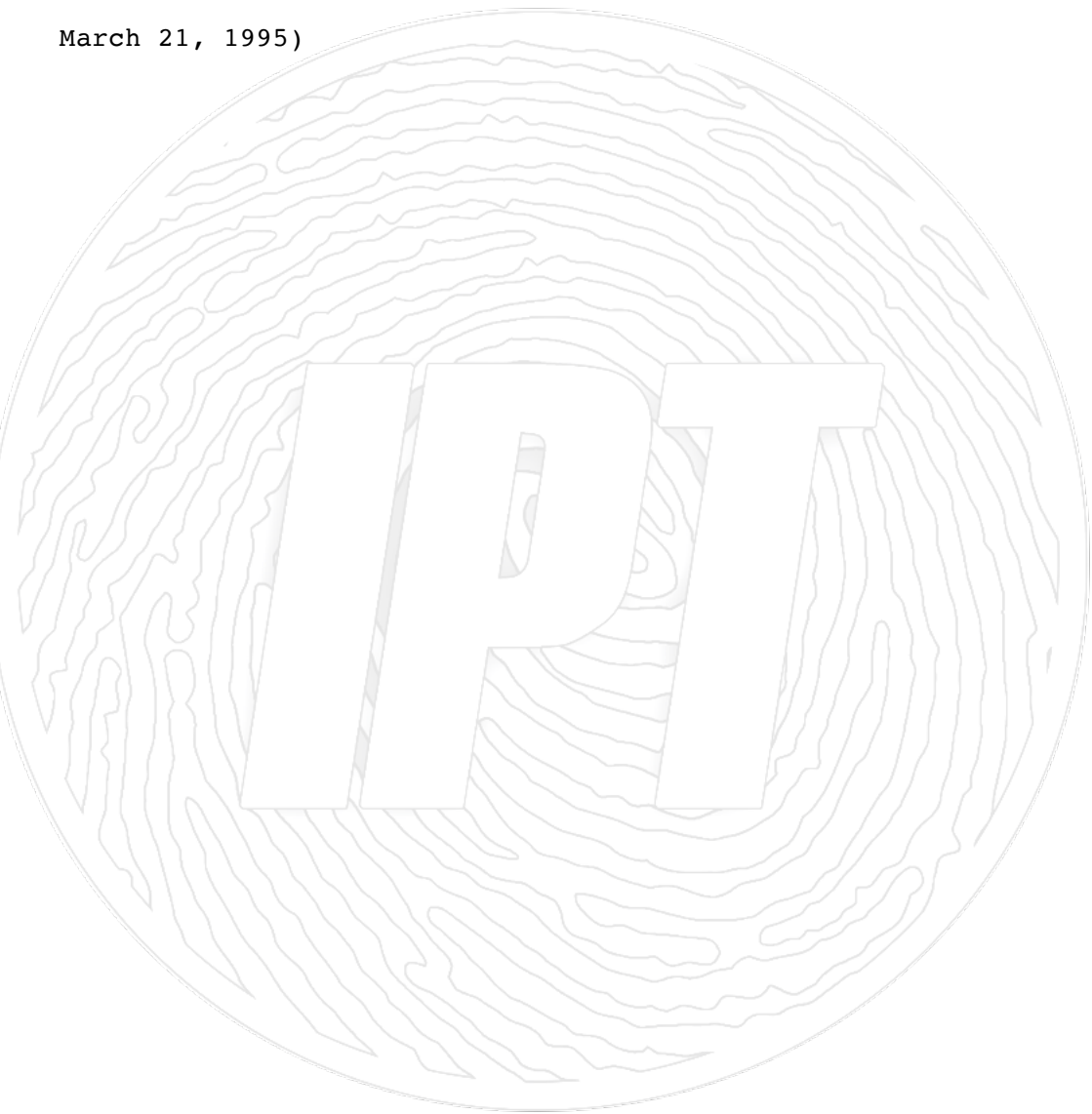
1 excused?

2 THE COURT: Yes.

3 (Pages 5435 through 5450 were sealed)

4 (Proceedings adjourned until 9:30 a.m., Tuesday,
5 March 21, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

March 20, 1995
3:40 p.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

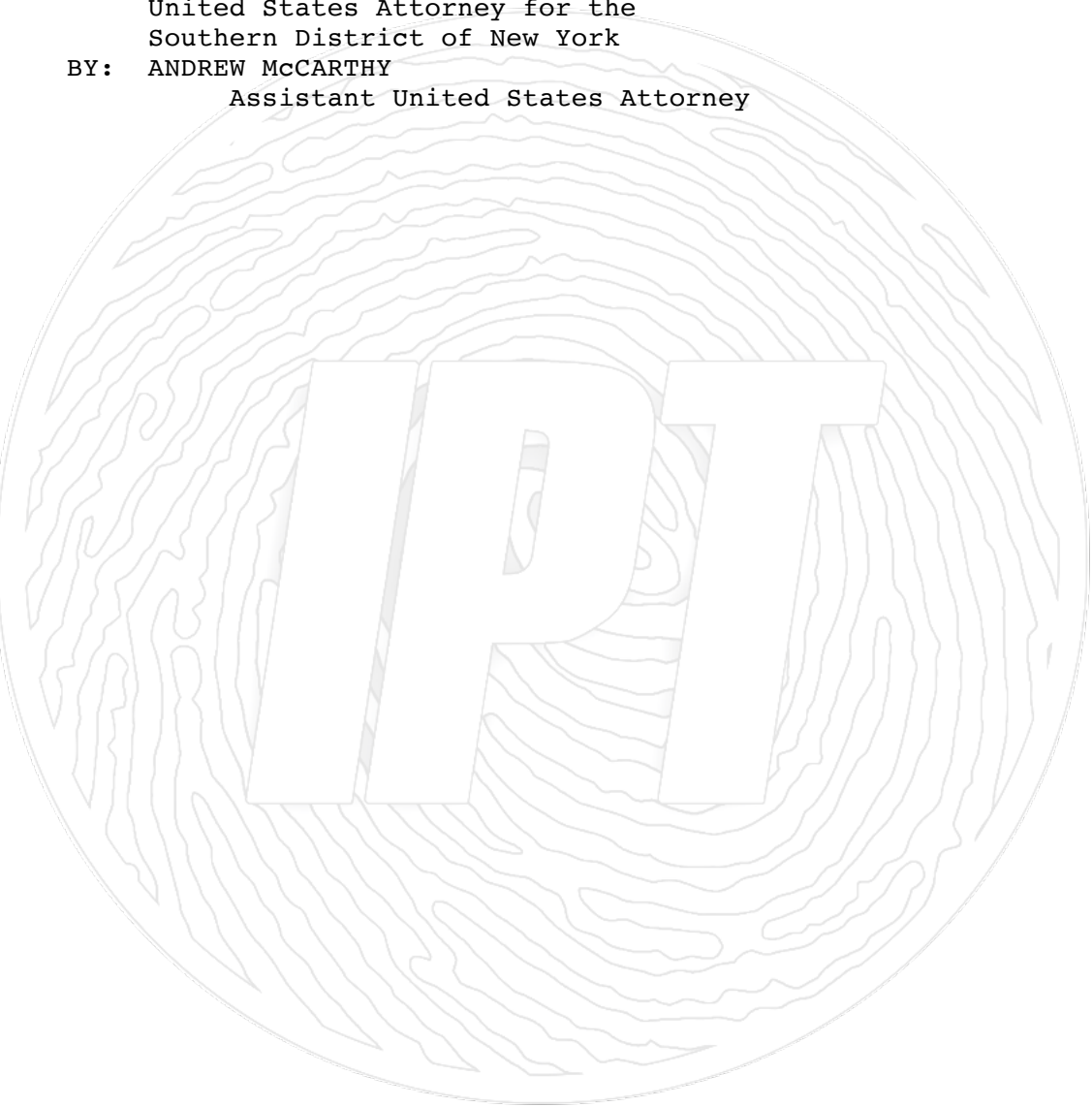
24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
Assistant United States Attorney



1 (In chambers)

2 THE COURT: There are two things. The first is
3 that I have reviewed the personnel photos, and there is only
4 one thing that I find that is conceivably Brady or Giglio
5 material, and that is in Floyd's personnel folder. There is
6 one item indicating that she reported having received a
7 brass business cardholder from an informant who I believe is
8 Salem, and in fact she reported it to the Bureau to
9 determine whether it was of value such that she had to
10 either return it or report it in some fashion. It wasn't,
11 she got to keep it. To the extent it suggests a personal
12 relationship, which is what the defense has been arguing, I
13 think it should be turned over.

14 MR. McCARTHY: Yes, your Honor.

15 THE COURT: I have put half of a Post-It on that
16 sheet.

17 There are two other marked sheets that were
18 marked at the time I got the folder. Those can be
19 disregarded, as far as I am concerned. They are not Brady
20 or Giglio as to this witness, but this one, I think, is.

21 The second concerns what had been a redacted list
22 of names.

23 MR. McCARTHY: Is this the Egyptian intelligence
24 list of 21?

25 THE COURT: Yes. I wasn't sure what the reason

1 was for the redactions, and I wanted to make sure that it
2 wasn't some security reasons.

3 MR. McCARTHY: Yes. To make a long story short,
4 I have no objection to giving them all the names at this
5 point. My understanding is that those are names of
6 individuals who are or at least were of interest to Egyptian
7 military intelligence, according to the witness. He
8 believes that on the basis of things he has heard and read,
9 much of which is public information, and I really don't
10 think there is any problem with that.

11 THE COURT: Thank you.

12 (Proceedings adjourned)

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,
v.

4 OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
5 a/k/a "Sheik Rahman,"
a/k/a "The Sheik,"
6 a/k/a "Sheik Omar,"

7 EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
8 a/k/a "Victor Noel Jafry,"

9 IBRAHIM A. EL-GABROWNY,
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
10 a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"

11 AMIR ABDELGANI,
a/k/a "Abu Zaid,"
12 a/k/a "Abdou Zaid,"

13 FARES KHALLAFALLA,
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a/k/a "Abdou Fares,"

14 TARIG ELHASSAN,
a/k/a "Abu Aisha,"

15 FADIL ABDELGANI,
MOHAMMED SALEH,
16 a/k/a "Mohammed Ali,"

17 VICTOR ALVAREZ,
a/k/a "Mohammed," and
18 MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----x
20 March 21, 1995
9:40 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

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JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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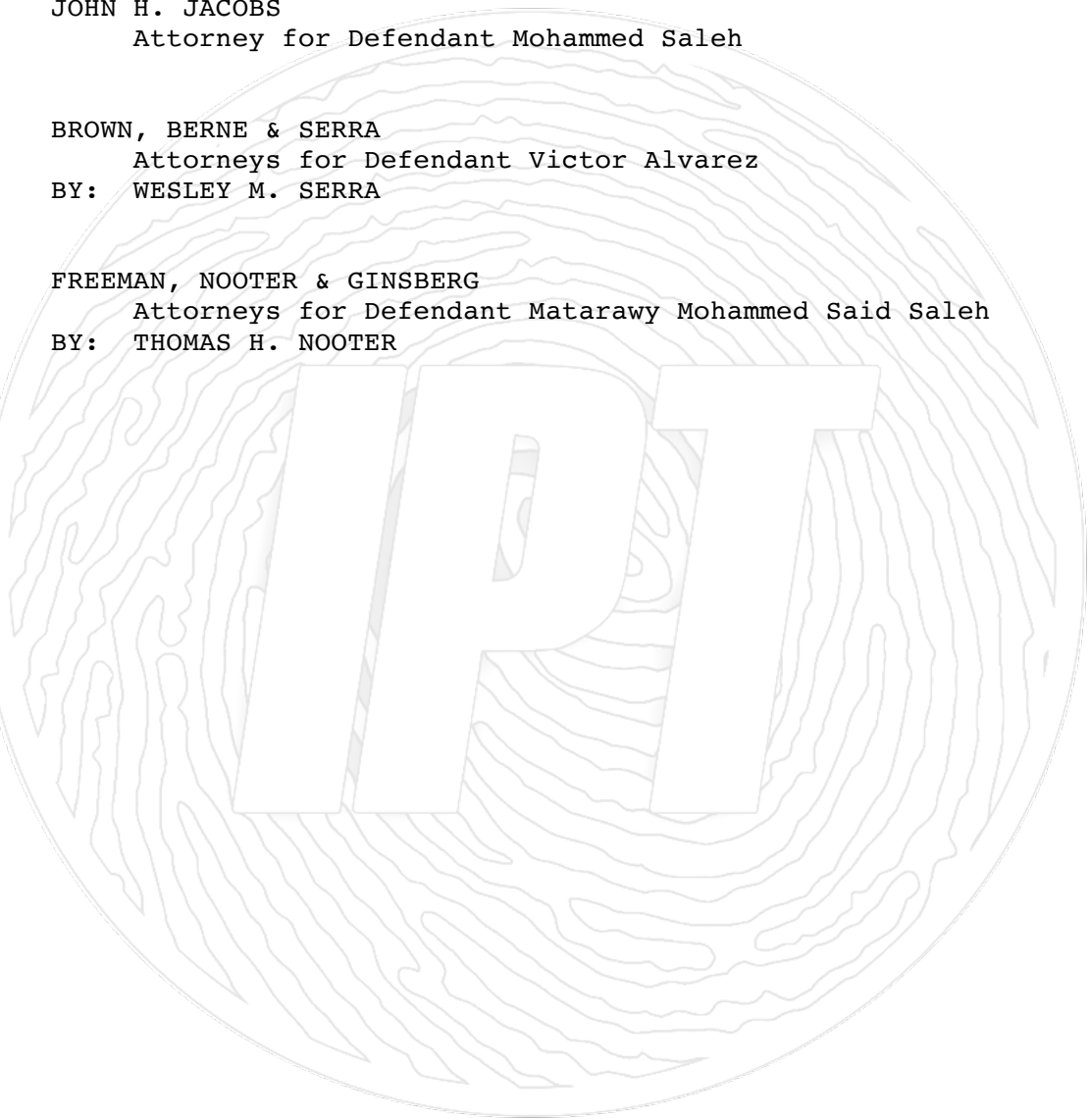
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
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BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
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Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed; jury not present)

2 THE COURT: Good morning.

3 MR. McCARTHY: Good morning, your Honor.

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 THE JURY: Good morning.

8 THE COURT: Mr. Salem, you are still under oath.

9 Mr. McCarthy?

10 MR. McCARTHY: Thank you, your Honor.

11 DIRECT EXAMINATION (Continued)

12 BY MR. McCARTHY:

13 Q Good morning, sir.

14 A Good morning, sir.

15 Q Mr. Salem, before we get back to discussing what
16 we were talking about at the end of last Thursday, I would
17 like to show you some cassette tapes.

18 A Yes, sir.

19 Q Mr. Salem, I am placing before you the following
20 cassette tapes: These are tapes marked CM41, and they are
21 Government's Exhibits 344 -- and there are four tapes. They
22 are marked 344, one of four, two of four, three of four and
23 four of four.

24 Have you reviewed these prior to testifying,

25 Mr. Salem?

1 A Yes, sir.

2 Q Why don't I hand them to you one at a time.

3 Showing you first 344, one of four --

4 A Yes, sir.

5 Q -- what do you recognize that to be?

6 A It is a recording tape for some members of the
7 Sudanese mission in the United Nations and myself, sir.

8 Q Showing you 344, two of four.

9 A This is the conversation between Mr. Siddig
10 Ibrahim Ali, Mr. Mahmud Abouhalima and myself in
11 Mr. Siddig's house, sir.

12 Q Just to make it clear, have you reviewed these
13 tapes and then written a note in Arabic on the back to tell
14 you what it is that you reviewed?

15 A Yes, sir.

16 Q Showing you 344E, three of four.

17 A It is a conversation between Mr. Siddig,
18 Mr. Mahmud Abouhalima and myself in Mr. Siddig's house, sir.

19 Q Finally, 344E, four of four.

20 A It is a conversation between Mr. Siddig and
21 myself about the second bomb he want to place in the World
22 Trade Center, sir.

23 MR. JACOBS: I'm sorry. I didn't hear that, your
24 Honor.

25 THE COURT: Would the reporter read the end of

1 that answer back, please.

2 (Record read)

3 Q Do 344E, one of four through four of four fairly
4 and accurately record conversations or portions of
5 conversations that you had between May and June of 1993?

6 A Yes, sir.

7 Q I am next showing you a series of six tape
8 recordings, marked 343E, one of seven, and I will go through
9 them one at a time.

10 343 one of seven.

11 A It is a conversation between Mr. Siddig and
12 myself and another individual called Jihad in a store on
13 Atlantic Avenue, sir.

14 Q 343E, two of seven.

15 A It is a conversation between Mr. Siddig and
16 Dr. Rashid and myself in Al Farooq mosque, sir.

17 Q 343E, three of seven.

18 A It is a conversation between Mr. Siddig,
19 Dr. Rashid, myself, in the Al Farooq mosque, sir.

20 Q 343E, five of seven.

21 A It is a conversation between Dr. Rashid,
22 Mr. Siddig Ibrahim Ali and myself, sir.

23 Q 343E, six of seven.

24 A It is a noise of car being driven, sir.

25 Q And 343E, seven of seven.

1 A It is a conversation between Sheik Omar Abdel
2 Rahman, Mr. Ahmed Abdel Sattar and myself in Sheik Omar's
3 apartment, sir.

4 Q Do those conversations on these six tapes that I
5 have just shown you fairly and accurately record
6 conversations or portions of conversations that you had
7 between May and June of 1993?

8 A Yes, sir.

9 Q Sir, can you tell us what device, if you recall,
10 that these conversations were recorded from?

11 A It is being recorded through something like
12 called the belt or the pants.

13 Q Is that --

14 MR. JACOBS: I'm sorry.

15 I didn't hear any of that.

16 THE COURT: He think he said belt or pants.

17 MR. JACOBS: I didn't hear your Honor.

18 THE COURT: Belt, B-E-L-T or pant, P-A-N-T.

19 Pants.

20 MR. JACOBS: Pants?

21 THE COURT: As in trousers.

22 MR. JACOBS: OK. I'm sorry.

23 Q Is that a computerized device?

24 A It is a computerized device, sir, yes.

25 Q Finally, showing you 355E which is also marked CM

1 66, for counsel.

2 A It is a conversation between Mr. Siddig and
3 Mr. Mohammed, the Spanish, Mr. Fares and Mr. Amir and myself
4 in Mr. Siddig's house, sir.

5 Q When you say "Mr. Fares," who are you speaking
6 about?

7 A Mr. Fares Khallafalla, sir.

8 Q And Mr. Amir?

9 A Mr. Amir Abdelgani, sir.

10 Q Was this also recorded off the belt device?

11 A I'm not sure. Either the belt or the pant -- I'm
12 sorry, either the belt or the briefcase, sir.

13 Q The recording of 355E, does that fairly and
14 accurately record the conversation?

15 A Yes, sir.

16 MR. McCARTHY: Your Honor, the government offers
17 344E, the four tapes in that series, 343E, the six tapes I
18 referred to, and 355E.

19 MR. JACOBS: Voir dire?

20 THE COURT: Mr. Jacobs?

21 VOIR DIRE EXAMINATION

22 BY MR. JACOBS:

23 Q Mr. Salem, let me show you the original exhibits,
24 343, and ask you to take a look at these.

25 A Yes, sir.

1 MR. JACOBS: Your Honor, may I approach.

2 THE COURT: Yes.

3 Q Mr. Salem, 343, what are they?

4 A It is cassette tapes, sir, audiocassette tapes.

5 Q Does your writing appear on those two exhibits,
6 if you know, sir?

7 A Only my initials, sir.

8 Q Do you know when you made those initials?

9 A The last couple of weeks, sir.

10 Q The last couple of weeks, OK.

11 What type of device was used to record those
12 two -- I think there are two cassettes I gave you. What
13 type of device was used?

14 MR. McCARTHY: Objection, scope.

15 MR. JACOBS: All right.

16 THE COURT: Overruled.

17 Q What type of device was used, sir?

18 A It is a pants, the pant device.

19 Q Well, when you say a pants device, is it some
20 type of recording equipment that's secreted in your pants?
21 Is that what you mean when you say a pants device?

22 If I'm wrong, tell me.

23 A I'm sorry. "Secreted" means?

24 Q Secreted. Hidden in your pants.

25 A It is a computerized chip being hidden somehow in

1 the pant to pick up certain amount of time on a chip, from
2 what I understand to be reloaded through computer on --

3 Q All right. In other words, you were not wearing
4 a cassette recorder in your pants or having it in your
5 pants, it was some other device, is that correct?

6 A Yes, sir.

7 Q This device -- let's assume it's a computer chip
8 of some sort, that was put into your pants by whom?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 This is voir dire.

12 MR. JACOBS: I understand. I don't want to argue
13 in front of the jury, your Honor.

14 THE COURT: Good.

15 MR. JACOBS: The government has made an offer. I
16 would like to ask the witness some questions. I don't want
17 to do it in front of the jury, your Honor.

18 THE COURT: Move on to something else.

19 Q Did you do this transfer from the computer chip
20 to these cassettes?

21 A No, sir.

22 Q So what you have before you is a copy of
23 something, correct, is that fair to say?

24 A I will say something being taken out of the
25 computer chip, yes, sir.

1 Q When was the date that you made this conversation
2 on 343, if you know?

3 A I don't recall, sir.

4 Q You have no notation of when it was made in May
5 or in June?

6 A I am bad at dates, sir.

7 Q Sometime in May and June, though, you made this
8 recording. Is it more than one, several recordings in one
9 or --

10 A It's several recordings, sir.

11 Q How did you activate this equipment? Was there
12 some on and off switch?

13 A Yes, sir.

14 Q Where was that located?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q Was the recordings on 343 on more than one date,
18 or was it just on one date, knowing that you don't remember
19 the date.

20 A I don't recall, sir.

21 Q So it might be recordings over several dates?

22 A Could be, sir.

23 Q The decision to use this equipment was the FBI's
24 decision, not yours?

25 A That's correct, sir.

1 Q This was not personal equipment you had,
2 correct --

3 A No, sir.

4 Q -- on this exhibit, correct?

5 A Yes, sir.

6 Q Did you have anything to do with putting the
7 equipment in the pants or the belt or wherever it was, or
8 did the FBI do all the putting the equipment in your pants?

9 A The FBI do the whole setup, and they just give me
10 the pant, I just put it on --

11 Q Somebody told you how to work it?

12 A Pardon, sir?

13 Q Somebody told you how to work it?

14 A Yes, sir.

15 Q Would I be correct in stating that -- I know you
16 don't remember the dates, but sometime afterwards you took
17 your pants off and gave it to the Bureau, the FBI?

18 A Yes, sir.

19 Q You don't know anything further about what
20 happened to the chip or what they did with it after that
21 date, correct?

22 A No, sir. Once I give them the pant, I don't know
23 what's going on.

24 Q You reviewed 343, and, as best as you could
25 determine, it fairly and accurately reflects the portions of

1 the conversations you had, but you don't know what dates,
2 correct?

3 A Yes, sir.

4 MR. McCARTHY: Can we clarify, your Honor, I'm
5 sorry, 343?

6 MR. JACOBS: He was shown 343E, which were the
7 enhanced versions.

8 Q That fairly and accurately reflects the
9 conversation, correct, the best you can determine?

10 MR. McCARTHY: You are talking about the
11 cassettes that I showed him this morning?

12 MR. JACOBS: Yes, those cassettes that you showed
13 him.

14 May I approach the witness.

15 THE COURT: Yes.

16 Q Let me show you 344 and ask you, Mr. Salem, is
17 that one of these computer disks that you have been talking
18 about?

19 A Yes, sir.

20 Q In other words, 344, the mechanism that was used
21 was this either pants or belt device, is that correct?

22 A Yes, sir.

23 Q This was an FBI tape that you made for them,
24 correct?

25 A Yes, sir.

1 Q You had nothing to do with the installation on
2 344, you just operated the equipment, correct?

3 A Yes, sir.

4 Q At some point you gave the pants back on a
5 separate date than the other exhibit to them, is that
6 correct?

7 A Can you repeat the question, sir.

8 Q Sure.

9 A Please.

10 Q In other words, we have gotten our second
11 exhibit, 344, I had just shown you 343, what I'm asking you
12 is, would it be fair to state that there was more than one
13 computer chip that you recorded some conversations with, is
14 that correct?

15 MR. McCARTHY: Objection.

16 Q If you know.

17 MR. McCARTHY: Objection to form.

18 MR. JACOBS: I will rephrase it, your Honor.

19 THE COURT: OK.

20 Q What I am saying to you is this: You testified
21 just a few minutes ago that 343 was a series of
22 conversations that you recorded on some device that the FBI
23 gave you in a pair of pants, correct?

24 A Yes, sir.

25 Q The exhibit I am now showing you, 344, is that

1 also the same kind of device?

2 MR. McCARTHY: Objection.

3 Q If you know.

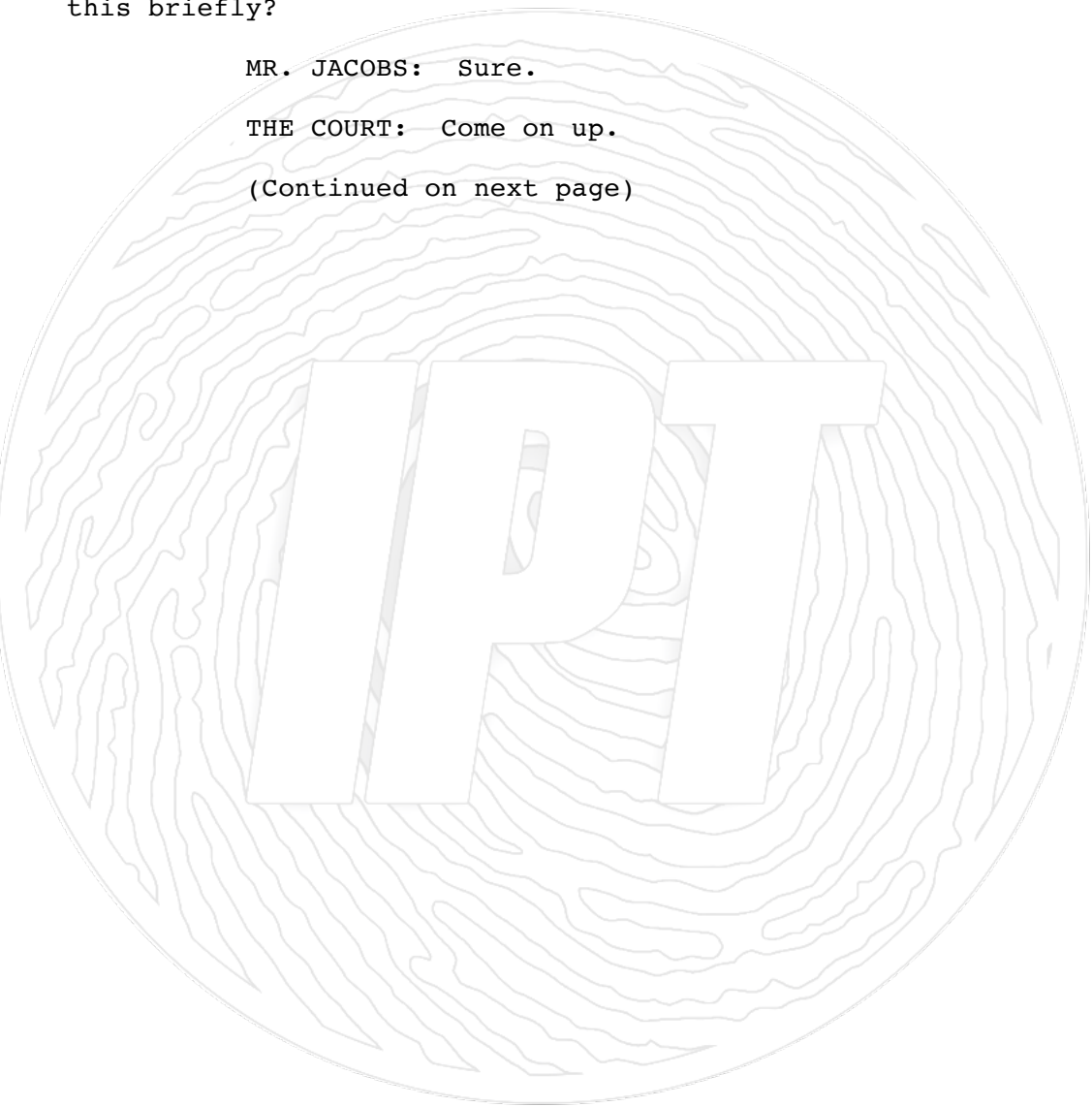
4 MR. McCARTHY: Your Honor, may we approach on
5 this briefly?

6 MR. JACOBS: Sure.

7 THE COURT: Come on up.

8 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: Your Honor, the reason I asked to
3 approach is, I think Mr. Jacobs understands this, because
4 Mr. Ginsberg had it explained to him in great detail by the
5 FBI: The device that recorded the conversations, which I
6 didn't ask Mr. Salem about other than to say that it was
7 computerized as far as he knows, was a chip that is
8 downloaded onto an optical disk, which is then put onto
9 cassette tapes.

10 As I understand Mr. Jacobs' question now, it
11 suggests to the jury that the device that actually captured
12 the conversation is the optical disk because that is the
13 exhibit that he's placed before the witness. I think that
14 is confusing. I don't know what the point of questioning
15 is. He's not really competent to describe the process
16 anyhow. Mr. Ginsberg also, I should note, we have talked to
17 him --

18 THE COURT: Keep it down.

19 MR. McCARTHY: I'm sorry.

20 He doesn't question the integrity of the process
21 by which these tapes were made.

22 THE COURT: That is not the point. What is the
23 point of the examination?

24 MR. JACOBS: I am trying to find out if this
25 pants device was used on more than one occasion or are 343

1 and 344 all coming from the same device on the same dates.

2 There is no dispute that the FBI used this device
3 and that it's been downloaded. I am not questioning the
4 integrity of eventually what they had come up with. I am
5 trying to find out if it would be done on more than one
6 occasion, did he take his pants off on three or four
7 occasion and then was given back the chip?

8 THE COURT: What does that have to do with
9 admissibility?

10 MR. JACOBS: This man is controlling the device.
11 I am trying to find on it what dates they are on. He has no
12 idea what dates these conversations are. I am trying to
13 find out the integrity of what he did.

14 THE COURT: I ask you how it goes to
15 admissibility, and what you are telling me you are trying to
16 find out the dates. They don't come together.

17 MR. JACOBS: Is this one day or two days?

18 THE COURT: That is not what you just asked him.

19 MR. JACOBS: I am about to.

20 THE COURT: Good. Please do so.

21 MR. JACOBS: OK.

22 (Continued on next page)

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1 (In open court)

2 MR. JACOBS: May I proceed, your Honor.

3 THE COURT: Yes.

4 Q Mr. Salem, would I be correct in stating that
5 this device was used on more than one date?

6 A Yes, sir.

7 Q In other words, you were giving your pants back
8 to the Bureau, to the FBI agents on more than one occasion,
9 correct?

10 A Yes, sir.

11 Q So that the series of exhibits that Mr. McCarthy
12 has shown you is the final result of the FBI downloading and
13 getting a product that you could hear, is that correct?

14 A Yes, sir.

15 Q So 343, 344 --

16 THE COURT: 355.

17 MR. JACOBS: I will show him 355, as well.

18 Q That would apply to 355 as well? I understand
19 that this is a disk that you didn't make or anything,
20 correct?

21 A Correct, sir.

22 Q But as far as you can determine, you've listened
23 to the tapes that the bureau, the technical people in the
24 bureau prepared, correct, you have listened to these tapes
25 that Mr. McCarthy showed you?

1 A The technical people, sir?

2 Q I'm sorry. That the technical people in the FBI
3 reduced to a product that you could hear, is that correct?

4 A That's correct, sir.

5 Q As far as you can determine, they are fair and
6 accurate as to the conversation that you believe you
7 recorded on certain dates that you don't remember?

8 A Yes, sir.

9 Q Let me show you 356.

10 THE COURT: Is that one of the exhibits that he
11 was --

12 MR. JACOBS: I think so. Mr. McCarthy?

13 MR. McCARTHY: No.

14 THE COURT: My notes say 344, 340 --

15 MR. JACOBS: I'm sorry. My apologies --

16 MR. McCARTHY: They are all in the same --

17 MR. JACOBS: They are in the same bag.

18 Q With respect to the exhibits, these
19 computer-generated tapes, you were able to turn the
20 equipment on and off during the conversations, is that
21 correct?

22 A Correct, sir.

23 Q Even though it's not a tape that was running, you
24 were told by the agents you had the capability of doing
25 that?

1 A Yes, sir.

2 Q Did you have to give the pants back on separate
3 occasions to the FBI?

4 A Yes, sir.

5 Q I assume you have no knowledge of what they did
6 with the pants or how they removed the equipment to put it
7 in again?

8 A No, sir.

9 Q In any event, someone like Detective Napoli would
10 just give you back the pants and you went out and recorded
11 additional conversations, correct?

12 A That's correct, sir.

13 Q With respect to these tapes, unlike the Nagras,
14 you had to give the pants back to the Bureau, correct?

15 A I'm sorry. I didn't get the question, sir.

16 Q Some of the Nagras, you testified previously you
17 actually took the Nagras out of the equipment and handed
18 them back to the Bureau, correct? You looked at the
19 equipment and opened them up?

20 A Sometimes I did in front of the agent; sometimes
21 the agent took it by himself.

22 Q I understand.

23 But with respect to these exhibits, these two or
24 three, you never touched the equipment, the computer chip?

25 A I touched it, sir --

1 Q I meant --

2 A -- but I did not reload, or I just record and
3 give them the whole pant. They took care of it.

4 Q You got another pair of pants back?

5 A Yes, sir.

6 Q Was there anything that you did to put in writing
7 what you were doing with respect to these particular
8 conversations? Did you make a note anywhere that you
9 recorded this or sign any piece of paper to the Bureau?

10 A No, sir.

11 Q Forgetting the tape for the minute, but there is
12 no document that would indicate when over May or June that
13 these conversations were recorded that you made, correct,
14 sir?

15 A I'm sorry. Could you please --

16 Q That didn't come out right.

17 Is there anything that you prepared that could
18 indicate when these conversations took place?

19 A I myself, I did not do any records, sir.

20 MR. JACOBS: I have nothing further.

21 THE COURT: Mr. Wasserman, representing

22 Mr. Hampton-El.

23 VOIR DIRE EXAMINATION

24 BY MR. WASSERMAN:

25 Q Good morning.

1 A Good morning, sir.

2 Q These tapes in connection with 343, CM45, could
3 you tell me what length of time -- what is the running time
4 on these tapes?

5 A From what I told by the FBI agents, it's three
6 hours, sir.

7 Q The tapes that you are seeking to -- or that you
8 have authenticated today, that you listened to, let me give
9 you an example, 343, Mr. McCarthy showed you six tapes,
10 correct?

11 A Yes, sir.

12 Q You were able to recall that on tape on you had a
13 conversation with Siddig Ali and a man named Jihad, correct?

14 A Yes, sir.

15 Q How long did that tape run? How long was that
16 conversation?

17 A It wasn't that long because we were waiting for
18 Dr. Rashid in this store where we met and --

19 THE COURT: You he didn't ask you about those
20 circumstances. He just asked you about how long the
21 conversation was. If you can estimate it, fine; if you
22 can't, just tell him you can't.

23 A I don't know how long, but it's not very long.

24 Q Well, you listened to the conversation within the
25 last two weeks, correct?

1 A Yes, sir.

2 Q Could we narrow that down, and would it be fair
3 to say that you listened to this conversation last week?

4 A Yes, sir.

5 Q Can you tell us how long that conversation is in
6 terms of length?

7 A It's not very long. I mean, it's less -- I don't
8 want to put specific time -- I don't know how long, sir.

9 Q How about 343, tape two? That is a conversation
10 between Siddig Ali yourself and Dr. Rashid. How long is
11 that?

12 A It was a long conversation, sir.

13 Q We are talking specifically about 343, tape two.
14 That is a long conversation.

15 Can you estimate the running time?

16 A I cannot, sir.

17 Q How about 343, tape three, which you have
18 testified is also a conversation between Siddig Ali and
19 Dr. Rashid. How long is that?

20 A I cannot estimate the time, sir.

21 Q Is that a continuation of 343, tape two?

22 A I am not sure. I got to listen to it so I can
23 tell you, sir.

24 Q Sir, you testified that you listened to these
25 tapes last week, correct?

1 A Correct, sir.

2 Q And that you recall the conversations based upon
3 that review, correct?

4 A Correct, sir.

5 Q You can't testify today about how long that
6 conversation is?

7 A No, I cannot, sir.

8 Q How about 343, tape five? That is also a
9 conversation between Siddig Ali, yourself and Dr. Rashid.
10 How long a conversation is that?

11 A I don't know, sir.

12 Q You listened to that last week?

13 A Yes, sir.

14 Q Is that a continuation of 343, tape three?

15 A I cannot confirm, sir, if it's a continuation or
16 it is different. Because we had met with Dr. Rashid on more
17 than one occasion, so I got to listen to it and I will tell
18 you, sir.

19 Q Presumably you listened to this last week,
20 correct?

21 A Yes, sir.

22 Q You are saying now that you cannot tell us
23 whether tapes two, three and five are part of the same
24 conversation or a continuation?

25 A Sir, you are reading from a paper. You have

1 numbers in front of you and notes. I am trying to memorize,
2 and I don't want to be pinned down on something I am not so
3 sure of it, sir.

4 Q Just about ten minutes ago Mr. McCarthy showed
5 you tape two, tape three, and tape five, correct?

6 A Correct, sir.

7 Q You read off your notes and they indicated you
8 had conversations with Siddig Ali and Dr. Rashid, correct?

9 A Correct, sir.

10 Q Your testimony is that you do not recall whether
11 these are one conversation. Were they held the same day?

12 A I don't know which tapes you are specifying here,
13 sir. I cannot recall.

14 Q Taken together as a group, two, three and five,
15 the conversations you have testified were with Dr. Rashid
16 and Siddig Ali, how long in total did you listen to them
17 last week?

18 A I checked, point-checked it from beginning,
19 middle, a little further, ten minutes here, ten minutes -- I
20 mean, I checked it, point-checked it until I made sure that
21 that's the conversation. We had listened to it, and I
22 recorded it, sir.

23 Q Can you estimate for us the total of these three
24 tapes: Tapes two, three and five?

25 A No, sir, I cannot.

1 Q When did you first listen -- withdrawn.

2 Those tapes where the conversation is broken out
3 into tapes two, three, and five, is that the format that you
4 first heard these conversations in?

5 A I beg your pardon, sir?

6 Q When did you first hear these conversations?

7 When did you first review tapes of these
8 conversations?

9 A I heard it early last year, I will say, sometimes
10 last year. And I heard it again last couple of weeks, sir.

11 Q So would it be fair to say you are talking about
12 early in 1994 you heard these tapes?

13 A I will assume, yes, sir.

14 Q Please don't assume.

15 Do you recall?

16 A I recall that I heard these conversations all of
17 it from A to Z from the beginning to the end, very early
18 last year. Last week or last couple of weeks I heard it, I
19 checked it, and I made sure that this is the same
20 conversation I recorded, and I recall that I heard it
21 before, sir.

22 Q Did you participate in the making of transcripts
23 from these tapes?

24 A Yes, sir.

25 Q Now, between early last year, which would be

1 early 1994, and the arrests in this case, which took place
2 on June 24, did you listen to these tapes?

3 A Can you repeat that time frame, sir, please?

4 Q Is the first time that you listened to these
5 tapes approximately six months after the arrests in this
6 case?

7 A I am not so sure how long exactly, but, yes, long
8 time after the arrests.

9 Q Did you get any response from the FBI with
10 respect to these recordings prior to the time that you first
11 listened to them?

12 MR. McCARTHY: Objection.

13 THE COURT: Sustained.

14 Q Did you have any other recording device on you at
15 the time or did you use any other recording device in
16 addition to the computer disk with reference to the
17 conversations that are recorded on CM45?

18 A Which one is this? The one --

19 Q The one we have just been talking about sir.

20 MR. McCARTHY: Objection to form.

21 Can we clarify what CM45 is?

22 MR. WASSERMAN: 343, for clarification.

23 MR. McCARTHY: Thank you.

24 THE COURT: Go ahead.

25 A I don't know what's that, CM44. I don't know

1 what's this number belong to what. Let me listen to the
2 tape. I will tell you where it is recorded, and if I was
3 wearing extra recording device or not, sir.

4 Q Presumably you listened to it last week, correct?

5 A Yes, sir.

6 Q You can't remember from last week?

7 A It is a lot of tapes, sir.

8 Q The first time that you recorded a conversation
9 using this computer chip was in reference to Exhibit 343?

10 A I don't know what's Exhibit 343, sir.

11 Q You have testified today --

12 A Yes.

13 Q -- concerning CM45. That's called Exhibit 343.
14 Is that the first time you used a computer chip
15 to record a conversation?

16 A Yes, sir.

17 Q In doing so, did you have any other recording
18 device that you were using at the same time?

19 Did you have, for example, your briefcase, your
20 Nagra in the briefcase?

21 A Yes, sir.

22 Q Did you also at the same time have a
23 microcassette?

24 A On the recording in Dr. Rashid's safe house, yes,
25 sir.

1 Q The question is: On the first time that you used
2 computer chip, you were also using a Nagra in your
3 briefcase, correct?

4 A Yes, sir.

5 Q Did you also at that time have a microcassette on
6 your person?

7 A I don't take it by number, sir. You tell me
8 which meeting; I will tell you if I have it or not.

9 Q I think we've established which meeting sir. It
10 is the first time that you used the computer chip.

11 MR. McCARTHY: Objection.

12 Q At that particular recording session, did you
13 have a microcassette on your person?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q When you first heard the tape of that
17 conversation, correct, did you know whether it was the tape
18 of the Nagra or of the computer chip?

19 A At the beginning I know that that's coming out of
20 the computer chip, sir.

21 (Continued on next page)

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1 Q And you are listening to a tape, is that correct?

2 A Correct, sir.

3 Q And the basis of your knowledge that it comes
4 from the chip is what?

5 A I don't know. It could be optical disk.

6 Q Sir, when you first listened to the tape of this
7 conversation, how do you know that it is a tape made from
8 the information that the computer chip captured as opposed
9 to the Nagra tape that you also had going at the same time?

10 A Because that's what they told me, sir.

11 Q They told you that?

12 A Yes, sir.

13 Q Did you ever listen to the tape recording made by
14 the Nagra machine in your briefcase of the same
15 conversation?

16 A Yes, sir.

17 Q When did you listen to that?

18 A In the last couple of weeks, sir.

19 Q So it is your testimony that you listened to both
20 the tape recording made from the computer chip and the tape
21 recording made from the Nagra?

22 A Yes, sir.

23 Q When you first listened to these tapes, were they
24 broken down into six tapes as the government has presented
25 it to you today, that is, tapes 1, 2, 3, 5, 6 and 7?

1 A Yes, sir.

2 Q Do you have any idea what happened to tape 4?

3 A No, sir.

4 Q When you listened to both the Nagra and to the
5 recording made from the mike chip, did you notice any
6 difference between the two?

7 A The tape from the Nagra, it's a straight one-shot
8 conversation. The tapes from the microchip, it's, you have
9 a piece here and -- it's not in order.

10 Q Not in order. Is the first time you listened to
11 the recording made from the Nagra in the last two weeks?

12 A No, sir. I heard it once before, early.

13 Q When was that? When is early?

14 A That's what I said, long time after the tapes
15 being taken down.

16 Q You are talking about the beginning of last year?

17 A Yes, sir.

18 Q Other than the FBI telling you which tape you
19 were listening to came from the computer clip and which tape
20 came from the Nagra, you have no independent knowledge of
21 which came from which, correct?

22 A The only knowledge, sir, that the tape came from
23 the Nagra, it's one-shot conversation. The tape came from
24 the computer chip is conversation and then another
25 conversation. They are not in order. So that's how I can

1 differentiate.

2 Q But there is essentially duplication of certain
3 conversations, correct?

4 A Yes, sir.

5 Q And would it be fair to say that what you have
6 testified to today concerning your conversation with Siddig
7 Ali, Dr. Rashid and yourself is also contained on a Nagra
8 tape that you have listened to, correct?

9 A Yes, sir.

10 Q And is it your testimony that both are equivalent
11 in terms of audibility?

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 MR. WASSERMAN: I have no further questions.

15 MS. AMSTERDAM: Very briefly, your Honor.

16 THE COURT: Go ahead, Ms. Amsterdam.

17 VOIR-DIRE EXAMINATION

18 BY MS. AMSTERDAM:

19 Q Sir, turning your attention to Exhibit 355E, you
20 indicated in response to Mr. Wasserman that you had point
21 checked the tapes when you reviewed them, is that correct?

22 A Yes, ma'am.

23 Q Meaning that you listened to part of the
24 conversation, advanced the tape, listened to another part of
25 the conversation, advanced the tape, and listened to a third

1 part of the conversation, correct?

2 A Correct, ma'am.

3 Q You did not listen to the conversation in its
4 entirety, did you, sir?

5 A I listened to it previously, long time --

6 Q I am talking about last week, sir. Last week you
7 did not listen to the conversation in its entirety, correct?

8 A Yes, ma'am.

9 Q And when you point checked the tape last week,
10 you indicated that you had recalled hearing the tape before,
11 correct?

12 A Correct, ma'am.

13 Q Would I be correct in saying that as you sit here
14 today, from your own memory, you do not have a precise
15 memory as to the exact length of that conversation, correct?

16 A Yes, ma'am.

17 Q And that as you sit here today from your own
18 memory, you do not have precise memory as to the date of
19 that conversation, correct?

20 A No, I don't, ma'am.

21 Q And as you sit here today from your own memory,
22 you do not have a precise recollection of the exact words
23 that were spoken and who said what to whom, correct?

24 A That is not correct, ma'am.

25 Q You have a memory of what was said, precisely,

1 word by word?

2 A Not word by word.

3 Q You have a general memory of the events, correct?

4 A That is correct, ma'am.

5 Q But you don't remember the exact conversation
6 word by word from your own memory, do you, sir?

7 A No, ma'am.

8 Q Sir, you stated that the tapes that you spot
9 checked were fair and accurate representations of portions
10 of conversations that you recorded, correct?

11 A Correct, ma'am.

12 (Continued on next page)

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1 Q Without listening to the entire tape last week,
2 how can you say that is a fair and accurate representation
3 of conversations that you had?

4 MR. McCARTHY: Objection. My objection is based
5 on a prior discussion that we have had on this matter.

6 THE COURT: May I see counsel at the side bar.

7 (At the side bar)

8 THE COURT: I don't know whether you asked or
9 whether somebody else asked before whether he had
10 participated in the preparation of these. I believe it was
11 Mr. Wasserman.

12 MR. McCARTHY: That is right.

13 MR. WASSERMAN: I asked him about the CM he was
14 questioning him about.

15 THE COURT: You can amplify it or not, but I
16 think it is fair to conclude that he participated in the
17 preparation of the transcripts of all these.

18 MS. AMSTERDAM: That is not my question. My
19 question goes to the heart of the matter. If he is stating
20 these are fair and accurate portions, how can he state that
21 as to these tapes in their entirety? It is the very heart
22 of the voir dire.

23 MR. McCARTHY: Counsel represented to me, as I
24 understood it, that there was no issue about the tapes that
25 the FBI had made, that they were fair and accurate and

1 intact.

2 MS. AMSTERDAM: Mr. McCarthy, I do not attack the
3 FBI's preparation of the tapes. I am not making the
4 assertion that the FBI tampered with them, but if the
5 witness is going to get up on the stand and say they are
6 fair and accurate portions of the conversations and he
7 didn't listen to them, that is a proper question.

8 THE COURT: But the point of his having
9 participated in the preparation of the transcripts is that
10 he can listen to them, i.e., he prepared the transcript.

11 If this is addressed to me, and it is supposed to
12 be addressed to me, I am telling you it is not cutting any
13 ice. If you are addressing the jury, it is
14 cross-examination and not appropriate voir dire. Let's move
15 on.

16 (Continued on next page)

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1 (In open court)

2 BY MS. AMSTERDAM:

3 Q Mr. Salem, I would be correct in saying that last
4 week you did not listen to that tape, CM, Government Exhibit
5 355E, in its entirety, correct?

6 A Correct.

7 Q And as you sit here today, you cannot state that
8 that tape is a fair and accurate representation of the
9 portion of the conversation that you had with my client, can
10 you?

11 A I can, ma'am.

12 Q Without having listened to the tape in its
13 entirety, sir, how can you say that?

14 A Because I did listen to the entire tape once
15 before, ma'am, and when I checked it again, it's in the same
16 sequence, in the same way I heard it before, ma'am.

17 Q All you did last week was spot-check it, correct?

18 A Correct, ma'am.

19 MS. AMSTERDAM: Thank you, sir.

20 THE WITNESS: You are welcome.

21 THE COURT: Ms. London.

22 VOIR-DIRE EXAMINATION

23 BY MS. LONDON:

24 Q Good morning, Mr. Salem.

25 A Good morning, ma'am.

1 Q Mr. Salem, you told us that you controlled the
2 on/off switch for these disk recordings, correct?

3 A Which one, ma'am?

4 Q The government exhibits that we are talking about
5 this morning. I didn't give you the numbers. I thought you
6 were bad at numbers. Government's Exhibits 344, 343 and
7 355. You controlled the on/off switch for those recordings,
8 is that correct?

9 A Correct, ma'am.

10 Q Where is that on/off switch located?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q How did you operate that on/off switch?

14 MR. McCARTHY: Objection.

15 THE COURT: I will allow that.

16 A I turned it on and off, ma'am.

17 Q Was there a switch or a knob?

18 A Yes, ma'am.

19 Q Do you know where in the pants the chip was
20 located?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q Could you feel the chip?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q Was there a separate microphone to these
2 recordings?

3 MR. McCARTHY: Objection to norm.

4 Q If you know, Mr. Salem, did the equipment you
5 were wearing have a microphone?

6 A All what I know, it picks up the conversation,
7 but I really did not involve in the technical matter of this
8 computer chip.

9 Q You testified to us that some of the tape
10 recordings contained conversation that went over several
11 days, is that correct?

12 A Yes, ma'am.

13 Q For those recordings, you kept the pants for
14 several days, is that correct?

15 A No, ma'am.

16 Q Did you return the pants every night to the FBI?

17 A Yes, ma'am.

18 Q And then you received back the next occasion a
19 separate pair of pants, is that correct?

20 A Sometimes a separate pair of pants, sometime the
21 same pants, ma'am.

22 Q From time to time in May and June of 1993, you
23 wore a pair of pants that had a pocket located below the
24 knee, isn't that correct?

25 MR. McCARTHY: Objection, scope.

1 THE COURT: Sustained.

2 MS. LONDON: Your Honor, may we approach?

3 THE COURT: No.

4 Q Mr. Salem, were you wearing these FBI pants on
5 the night of June 23, June 24, when the arrests in this case
6 occurred?

7 A Yes, ma'am.

8 Q Have you listened to any recordings from that
9 evening from those computer disks?

10 MR. McCARTHY: Objection, scope.

11 THE COURT: Sustained.

12 MS. LONDON: I have no further questions.

13 THE COURT: Miss Stewart?

14 MS. STEWART: Yes.

15 VOIR-DIRE EXAMINATION

16 BY MS. STEWART:

17 Q Mr. Salem, I think you mentioned that the
18 capacity of the chip was a two-hour capacity, is that right?
19 It had the ability to record for two hours?

20 A I don't recall two hours, ma'am.

21 Q Would you tell us what your understanding was of
22 how long you would be able to record using your pants, so as
23 to speak?

24 A As far as I recall, three hours, ma'am.

25 Q Three hours?

1 A That's as far as I recall, yes.

2 Q Was there ever an occasion that you recorded
3 something, went home, took off those pants, left them, put
4 them on again the next day to record again?

5 A I don't recall it specifically, but what I
6 recall, that I always give it to them quickly to reload --
7 to unload the computer chip so I can have it for the next
8 meeting, and sometimes I have it twice a day, after they
9 took it, unload it and brought it back to me.

10 Q But you also said that the tapes were not in
11 order, you could not verify the order. In other words,
12 343-1 of seven, actually came before 343-7 of seven, is that
13 right? How did that happen, if you know?

14 A I am not so sure how that happened, but if I
15 understood, that they did not -- when they unloaded the
16 chip, they did not delete the -- it's a computerized,
17 complicated thing. I wouldn't tell my opinion in it, ma'am.

18 Q You are talking to someone who can't program her
19 own VCR.

20 You turned the recordings, whatever way they were
21 done, in order, is that right? You turned them in that way
22 to the FBI?

23 A Yes, ma'am.

24 MS. STEWART: No further questions, I guess.

25 THE COURT: Anyone else?

1 The exhibits have been proffered.

2 MR. WASSERMAN: Your Honor, may we have a side
3 bar?

4 THE COURT: Yes.

5 (At the side bar)

6 THE COURT: I don't understand what if anything
7 has been agreed to with regard to these tapes or stipulated
8 to with regard to them, and what hasn't. If somebody could
9 enlighten me on that, I could figure out where we are going.

10 MR. WASSERMAN: If I may, CM 45 touches on my
11 clients directly. What I would like to find out is why
12 these tapes have been cut out into six different tapes. I
13 have received different versions of CM 45, and he testifies
14 that this comes from a computer chip and also from a Nagra.
15 I would like to listen to these conversations. He doesn't
16 know how long they were. I know that my client's
17 conversation was approximately 40 minutes based upon the
18 tapes that I received in October. So I would like to have a
19 decision deferred, if I may, until I can listen to these
20 tapes.

21 MR. McCARTHY: Your Honor, I wasn't going to ask
22 to play any of these tapes at this point. I just wanted to
23 get what foundation I could get out of this witness on it.

24 THE COURT: Then why are we up here?

25 MR. McCARTHY: I offered them. I was hoping

1 there wasn't going to be an issue. I can make a proffer
2 about how it is that they came to be in the condition they
3 are in.

4 THE COURT: Let's do it outside the presence of
5 the jury.

6 MR. JACOBS: Just to clarify, I think until he
7 gave the answer that he had previously reviewed them in
8 their entirety, I think there was a legal objection.
9 However, I think the witness's now testimony that he
10 reviewed them in their entirety and they are fair and
11 accurate to the portions, we no longer have a legal basis --

12 THE COURT: Before you waive for everybody, why
13 don'ts you talk about it.

14 (In open court)

15 THE COURT: Let's go.

16 MR. McCARTHY: Your Honor, I am going to move on
17 to a different exhibit, with the court's indulgence.

18 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q Mr. Salem, showing you Government's Exhibit 639,
3 which you have identified previously in your testimony, can
4 you please tell us what this is a microcassette of?

5 A Yes, sir. It is a conversation between Sheik
6 Omar, Siddig Ali and myself, and another conversation
7 between Dr. Rashid, Mr. Siddig Ali and myself.

8 Q The conversation between yourself, Mr. Siddig Ali
9 and the defendant Omar Abdel Rahman, can you tell us where
10 that took place?

11 A In Abu Bakr Mosque in Brooklyn, sir.

12 Q And the conversation between yourself, Siddig Ali
13 and Abdel Rashid, or the defendant Hampton-El, where did
14 that take place?

15 A In Rogers Avenue safe house, where is Dr. Rashid
16 place, sir.

17 Q How did you record this particular conversation?

18 A That was a body recorder, sir.

19 Q Was that your own equipment?

20 A Yes, sir.

21 Q And I think you previously identified the
22 initials -- I am looking at the B side in the top right-hand
23 corner as you look at it. Do you know whose initials those
24 are?

25 A That is the FBI agent who took this microcassette

1 from my apartment, sir.

2 Q Mr. Roth?

3 A That is correct, sir.

4 MR. McCARTHY: Your Honor, the government offers
5 the first and third conversations on 639.

6 MR. JACOBS: Your Honor, may I confer with
7 counsel for a moment?

8 THE COURT: Yes.

9 MR. JACOBS: May I have a brief voir dire, your
10 Honor?

11 THE COURT: Yes.

12 VOIR-DIRE EXAMINATION

13 BY MR. JACOBS:

14 Q Mr. Salem, does that microcassette have any
15 writing that is your handwriting on it? Take a look at it,
16 please.

17 A Yes, sir.

18 Q What writing does it contain, and second question
19 is, when did you write it?

20 A The first writing is my initial and the second
21 writing, I wrote -- excuse me for a second.

22 Q I can lend you my bifocals. Do you know when you
23 wrote it or do you want to take a look for a second -- sure,
24 switch glasses.

25 A I wrote "sheik" and my initials, and the third

1 thing is smudged, or is being --

2 Q Smudged.

3 A Smudged, yes.

4 Q And the word "sheik," when did you write that?

5 A Today, sir.

6 Q Pardon me?

7 A Today, sir.

8 Q And your initials, was that today as well?

9 A No, sir, it was not today.

10 Q Could you tell us when it was?

11 A Sometimes last two weeks.

12 Q So is it fair to state that when you made the
13 recording you didn't write anything on the paper that is
14 part of the tape at the time that you made the recording or
15 shortly thereafter? Is that accurate?

16 A Yes, sir, I did not.

17 Q So the writings that appear on it are either FBI
18 writings from the lab or something you wrote either this
19 morning or a couple weeks ago, correct?

20 A Yes, sir.

21 Q Is there any document that you ever prepared or
22 signed in connection with the making of that tape?

23 A No, sir.

24 Q Am I correct in stating that the FBI did not
25 direct you to make that body recording; is that correct?

1 A They did not direct me, sir.

2 Q So it was something that you did on your own on
3 the particular date in question, is that correct?

4 A Yes, sir.

5 Q Am I correct that it was -- do you remember the
6 date that that conversation took place?

7 A No, sir, I am sorry.

8 Q Again, May or June, not sure of the date?
9 Probably May?

10 A It's close to the end of the case.

11 Q Close to the end of the case?

12 A Yes, sir.

13 Q And the end of the case would have been on or
14 about June 23, 1993, correct, 24th?

15 A Yes, sir.

16 Q The equipment that was used was a microcassette
17 recorder, is that correct?

18 A That is correct, sir.

19 Q Do you have that equipment at the present time?

20 A Now?

21 Q Yes, sir.

22 A Not on me, but I have it in my home.

23 Q Did the FBI ever take custody of the actual
24 equipment that was used to record this conversation?

25 MR. McCARTHY: Objection, relevance.

1 THE COURT: I will allow it.

2 A No, sir.

3 Q And I am not asking you where you live at the
4 present time, but wherever you live at the present time,
5 that piece of equipment is still in your control, is that
6 correct? I don't know where you live, but it is in your
7 control?

8 A I hope I still have it. I have been moved --
9 this is the 15th time. I don't know where is anything, sir.

10 Q In any event, would I be correct in stating that
11 this type of equipment, was it all one piece like you go to
12 a radio store and buy a microcassette recorder like a Sony,
13 one piece of equipment, or did it have a separate
14 microphone?

15 A It could be one piece and it could be extended
16 piece, sir.

17 Q When you say extended piece, it might have had a
18 wire with a microphone?

19 A That's right, sir.

20 Q And the equipment that was used for this
21 particular conversation was something you bought independent
22 of law enforcement, correct?

23 A Yes, sir.

24 Q You put the cassette in, correct, yourself?

25 A Yes, sir.

1 Q You turned the equipment on and off, correct?

2 A Yes, sir.

3 Q You took the cassette out, correct?

4 A Yes, sir.

5 Q You kept it yourself, correct?

6 A Yes, sir.

7 Q And it wasn't until weeks later or a month later
8 that somehow the FBI found it in your home, correct?

9 A Yes, sir.

10 Q You didn't tell the FBI the day after that you
11 made this recording, did you, sir?

12 A On the time I made it, no, sir.

13 Q For whatever the reason, you kept it in your
14 house with other tapes that you were making, correct?

15 A Yes, sir.

16 Q Would I be correct in stating that at the time
17 you made it you knew that some of the people were targets of
18 the investigation; is that fair to say?

19 A I am sorry. Could you repeat, please.

20 Q Sure. When you made the tape of the sheik and
21 Siddig, these were part of the people that you were making
22 the investigation on, correct?

23 A Correct, sir.

24 Q Did you keep any recordkeeping in your home
25 concerning when you were making any personal tapes like

1 this?

2 A No, sir. Once I delivered the information I
3 dropped it in a box.

4 Q When you say once you delivered the information
5 you dropped it in a box, what information are you saying you
6 delivered?

7 A That I told the FBI agents that I had a meeting
8 today, what happened, so and so, if it's recorded on Nagra
9 tapes I give it to them.

10 Q In particular, this exhibit that the government
11 has offered, 639, is it your testimony that you told the
12 agents -- and I am not asking who it was, Napoli or
13 Anticev -- you told them I had a meeting but you didn't say
14 you have a tape, correct?

15 A I did not say, sir.

16 Q For whatever the reason, you held the tape
17 yourself for some period of time in your control, correct?

18 A It was not a particular reason.

19 Q I didn't ask you whether it was.

20 A Could you --

21 Q You held it for whatever the reason might have
22 been.

23 A That is correct, sir.

24 Q Did you go back home and listen to 639 before the
25 FBI got it at the end of June?

1 A I don't recall the date exact that I did that,
2 sir.

3 Q When the FBI agents debriefed you about the
4 conversation, had you listened to it again to see what was
5 said?

6 A I don't recall, sir.

7 Q With respect to these microcassettes, do you know
8 if there is a mechanism where you could punch out tabs to
9 stop it from rerecording? Do you know that, sir?

10 A Now I know, sir.

11 Q Pardon me.

12 A Now I know, sir.

13 Q At the time that you made 639, is it your
14 testimony that you did not know that you could punch out the
15 tab so it can't be rerecorded? Is that your testimony, sir?

16 A I am sorry. Could you repeat it, please.

17 Q Sure. I am asking you whether at the time that
18 you made this recording, and you are not sure when, did you
19 know that you could punch out the tabs, break the tabs so
20 that you could not rerecord?

21 A No, in that time I don't know, sir.

22 Q Do you know if something was underneath this,
23 rerecorded over this? Would you know that, sir?

24 A I don't know, sir.

25 Q Is it your testimony that there may be another

1 conversation that you rerecorded over this one?

2 A I don't know, sir.

3 Q During the time period involved here, May and
4 June, you were using this body recorder on numerous
5 occasions, correct?

6 A Yes, sir.

7 Q And the manner that you used them was strictly
8 within your 100 percent control, correct?

9 A Correct, sir.

10 Q Can you tell us whether this tape is fair and
11 accurate as to the entire conversation?

12 A Yes, sir.

13 Q Is there some portion that may be missing?

14 A No, sir. It's the entire -- well, I wasn't sure,
15 because if there is a missing word by the time I flip the
16 switch or not, but it is fair of the whole conversation with
17 no interruption, sir.

18 Q Did the FBI refuse to give you a Nagra that day
19 that is involved here?

20 A No, sir, they did not refuse.

21 Q You had access to your FBI pants and your FBI
22 suitcase on the date in question, sir, as far as you know?

23 A I am not sure that the pants was with me in that
24 time, but I had the briefcase in that time, sir.

25 Q Did you ever make a copy of this tape yourself?

1 A I don't recall doing that, sir.

2 Q With respect to your own taping system, did you
3 ever make copies of any of the tapes, whether it be this one
4 or another one?

5 A I don't recall, sir.

6 Q Did you ever take any of these home tapes and
7 send them anywhere?

8 A No, sir.

9 Q Never gave them to anybody, every tape that you
10 ever made in connection with this investigation -- I am
11 sorry. Your Honor is leaning forward. Do I take that to
12 mean I will move on to another area?

13 THE COURT: Yes.

14 MR. JACOBS: OK.

15 Q With respect to 639, the original, would you
16 agree that the tabs appear to be broken and removed on the
17 sides, if you know?

18 A Yes, sir.

19 Q When were they broken? Did you break them?

20 A I did not.

21 Q So somebody broke the tabs but you are not sure
22 who or when?

23 A I am not sure who or when, sir.

24 Q When you made the recording and put them in the
25 box, were the tabs there?

1 A Yes, sir.

2 Q Somebody took this tape and did something with it
3 between the time that you last saw it until now, is that
4 correct?

5 MR. McCARTHY: Objection to form.

6 Q If you know?

7 THE COURT: Sustained as to form.

8 Q The last time you saw this tape, the tabs were
9 intact, correct? Or not. Tell me if I am wrong.

10 A I didn't check for it specifically, sir.

11 Q But you didn't break the tabs?

12 A No, I did not, sir.

13 Q Mr. Salem, I don't want to ask the names, but
14 would I be correct in stating that you didn't have these
15 tapes in a locked safe, did you?

16 A It's not under lock, no, sir. It was not under
17 lock.

18 Q And you didn't have your own FBI evidence vault
19 in your home, did you, sir?

20 A Pardon me.

21 Q The FBI didn't give you a box to safeguard
22 anything, did they, sir?

23 A No, sir.

24 Q The FBI never instructed you to make your own
25 tapes, correct, sir?

1 A I am not so sure about that, sir.

2 Q Perhaps we will leave that for some other point.

3 With respect to the safeguarding of tapes that
4 you made --

5 A Yes, sir.

6 Q And I guess we will include the Nagras -- was
7 there some kind of procedure that the FBI told you to hold
8 the tapes when you had to wait a day or so for them to pick
9 it up?

10 A The Nagra?

11 Q Yes, the Nagra.

12 A It stated inside the recording device, sir. Or
13 when I took it out and reloaded the Nagra tape, it is inside
14 the envelope inside the briefcase, sir.

15 MS. AMSTERDAM: I am sorry. I didn't hear the
16 last answer.

17 A If I reloaded the Nagra tape, I took the old one,
18 I put it in the white envelope inside the briefcase, ma'am.

19 Q Did you, did you, did you keep --

20 THE COURT: The exhibit under discussion is
21 supposed to be 639 which was made on a microcassette. Can
22 we stick to that?

23 MR. JACOBS: I am trying to.

24 THE COURT: Try harder.

25 Q My question is, what was stored in your box? Was

1 it just your personal tapes like this one, or did you also
2 put the FBI ones in there as well?

3 A I think it was only my tapes, sir.

4 Q So someplace else at home you would be keeping
5 your Nagra tapes waiting to be picked up by Napoli, is that
6 correct?

7 A No, sir.

8 Q When you had to wait for Napoli to pick up your
9 Nagra tapes, where did you store those?

10 MR. McCARTHY: Objection to scope.

11 THE COURT: Sustained.

12 Q Did you keep this tape, 639, separate from
13 anything else that you were making for the FBI?

14 A That is correct, sir.

15 Q The FBI gave you no instructions on how to keep
16 tapes or store tapes in your home, is that correct?

17 A Correct, sir.

18 MR. JACOBS: I have nothing further.

19 VOIR-DIRE EXAMINATION

20 BY MS. AMSTERDAM:

21 Q Sir, this cassette was made with a body recorder,
22 is that correct?

23 A I beg your pardon, ma'am.

24 Q This microcassette was made with a body recorder?

25 A Yes, ma'am.

1 Q Did you have one body recorder or more?

2 A I have a lot of gadgets, ma'am.

3 MS. AMSTERDAM: Thank you.

4 VOIR-DIRE EXAMINATION

5 BY MS. STEWART:

6 Q Mr. Salem, this tape, I think other people have
7 covered it, but it was found on your chair in your bedroom,
8 is that right, among all the other tapes?

9 A It was inside a chair, ma'am.

10 Q Inside, you mean it was concealed in some way?

11 A Yes, ma'am.

12 Q Under the cushion, in the actual upholstery?

13 A Yes, ma'am.

14 Q You indicated to Mr. Jacobs that you thought this
15 tape was made probably close to the end of the
16 investigation, is that right?

17 A That's what I said, yes.

18 Q You told us earlier, did you not, that the FBI
19 had instructed you to put the date and the time and the
20 place where you made CM tapes on the tape, is that right?

21 A For a certain while I did that by myself, but
22 later on they picked up this thing and they did it
23 themselves, ma'am.

24 Q Let me ask you, on this particular tape -- you
25 reviewed this tape? You have reviewed this 639?

1 A Yes, ma'am.

2 Q And did you not hear yourself putting the date on
3 it and the time and the place?

4 A I am not so sure.

5 MS. STEWART: Judge, may I approach the witness?

6 THE COURT: Yes.

7 Q Just this end. If you could read all of it if
8 you like.

9 THE COURT: What is the exhibit, Miss Constitute?

10 MS. STEWART: 639T.

11 A Yes, ma'am.

12 Q I will step back. Did that refresh your memory,
13 Mr. Salem, about where, when you made this tape?

14 A Yes. I made it in Abu Bakr Mosque, and that was
15 11:30, as I stated, 11:30 p.m.

16 Q And the date?

17 A I forget.

18 Q Was it May 30?

19 A That is correct, ma'am.

20 Q You had made other tapes that day, using official
21 equipment, is that correct?

22 A I don't recall.

23 Q Do you remember driving to Abu Bakr Mosque and
24 stopping at Rashid's home?

25 A Yes, ma'am.

1 Q And then going from there to pray the sunset
2 prayer at the mosque, is that correct?

3 A Yes, ma'am.

4 Q And the conversation at Rashid's home was on a
5 CM, is that right, on a Nagra?

6 A Yes, ma'am.

7 Q When you got to the mosque, was there a reason
8 why you no longer used that same Nagra?

9 A Yes, ma'am.

10 Q What was that?

11 A Number one, it will be funny for me to carry
12 briefcase and walk back and forth in the mosque. And number
13 two, I could not get to the briefcase the time I saw Sheik
14 Omar and Mr. Siddig Ali walk to the corner, and they start
15 talking and Mr. Siddig looking at me, and I expected that he
16 will call me for something. I flipped the switch and I
17 waited for him till he came to me, and he was angry at me,
18 that I talked to Sheik Omar at his apartment.

19 Q I am sorry.

20 A He was angry at me that I talked to Sheik Omar
21 Abdel Rahman at his apartment.

22 Q When you say he was angry at you, you are talking
23 about Siddig Ali, is that correct?

24 A Yes, ma'am.

25 Q And when you say spoke to him at his apartment,

1 that would be on a previous occasion?

2 A Yes, ma'am.

3 Q You indicated, you were touching your lapel when
4 you said I switched it on. Is that where the off/on switch
5 was for this particular microcassette recorder?

6 A Yes, ma'am.

7 Q Where was the recorder itself?

8 A In my groins, ma'am.

9 Q You did not listen to this tape again until it
10 was in FBI custody and the arrests had taken place, is that
11 right?

12 A That is correct, ma'am.

13 Q You didn't need it to refresh your memory or
14 anything, is that right?

15 A I don't think so, ma'am.

16 Q That was the reason the FBI told you to wear the
17 microcassette, isn't that correct?

18 A The FBI did not tell me to wear a body recorder,
19 ma'am.

20 Q Did you not a few moments ago answer Mr. Jacobs
21 in saying they did authorize you on occasion to wear it?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q Do you remember the date that you first listened
25 to this microcassette?

1 A No, ma'am.

2 Q Is there anything on the tape or on the envelope
3 that would indicate that?

4 A I think there is, ma'am.

5 MS. STEWART: May I have the exhibit?

6 Q Showing you what has been marked 639A for
7 identification --

8 A 6/29/93, ma'am.

9 Q I am sorry.

10 A 6/29/93, ma'am.

11 Q You listened to it the same day that Mr. Roth
12 went to your home and recovered it, is that correct?

13 A Mister who, ma'am?

14 Q Mister Agent Roth?

15 A No, ma'am, I did not listen to it on the same
16 day.

17 Q When you gave us that day, you were reading from
18 the envelope, is that correct?

19 A Correct, ma'am.

20 Q Do you have any independent recollection of
21 listening to the tape that day?

22 A No. I did not listen. I recall that I did not
23 listen to this tape on the day of Mr. Roth collecting it
24 from my home, ma'am.

25 Q So if Mr. Roth collected it on 6/29/93, you would

1 not have listened to it on that day, is that right?

2 A I am sorry, dates. Which date you are talking
3 about now?

4 Q Let me just start over again.

5 A All right.

6 Q My question is, do you remember the date that you
7 listened to this tape first?

8 A No, ma'am.

9 Q I then asked you if I showed you the envelope,
10 would that refresh your memory, could you look, was there a
11 notation made about when you first heard this tape. You
12 then looked at the envelope and you told us, did you not,
13 that you heard the tape on June 29, 1993?

14 A I did not say that, ma'am. I said the date on
15 the envelope is what I just read now, but I did not say that
16 I heard it on this tape.

17 Q Let me go back to my original question, which
18 was, can you just tell by looking either at the envelope or
19 the tape when you first listened to the tape?

20 A No, no, ma'am.

21 Q There is no notation?

22 A No, ma'am.

23 Q With regard to these tapes that were found in
24 your apartment, do you remember whether you listened to
25 them -- let me strike that. Did you listen to them all at

1 once or did you listen to one group and then another group
2 and another group at different times?

3 A Ma'am, I have been listening to a lot of tapes.
4 I cannot emphasize which is which and which is when. I
5 mean, it's a lot of tapes there. So I cannot really
6 distinguish.

7 Q Would it be fair to characterize this tape as a
8 missing CM?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q Do you have any recollection who you reported
12 this conversation to, which of the agents?

13 A No, ma'am, I am sorry, I do not recall.

14 (Continued on next page)

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1 Q Did you ever have a practice whereby you turned
2 over body tapes to an agent different from Agents Anticev,
3 Napoli or Floyd?

4 A No, ma'am.

5 Q Is it your testimony that after May 30 you made a
6 report and then you took this tape and tossed it in the
7 pile, is that right?

8 A Yes, ma'am.

9 Q This was a tape of the sheik discussing -- this
10 is a tape of you and the sheik and Siddig Ali, is that
11 right?

12 A Part of the conversations on the tape, yes,
13 ma'am.

14 Q Do you ever recall during the pendency of the
15 investigation -- I am now speaking of from May until June --
16 did you ever turn over a microcassette to either Detective
17 Corrigan or Liguori?

18 A I am sorry. Can you repeat the names, please?

19 Q Detective Corrigan of the task force or Agent
20 Liguori.

21 A I don't recall. I have been dealing with so many
22 agents.

23 Q The microcassette that you used, did this
24 microcassette have more than one speed on which it recorded?

25 A Yes, ma'am.

1 Q How many speeds could it record on?

2 A Two, ma'am.

3 Q What was the difference, if you recall, between
4 recording on one speed as opposed to the other speed?

5 A There is one speed which is a slow speed. It
6 could give you capacity of four, five hours' worth of
7 recording, and there is another speed, it could give you the
8 exact time, which is being written on the tape itself, if
9 it's 60 minutes or 90 minutes or whatever.

10 Q Do you remember which one you used in this
11 particular occasion?

12 A I did not check that, ma'am.

13 Q Is there a way you could check it now or --

14 A Yes, ma'am, I can check it.

15 Q Do you need to see the exhibit again?

16 A If you would be kind enough, please.

17 MS. STEWART: May I, Judge?

18 THE COURT: Yes.

19 Which exhibit is it he is being shown?

20 MS. STEWART: This is 639A and 639 itself, which
21 is within it.

22 A That is 90 minutes tape, ma'am.

23 Q Well, OK. Let me step back. I will take the
24 exhibit.

25 A Sure.

1 Q When you say this is 90 minutes, do you mean you
2 recorded it at the speed whereby it's the same time as the
3 time recorded that you described to us a moment ago?

4 A I don't know what speed I recorded. I think that
5 can be checked. If we have a similar microcassette, we can
6 check what type of speed we recorded it with.

7 Q Do you remember what kind of microcassette that
8 was, the recorder?

9 A It's a microrecorder, but I don't know what
10 brand.

11 Q Do you remember how much you paid for this
12 microcassette recorder?

13 A That was a long time ago. I don't remember,
14 ma'am.

15 Q Did you bill the FBI for it?

16 A No, ma'am, that's my personal.

17 Q Did you take any part in the translation of this
18 particular tape -- which was recorded in Arabic, is that
19 correct?

20 A Correct, ma'am.

21 Q Did you take part in the translation?

22 A I'm not so sure because it was a lot of tapes, a
23 lot of translations.

24 MS. STEWART: Just give me one minute, Judge.

25 Q Mr. Salem, you mentioned I think at the end of

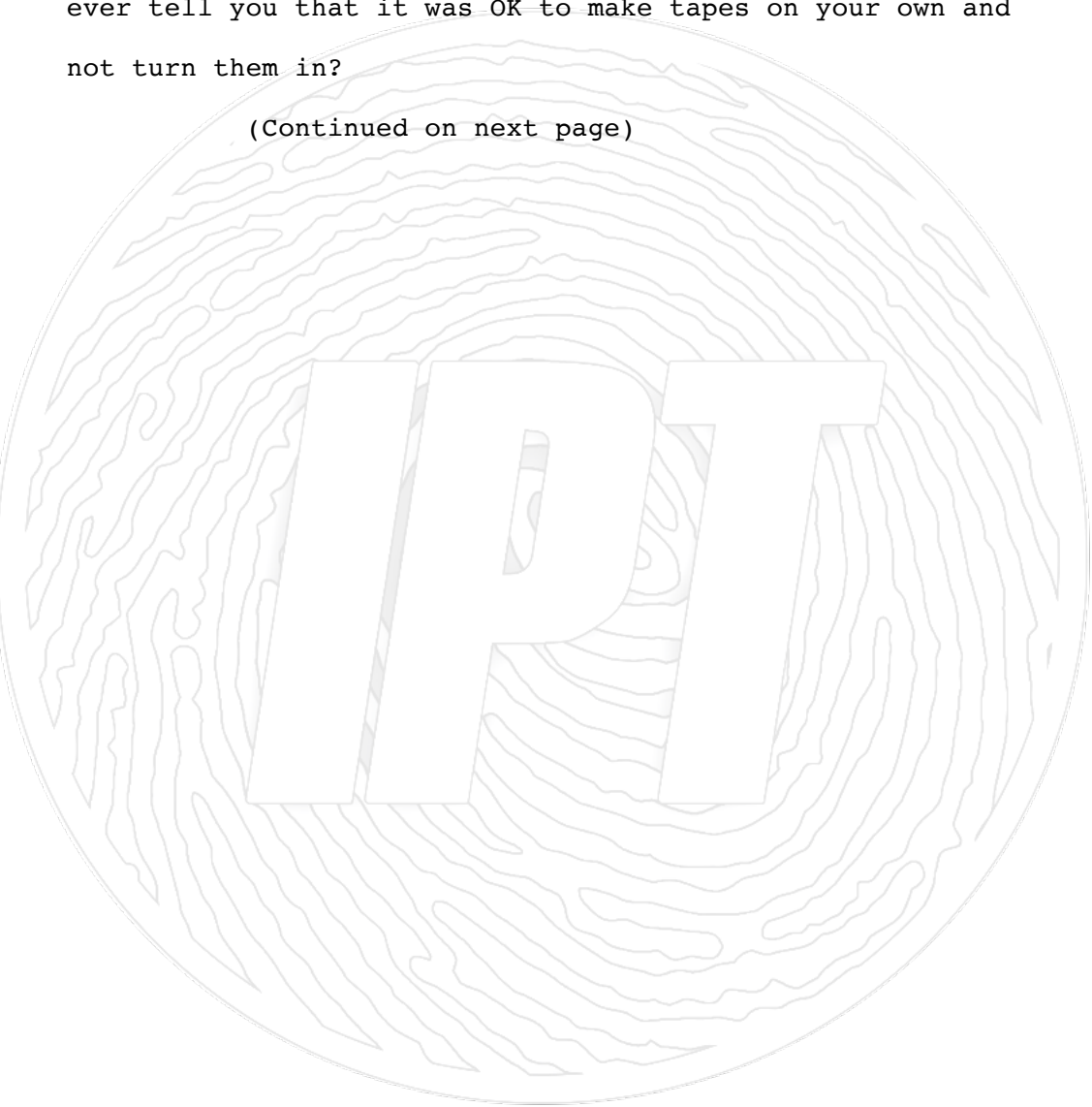
1 your cross-examination with Mr. Amsterdam that you had a lot
2 of gadgets, is that right?

3 A Yes, ma'am.

4 Q Did Agent Anticev or any of the agents actually
5 ever tell you that it was OK to make tapes on your own and
6 not turn them in?

7 (Continued on next page)

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1 MR. McCARTHY: Objection, scope.

2 THE COURT: Sustained and stricken.

3 Anything else?

4 MS. STEWART: No, Judge.

5 THE COURT: Thank you.

6 Ladies and gentlemen, we are going to take a
7 short break. Please leave your notes and other materials
8 behind. Please don't discuss the case and we will resume in
9 a few minutes.

10 (The jury was excused)

11 THE COURT: You may step down.

12 (Witness excused)

13 (Jury not present)

14 MR. STAVIS: Your Honor, I was given a copy of
15 the minutes of yesterday's conference at 3:40 p.m. It
16 concerns the personnel file of Special Agent Nancy Floyd. I
17 know your Honor has made a determination after reviewing the
18 file. It is my application is that the file be released to
19 defense counsel here.

20 The reason I make that application is there is a
21 line of cases, your Honor, beginning with United States v.
22 Burr, where Chief Justice Marshall was the circuit justice
23 who wrote, and the line of cases goes up to Jencks, with
24 Justice Brennan, and then to Nixon. The point of these
25 cases is that the adversarial eye is often in a better

1 position to see things than the judicial eye. Recognizing,
2 your Honor, that in terms of admissibility or anything else,
3 that will be determined on an ad hoc basis --

4 THE COURT: I looked at it with my adversarial
5 eye. Your application is denied. I will see you in a few
6 minutes.

7 MS. STEWART: May I ask about the lists of 21
8 people that you ordered, the Egyptian list?

9 THE COURT: As I understand it, I don't know that
10 it is 21 --

11 MS. STEWART: We did not get it. However many it
12 is, we did not get a list.

13 MR. McCARTHY: We are turning it over. I expect
14 to turn it over today.

15 THE COURT: Fine.

16 MS. STEWART: Thank you.

17 THE COURT: You're welcome.

18 You can rest assured that the entire personnel
19 file will be available to the Second Circuit should they
20 wish to review it.

21 MR. JACOBS: I must be missing something. Was
22 there some proceeding yesterday afternoon?

23 THE COURT: Yes. You folks wanted me to go
24 through the personnel folders of both Anticev and Floyd to
25 determine whether there was either Brady or Giglio material

1 in there. In fact, somebody asked me whether I had gotten
2 to it yet, and I said --

3 MR. JACOBS: I did.

4 THE COURT: You did?

5 MR. JACOBS: Yes.

6 THE COURT: I said I hadn't, but I would do it
7 yesterday afternoon. I did it yesterday afternoon, and,
8 when I did, I found something in Agent Floyd's file that I
9 thought should be turned over. I then summoned the
10 government and put on the record that I had found something
11 and that I wanted them to turn it over.

12 MR. JACOBS: OK.

13 THE COURT: That was the proceeding.

14 MR. JACOBS: OK, fine. Mr. Stavis referred to
15 it, and I didn't know what it was about.

16 THE COURT: OK. Fine.

17 (Recess)

18 MR. SERRA: Your Honor, before the jury comes
19 out, there is a government proffer on the table of 639-1 and
20 639-3. I may well have gotten 639-3 in draft form some time
21 ago with a number of other bootlegs. But I -- and, from a
22 quick and informal poll, my co-counsel -- was not aware that
23 it was going to be offered today, and don't have a copy
24 here. So, your Honor, I don't think we need to take this up
25 now, as long as none of it is going to be read to the jury

1 in English. If there are inadmissible parts of it, or, if
2 it is in whole inadmissible, as long as I have it in front
3 of me, we can take that up later.

4 MR. McCARTHY: As long as, your Honor, everybody
5 agrees that whatever foundation issues there are with
6 respect to this witness -- I was not planning to play those
7 tapes at this time. I was just trying to lay the
8 foundation.

9 THE COURT: Fine.

10 MR. SERRA: I have no problem with that.

11 MR. WASSERMAN: Your Honor, I may have an
12 objection to the admission of 639-3.

13 THE COURT: I will hear you at the appropriate
14 time.

15 MR. JACOBS: Your Honor, I read the minutes from
16 yesterday afternoon. If you have a few minutes sometime
17 today, I would like to be heard on it.

18 THE COURT: On what?

19 MR. JACOBS: On your Honor's review, what your
20 Honor reviewed I wanted to discuss it, but I don't want to
21 do it with the jury coming out. Today or tomorrow. It is
22 not an emergency.

23 THE COURT: OK.

24 EMAD SALEM, resumed.

25 (Continued on next page)

1 (Jury present)

2 THE COURT: Go ahead, Mr. McCarthy.

3 MR. McCARTHY: Thank you, your Honor.

4 DIRECT EXAMINATION (Continued)

5 BY MR. McCARTHY:

6 Q Mr. Salem, a few moments ago Ms. Stewart asked
7 you some questions about the conversation that you recorded
8 at the Abu Bakr mosque with yourself, Mr. Siddig Ali, and
9 the defendant Omar Abdel Rahman, do you recall that?

10 A Yes, sir.

11 Q Can you tell us the circumstances under which you
12 recorded that conversation.

13 A I was standing at the end of the mosque. I saw
14 Mr. Siddig Ali holding Sheik Omar Abdel Rahman --

15 THE COURT: Which exhibit is this?

16 MR. McCARTHY: This is 639, your Honor.

17 THE COURT: Thank you.

18 MR. McCARTHY: Conversation one of three.

19 A I saw Mr. Siddig Ali holding Sheik Omar's arm.
20 They went to the corner and they sit down on the floor.
21 They start talking to me -- talking to each other and
22 Mr. Siddig Ali start looking at me with a very angry way. I
23 felt that they are talking about me. I flipped the switch,
24 and I waited what will happen. Mr. Siddig Ali walked
25 towards me and told me, "Didn't I tell you do not talk to

1 the sheik in his house."

2 I said, "Yes, if there is anything wrong."

3 He grabbed my arm took me to the corner, sat down
4 with Sheik Omar Abdel Rahman and Mr. Siddig Ali, and we
5 started the rest of the conversation.

6 Q Just for the sake of clarity in the record, I
7 believe when Ms. Stewart was asking you questions you made
8 the statement that, "He was angry at me because I spoke to
9 him at his apartment."

10 Could you tell us who was angry at you and whose
11 apartment that you had spoken to whom in? If you could,
12 clarify exactly who you meant by those statements.

13 A Mr. Siddig Ali was angry at me that I spoke to
14 Sheik Omar Abdel Rahman in Sheik Omar Abdel Rahman's
15 apartment.

16 Q Is that the conversation that we heard at the end
17 of the day last Thursday?

18 A Yes, sir.

19 Q Prior to the conversation that you had with the
20 defendant Omar Abdel Rahman in his apartment, can you tell
21 us whether you discussed with Siddig Ali whether he, that
22 is, Siddig Ali, had consulted with Omar Abdel Rahman about
23 the bombing of the United Nations?

24 A Yes, sir, I did.

25

1 Q Can you tell us what if anything Siddig Ali told
2 you about that?

3 A Siddig Ali told me that yes, he did consulted
4 Sheik Omar Abdel Rahman, and he told him yes, it's a must,
5 it's a duty.

6 Q What was a must or a duty?

7 A To bomb the United Nations.

8 Q What was it withdrawn.

9 Q What was it that caused you to have a
10 conversation with Omar Abdel Rahman himself, that is, you
11 and he directly?

12 A Mr. Siddig Ali told me that he consulted Sheik
13 Omar, and if you want to ease up your mind, you go ahead,
14 talk to him by yourself.

15 Q A couple moments ago you said that somebody had
16 said that the bombing was a must?

17 A Yes, sir.

18 Q What was your understanding of who had said the
19 bombing was a must?

20 A Sheik Omar Abdel Rahman, sir.

21 Q Did Siddig Ali give you any advice about how you
22 should talk to Dr. Abdel Rahman?

23 A Yes, sir, he did.

24 Q What did he tell you?

25 A He told me, do not discuss with him details, and

1 just talk to him about the main topic, if it's permissible
2 or not, but don't discuss details and don't talk to him in
3 his house.

4 Q Did he tell you or did he say anything about
5 whether that was anyone's particular ground rule?

6 A Yes, sir.

7 Q Whose ground rule?

8 A He said this is Sheik Omar Abdel Rahman's rules.

9 Q Did he tell you why that rule was in place?

10 A So he can be shielded from getting caught on any
11 tapes or any devices in the house.

12 Q Mr. Salem, when you first began speaking with
13 Siddig Ali during the spring of 1993 about bombings, how
14 often did you see him with Dr. Abdel Rahman?

15 A On a daily basis, sir.

16 Q Can you tell us, to the extent you know, how --
17 withdrawn, if your Honor please.

18 Could you compare for us your relationship in
19 that time with Omar Abdel Rahman, compared to Siddig Ali's
20 relationship with Omar Abdel Rahman, as you observed it?

21 MR. STAVIS: Objection as to form, your Honor.

22 MR. JACOBS: Objection.

23 THE COURT: Sustained.

24 Q As you observed it in the spring of 1993, can you
25 tell us what it was that Siddig Ali did for Omar Abdel

1 Rahman?

2 A He did so many things. One, he used to keep all
3 of his secret papers from the lawyers.

4 Q Let me stop you there. He used to keep his
5 secret papers, you said. Can you tell us who used to keep
6 whose secret papers?

7 A Siddig Ali used to keep Sheik Omar Abdel Rahman's
8 papers from the lawyers with him, and he used to translate
9 it from Arabic to English to the lawyer, and he used to
10 translate it from English to Arabic to Sheik Omar, and he
11 used to translate his press conferences --

12 Q Let me stop you again. Who used to translate
13 whose press conferences?

14 A Mr. Siddig Ibrahim Siddig Ali used to translate
15 Sheik Omar Abdel Rahman's press conferences. And he used to
16 translate his lectures in the mosques as well.

17 Q How often in that time, that is, the spring of
18 1993, did you, Mr. Salem, have contact with Omar Abdel
19 Rahman?

20 A It wasn't that often: once a week, once each
21 other week.

22 Q Were you with Mr. Siddig Ali when he was in
23 telephone contact with Dr. Omar Abdel Rahman?

24 A Yes, sir.

25 Q How often, as far as you knew, was Siddig Ali in

1 telephone contact with Omar Abdel Rahman?

2 MS. AMSTERDAM: Objection, speculative.

3 THE COURT: Sustained, unless we get a foundation
4 for it.

5 MR. McCARTHY: Yes, your Honor.

6 Q I am asking you now, Mr. Salem, not what you
7 heard. Let's start for the moment with what you saw. Did
8 you see Mr. Siddig Ali during the spring of 1993 use the
9 telephone?

10 A Yes, sir.

11 Q How often in your presence was he in telephone
12 contact with Omar Abdel Rahman?

13 A Very often, sir.

14 MS. STEWART: Objection.

15 THE COURT: Overruled.

16 Q Your answer?

17 A Very often, sir.

18 Q I am directing your attention to the conversation
19 that we heard at the end of the day last Thursday, which is
20 Government Exhibit 311, and the transcript -- if your Honor
21 please -- was 311T. Do you recall that conversation?

22 THE COURT: Do you want the jurors to look at
23 311T or not?

24 MR. McCARTHY: I think it would be helpful at
25 this point, your Honor, if they had the transcript in front

1 of them.

2 THE COURT: All right.

3 Q Mr. Salem, prior to the conversation that you had
4 with Omar Abdel Rahman in his apartment, where had you been
5 that evening?

6 A I was in El Salaam Mosque in New Jersey.

7 Q What was the reason for being at the El Salaam
8 Mosque in New Jersey?

9 A There was a dispute between the board of
10 directors of El Salaam Mosque and Sheik Omar and his
11 followers about money in the mosque which is being gathered.
12 The board of directors needs to use this money to purchase a
13 new mosque, and they are afraid if Sheik Omar take over the
14 mosque he will use it for jihad.

15 (Continued on next page)

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1 MS. STEWART: Objection, Judge. Move to strike.

2 THE COURT: May I see counsel briefly at the
3 side.

4 (At the side bar)

5 THE COURT: Where is this supposed to go?

6 MR. McCARTHY: It just explains a lot of
7 conversation in the transcript, including about a guy named
8 Abdul Raof, and I am finished.

9 MS. STEWART: My objection is to the hearsay
10 nature, that the persons are not specified as to who was
11 involved in the dispute except my client. The other side of
12 a dispute, anything between them, unless they are alleged
13 coconspirators, it seems, is pure hearsay.

14 THE COURT: He says he is not offering it for the
15 truth but simply to show what was said and what a topic is
16 of conversation between Salem and your client that takes
17 place later that evening. That is my understanding.

18 MS. STEWART: I don't think it is the topic of
19 theirs later that evening, but it is between the two of
20 them --

21 MR. McCARTHY: There is conversation between
22 Siddig Ali and this witness on the tape.

23 THE COURT: Between Siddig Ali?

24 MR. McCARTHY: Yes, your Honor. To back up, the
25 reason he is there in the first place is because they all

1 went to the mosque to show support for Sheik Abdel Rahman.
2 Later in the conversation -- that is 311 that came into
3 evidence -- there is a lot of conversation about Abdul Raof
4 and a dispute, and the only reason I brought it out was so
5 the jury would understand what that was about.

6 THE COURT: Again, not for the truth of anybody's
7 allegation.

8 MS. STEWART: Would you so instruct the jury,
9 Judge?

10 THE COURT: Yes.

11 MS. STEWART: Thank you.

12 (In open court)

13 (Continued on next page)

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1 THE COURT: Ladies and gentlemen, the last
2 segment of testimony about what the witness said he heard
3 and the dispute that he said he heard at the mosque is
4 received only to show what it was that he heard, not to show
5 that any of that was true, particularly with regard to
6 Dr. Abdel Rahman. It is simply to show what he heard and to
7 explain, if it does explain, later events. Go ahead.

8 MR. McCARTHY: Thank you.

9 BY MR. McCARTHY:

10 Q Mr. Salem, let me now invite your attention to
11 Government's Exhibit 311, the conversation that we have
12 heard last week.

13 A Yes.

14 Q Where did you have your conversation with the
15 defendant Abdel Rahman?

16 A In his apartment, sir.

17 Q What part of his apartment did you and Omar Abdel
18 Rahman speak in?

19 A The kitchen, sir.

20 Q Can you describe for us, please, what tone of
21 voice you were speaking in during the conversation.

22 A Very whispery, sir.

23 Q Miss Stewart asked you some questions last week
24 on voir dire examination about whether you had actually tape
25 recorded this conversation on the briefcase Nagra. Do you

1 recall that?

2 A Yes, sir.

3 Q Did you record the conversation on the briefcase
4 Nagra?

5 A Yes, sir.

6 MR. McCARTHY: Your Honor, at this point the
7 government would ask to play about three or four minutes of
8 the reel, that is, 311.

9 THE COURT: All right.

10 MR. McCARTHY: The Nagra.

11 THE COURT: All right. Do we need earphones for
12 this?

13 MR. McCARTHY: Yes, your Honor.

14 MS. STEWART: Judge, could we have a page
15 reference, if that is possible?

16 MR. McCARTHY: Your Honor, we will be starting at
17 the beginning of the tape and going to approximately the top
18 of page 7, but with the understanding that the conversation
19 is in Arabic.

20 (Pause)

21 MR. BERNSTEIN: Is this operating? Because we
22 are not hearing it.

23 MR. McCARTHY: We are trying to fix it.

24 (Pause)

25 MR. McCARTHY: Your Honor, there is apparently

1 some malfunction of the machine. I would ask to go on to
2 something else, and we will try to get it fixed over lunch.

3 THE COURT: OK.

4 MR. McCARTHY: Your Honor, I am going to be
5 referring to page 3 of the transcript.

6 BY MR. McCARTHY:

7 Q Mr. Salem, at page 3 of the transcript, you made
8 the statement: Siddig and I are trying to do a job if God
9 is willing, but I will be carrying it through my own
10 experience. I don't know whether it is licit or illicit.

11 Do you recall that?

12 A Yes, sir.

13 Q The words licit and illicit are used a few times
14 in the conversation, is that correct?

15 A Yes, sir.

16 Q Can you tell us what Arabic words you used for
17 lift and illicit?

18 A Haram and halal.

19 Q H-A-R-A-M?

20 A Yes, sir.

21 Q And H-A-L-A-L?

22 A Yes, sir.

23 Q What is your understanding of the meaning of
24 haram?

25 MR. STAVIS: Objection, your Honor.

1 THE COURT: Overruled.

2 A Means prohibited, sir.

3 Q Prohibited with respect to what?

4 A With respect to sharia.

5 Q S-H-A-R-I-A?

6 A Yes, sir.

7 Q What is the sharia?

8 A The Islamic law.

9 Q What does halal mean?

10 A Permissible.

11 Q With respect to what?

12 A With respect to the sharia as well, sir.

13 Q When you talked about or you made reference to,
14 when you talked about or made reference to a job that you
15 and Siddig were planning, what were you referring to?

16 A Bombing the United Nations.

17 Q Further down to the transcript the defendant
18 Abdel Rahman stated to you: Go visit Mahmud and ask him
19 about Siddig. He then continued: Go visit Mahmud. You
20 say: I don't want to go see Mahmoud now, so that whenever
21 we do something, no doubt we'll be there. And Abdel Rahman
22 replied, or later said: Visit Mahmoud and ask him about
23 Siddig, ask Mahmoud Abouhalima about Siddig.

24 Do you recall that part of the conversation?

25 A Yes, sir.

1 Q When the defendant Abdel Rahman told you to go
2 speak to Mahmoud, whom did you understand him to be
3 referring to?

4 A Mr. Mahmoud Abouhalima, sir.

5 Q Do you know where Mahmoud Abouhalima was at that
6 time?

7 A Was in jail for bombing the World Trade Center,
8 sir.

9 Q Later in the conversation -- I am referring to
10 page 4 of the transcript -- toward the bottom of the page
11 you and Abdel Rahman engage in the following conversation.
12 Abdel Rahman says: Say to Mahmoud Abouhalima, swear to
13 Allah, to me, swear to Allah. You respond: Between you and
14 I, I have asked him this question. Abdel Rahman asks: What
15 did he tell you? You respond: They said we cannot be sure
16 of anything, but we have doubts, and Allah is the most
17 knowledgeable. And Abdel Rahman says: Tell him what do you
18 suspect, what is the incident that rose your doubts?

19 Do you recall that part of the conversation?

20 A Yes, sir.

21 Q Can you explain to the ladies and gentlemen of
22 the jury what you understand this part of the conversation
23 to be about?

24 A Sheik Omar Abdel Rahman was telling me to talk to
25 Mahmoud Abouhalima at the beginning, to ask him about Siddig

1 Ali. And then he said: Check with Mohammed Abouhalima,
2 which is Mr. Mahmoud Abouhalima's brother, and ask him by
3 God's name what did he heard about Siddig, that he is an
4 informant to the FBI, they were suspectng him as an
5 informant.

6 Q You stated to Abdel Rahman that, again, between
7 you and I, I have asked him this question. Had you in fact
8 had a conversation with Mohammed Abouhalima about Siddig
9 Ali?

10 A Yes, sir.

11 Q Turning over to the next page, page 5, this is
12 after the bottom of page 4, Abdel Rahman said to you: What
13 is the incident that rose your doubts? Picking up on page
14 5, the third attribute, some conversation took place between
15 Mahmoud Abouhalima and Siddig. Do you recall that?

16 A Yes, sir.

17 Q Can you tell us what this part of the
18 conversation was about?

19 A Was about Mr. Mahmoud Abouhalima talked to
20 Mr. Siddig Ibrahim Ali in a car about specific issue, and
21 later on Mr. Mahmoud Abouhalima was questioned about it from
22 the authority in Egypt when he get arrested over there.

23 Q Let me stop you for a moment. At page 5 of the
24 transcript, Dr. Abdel Rahman makes the statement to you,
25 because Mahmoud is saying, "I did not tell anyone at all

1 except Siddig." You say: That's it. And Abdel Rahman
2 says: And I told him in a certain automobile.

3 Do you recall that part of the conversation?

4 A Yes, sir.

5 Q What did you understand Dr. Abdel Rahman to mean?

6 A Dr. Abdel Rahman meant that Mr. Mahmoud
7 Abouhalima talked only Siddig in a particular car about this
8 subject.

9 Q And then what happened?

10 A Then this subject being leaked to the Egyptian
11 authorities, and they questioned Mahmoud Abouhalima about it
12 there.

13 Q After this conversation that you had with
14 Dr. Abdel Rahman, did there come a time that you spoke with
15 Siddig Ali directly about the conversation that he had had
16 with Mahmoud Abouhalima in a car?

17 A Yes, sir.

18 Q What did Siddig Ali tell you the conversation in
19 the car with Mahmoud Abouhalima had been about?

20 MR. STAVIS: Can we have a time frame on that,
21 your Honor?

22 THE COURT: Try to place it.

23 Q About how long after this conversation with
24 Dr. Abdel Rahman did you speak with Siddig Ali about the
25 conversation in the car with Mahmoud Abouhalima?

1 A Next few days, right away. I don't recall exact
2 date but it was very soon after this conversation.

3 Q What did Siddig Ali tell you about the
4 conversation he had had in a car with Mahmoud Abouhalima?

5 A At the beginning, he told me that Mahmoud
6 Abouhalima talked to me about subject in the car, and he put
7 it in writing --

8 Q Let me stop you. Who is the "he" who put what in
9 writing?

10 A Mr. Mahmoud Abouhalima put this issue on writing.
11 He did not say it verbally.

12 Q Say it to whom?

13 A To Mr. Siddig Ali.

14 Q Continue.

15 A And they are suspectng that I leaked it to the
16 FBI or for the law enforcement people.

17 Q When you say somebody said they are suspectng
18 that I leaked it, who are you quoting?

19 A Quoting Mahmoud Abouhalima, Mohammed Abouhalima,
20 Sheik Omar.

21 Q No. My question to you, sir, is, who said that
22 they are suspectng that I leaked it?

23 A Mr. Siddig Ali, sir.

24 Q Did there come a time that Siddig Ali told you
25 what the writing that Mahmoud Abouhalima had given him was

1 about?

2 A Yes, sir.

3 Q What did he tell you?

4 A He told me that Mr. Mahmoud Abouhalima requested
5 him to make a test for him, and he took to the professional
6 people, they conducted the test, and he brought the result
7 later on back to Mr. Mahmoud Abouhalima.

8 Q A test of what?

9 A In another conversation he told me test of
10 explosives.

11 Q Did Mr. Siddig Ali tell you who the professional
12 people were that he brought the test to?

13 A Yes, sir.

14 Q Who did he tell you?

15 A Dr. Rashid.

16 Q Were you present, sir, on other occasions when
17 Siddig Ali discussed this topic, this allegation about him,
18 in the car with Mahmoud Abouhalima, and whether he leaked
19 the conversation?

20 MR. STAVIS: Objection, your Honor.

21 THE COURT: Overruled.

22 MR. STAVIS: May we have a time frame?

23 MR. McCARTHY: We haven't established that there
24 were such conversations.

25 THE COURT: One step at a time. Let's go.

1 Q Mr. Salem, I am directing your attention now to
2 the topic of the conversation between Siddig Ali and Mahmud
3 Abouhalima in the car.

4 A Yes, sir.

5 Q Were you present on other occasions when Siddig
6 Ali discussed that matter and the allegation that he might
7 be an informant with other people?

8 A Yes, sir.

9 Q Can you tell us, please, who some of the other
10 people were that you were present when such conversations
11 took place?

12 MR. STAVIS: May I now have a time frame for
13 those conversations, your Honor?

14 THE COURT: Again, one step at a time. Let's
15 find out who the participants were.

16 Q You can answer, sir, who the people were that
17 were present when Siddig Ali discussed this matter.

18 A It was a time Mr. Abdel Rahman Haggag,
19 Mr. Khalid, Mr. Siddig Ibrahim Siddig Ali, Sheik Omar Abdel
20 Rahman --

21 Q Let me stop you for a moment. You mentioned
22 Abdel Rahman Haggag, H-A-G-G-A-G, a man named Khalid,
23 K-H-A-L-I-D, and Omar Abdel Rahman.

24 A Yes, sir, and myself.

25 Q Was that one conversation or a number of

1 conversations that you just referred to?

2 A It was one conversation all of us together, and
3 there is another conversation about the same topic.

4 Q Let's start with the one conversation all of you
5 together. Do you remember approximately when that took
6 place?

7 A I recall, sir, that it was a press conference in
8 that day, and after the press conference Sheik Omar
9 requested this meeting.

10 Q Do you recall how far that happened or how long
11 before the arrests were made in this case? That is, the
12 arrests, I believe the date that you were asked about before
13 was June 24, 1993. How long before then?

14 A It was not that long, sir, but I cannot specify
15 date.

16 Q Where did that conversation take place?

17 A In Sheik Omar Abdel Rahman's apartment, sir.

18 Q Did you report that conversation?

19 A Yes, sir.

20 Q You said that that was one conversation with all
21 those individuals together. Do you recall another
22 conversation with some of those individuals?

23 A Yes, sir.

24 Q Which individuals?

25 A It was Sheik Omar Abdel Rahman, Mr. Siddig

1 Ibrahim Ali, and myself, sir.

2 Q Did you record that conversation?

3 A Yes, sir.

4 Q Where did that conversation take place?

5 A That was in Abu Bakr Mosque in Brooklyn, sir.

6 Q Is that on Government's Exhibit 639 that we spoke
7 about this morning?

8 A I am not so sure about the number, sir.

9 Q Did there come a time when you were present when
10 this subject was discussed with the defendant Clement
11 Hampton-El, Abdel Rashid?

12 A Yes, sir.

13 Q Who was present on that occasion?

14 A Mr. Siddig Ibrahim Ali, Mr. Abdel Rashid, and
15 myself, sir.

16 Q Where did that conversation take place?

17 A As far as I recall, in Rogers Avenue.

18 Q Did you record that conversation?

19 A Yes, sir.

20 Q Were you present on an occasion when this topic
21 was discussed with Mohammed Abouhalima?

22 A Yes, sir.

23 Q Do you recall approximately when that happened?

24 A It was prior to my conversation with Sheik Omar,
25 and it was in Mr. Siddig's apartment, sir.

1 Q You told us that Siddig Ali told you that the
2 conversation between him and Mahmoud Abouhalima was about a
3 test, is that correct?

4 A Yes, sir.

5 Q Directing your attention back to Government's
6 Exhibit 311 for a moment, at page 5 of the transcript, when
7 you were speaking with Dr. Abdel Rahman, you made the
8 statement, some conversation took place between Mahmoud
9 Abouhalima and Siddig on -- and then you continue -- on the
10 subject of shooting Mubarak. Abdel Rahman says yes, and you
11 continue, the conversation went to the CIA the next day, and
12 they understand that Siddig had leaked the conversation.

13 Do you recall that conversation?

14 A Yes, sir.

15 Q Why did you tell Abdel Rahman that you understood
16 the conversation between Siddig and Mahmoud Abouhalima had
17 been about shooting President Mubarak?

18 A Because I spoke with Mr. Abdel Rahman Haggag and
19 Mr. Mohammed Abouhalima about that they had prepared a plan
20 to kill President Mubarak and we should start to replan it
21 again. Mr. Siddig Ali told me in the car that he had
22 planned with Mr. Abdel Rahman Haggag to kill President
23 Mubarak when he come here to United States, and at the
24 beginning Sheik Omar told me in the van kill President
25 Mubarak. So it came to my mind in that time that the topic

1 is President Mubarak.

2 Q Had Siddig Ali told you that the Mubarak plan had
3 been leaked?

4 A He said it's being leaked but he did not leak it.

5 Q Why did you say to Dr. Abdel Rahman that the
6 conversation had been on the subject of shooting Mubarak?

7 A I misunderstood what Siddig told me, and I
8 thought it's what they talked about it -- when I say they,
9 Mahmoud Abouhalima and Siddig Ali -- I thought they were
10 talking about Mubarak's assassination. But later on
11 Mr. Siddig Ali clarified it to me.

12 Q What did he clarify to you?

13 A He said it was another topic, it was -- it wasn't
14 Mubarak's assassination.

15 Q What if anything did Siddig Ali say Mahmoud
16 Abouhalima had to do with the plan to shoot Mubarak?

17 A He said he has nothing to do with it.

18 Q Was this error cleared up before or after this
19 conversation that you had in the kitchen with Dr. Abdel
20 Rahman?

21 A It was after --

22 MS. STEWART: Objection, Judge, to the form of
23 the question.

24 THE COURT: Overruled.

25 A It was after, sir.

1 Q I want to focus your attention, Mr. Salem, to the
2 conversation that you had in the Abu Bakr Mosque with Siddig
3 Ali and Dr. Abdel Rahman.

4 A Yes, sir.

5 Q That you started to describe to us before.

6 A Yes, sir.

7 Q Can you tell us, please, about the conversation
8 that you had with Omar Abdel Rahman and Siddig Ali once
9 Siddig Ali brought you over to Sheik Omar Abdel Rahman in
10 the mosque?

11 A Yes, sir. It started that Siddig telling me,
12 didn't I tell you do not talk to the sheik in his apartment?
13 And I said yes, if something wrong happen? And he drag me
14 to Sheik Omar, and Sheik Omar said look, you are my friend
15 and we are good together, but probably we discover five
16 bugging devices and we do not discover other bugging
17 devices. So please do not talk to me about these things,
18 because I want to stay as a front for the Muslims, and --

19 Q Let me stop you for a moment. Did he use the
20 word "front"?

21 A Yes, sir, but in Arabic. He used Arabic word,
22 wajihaa.

23 Q I am sorry.

24 A He say W-A-G --

25 MS. STEWART: I am sorry, Judge. There seem to

1 be two different words.

2 THE COURT: You can clarify it on cross.

3 A Wag -- WAGH -- as far as I can spell it --

4 Q In the course of this conversation that you had
5 in the Abu Bakr Mosque, did the subject of whether there was
6 need for further consultation come up?

7 A Yes, sir.

8 Q What if anything did Dr. Abdel Rahman have to say
9 about whether there was need for further consultation?

10 A Sheik Omar Abdel Rahman told me, you don't need
11 to consult me for these things, the path or the way to God
12 is clear, and if you want to do something for God's sake,
13 you know your way to God, go ahead and do it, but I want to
14 be able to challenge them if somebody come to question, or I
15 don't want them to say that we caught something on you and
16 then they come to question me.

17 Q After you had this conversation with Sheik Omar
18 Abdel Rahman and Siddig Ali, did you move on to discuss
19 another topic?

20 A Yes, sir.

21 Q What topic did you discuss after that?

22 A Who is the informant inside the group.

23 Q And can you tell us, please, what that
24 conversation was?

25 A Mr. Siddig Ali was telling Sheik Omar what

1 happened, that Mr. Mahmoud Abouhalima sat with him in a car
2 in front of El Salaam Mosque, and put in writing that he
3 wants, Mr. Mahmoud Abouhalima wants Mr. Siddig Ali to
4 conduct a test, to conduct a test for him, and Mr. Siddig
5 Ali told Sheik Omar that he took this test to the
6 professional people, which they conducted the test, and they
7 came back to him with the result, and Mr. Siddig Ibrahim Ali
8 took the results to Mr. Mahmoud Abouhalima.

9 Q Let me direct your attention now to the
10 conversation you told us about before that you were present
11 for in Sheik Omar Abdel Rahman's apartment that involved
12 Mr. Haggag and the person you identified as Khalid.

13 A Yes, sir.

14 Q Tell us, please, if you will, how did that
15 conversation get started?

16 A It started that Siddig Ali trying to defend
17 himself from being an informant, and said that Abdel Rahman
18 had been accusing him that he is an informant. Sheik Omar
19 asked Khalid to knock the door for Mr. Abdel Rahman Haggag.

20 (Continued on next page)

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1 Q Let me stop you for a moment.

2 Where did Mr. Abdel Rahman Haggag live in
3 comparison to where Sheik Omar Abdel Rahman was?

4 A On the same floor, a couple of apartments from
5 his door.

6 Q Did Khalid comply with Sheik Abdel Rahman's
7 request to summon Haggag?

8 A Yes, sir.

9 Q What happened then?

10 A He came back and said that Abdel Rahman Haggag
11 will be back. He's coming over. Sheik Omar asked him did
12 he ask who is with him.

13 Q I'm sorry. Sheik Omar asked whom?

14 A Sheik Omar asked Khalid, "Did Abdel Rahman Haggag
15 ask you," means Khalid, "who is with me?" means Sheik Omar
16 Abdel Rahman, and Khalid replied, "No."

17 And then Abdel Rahman Haggag came over and
18 started the conversation.

19 Q Would you give us an idea, please, how long did
20 this conversation take?

21 A It was a very long conversation.

22 Q What do you mean by "very long"?

23 A I cannot specify certain time, but it was a long
24 one, sir.

25 Q Briefly, can you tell us what happened during the

1 conversation.

2 A What happened, Sheik Omar asked Abdel Rahman
3 Haggag, "Did you accused Siddig Ali that he is leaking
4 information or he's an informant?"

5 Abdel Rahman Haggag replied, "Yes, I did."

6 Sheik Omar told him, "How certain you are?"

7 Rahman Haggag said, "I was 80 percent certain,
8 but my assurance, or my certainty became 90 percent, or it's
9 been increased."

10 Sheik Omar told him, "You should not accuse
11 anybody until you are a hundred percent sure."

12 Then the topic switched that Siddig Ali and Abdel
13 Rahman Haggag, each one of them start saying, "The operation
14 for Mubarak it was my idea." And Abdel Rahman Haggag said,
15 "No, no, it was my idea." And then they both agreed to
16 split it between each other, "OK, it was both of us ideas."

17 And then it came a time that Abdel Rahman Haggag
18 get very nervous when three of us, which is Sheik Omar,
19 Siddig Ali Ibrahim Ali and myself, start confronting him
20 with his allegations against Siddig, his allegations against
21 me, and --

22 Q Let me stop you?

23 What was his allegation against you?

24 A He said that I'm an informant, too, at that time,
25 and his allegation against Sheik Omar, and he get nervous

1 and he start screaming, and he said, "I have other things I
2 won't talk about."

3 Q When he said that he had other things that he
4 didn't want to talk about, what did Sheik Omar Abdel Rahman
5 do?

6 A He said, he pointed to the walls and he said,
7 "What other things you don't want to talk about? You
8 already told them. You already told them."

9 Q What did you understand him to mean when he said
10 that?

11 A Well, told the FBI through the bugging devices in
12 the walls.

13 Q I want to redirect your attention, Mr. Salem, to
14 the conversation that we read at the end of last week. That
15 is the conversation you had in Dr. Abdel Rahman's kitchen.

16 A Yes, sir.

17 Q After you had your conversation with Omar Abdel
18 Rahman, did you speak with anyone else?

19 A Yes, sir.

20 Q Who did you speak with?

21 A Mr. Siddig Ibrahim Siddig Ali, sir.

22 Q Can you tell you also where you spoke with Siddig
23 Ali?

24 A It was in my car, sir.

25 Q Was that conversation also recorded on the

1 exhibit that we read last week?

2 A Yes, sir, it was.

3 Q I am referring to page 23 of the transcript.

4 MR. STAVIS: Is this 311?

5 MR. MCCARTHY: 311. I'm sorry. 311/T.

6 Q From about the middle of the page, 23, going down
7 toward the bottom, you and Mr. Siddig Ali discuss a person
8 named Isam. Do you recall that?

9 A Yes, sir.

10 Q Other than this occasion, did you and Mr. Siddig
11 Ali ever discuss the person Isam again?

12 A Yes, sir.

13 Q About how long after this conversation?

14 A It wasn't very long. I don't recall, sir.

15 Q What, if anything, did Siddig Ali tell you about
16 Isam?

17 A He told me that his last name is Gelgal.

18 Q Gelgal, G-E-L-G-A-L?

19 A Yes, sir.

20 Q All right.

21 A And he is a pilot in the Sudanese Air Forces, and
22 he will let me meet with him --

23 Q Let me stop you. Who will let you meet with
24 whom?

25 A Mr. Siddig Ibrahim Siddig Ali will let me meet

1 with Mr. Isam Gelgal to make arrangement for Mr. Isam Gelgal
2 to go back to Sudan, take his aeroplane, and I will explain
3 to him through my experiences as an ex-Army what's the best
4 way so he can go through the gaps in the Egyptian Air Forces
5 with his aeroplane, he will go to the presidential house,
6 bomb it, and turn --

7 Q The presidential house where?

8 A In Cairo, sir.

9 Q Yes.

10 A And turn around, come to the American embassy,
11 crash his aeroplane into the American embassy after ejecting
12 himself out of the aeroplane and I suppose -- or Mr. Siddig
13 Ali told me to make arrangement through my contacts in Egypt
14 to pick Mr. Isam Gelgal up and free him out of the country.

15 Q Did you ever actually meet Mr. Isam Gelgal?

16 A No, sir, I did not.

17 Q Directing your attention to page 25 of the
18 transcript, Siddig Ali toward the top of the page made the
19 statement to you: "Yes, but there is one brother called
20 Abdullah, of course this is not his name, his code name is
21 Abdullah."

22 He goes on to say, "When you see him you'll know
23 him. He is from Egypt."

24 And then Siddig Ali goes on to say, "This one is,
25 eh, Abdullah is one of the sheik's men."

1 Do you recall that?

2 A Yes, sir.

3 Q Did Siddig Ali ever identify the person Abdullah
4 to you?

5 A Yes, sir.

6 Q Whom did he tell you Abdullah was?

7 A Mr. Hamdi Ali, sir.

8 Q Did you know Hamdi Ali?

9 A Yes, sir.

10 Q When did you meet Hamdi Ali?

11 A I met him on our trip to Detroit with Sheik Omar
12 Abdel Rahman, and I met him in so many different occasions
13 in El Salaam mosque and sometimes in Abu Bakr mosque, sir.

14 Q Directing your attention to page 27 of the
15 transcript, about two-thirds of the way down the page
16 Mr. Siddig Ali says to you: "Who is he? Not the one that
17 has access, the ambassador's deputy, no. I trust the
18 ambassador's deputy very much. He had told me I'll hand
19 over, I'll hand Boutros over to you if you want him."

20 You say, "Um."

21 Siddig Ali continues, "He said so to me, you see,
22 like, "(unintelligible) food." And "unintelligible" and
23 "food" are in quotes.

24 He then goes on to say: "Like what? Like a
25 cake, a piece of cake."

1 Over to the following page, which is 28, about a
2 quarter of the way down the page you make the statement --
3 Siddig makes the statement, "It's their work, he said that
4 he'll give him to me like good food."

5 You say: "OK. We are now looking for Boutros."

6 Do you recall that conversation?

7 A Yes, sir.

8 Q Can you explain to the ladies and gentlemen of
9 the jury what that conversation was about.

10 A It was, Mr. Siddig Ali was telling me that
11 ambassador's deputy for the Sudanese mission in the United
12 Nations told Mr. Siddig that he can give him Mr. Boutros
13 Ghali, which is the Secretary General for the United Nations
14 like this (gesturing) and he did like that, piece of cake.

15 Q You kissed a couple of your fingers?

16 A Yes.

17 Q Folded over your thumb?

18 A Yes, sir.

19 Q Go ahead.

20 A And Mr. Siddig Ali at the beginning thought that
21 it's a good idea to kill Mr. Boutros Ghali, but Mr. -- the
22 ambassador's deputy for the Sudanese mission in the United
23 Nations told him, told Mr. Siddig Ali, that it is not a good
24 idea because the next term for the Secretary General of the
25 United Nations will be American, so at least leave Boutros

1 there. At least he's Egyptian.

2 MR. McCARTHY: Your Honor, I am about to move on
3 to a new topic.

4 THE COURT: All right. Ladies and gentlemen, we
5 are going to break for lunch. Please leave your notes and
6 other materials behind. Please don't discuss the case.
7 Have a pleasant lunch and we will resume at 2 o'clock.

8 (The jury was excused)

9 (Continued on next page)

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1 THE COURT: You may step down.

2 (The witness excused)

3 MR. McCARTHY: May I raise one brief matter?

4 THE COURT: Go ahead.

5 MR. McCARTHY: I received a letter this morning
6 from Mr. Stavis, the last paragraph of which -- which is
7 short -- says: "Be advised that the only items of evidence
8 which I will introduce through Mr. Salem will be those
9 provided to me by the government as either Rule 16 or 3500
10 material."

11 I don't think that was what the order had in mind
12 yesterday.

13 THE COURT: It sure isn't. The idea was to
14 specify exhibits. Pointing to, in essence, thousands of
15 pages and saying, "It's in there someplace," doesn't do it.

16 I assume he will specify which they are.

17 Mr. Jacobs you had something you wanted to raise.

18 MR. JACOBS: Yes. I read the minutes yesterday,
19 and I don't know what was in the personnel file, what the
20 FBI has or doesn't have in there, but I have reason to
21 believe that after the disclosure of the bootleg tapes that
22 the FBI conducted a review of those tapes, and, in so doing,
23 a certain memorandum was prepared by the Bureau going up to
24 Judge Freeh in connection with that review of the conduct of
25 the agents.

1 THE COURT: You mean in connection with the
2 bootleg tapes?

3 MR. JACOBS: Yes.

4 THE COURT: Nothing like that was in there.

5 MR. JACOBS: OK. I understand that the
6 government is not going to just hand me internal FBI
7 documents, nor am I requesting it. However, if the
8 Department of Justice and the FBI conducted such a review --
9 and my good-faith basis I would like to put on ex parte, if
10 necessary, which I am prepared to do. If such documents
11 were prepared concerning review of the conduct of the agents
12 and the manner in which it was done -- and I said I'm more
13 than happy to put on the record my good-faith basis for that
14 statement -- I would ask that the government turn it over to
15 your Honor, and have your Honor do a similar type of review
16 as your Honor did with the personnel file, quote, unquote.

17 THE COURT: I will be happy to do whatever
18 homework assignments I get, but the question, I guess, is
19 whether it's either Brady or Giglio for this witness.

20 MR. JACOBS: I understand. What I don't want to
21 have happen is for us to get -- if we get someday portions
22 of some documents that would certainly have opened up
23 certain areas of inquiry of the witness. It may not. All I
24 am saying is that --

25 THE COURT: The question is not opening up areas

1 of inquiry; it's Brady and Giglio.

2 MR. JACOBS: As I said, I am more than happy ex
3 parte to tell your Honor --

4 THE COURT: As you can tell from yesterday's
5 proceeding, I think I have a fairly keen understanding of
6 what it is that that entails.

7 MR. JACOBS: Perhaps if I ex parte put on the
8 record certain information that I have, I think it would
9 give your Honor some idea of what I think is there.

10 THE COURT: Fine.

11 MR. JACOBS: It would take about a minute.

12 THE COURT: Good. I'm happy to see you.

13 MR. STAVIS: Your Honor, I don't know if the
14 record was exactly clear, because the letter that I sent to
15 Mr. McCarthy this morning listed every single bootleg tape
16 that I planned to use. It is the second paragraph of the
17 letter that Mr. McCarthy is referring to, so I have
18 specified for him those bootleg tapes which I intend to play
19 on my cross-examination.

20 MR. McCARTHY: I will hand the letter up. The
21 first paragraph did not --

22 THE COURT: I probably got a copy of it.

23 MR. STAVIS: I have your Honor -- well, I
24 submitted a copy, whether or not you received it.

25 MR. McCARTHY: In the first paragraph he talks

1 about cross-examination. In the second paragraph he talks
2 about introducing items of evidence, which are, as we said
3 over the last few days, two entirely different subjects.

4 THE COURT: Can I suggest that you gentlemen
5 discuss what it is that the letter means. If the letter
6 confines the exhibits to those listed in the first
7 paragraph, i.e., those exhibits to be introduced through him
8 would be simply those enumerated in the first paragraph,
9 then presumably you don't have a dispute. If it is broader
10 than that, you do have a dispute and there is going to have
11 to be greater specificity.

12 All right.

13 MR. JACOBS: Your Honor, I will see you now for a
14 minute?

15 THE COURT: Now.

16 (Pages 5564 through 5566 were sealed by order of
17 the Court)

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AFTERNOON SESSION

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2:05 p.m.

(In open court; jury not present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Mr. McCarthy.

DIRECT EXAMINATION continued

BY MR. McCARTHY:

Q Good afternoon, Mr. Salem.

A Good afternoon, sir.

MR. McCARTHY: Your Honor, while we can, I think I would like to have another shot at Exhibit 311.

THE COURT: OK.

MR. McCARTHY: Your Honor, I believe one of the jurors has a problem with her headset.

(Taped played)

Q Mr. Salem, where did that portion of the conversation that we just heard take place?

A In the kitchen, sir.

Q Mr. Salem, before we broke for lunch, you told us about a conversation that Siddig Ali had told you that he had with Mahmoud Abouhalima in a car. Do you recall that?

A Yes, sir.

Q And you mentioned a test explosive and that Siddig Ali had told you that he gave the test explosive to

1 Dr. Rashid.

2 A Yes, sir.

3 Q Did Siddig Ali tell you whether Dr. Rashid had
4 actually himself ever performed the test explosion?

5 A He never give me a clear answer about this, sir.

6 Q You were asked some questions earlier today about
7 listening to the tape recordings, the recordings that you
8 made for the FBI during May and June of 1993.

9 A Yes, sir.

10 Q And I believe you told some of the defense
11 lawyers in their questions that you had reviewed the tapes.
12 Do you recall that?

13 A Yes, sir.

14 Q Can you explain to the ladies and gentlemen of
15 the jury in what connection you reviewed the tape
16 recordings?

17 A It was for helping transcribing the tapes from
18 Arabic to English, and some voice identification
19 attribution.

20 Q That is to identify who was saying what on a
21 tape?

22 A Yes, sir.

23 Q About how much time after the arrests in this
24 case in June 1993, after that period of time about how much
25 time did you spend reviewing the tapes?

1 A It was a long time. It's few months over year
2 and a half.

3 Q You spent a few months of time during the course
4 of a year and a half reviewing the tapes?

5 A It was a very long time, months and months, days
6 and days I just were sitting doing nothing but reviewing
7 tapes.

8 Q Have you finished your answer?

9 A Yes, sir.

10 Q Mr. Salem, I want to ask you about a couple of
11 other topics. You mentioned Mohammed El-Gabrowny a couple
12 of times in your testimony. Do you recall that?

13 A Yes, sir.

14 Q Can you remind us about how Mohammed El-Gabrowny
15 is related to Ibrahim El-Gabrowny?

16 A His brother, sir.

17 Q You told us earlier in your testimony that you
18 had some conversation with Mohammed El-Gabrowny about his
19 immigration status?

20 A Yes, sir.

21 Q How did you know what Mohammed El-Gabrowny's
22 immigration status was? That is, what was the source of
23 your information about it?

24 A Himself, sir. He told me and he showed me a
25 document to state that he is a Lebanese political asylum in

1 the United States.

2 Q When you went with Mohammed El-Gabrowny to visit
3 Mr. Nosair up in Attica, did Mohammed El-Gabrowny use his
4 real name?

5 A I didn't see what he wrote down, but he told me
6 that --

7 MR. STAVIS: Objection, your Honor.

8 THE COURT: Sustained.

9 Q Did Mr. El-Gabrowny tell you whether he as a
10 practice used the name El-Gabrowny?

11 MR. STAVIS: Objection as to form, your Honor.

12 THE COURT: I will allow that.

13 A He said he never used El-Gabrowny, so he --
14 because he have a different citizenship, so he don't want to
15 use El-Gabrowny.

16 Q Last week you told us about some code words that
17 you used in conversations with Siddig Ali and others during
18 the spring of 1993. Do you recall that?

19 A Yes, sir.

20 Q I want to ask you about a few other words, and
21 again I am directing your attention with respect to this
22 area on the conversations that you had between May and June
23 of 1993.

24 A Yes, sir.

25 Q In the course of your conversations with Siddig

1 Ali and others, was the term "box," B-O-X, used?

2 MR. JACOBS: Your Honor, I am going to object to
3 "others," unless we discuss --

4 THE COURT: Overruled.

5 Q Was the term "box" used, sir?

6 A Yes, sir.

7 Q What was the term "box" used for?

8 A It was used for the timers, sir.

9 Q It was a code word for timers?

10 A That is correct, sir.

11 Q How about the term "balls"?

12 A It was the code word for the hand grenades, sir.

13 Q Was the term "the center" used?

14 A Yes, sir. It was the code word for the 26
15 Federal Plaza, sir.

16 Q How about the term Duane Street?

17 A It's the same code word for the Federal Plaza,
18 since it's on Duane Street, sir.

19 Q Was the term "lamp" used in your discussions?

20 A Yes, sir.

21 Q What was lamp a code for?

22 A Lamp is a code word for detonator, sir.

23 Q How about the term "groceries"?

24 A Grocery, it's a code word for explosives, sir.

25 Q Was the term "exterminator" used?

1 A Yes, sir.

2 Q What did exterminator refer to?

3 A It was a code word for myself, since I used to go
4 sweep their apartments and their cars for bugs, bugging
5 devices, so they called me exterminator as a code word, to
6 sweep --

7 MR. JACOBS: Judge, I object to "their," unless
8 he specifies --

9 THE COURT: Go ahead.

10 Q Who gave you the name the exterminator?

11 A Siddig Ali and Dr. Rashid, sir.

12 Q Was the term "factory" used?

13 A Yes, sir.

14 Q What was the factory?

15 A It's a word used sometimes as a code word for the
16 safe house where we had the bombs.

17 Q That was in Queens?

18 A Correct, sir.

19 Q Finally, was the word filuus, F-I-L-U-U-S used?

20 A Yes, sir.

21 Q What is filuus?

22 A Filuus, it's Arabic word for money or cash.

23 Q Was it used for money? That is, was the word
24 used for money?

25 A Yes, sir.

1 Q Directing your attention again to the spring of
2 1993, did you and Mr. Siddig Ali have some discussions about
3 financing the bombing plans?

4 A Yes, sir.

5 Q First tell us why it was necessary to discuss
6 financing the bombing plans.

7 A Because there is so many things need to be
8 bought, and in that time money was not available, sir.

9 Q Did you have any discussion with Mr. Siddig Ali
10 about the subject of counterfeit money?

11 A Yes, sir.

12 Q When did those discussions take place, that is,
13 about counterfeit money?

14 A It was in the early stages of meeting with him,
15 with Mr. Siddig Ali.

16 Q This is during 1993?

17 A Yes, sir.

18 Q Can you tell us what your discussion was with
19 Mr. Siddig Ali about counterfeit money in the spring of
20 1993?

21 A Mr. Siddig Ali told me that he have somebody who
22 can supply counterfeit money, and for each million dollars
23 we should pay \$150,000.

24 Q You are talking about a million dollars of
25 counterfeit for \$150,000 of real currency?

1 A Yes, sir.

2 Q Were the conversations that you had with
3 Mr. Siddig Ali on this subject recorded?

4 A Yes, sir.

5 Q Did you actually ever get any counterfeit money
6 from Mr. Siddig Ali?

7 A No, sir.

8 Q Did there come a time that you and Mr. Siddig Ali
9 discussed a man by the name of Yousef Hussein?

10 A Yes, sir.

11 MR. McCARTHY: That is Y-O-U-S-E-F,
12 H-U-S-S-E-I-N.

13 Q When did that occur? That is, when did these
14 discussions occur?

15 A It was around the time when we start look for
16 money for financing the bombs, sir.

17 Q How close was it to the time of the arrests on
18 June 24, 1993?

19 A It was so close, sir.

20 Q What if anything did Mr. Siddig Ali tell you
21 about Yousef Hussein?

22 A He used to call him the engineer, and he said
23 that he is a very wealthy man who contributed a lot of money
24 for jihad and --

25 Q Did he tell you -- I am sorry. Were you finished

1 your answer?

2 A Yes, sir.

3 Q Did he tell you where Mr. Yousef Hussein was
4 from?

5 A Yes, sir. He told me that he is from UAE, United
6 Arab Emirates.

7 Q Did he tell you which emirate he was from?

8 A Yes, sir, he said he was from El Shareqe.

9 Q S-H-A-R-E-Q-E?

10 A Yes, sir.

11 Q Did Mr. Siddig Ali give you any instructions with
12 respect to Mr. Yousef Hussein?

13 A Yes, sir.

14 Q What was that?

15 A He ask me to send him a fax asking for money for
16 some invaders.

17 Q Some invaders?

18 A Right, sir.

19 Q What was meant by invaders?

20 A Invaders, that mean some people who is preparing
21 to invade something, to invade a target, to invade a
22 country. So that's what he wrote down, sir.

23 Q Do you recall how much money?

24 A As far as I recall, \$5,000, sir.

25 Q Did you actually send a fax?

1 A Yes, sir, I did.

2 Q Mr. Salem, I am placing before you Government's
3 Exhibits 673 and 673C. I would be ask you to take a look at
4 those and tell us if you recognize them?

5 A Yes, sir.

6 Q What do you recognize them to be?

7 A That's the fax being sent to Mr. Yousef Hussein,
8 and that's the fax --

9 Q Let me stop you for a moment. When you say
10 that's the fax, you are referring to Government's Exhibit
11 673 for identification?

12 A Yes, sir.

13 Q Directing your attention now to 673C.

14 A Yes, sir.

15 Q What is 673C?

16 A That's the fax number and Mr. Yousef Hussein's
17 name being written on a piece of paper, sir.

18 Q Do you recall who wrote Mr. Yousef Hussein's
19 number on the small piece of paper, 673C?

20 A Yes, sir, Mr. Siddig Ibrahim Siddig Ali, sir.

21 Q Who is the author, Mr. Salem, of the letter that
22 was faxed, that is, Government Exhibit 673?

23 A I believe Mr. Siddig Ali, sir.

24 Q Mr. Salem, do you recall telling us earlier in
25 your testimony about a man named Adel?

1 A Yes, sir.

2 Q Remind us, who is Adel?

3 A He is the Palestinian individual who followed me
4 around in the Detroit trip, sir.

5 Q That was the trip to Detroit that you mentioned
6 earlier in your testimony?

7 A Yes, sir.

8 Q Did there come a time in the spring of 1993 when
9 you saw Adel once again?

10 A Yes, sir.

11 Q Can you tell us how it was that you saw Adel
12 again?

13 A Mr. Siddig Ali told me that Mr. Adel owned a
14 supermarket in New Jersey somewhere, and we should go to
15 collect some money to finance the bombs.

16 Q Did you actually go to see Adel?

17 A Yes, sir.

18 Q Who went with you?

19 A Mr. Siddig Ali, sir.

20 Q Where did you go?

21 A Somewhere in New Jersey.

22 Q Where in New Jersey.

23 A He describe me how to drive left, right,
24 straight, until we went over there.

25 Q For the moment, I am not asking you for the town.

1 What was the location that you went to?

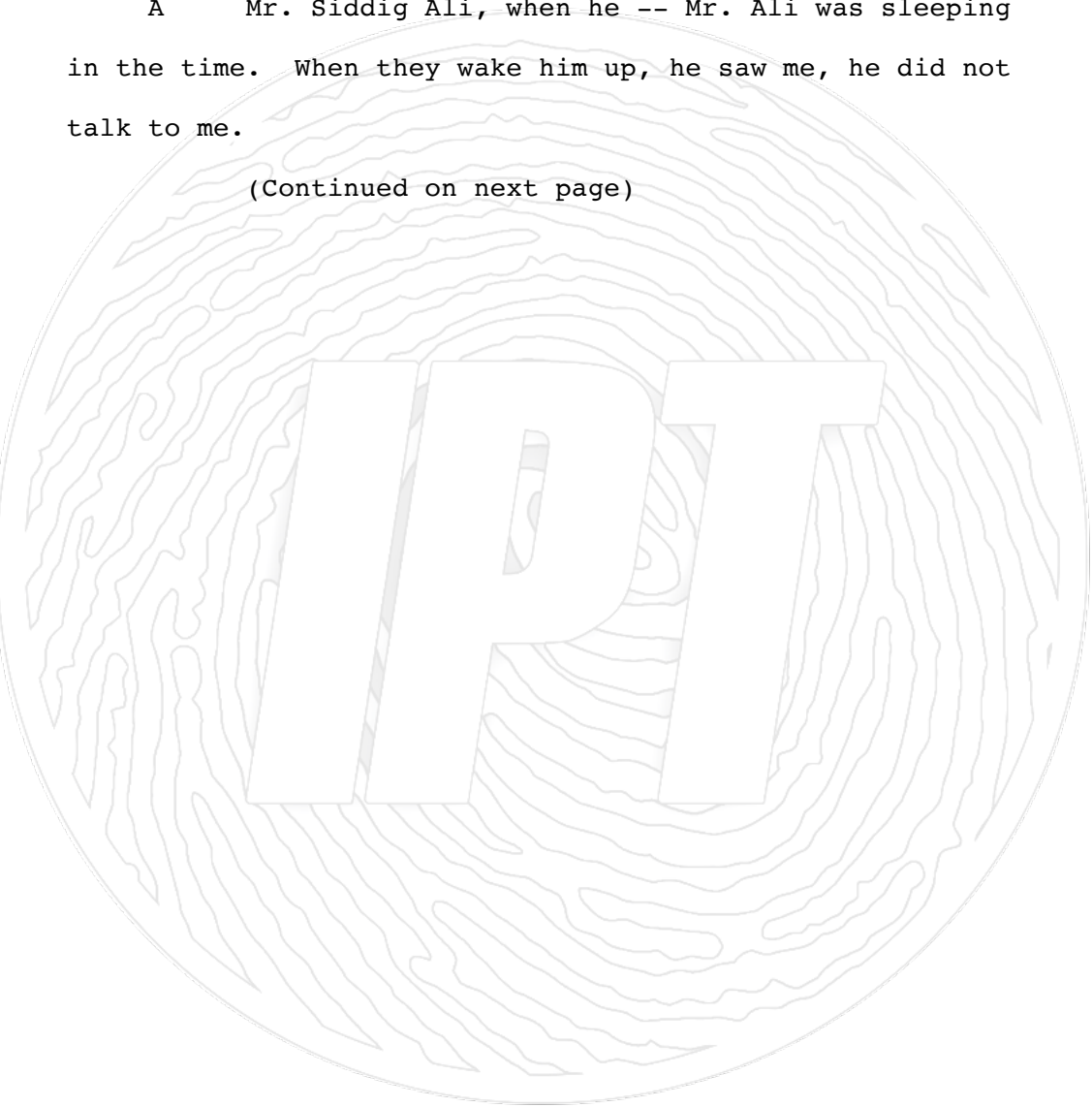
2 A The supermarket place, sir.

3 Q What happened when you and Mr. Siddig Ali got to
4 the supermarket in New Jersey?

5 A Mr. Siddig Ali, when he -- Mr. Ali was sleeping
6 in the time. When they wake him up, he saw me, he did not
7 talk to me.

8 (Continued on next page)

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1 Q Let me stop you. Who saw you?

2 A Mr. Adel.

3 Q Saw you?

4 A Yes, sir.

5 Q What happened then?

6 A He did not talk that much to me, and he took
7 Mr. Siddig Ali to the corner. They talked to each other and
8 then we left afterwards, sir.

9 Q Did you have a conversation with Mr. Siddig Ali
10 right after you left Adel?

11 A Yes, sir.

12 Q What did Mr. Siddig Ali tell you about his
13 conversation with Adel?

14 MR. JACOBS: Objection.

15 THE COURT: Overruled.

16 A Mr. Siddig Ali told me that it seems to be --

17 MS. AMSTERDAM: Your Honor, can we approach. I
18 have an objection.

19 THE COURT: No.

20 Q Mr. Salem, what did Mr. Siddig Ali tell you?

21 A Mr. Siddig Ali told me that it seems to be that
22 he is not going to pay anything.

23 MR. BERNSTEIN: Objection. Move to strike based
24 upon a prior objection, your Honor.

25 THE COURT: Denied. Go ahead.

1 Q Mr. Salem, did there come a time that you met
2 Mohammed Saleh?

3 A Yes, sir.

4 Q Do you recall approximately when it was that you
5 met Mohammed Saleh?

6 A Around the same time when Mr. Siddig was looking
7 for money.

8 Q How did you come to meet Mohammed Saleh?

9 A Mr. Siddig Ali -- excuse me. Mr. Siddig Ali
10 introduced me to him in his gas station, sir.

11 Q How did you know where to go and when to go?

12 A Mr. Siddig Ali kept describing me, "Drive that
13 way, drive that way," until we went to Yonkers.

14 Q To where?

15 A Yonkers.

16 Q That is Yonkers, New York?

17 A Yes, sir.

18 Q Before you met with Mr. Mohammed Saleh in
19 Yonkers, was there a plan about when and where you were
20 supposed to meet with him?

21 A Yes, sir.

22 Q What was the plan?

23 A Mr. Siddig Ali told me that he's supposed to go
24 to give a lecture --

25 Q Let me stop you. Mr. Siddig Ali told you that

1 who was supposed to give a lecture?

2 A Mr. Siddig Ali himself supposed to give a Friday
3 prayer lecture in the mosque where is Mr. Mohammed Saleh do
4 his prayer in Yonkers, and we took the car, Mr. Siddig Ali,
5 Mr. Siddig Ali's wife, and myself to Yonkers, but there was
6 an accident on the route at that time. It was a lot of
7 traffic, and we went late. So we missed Mr. Mohammed Saleh,
8 and he already went to the mosque.

9 Q Where did you go?

10 A We went to his gas station, sir.

11 Q He was not there when you got there?

12 A No, he was not, sir.

13 Q Did there come a time that he arrived?

14 A Yes, sir.

15 Q What, if anything, did he say about what had gone
16 on in the mosque where Mr. Siddig Ali was supposed to give
17 the lecture?

18 A He said that, "You were late, and thank God
19 Dr. Nofal did the lecture."

20 Q Dr. Who?

21 A Dr. Ahmed Nofal.

22 Q Have you ever met Dr. Ahmed Nofal?

23 A Yes, sir, I did.

24 Q Where did you meet Dr. Ahmed Nofal?

25 A I met him in the conference in Detroit, sir,

1 where the lecture took place.

2 MR. McCARTHY: Your Honor, I would like to play
3 about 30 seconds of Government's Exhibit 388 for just a
4 moment.

5 THE COURT: All right.

6 MR. McCARTHY: That is in evidence.

7 THE COURT: Go ahead.

8 MR. McCARTHY: Your Honor, while that is being
9 set up, may I see the court with Mr. Jacobs for a moment.

10 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: Your Honor, I want to clarify this
3 because of the prior record on this issue: The witness
4 knows Ahmed Nofal, who was seated at the podium with
5 Dr. Abdel Rahman at Detroit. He's basically a spokesperson
6 for the Hamas group. He also knew Mr. --

7 MS. STEWART: I'm sorry. Mr. Fitzgerald said
8 that I might want to join this, having been very happy not
9 to join it.

10 THE COURT: What you missed was that Mr. McCarthy
11 said that the witness Mr. Nofal, or Dr. Nofal, was a
12 spokesman for Hamas. You were going on from there.

13 MR. McCARTHY: Mr. Siddig Ali also told the
14 witness, and I think this is borne out on a tape recording,
15 that Mr. Mohammed Saleh was associated with the Hamas group.
16 Other evidence in the case will show that Ahmed Nofal was
17 staying with Mr. Saleh around this period of time. Based on
18 the couple of times that we tried to get into Hamas with
19 sustained objections, I didn't want to start --

20 THE COURT: The only thing that I sustained an
21 objection to with regard to Hamas was the label on the tape.

22 MR. McCARTHY: When I tried to get in the Ahmed
23 Nofal stuff a couple of weeks ago, I asked Salem what Ahmed
24 Nofal had spoken to him about, and he said Hamas, and I
25 believe -- I read the transcript this morning -- there was a

1 motion to strike.

2 MR. JACOBS: Your Honor, let's clarify a few
3 things.

4 THE COURT: OK.

5 MR. JACOBS: Certainly Siddig Ali's comments
6 about my client's affiliation with the group I think are
7 fair game. It is on the tape, and I have no problem with
8 that. That is one thing. The government introduces it as
9 they introduce anything. The other statement that this
10 witness had some understanding of some person who was not a
11 defendant in this case is with Hamas I really object to
12 because then we are into what is the foundation for that.

13 It is one thing for Siddig Ali to refer to my
14 client as "an associate," which is something I am permitted
15 to cross-examine on. But I don't know the foundation this
16 witness is basing that on, and it shouldn't be in front of
17 the jury until we have had that basis established. Maybe it
18 is personal knowledge, and that is another matter and
19 perhaps your Honor can rule. But I don't think this jury --

20 THE COURT: Let me hear from Mr. McCarthy.

21 MR. JACOBS: I'm sorry.

22 MR. McCARTHY: The basis for his knowledge of
23 Ahmed Nofal is he spoke to Ahmed Nofal in Detroit about
24 Hamas. He was speaking about Hamas. There was a Hamas
25 demonstration at the conference.

1 That is the basis. That is the one and only time
2 as I understand it --

3 MR. JACOBS: May I just add something. We are
4 interjecting something that may inflame the jury under 403.

5 THE COURT: Wait a second.

6 MR. JACOBS: I'm sorry.

7 THE COURT: If there is already evidence either
8 in or that is going to be in that Siddig Ali says that your
9 client is associated with Hamas, then it seems to me it is
10 virtually insignificant to say that he knows somebody else
11 who is affiliated with Hamas, namely, Mr. Nofal. I don't
12 see what the big deal is.

13 MS. STEWART: I think the difference is, Judge,
14 is that Siddig Ali may be considered somewhat incredible in
15 some of his pronouncements. Whereas if Mr. Salem says,
16 based on some kind of hearsay knowledge that we are not
17 going to be privy to, that he knows Mr. Nofal from a
18 conference he attended three years prior to this particular
19 meeting, it puts a different gloss on things. It is like it
20 gets an imprimatur from outside this group. That is all.

21 THE COURT: I guess I don't understand what it is
22 that you are offering his contact with Nofal to prove.

23 MR. JACOBS: Exactly.

24 MR. McCARTHY: In order to corroborate the
25 connection of Mohammed Saleh to Hamas, which is the reason

1 why there is a degree of trust that would cause Siddig Ali
2 to turn to Mohammed Saleh in the first place.

3 MR. JACOBS: The problem with that is that there
4 is a later tape where both Salem and Siddig Ali basically
5 say, "We don't have a clue if he has anything to do with
6 Hamas." I think if you --

7 THE COURT: "He" who.

8 MR. JACOBS: Mohammed Saleh, my client. I think
9 what it does, your Honor, it is interjecting a terrorist --

10 THE COURT: Hold on.

11 MR. JACOBS: OK.

12 THE COURT: Are you going to play this tape or
13 what?

14 MR. McCARTHY: I was just going to show Nofal on
15 the tape.

16 MS. STEWART: This is the old Detroit tape?

17 MR. JACOBS: Right.

18 THE COURT: If we have to analyze this, I would
19 just as well send them out and do it.

20 MR. JACOBS: Yes. Because bringing in Hamas,
21 your Honor -- all right. We have talked about this.

22 THE COURT: All right.

23 (In open court)

24 THE COURT: Ladies and gentlemen, we are going to
25 take a short break. Please leave your notes and other

1 materials behind. Please don't discuss the case, and we
2 will resume, I hope, in a few minutes.

3 (The jury was excused)

4 (Jury not present)

5 THE COURT: You may step down.

6 (Witness excused)

7 THE COURT: Just to review the bidding --

8 MR. SERRA: Your Honor, I'm sorry.

9 THE COURT: Just to review the bidding, as I
10 understand it, you propose to introduce evidence that
11 someone on this tape, namely, Mr. Nofal, told Siddig Ali at
12 some point that he, Nofal, was a member of or associated
13 with Hamas, correct?

14 MR. McCARTHY: No, your Honor. That Mr. Nofal
15 told the witness -- I'm sorry, in Detroit.

16 THE COURT: Told the witness in Detroit that he
17 was associated with Hamas?

18 MR. McCARTHY: Yes.

19 THE COURT: You also propose to prove that he
20 stayed with Mr. Saleh as a house guest?

21 MR. McCARTHY: Yes, your Honor.

22 THE COURT: That is offered as corroboration for
23 Siddig Ali's statement that Saleh is a member of Hamas?

24 MR. McCARTHY: Yes, your Honor. Well, that he is
25 associated with Hamas.

1 MR. JACOBS: The government is still trying to
2 figure out what their theory is.

3 THE COURT: Mr. Jacobs, please, fights like that
4 aren't going to --

5 MR. JACOBS: That is important, your Honor.

6 THE COURT: Let's just talk about some narrowly
7 focused things.

8 MR. JACOBS: OK.

9 MR. McCARTHY: I should just flesh out --

10 THE COURT: Yes.

11 MR. McCARTHY: -- Mr. Mohammed Saleh speaks
12 himself about Hamas on the tape.

13 THE COURT: OK. Understood.

14 Is Nofal alleged to be a co-conspirator?

15 MS. AMSTERDAM: I'm sorry?

16 THE COURT: Is Nofal alleged to be a
17 co-conspirator?

18 MR. McCARTHY: No.

19 MR. JACOBS: Your Honor, I renew my statement. I
20 have no problem with the government's introduction --

21 THE COURT: Which of your many statements are you
22 renewing?

23 MR. JACOBS: I have no problem with the
24 government playing 32 and asking the witness about it, but I
25 object to anything about Nofal and Hamas.

1 THE COURT: I know you do. I am trying to find
2 out whether there is a theory or there isn't a theory.

3 MR. JACOBS: OK.

4 THE COURT: How is Nofal's statement, "I am
5 associated with Hamas," or words to that effect admissible?

6 MR. McCARTHY: Under, I believe, United States v.
7 Stratton and a number of other cases that come after
8 Stratton that deal with the co-conspirator exception to the
9 hearsay rule, if somebody makes a statement which is in
10 furtherance of a conspiracy that is factually intertwined
11 with the conspiracy that is being proved in the trial, that
12 a statement in furtherance of that other --

13 THE COURT: That other conspiracy?

14 MR. McCARTHY: Yes. It is admissible provided
15 that it is factually intertwined with the trial.

16 In the indictment we have charged that Mohammed
17 Saleh had links to an overseas organization. That is Hamas.
18 The government's theory is the reason that the defendants
19 turned to Mohammed Saleh at a time when they needed
20 financing for terrorist activities is because the link to
21 Hamas was part of what formed a voucher of trust, if you
22 will, that they could rely upon in order to turn to Mohammed
23 Saleh as opposed to, you know, turning to somebody else who
24 had money. It is not really much different than what he
25 said, I believe, about Yusef Hussein, whom they knew to be

1 somebody who had contributed sums to jihad.

2 I think that is our theory of admissibility
3 regarding what Mr. Nofal had to say about himself.

4 THE COURT: Mr. Jacobs?

5 MR. JACOBS: Your Honor, I think that type of
6 logic is remote. I think it is highly prejudicial. I have
7 argued to your Honor --

8 THE COURT: Let's talk about the prejudice first.
9 You have conceded that there is a tape coming in that
10 says -- forget Mr. Nofal for a minute -- that says that your
11 client is associated with that organization.

12 MR. JACOBS: I disagree with that
13 characterization. It says he knows somebody in Hamas. It
14 absolutely does not say he is associated with it. In fact,
15 on the government's next tape both Salem and Siddig say, "We
16 don't have a clue if this guy has any connection." That's
17 neither here nor there.

18 THE COURT: There are other conversations in
19 which they say the reason that they turn to him for
20 financing is they believe he is, right?

21 MR. JACOBS: I don't see that here. If Salem
22 going to say that --

23 MR. McCARTHY: That is our theory for why they
24 did it. I don't think that is explicitly stated anywhere
25 that I am aware of.

1 THE COURT: What is it --

2 MR. JACOBS: Your Honor, just --

3 THE COURT: Wait a minute. What is it that you
4 have on the tape with regard to his client and an
5 association with Hamas?

6 MR. McCARTHY: His own conversation about Hamas,
7 that is, Mr. Saleh's conversation. He asked the witness to
8 obtain night vision goggles which --

9 THE COURT: OK. From that you argue that he is
10 associated with Hamas?

11 MR. McCARTHY: Yes, your Honor.

12 MR. JACOBS: Your Honor, may I just read
13 something to you.

14 THE COURT: No.

15 MR. JACOBS: Salem says after this meeting with
16 Nofal and things the following, your Honor --

17 MR. McCARTHY: With Saleh or --

18 MR. JACOBS: This is Salem, CM31.

19 "Salem: I hear you saying he's a follower of the
20 group, Hamas group. Perhaps they have something.

21 "Siddig Ali: They have -- who are these 'they'?
22 We are not dealing with them. We are dealing with him. He
23 is an individual, am I right or not?

24 "Salem: Has he got any influence among these
25 people?

1 "Siddig Ali: No, no, no, I know nothing."

2 Instead of references to this other person and
3 affiliations, we've got the two people afterwards absolutely
4 denying that my client has anything to do with it or that
5 they have any knowledge. That is why I think it is improper
6 to interject this other gentleman and his relationship with
7 Hamas when we have, hours after they meet my client,
8 absolute denial of such an affiliation. I think under 403
9 we are just entering into speculation and prejudice before
10 the jury.

11 In fact, it goes on. Siddig says: "I am telling
12 you he supports and endorses Hamas."

13 Salem says: "I see, I see."

14 "Siddig Ali: I mean to say I do not know, I do
15 not know, for example" -- that he is one of them.

16 MR. McCARTHY: Rather than dealing with a
17 conversation that Siddig Ali has with Salem, in the
18 conversation CM32 itself there is a discussion in the course
19 of it about night vision goggles which Mr. Saleh asked
20 Mr. Salem to obtain.

21 The upshot of the discussion is that the night
22 vision goggles are -- Mr. Salem says to Saleh, "So of course
23 the brothers of Hamas can do operations they conduct at
24 night." They continue the conversation and Mr. Saleh makes
25 remarks about whether they can get the night vision goggles

1 into Jordan, and this is in the course of a conversation
2 where he indicates that he has associates.

3 THE COURT: The point behind the questions I was
4 asking is simply this: If there is, at any rate, a
5 discussion about whether your client is or isn't associated
6 with this group, then I can't see how on balance under 4303
7 it is highly prejudicial to you to talk about whether
8 somebody else is or isn't.

9 MR. JACOBS: I'm sorry, your Honor. I think we
10 are just collaterally litigating a point that shouldn't be
11 before the jury. I can see that what he says is fair game,
12 and the government is entitled to introduce it, and I am
13 entitled to cross-examine Salem on what he says with the
14 other people involved in the conversation. But I can't
15 cross-examine some other person who is not a co-conspirator
16 in this case about his membership in a terrorist
17 organization. That is the problem that I have. I don't
18 like cross-examining Salem on what he says about my client.
19 But your Honor is now putting me in a situation of someone
20 who is supposed to be a member at some conference who is
21 making a statement that I can't cross-examine on. That is
22 the problem I have. He is not a co-conspirator.

23 THE COURT: Anything else?

24 MR. McCARTHY: No, your Honor.

25 THE COURT: It is out.

1 Do you need to show the tape in that event?

2 MR. McCARTHY: If it is out?

3 THE COURT: Yes.

4 MR. McCARTHY: Can I have about 30 seconds to
5 think that one through?

6 THE COURT: Sure.

7 MR. McCARTHY: I would like to show the tape
8 briefly. I will not, of course, go into the area of Hamas.

9 THE COURT: You are going to show it for some
10 other reason, as kind of a visual diversion?

11 MR. McCARTHY: Actually, no, I will withdraw the
12 showing of the video.

13 THE COURT: Fine. Then shall we get them back
14 and press ahead?

15 MR. McCARTHY: We are right about to read the
16 transcript then, which is a very lengthy one.

17 THE COURT: How long does that take?

18 MR. McCARTHY: Probably about an hour.

19 THE COURT: All right. Then I will simply advise
20 them that this is the start of their afternoon break. They
21 will take their afternoon break and we will take ours and we
22 will have the transcript.

23 MR. McCARTHY: Yes, your Honor. About.

24 MR. BERNSTEIN: Judge, taking the afternoon break
25 may be a problem with the prayer time. I am concerned that

1 we will have a problem later like we had a few weeks ago.

2 THE COURT: Is there a point in the transcript
3 where you can break?

4 MR. McCARTHY: We will find one.

5 THE COURT: Good. Let's get them back, then.

6 MR. BERNSTEIN: Thank you, Judge.

7 Your Honor, what time do you want us to break,
8 approximately?

9 THE COURT: 3:30. Half hour?

10 MR. McCARTHY: Your Honor, I think at page 30,
11 toward the top of the page there is a break where it says
12 (laughs), and that will be where we will target.

13 MR. JACOBS: Judge, there is one disputed line in
14 the transcript that we haven't resolved and that is still
15 open. I think you gave a previous instruction where there
16 is a disputed line, it may come up later on in the case.

17 THE COURT: Is it an attribution?

18 MR. JACOBS: No, it is a substantive line, and I
19 think you said that line will be litigated later if counsel
20 choose.

21 THE COURT: You want me to give that instruction
22 before they start to read?

23 MR. JACOBS: Yes, I think you gave a previous
24 instruction about some other ones.

25 THE COURT: You want me to reiterate it?

1 MR. JACOBS: Yes.

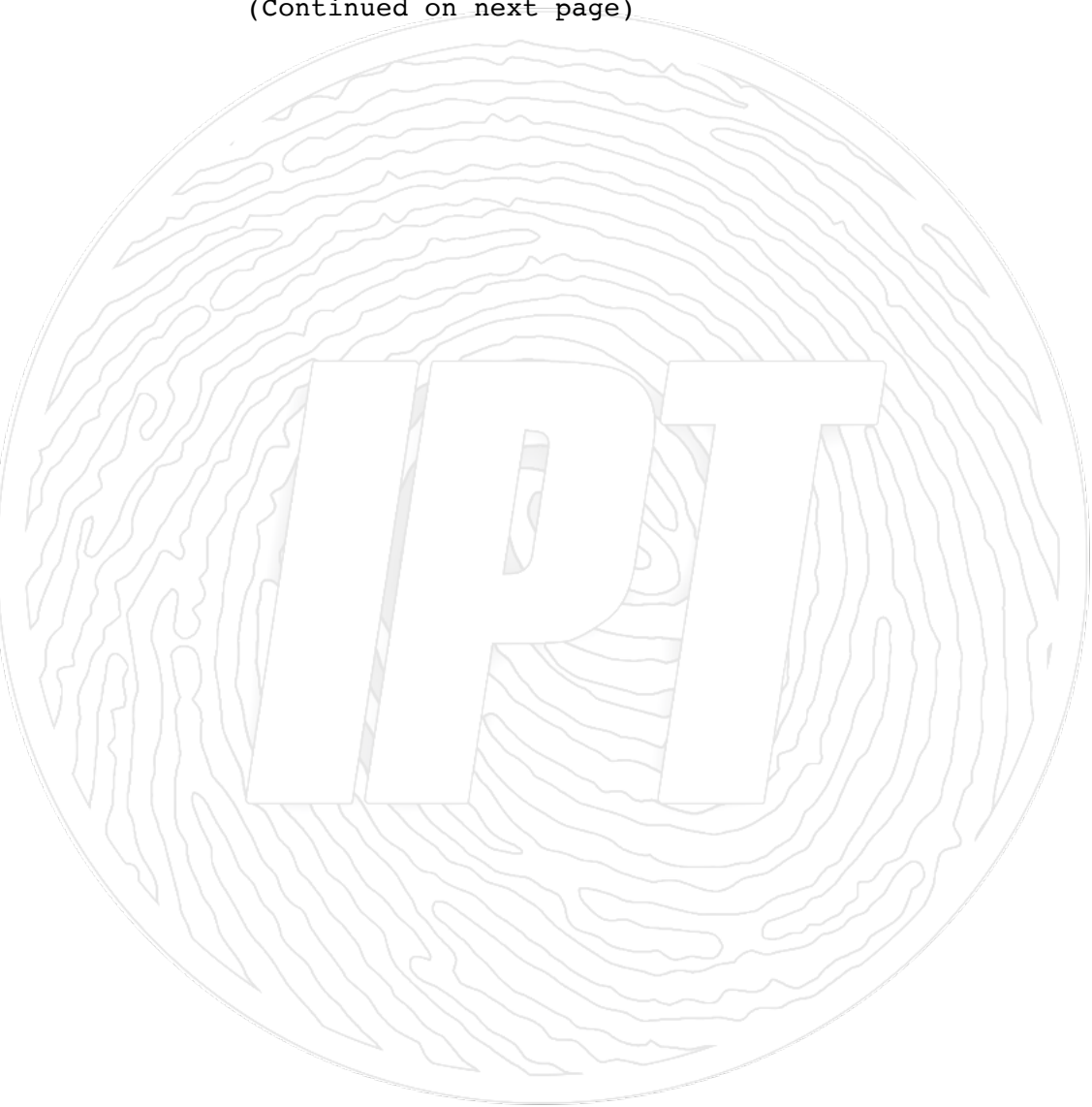
2 THE COURT: All right.

3 MR. JACOBS: Thank you.

4 EMAD SALEM, resumed.

5 (Continued on next page)

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1 (Jury present)

2 MR. McCARTHY: May I proceed, your Honor.

3 THE COURT: Please.

4 MR. McCARTHY: Thank you.

5 DIRECT EXAMINATION (Continued)

6 BY MR. McCARTHY:

7 Q Mr. Salem, I want to direct your attention now to
8 the time that you met Mr. Saleh, that is, Mohammed Saleh, at
9 the gas station.

10 A Yes, sir.

11 Q What happened after you met him at the gas
12 station?

13 A He told us that we were late and he went to the
14 mosque --

15 Q Let me stop you for a moment.

16 What I meant to ask you is: Where did you go
17 from the gas station?

18 A We get into his car because my car in that time
19 needs some work to be done and we drove to his home, sir.

20 Q To Mr. Mohammed Saleh's home?

21 A Yes, sir.

22 Q Did you have the briefcase Nagra with you?

23 A Yes, sir.

24 Q When you got to Mr. Saleh's home, did you record
25 your conversation there?

1 A Yes, sir.

2 Q Can you tell us how much of the conversation was
3 recorded?

4 A Right after we get into his apartment all the way
5 up until we left until we went back to the same gas station,
6 one straight shot, sir.

7 Q How long was the conversation?

8 A It was very, very long, the whole tape, sir.

9 Q Do you see Mr. Mohammed Saleh in court today?

10 A Yes, sir.

11 Q Can you point him out, please.

12 A He is No. 3 from the right --

13 THE COURT: Indicating Mr. Mohammed Saleh.

14 Go ahead.

15 MR. McCARTHY: Thank you, your Honor.

16 Your Honor, at this point the government would
17 offer Exhibit 333 and ask to read from the transcript that
18 is 333T.

19 MR. JACOBS: Subject to our previous discussion.

20 THE COURT: Right. That is received.

21 (Government's Exhibit 333/T for identification
22 was received in evidence)

23 THE COURT: Ladies and gentlemen, that is in your
24 books under Tab 333/T. There is, I gather, at least one
25 line in that transcript that is underlined. As I told you

1 the last time, an underlined portion means that the
2 translation of that portion may be in dispute. So, although
3 it is going to be read to you the way it appears,
4 underlined, there may be later proof to suggest that it
5 means something different from what you see in the
6 transcript. It is only as to whatever portion is
7 underlined. Go ahead.

8 MR. KHUZAMI: Your Honor, in this tape, to let
9 you know what the roles are, Mr. McCarthy will read the role
10 of Mohammed Saleh; Mr. Fitzgerald will read the role of
11 Siddig Ali; I will read the role of Ahmed Salem; and Ms. Chu
12 will read Shaema Ali, Abdullah Saleh, Chirouk Saleh, and
13 unidentified children.

14 (Government Exhibit 333/T was read to the jury)

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1 MR. McCARTHY: Your Honor, is this an appropriate
2 point?

3 THE COURT: Ladies and gentlemen, we are going to
4 break briefly. Please leave your notes notebooks and other
5 materials behind. Please don't discuss this case, and we
6 will resume the reading at this point, after the break.

7 (Recess)

8 THE COURT: We are going to resume the reading of
9 3333. Page 15?

10 MR. McCARTHY: Yes, your Honor.

11 THE COURT: Page 15 of 333T.

12 MR. McCARTHY: About eight parts from the bottom.

13 THE COURT: Go ahead.

14 (Reading of Government's Exhibit 333T continued)

15 (Continued on next page)

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1 THE COURT: Ladies and gentlemen, we are going to
2 break for the day. Please leave your notes and other
3 materials behind. Please don't discuss the case or hear or
4 read anything about the case. We will see you tomorrow
5 morning. Good night.

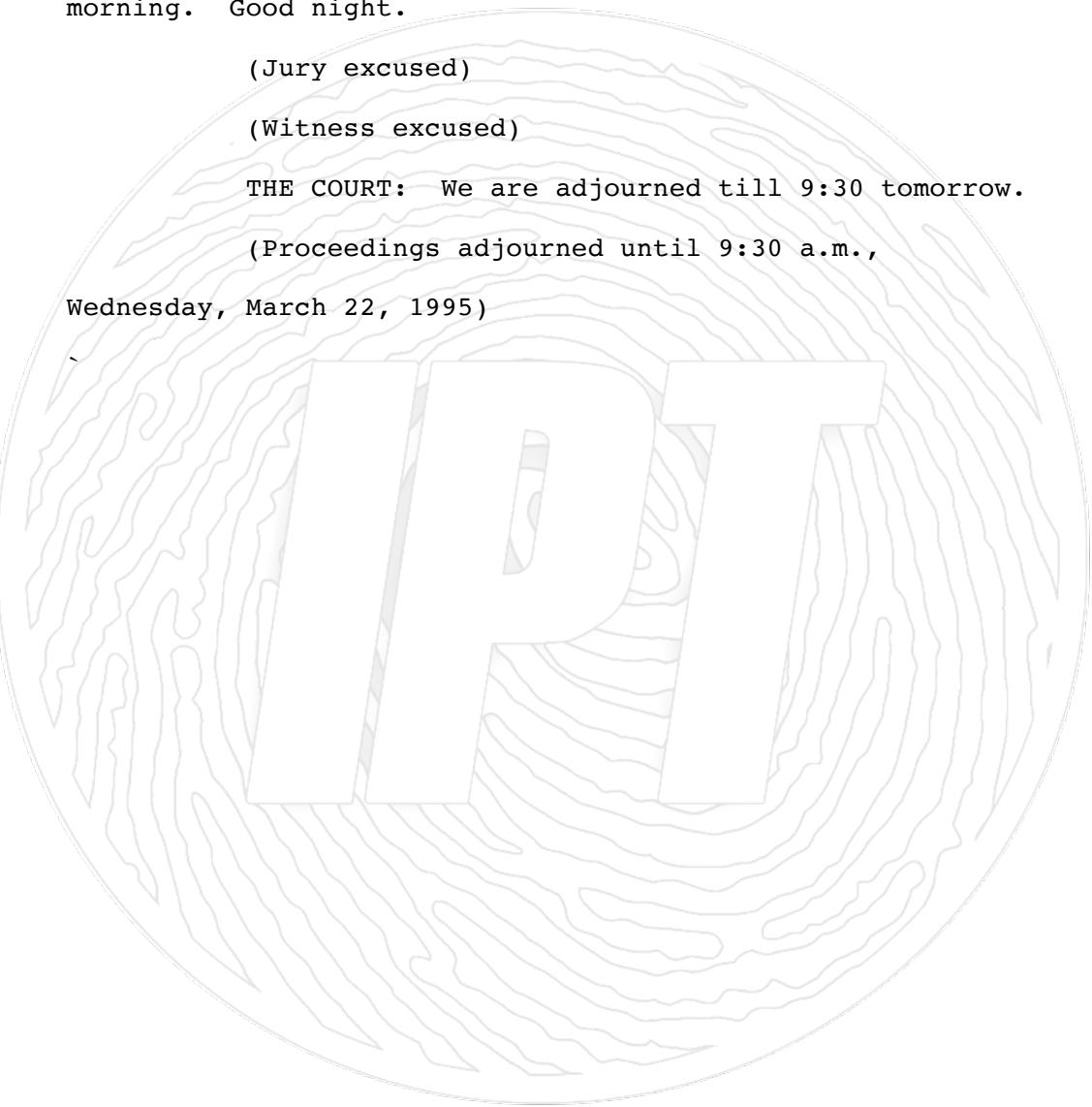
6 (Jury excused)

7 (Witness excused)

8 THE COURT: We are adjourned till 9:30 tomorrow.

9 (Proceedings adjourned until 9:30 a.m.,
10 Wednesday, March 22, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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S5 93 Cr. 181 (MBM)

March 22, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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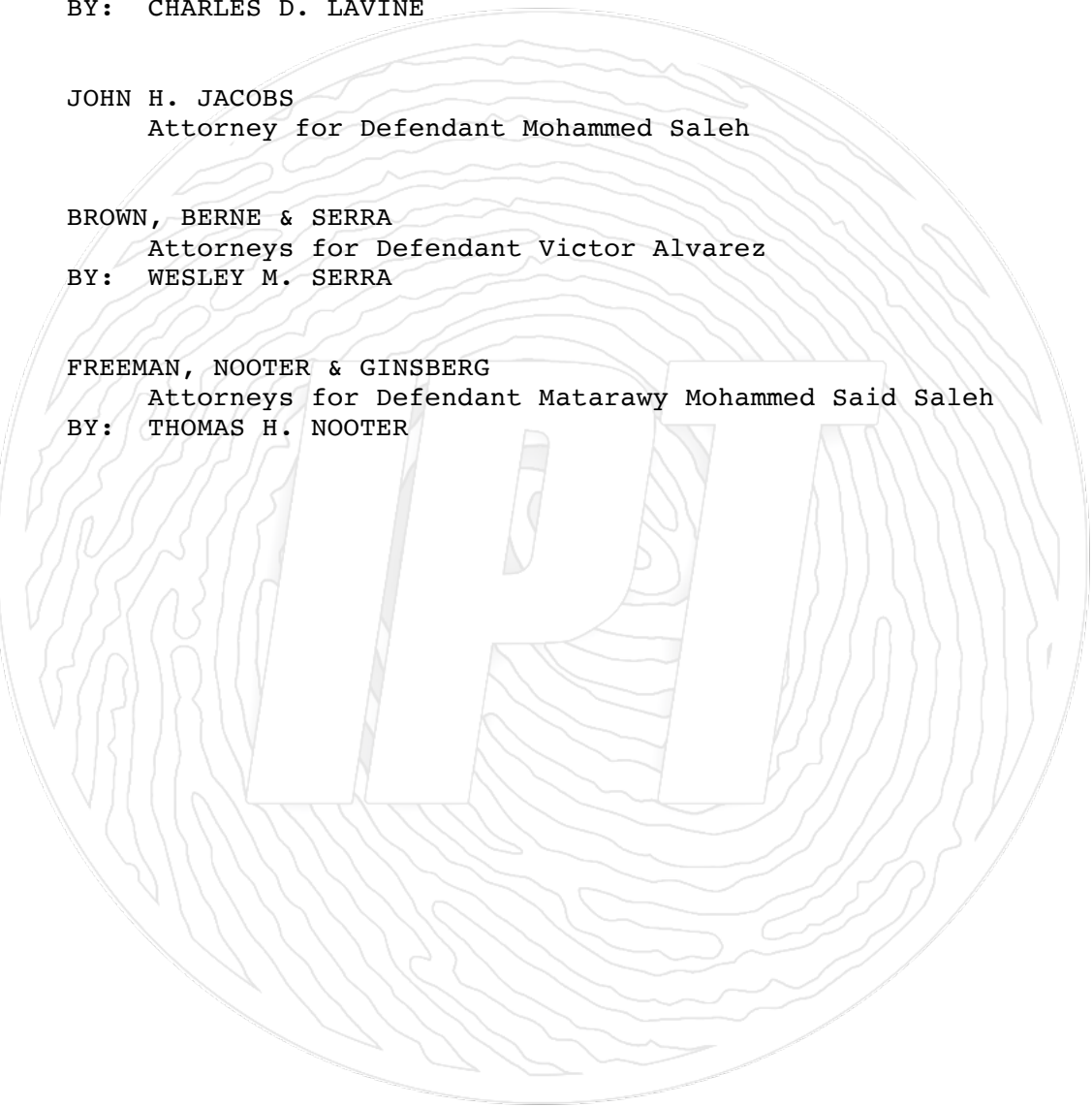
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



5606

1 (Trial resumed)

2 EMAD SALEM, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: Mr. Salem, you are still under oath.

7 Mr. McCarthy.

8 MR. McCARTHY: Thank you, your Honor. Your
9 Honor, for notice to the court and counsel and the jury, I
10 am going to be referring to the transcript that is
11 Government's Exhibit 333T.

12 THE COURT: That is the one that was read at the
13 end of the day yesterday?

14 MR. McCARTHY: Yes, your Honor. May I proceed,
15 your Honor?

16 THE COURT: Please.

17 DIRECT EXAMINATION continued

18 BY MR. McCARTHY:

19 Q Mr. Salem, good morning.

20 A Good morning, sir.

21 Q When we broke yesterday, we were discussing or
22 reading from a transcript of a conversation you had with
23 Mohammed Saleh and Siddig Ali at Mr. Mohammed Saleh's house
24 in Yonkers. Do you recall that?

25 A Yes, sir.

5607

1 MR. McCARTHY: I would like to direct the
2 attention of the court and counsel and the jury to page 21
3 of the transcript, about halfway down the page.

4 Q Mr. Salem, at a certain point in the conversation
5 that we heard yesterday afternoon, Mr. Siddig Ali makes the
6 statement: I am telling you this, God willing, we ask God
7 the almighty to grant us success because we are talking
8 about people who deserve, I mean that you know certain
9 people who have money, have, unintelligible, and they want
10 to contribute, they want to pay for jihad's cause because
11 the jihad's issue became one of the closed subjects. We
12 don't want to stop, we want you to help us a little bit.

13 Mr. Saleh responds: Are these jihad subjects for
14 here or for Egypt or in, uh, the point is --

15 Mr. Siddig Ali says: Yes, yes, good.

16 Mr. Saleh says: The projects here or ah.

17 And Mr. Siddig Ali says: Here.

18 Mr. Saleh says: Yes means here.

19 Siddig Ali says: It is military.

20 Mr. Saleh says: These projects are a duty, the
21 people who will operate in it must be knowledgeable.

22 Do you recall that part of the conversation?

23 A Yes, sir.

24 Q Can you explain to us what you understood that
25 part of the conversation to be about?

5608

1 MR. JACOBS: Objection.

2 THE COURT: Foundation, Mr. McCarthy.

3 Q Were you present during this part of the
4 conversation?

5 A Yes, sir.

6 Q Were you participating in it?

7 A Yes, sir.

8 Q Did you hear Mr. Siddig Ali make the statements
9 that I read?

10 A Yes, sir.

11 Q Did you hear Mr. Saleh make the statements that I
12 read?

13 A Yes, sir.

14 Q Were you participating intermittently in this
15 conversation?

16 A Yes, sir.

17 Q Had you been working with Mr. Siddig Ali for a
18 period of time up to the point of this conversation?

19 A Yes --

20 MR. JACOBS: Objection to the form.

21 THE COURT: Overruled.

22 Q What was the purpose of going to see Mr. Mohammed
23 Saleh that day?

24 A The purpose to get some money to finance the
25 bombs.

5609

1 Q Can you tell us what you understood the section
2 of the conversation I just read to you to mean?

3 MR. JACOBS: Objection.

4 THE COURT: Overruled.

5 A Mr. Mohammed Saleh asking Mr. Siddig Ali, is this
6 operation going to be here or for Egypt, and Mr. Siddig Ali
7 told him it's for here, means in United States.

8 Q What did you understand the term operations to
9 mean?

10 A That we going to blow up the United Nations and
11 the tunnels.

12 MR. JACOBS: Your Honor, I object. The word
13 operations --

14 THE COURT: Does the word operations appear in
15 the text?

16 MR. JACOBS: I don't see that word, your Honor.

17 MR. McCARTHY: Let me --

18 MR. JACOBS: I am sorry. There is an objection.

19 THE COURT: That is sustained.

20 Q Do you see the word projects?

21 A Yes, sir.

22 Q Did you hear the word projects, I should say?

23 A Yes.

24 Q What did you understand the word projects to
25 mean?

5610

1 A A project, which is the same thing I just said,
2 operation. The project we are doing it for building bombs
3 to blow up the United Nations and the tunnels, sir.

4 Q Directing the court's attention to page 23 of the
5 transcript, a little more than halfway down the page.

6 Mr. Mohammed Saleh makes the statement: One time some
7 brothers of Hamas's young men and told me "We would like you
8 to get us a night radar."

9 Mr. Siddig Ali says: Um.

10 Mr. Saleh continues: I tried places by God but I
11 could not get it.

12 You, Mr. Salem, then make the statement: You
13 tell me and I get you whatever you want.

14 Siddig Ali says: This man is a specialist in
15 electronics.

16 And Mr. Saleh says: By God they need it badly.
17 Two chances, unintelligible, this.

18 And you say: The night vision goggles.

19 And Mr. Saleh says: The night vision goggles.

20 Do you recall that part of the conversation?

21 A Yes, sir.

22 Q Can you tell us what the conversation that you
23 had with Mr. Saleh and Mr. Siddig Ali about night vision
24 goggles was?

25 A Yes, sir. Mr. Mohammed Saleh said that the young

5611

1 youth of Hamas group asked him to get them night vision
2 goggles because they missed two operations, or they missed
3 two things, they didn't do it because they don't have these
4 night vision goggles. And Mr. Siddig Ali told him that I am
5 an electronic expert. And I confirmed that, I said yes,
6 whatever you need for night vision goggles I will get you,
7 just let me know, and that was it, sir.

8 Q Did you hear Mr. Saleh during the course of your
9 entire discussion use the term young men on occasion?

10 A Yes, sir.

11 Q What did you understand him to mean when he said
12 young men?

13 A It's the same young men of Hamas group, sir.

14 MR. McCARTHY: If I may direct everyone's
15 attention now to page 51 of the transcript.

16 Q Mr. Salem, did there come a time in the
17 conversation that you and Mr. Mohammed Saleh and Mr. Siddig
18 Ali spoke about targets?

19 A Yes, sir.

20 Q Can you explain to the ladies and gentlemen of
21 the jury what was going on when you had the conversation
22 about targets?

23 A It came a time Mr. Siddig Ali start explaining to
24 Mr. Mohammed Saleh what targets we are intending to bomb,
25 and he brought a notebook, and he don't want to say --

5612

1 Q Let me stop you for a moment. When you say he
2 brought a notebook, who is the "he" to whom you are
3 referring?

4 A Mr. Siddig Ali.

5 Q What did Mr. Siddig Ali do with the notebook?

6 A He want to write down the targets.

7 Q You say he wanted to write down the targets.
8 What did he do?

9 A He did wrote down the targets, the United Nations
10 and the tunnels, and in that time I told him, Siddig, don't
11 write it, because I want him to say it so it comes through
12 the microphone. And he told me, what am I supposed to do,
13 I'm going to write it, and then I will eat it. He
14 continued, wrote down the United Nations, he wrote down the
15 two tunnels, and then he ripped the paper, and crumpled it
16 and give it to me and ask me to eat it, and I ate the paper.
17 Mr. Mohammed Saleh told me that the ink is poison, or it
18 have poison, this ink. I said well, as long as he ordered
19 we must obey.

20 MR. McCARTHY: I should direct the attention of
21 everyone to page 52, not page 51 of the transcript.

22 Q Going from the bottom of page 51 to 52, there is
23 a discussion by Mr. Siddig Ali of the Islamic authority, I
24 mean, mujahida. And Mr. Siddig Ali continues, saying: And
25 we asked, um, and we came up with specific results.

5613

1 Do you recall that part of the conversation?

2 A Yes, sir.

3 Q What did you understand Mr. Siddig Ali to be
4 referring to?

5 A He was talking about Sheik Omar Abdel Rahman.

6 Q What about Sheik Omar Abdel Rahman?

7 A That he will be the Islamic authority for jihad,
8 that he did consulted him.

9 Q About halfway down that page, Mr. Siddig Ali
10 says: That's it, look here, look here, aha, not a word.

11 You say: No need to write, Sheik.

12 Mr. Siddig Ali says: Um.

13 You say: No need to write.

14 Mr. Siddig Ali says: What am I to do then? OK.

15 And then there is a pause.

16 Can you tell us what was going on at that point
17 in the conversation?

18 A I was trying to prevent him from writing down to
19 he can say the targets to Mr. Mohammed Saleh, but vocally,
20 so it comes to the microphone. But he insists to write it
21 down, and the time you just said pause, that's the time he
22 was writing down United Nations and the two tunnels, sir.

23 Q After the pause, Mr. Siddig Ali says: Meaning
24 all this, good? That's first, this is second.

25 You say: No writing.

5614

1 Siddig Ali says: Um. I'm going to eat, my
2 brother. Uh.

3 And then Siddig Ali continues a little further
4 down: For example, unintelligible, this is two, three, OK,
5 two, three, between what?

6 You say: The states.

7 Siddig Ali says: Each and every one of these
8 things is not a joke.

9 Do you recall that?

10 A Yes, sir.

11 Q Can you tell us what was referred to in that part
12 of the conversation?

13 A He said one United Nation. He wrote down United
14 Nation. Two, three, is the two tunnels. And he said
15 tunnels, and Mr. Mohammed Saleh didn't understand exactly,
16 and I said between the states, tunnels between the states,
17 to explain it exactly to him what it was, the Lincoln
18 Tunnel, the Holland tunnel, which is between New York and
19 New Jersey, sir.

20 Q On the next page, at the top of the page you make
21 a statement: Three targets, three serious acts, three acts
22 that are --

23 Mr. Siddig Ali says: Big?

24 You say: Not small.

25 A little further down the page Mr. Siddig Ali

5615

1 says: OK, take care of this, my brother, God willing. Then
2 there is some noise reflected on the transcript.

3 Can you tell us what was going on at that point?

4 A Yes, sir.

5 Q After he said that he will eat it, he ripped the
6 paper from the notebook and crumpled it little bit, and he
7 give it to me, and he said you eat it -- you take care of
8 this, brother. I said all right, I took it, and I continue
9 crumpling the paper close to the microphone, and I just ate
10 it.

11 Q A little further down the page Mr. Saleh makes
12 the statement: It might contain poisonous substances.

13 Siddig Ali says: It's OK, OK.

14 Mr. Saleh laughs and says: You are used to.

15 And you say: As long as he ordered it, that's
16 it, I must obey.

17 A Yes, sir.

18 Q What was going on at that point in the
19 conversation?

20 A The pen Mr. Siddig used to write, it's a dry ink
21 pen, and Mr. Mohammed Saleh saw me eating the paper, he
22 looked at me and he said, but it's have poison in it, could
23 have poison. I said well, as long as he ordered, I have to
24 obey. I just ate the paper, sir.

25 MR. McCARTHY: Your Honor, at this point I would

5616

1 ask to play a very short portion of Government's Exhibit
2 333E, cassette 2 of 3, which is a cassette recording of CM
3 32.

4 THE COURT: That is the tape of this
5 conversation?

6 MR. McCARTHY: Yes, your Honor, and specifically
7 referring to pages 52 and 53 of the transcript.

8 THE COURT: Go ahead.

9 MR. JACOBS: Your Honor, could we have a side bar
10 briefly on this matter?

11 THE COURT: No.

12 MR. JACOBS: I would like to be heard, your
13 Honor.

14 THE COURT: Yes.

15 (At the side bar) are.

16 THE COURT: What is it?

17 MR. JACOBS: Your Honor, I have no objection. I
18 assume they are going to play the portion of the paper
19 crumpling. I just don't want the agents turning up the
20 volume or changing the sound. If they want to play it at
21 the same level I don't have a problem. I just want to put
22 it on the record. I don't want to jump up in the middle.

23 MR. McCARTHY: I am going to play it myself.

24 MR. JACOBS: Fine. That's all.

25 (In open court)

5617

1 MR. McCARTHY: I am going to proceed, your Honor.

2 THE COURT: Go ahead.

3 (Tape played)

4 BY MR. McCARTHY:

5 Q Mr. Salem, were you listening to that?

6 A Yes, sir.

7 Q When in the snippet of the tape we just heard was
8 the portion of the paper crumpling?

9 A When Mr. Siddig Ali ripped the paper and he said,
10 you take care of this, brother. And I took it and I
11 wrinkled it little further to fit my mouth, and I start
12 chewing it. Then Mr. Mohammed Saleh said, it contains
13 poison, and I said well, as long as he order, I must obey,
14 that's the way we do.

15 Q Mr. Salem, to your knowledge, did Mr. Mohammed
16 Saleh ever contribute money to the bombing plan?

17 A To my knowledge, no, sir.

18 Q What if anything did he contribute?

19 A The diesel fuel for building the bombs.

20 Q Mr. Salem, I want to move your attention now to
21 the early spring of 1993.

22 A Yes.

23 Q Were you ever at a location called the Mohammed
24 Mosque?

25 A Yes, sir.

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1 Q Where is the Mohammed Mosque?

2 A It's in New Jersey close to Sheik Omar Abdel
3 Rahman's apartment, sir.

4 Q What was the occasion of you going to the
5 Mohammed Mosque in the early spring of 1993?

6 A I was driving the Sheik Omar Abdel Rahman to his
7 apartment from the mosque, and to translate for him his
8 lecture, sir.

9 Q Why was it necessary for somebody to translate to
10 English at the Mohammed Mosque?

11 A Sheik Omar Rahman does not speak English, and
12 part of the people who attend this mosque is American, are
13 American, and the other part is Palestinian. So the
14 American needs translation, sir.

15 Q Did you translate Dr. Abdel Rahman's lecture that
16 evening?

17 A Yes, sir.

18 Q Can you tell us, please, what was the topic of
19 the lecture?

20 A Jihad and Hamas group as a good front -- good
21 example for mujahidin.

22 Q What did the presentation that evening include?

23 A A videotape being played on the second floor of
24 the mosque.

25 Q At the conclusion of that evening, what did you

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1 do?

2 A I drove the sheik back home and we were followed
3 with some other guys.

4 (Continued on next page)

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1 Q What other guys followed you?

2 MS. STEWART: Judge, may we have a side bar?

3 THE COURT: Yes.

4 (At the side bar)

5 THE COURT: What is there about?

6 MR. McCARTHY: There is about, he gave a lecture
7 about the Hamas group. He brought a bunch of people who
8 were not identified to the witness, who were Palestinians,
9 whom he brought back home. He was not invited to stay for
10 the meeting that they had at the apartment. There were
11 about five individuals. That's it.

12 MS. STEWART: In the 302 -- they are not 302's --
13 in the Federal Bureau of Investigation reports and other
14 things, he always described these people as Hamas people,
15 and I just wanted to avoid that if possible.

16 MR. McCARTHY: I am not going to ask him that.
17 He doesn't know of his personal knowledge whether they are
18 Hamas people. What he does know is inference. It is not
19 more explicit than that.

20 MS. STEWART: Thank you.

21 (In open court)

22 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q Mr. Salem, were the people who followed you home
3 men?

4 MS. AMSTERDAM: I am sorry. I couldn't hear.

5 Q Were the people who followed you back to Sheik
6 Abdel Rahman's home men?

7 A Yes, sir.

8 Q Were they some of the Palestinian men you had
9 seen at the mosque?

10 A Yes, sir.

11 Q Did they go up to Sheik Abdel Rahman's apartment?

12 A Yes, sir.

13 Q Were you invited to stay?

14 A No, sir.

15 Q Mr. Salem, you told us earlier in your testimony
16 that you met a couple of men named Amir Abdelgani and Fares
17 Khallafalla. Do you recall that?

18 A Yes, sir.

19 Q Can you tell us how you came to meet Amir
20 Abdelgani and Fares Khallafalla?

21 A They were introduced to me by Mr. Siddig Ibrahim
22 Ali, sir.

23 Q Where did the introduction take place?

24 A He brought them to my car after we did the
25 evening prayer in the First Avenue mosque and 11th Street,

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1 sir.

2 Q That is First Avenue and 11th Street here in
3 Manhattan?

4 A Yes, sir.

5 Q Approximately when did that meeting take place?

6 A At the beginning of the second phase of the
7 investigation.

8 MS. AMSTERDAM: I object, your Honor.

9 THE COURT: Foundaton again.

10 MR. McCARTHY: Your Honor, if that is the nature,
11 the source of the objection, and if the court wants to
12 strike it, I will put another question.

13 THE COURT: Strike it. Put another question.

14 Q Did you meet with these gentlemen in the spring
15 of 1993?

16 A Yes, sir.

17 Q Did you meet with them after you first began
18 speaking with Siddig Ali about bombing?

19 A Yes, sir.

20 Q Where did you go from 11th Street and First
21 Avenue?

22 A We went to the safe house in Queens, sir.

23 Q Who went to the safe house?

24 A Mr. Siddig Ibrahim Ali, Mr. Amir Abdelgani, and
25 Mr. Fares Khallafalla, sir.

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1 Q What happened at the safe house?

2 A I showed them the safe house, the entrance and
3 the exits, and I made them feel that it's safe and secure
4 and comfortable.

5 Q Who is the "them" you are referring to?

6 A Mr. Siddig Ibrahim Ali, Mr. Amir Abdelgani and
7 Mr. Fares Khallafalla, sir. And then they walked around and
8 Mr. Siddig explained to them what was our targets. And that
9 was it, sir.

10 Q Was the meeting that you had in the safe house
11 that day recorded?

12 A Yes, sir.

13 Q Did there come a time when you went on a car ride
14 through Manhattan with Mr. Siddig Ali and Mr. Amir
15 Abdelgani?

16 A Yes, sir.

17 Q When in relation to the meeting at the safe house
18 you just told us about did you go on a car ride through
19 Manhattan?

20 A Few days later, sir.

21 Q Can you tell us what you did on the car ride
22 through Manhattan?

23 A We were going to make some surveillance on some
24 of the targets we want to bomb.

25 Q Which targets?

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1 A The United Nations and the tunnels.

2 Q Did there come a time when there was discussion
3 between Mr. Amir Abdelgani and Mr. Siddig Ali?

4 A Yes, sir.

5 Q Can you tell us what you recall of that
6 discussion?

7 A We were getting through close to the diamond
8 district, the jewelry district, and then Mr. Siddig --
9 sorry -- Mr. Amir Abdelgani suggested to bomb the jewelry
10 district, and Mr. Siddig screamed, God is great, that's the
11 best thing I can do, God's great, I'm going to hit Israel,
12 the heart of Israel. I ask him why you going to hit Israel,
13 what makes you to go over there? He said no, I'm going to
14 hit Israel in United States. And we continued talking about
15 bombing the jewelry district, and once we put the bomb, the
16 whole front windows will shatter and the jewelry, the
17 diamonds will be all over, and everybody will pick up, and
18 that's what happening. And later on we drove by the United
19 Nations.

20 Q Did there come a time during the spring of 1993
21 that you took a trip to Canal Street?

22 A Yes, sir.

23 Q Who did you take a trip to Canal Street with?

24 A With Mr. Fares Khallafalla, sir.

25 Q How long after the meeting at the safe house that

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1 you told us about a few moments ago was your trip to Canal
2 Street?

3 A It was few days also, sir.

4 Q What was the occasion for you going to Canal
5 Street on that occasion?

6 A The occasion, to buy timers, sir.

7 Q How did it happen that you went on that day?

8 A Mr. Siddig Ibrahim Ali asked Mr. Fares
9 Khallafalla to buy timers from Canal Street.

10 MS. AMSTERDAM: Objection, your Honor, as to
11 hearsay without a foundation.

12 THE COURT: Do you want to find out how he came
13 to learn?

14 Q Did you have a conversation with Mr. Siddig Ali
15 about timers and Mr. Khallafalla?

16 A Yes, sir.

17 Q What did Mr. Siddig Ali tell you?

18 A He said that he will let Fares to buy the timers.

19 Q Did you speak with Mr. Khallafalla about whether
20 he had tried to buy the timers?

21 A Yes, sir.

22 Q What did Mr. Khallafalla tell you?

23 A He, Mr. Fares, told me that he couldn't get it by
24 himself because the store was closed, and if I go to pick
25 him up from 32nd Street where is the Path train station, and

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1 go with him to show him which timers exactly, so he can buy
2 it. I went by my car, I picked him up, we went to Canal
3 Street, I showed him the timer, and he bought it.

4 Q He purchased it?

5 A Yes, sir.

6 Q Was your meeting that day, or your trip that day
7 to Canal Street with Mr. Fares Khallafalla tape recorded?

8 A Yes, sir.

9 Q During the spring of 1993, did you have
10 discussions with anyone about obtaining weapons?

11 A Yes, sir.

12 Q With whom do you recall having discussions about
13 obtaining weapons?

14 A We have discussion about obtaining weapons with
15 Mr. Mohammed Saleh, Mr. Abdel Rashid, Dr. Rashid, Mr. Siddig
16 Ibrahim Ali, Mr. Mohammed the Spanish.

17 Q You mention Mohammed the Spanish.

18 A Right.

19 Q Is that the name you knew the defendant Victor
20 Alvarez by?

21 A Yes, sir.

22 MR. JACOBS: Excuse me. May I clarify whether he
23 said my client Mohammed Saleh, just so the record is clear,
24 your Honor. I don't want to interrupt.

25 Q You said you had discussion with Mr. Mohammed

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1 Saleh?

2 A Yes, sir.

3 MR. McCARTHY: Directing the attention of the
4 court and counsel to 333T, the transcript from yesterday
5 afternoon, and referring to page 54 of the transcript.
6 333T. Page 54 of the transcript, about halfway down the
7 page.

8 Q Mr. Salem, in the conversation we heard yesterday
9 afternoon, did you hear Mr. Siddig Ali make the statement:
10 Now we have a little problem facing us, and, God willing,
11 we'll overcome it, sooner or later. It is the problem of --

12 And Mr. Saleh says: Money.

13 Mr. Siddig Ali says: Mm, yes, money. So now we
14 are in need of the following. First, it is for protection
15 only. It will not be used.

16 And Mr. Mohammed Saleh says: Um.

17 Do you recall that part of the conversation?

18 A Yes.

19 Q Were you present while that was going on?

20 A Yes, sir.

21 Q Did you observe Mr. Siddig Ali speaking to
22 Mr. Mohammed Saleh at that point?

23 A Yes, sir.

24 Q Can you tell us what if anything he did when he
25 made that statement?

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1 A Yes, sir. He said first, and he did like that.

2 (Indicating)

3 Q You are holding your two hands in the manner of a
4 rifle?

5 A Yes, sir. First like that, and we will use it
6 only for protection. And I don't recall the rest of the
7 words.

8 Q Mr. Siddig Ali continued: We'll get it. We are
9 not going to use it. There is a possibility, 90 percent,
10 aha, or possibility 20 percent chance, we don't know. If
11 circumstances warrant it, it must be available. So I mean,
12 we estimate about 3 to 5 of them. Good?

13 A Yes, sir.

14 (Continued on next page)

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1 Q Do you recall that part of the conversation?

2 A Yes, sir.

3 Q What did you understand Mr. Siddig Ali to be
4 speaking about?

5 A Speaking about three to five pieces of pistols or
6 rifles for protection.

7 Q Did there come a time that you got a weapon in
8 the spring of 1993?

9 A Yes, sir.

10 Q How did it happen that you got a weapon?

11 A Mr. Mohammed the Spanish told Mr. Siddig that he
12 made arrangement. Mr. Siddig went and I followed him by my
13 car to New Jersey, to obtain what Mr. Mohammed the Spanish
14 brought us, but it did not work the first time. And we went
15 next day, Mr. --

16 Q Let me stop you for a moment.

17 Who went the first day?

18 A The first day was Mr. Siddig, Mr. Amir and
19 myself, sir.

20 Q That is Amir Abdelgani?

21 A Yes, sir.

22 Q What happened the second day?

23 A The second day, as far as I recall, Mr. Mohammed
24 the Spanish paged us, and I was in that time in the safe
25 house, and I talked back to him. And he said that, "I have

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1 something for you. Come on over."

2 Mr. Siddig Ali talked to him and he suggested to
3 give him like a signal to ring his bell three times from
4 downstairs so he can come down. And we did drove,
5 Mr. Siddig Ali and myself, to New Jersey, went in front of
6 Mr. Mohammed the Spanish's home. Mr. Siddig Ali stepped
7 down, he rang the bell three times. Mr. Mohammed came down
8 with the box --

9 Q Let me stop you.

10 When you say "Mr. Mohammed came down," are you
11 talking about the defendant Victor Alvarez?

12 A Yes, sir.

13 Q What happened when Victor Alvarez came down?

14 A He came down carrying a box in his hand, and he
15 said, "This is my tools. Take care of it," or, "keep it,"
16 something in that effect.

17 I opened the trunk of my car, Mr. Mohammed
18 Alvarez, Mohammed the Spanish, Mr. Mohammed, put the box in
19 the trunk of my car. Mr. Siddig was standing on my left,
20 Mr. Mohammed on my right; I was in the middle, sir.

21 Q What did you do after you put the gun in the
22 trunk?

23 A We drove to Mr. Siddig's home, sir.

24 Q What happened at Mr. Siddig's home?

25 A We went upstairs. Mr. Siddig opened the box and

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1 he got a machine gun. He showed it to me and I handled it,
2 I said, "That's beautiful. It's great."

3 He said, "Well" -- I told him, "Let us go to the
4 safe house to keep it there."

5 He said, "Go ahead of me."

6 I went ahead of Mr. Siddig Ibrahim Ali, drove my
7 car, and he brought the box in his hand. He walk ahead of
8 me. He handed me the box. I put it on the back seat of my
9 car, and then we switched seats to sit. I sit on the right;
10 Mr. Siddig start to drive, sir.

11 MR. McCARTHY: Your Honor, this has been
12 disabled.

13 THE COURT: Go ahead.

14 Q Mr. Salem, I am placing before you Government
15 Exhibit 675, and 675A, B and C. I ask you, sir, if you
16 recognize these items.

17 A Yes, sir, I do.

18 Q What do you recognize them to be?

19 A This is the machine gun that was brought by
20 Mr. Victor Alvarez, give it to Mr. -- we put it in the trunk
21 in the box, and eventually we took it to the safe house.

22 Q What is 675A?

23 A It is the magazine, sir, for the machine gun.

24 Q 675B?

25 A It is a long barrel for the machine gun, sir.

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1 Q Can you show us -- well, let me just identify the
2 remaining object.

3 675C?

4 A It is a dummy installment barrel to block the
5 front of the machine gun just in case it's not being used to
6 protect the inside.

7 Q Was this weapon given to you in an unloaded
8 condition?

9 A Yes, sir.

10 MR. McCARTHY: Your Honor, the government offers
11 675 and 67A, B, and C.

12 MR. STAVIS: I object, foundation, your Honor.

13 THE COURT: Establish how he knows this is the
14 one.

15 Q Did you see this weapon in the safe house after
16 you received it?

17 A Yes, sir. We delivered it, Mr. Siddig Ali and
18 myself, we delivered it, both of us, in my car to the safe
19 house, and we even talked about it during our trip to the
20 safe house, sir.

21 Q What kind of weapon did you receive, or what kind
22 of weapon do you recall receiving?

23 A This machine gun, sir.

24 Q How do you know it is this machine gun?

25 A I held it in my hand for so many times. I opened

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1 the back of it. I loaded it; I unloaded it. I checked the
2 mechanism of it. I saw it in Mr. Siddig's house and in the
3 safe house, sir.

4 Q Let me show you a videotape marked Government's
5 Exhibit 393. Have you reviewed that item before?

6 A Yes, sir.

7 Q What do you know this item to be?

8 A It is one of the videotapes made by the FBI.

9 Q Do you know whether the gun that I have placed
10 before you is depicted in the safe house in this videotape?

11 MR. STAVIS: Objection, referring to an item not
12 in evidence, your Honor.

13 THE COURT: Overruled.

14 A Yes, sir.

15 MR. McCARTHY: Your Honor, I offer that portion
16 of the videotape, which is the beginning.

17 MR. STAVIS: I have no objection to the tape,
18 your Honor.

19 THE COURT: Go ahead.

20 While that is being cued up, may I see counsel
21 briefly at the side.

22 MR. McCARTHY: Yes, your Honor.

23 (Continued on next page)

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(At the side bar)

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THE COURT: Is there anybody who is going to testify to having taken this from the safe house?

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MR. McCARTHY: Yes, your Honor.

5

THE COURT: So do you want to offer it subject to connection or do you want just to offer it?

6

7

MR. McCARTHY: I wanted to offer it. I didn't think there would be an objection since I didn't think it was a contested issue, but I would offer it subject to connection.

10

11

THE COURT: Fine. I think it is silly to make a flap over it, but if they want to, they can. I am going to take it subject to connection. Do you still want to play the tape?

14

15

MR. McCARTHY: I will wait to play the tape until the point I was going to play it, which is the end of the examination.

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THE COURT: Fine.

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(Continued on next page)

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1 (In open court)

2 THE COURT: 675 and 675A, B, and C are going to
3 be received subject to connection.

4 MR. McCARTHY: 675, your Honor?

5 THE COURT: Right. And 675A, B, and C.

6 (Government's Exhibits 675, 675A, 675B and 675C
7 for identification were received in evidence)

8 Q Could you just briefly show us, Mr. Salem, how it
9 is that 675B is fitted into 675.

10 A You are supposed to unscrew this part here.

11 Q I am not asking you to unscrew it at the moment.

12 A All right. You are supposed to unscrew this
13 part, and then will fit the barrel, and put this nut on the
14 top of it and tighten it up, and then open the bottom part
15 here for extra support or use it as a short weapon, and it
16 is a long barrel to be, half of it is buried inside it, the
17 other half is the front to be used for long-range shooting,
18 sir.

19 Q That is the barrel?

20 A Yes, sir.

21 Q What is what you have referred to as the "dummy,"
22 675C?

23 A The dummy to be used in case if we don't use this
24 long barrel, so we can use it for, to protect the front. It
25 should -- this be taken off and we put this so nothing goes

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1 inside it to make it dirty or rusty, sir.

2 Q Finally, can you tell us where the magazine goes,
3 or the clip goes in the gun.

4 A This magazine should go over here.

5 Q That is the portion where the gun is disabled at
6 this point?

7 A Yes, sir.

8 Q Blocking that portion?

9 A Yes, sir. This magazine, to fit inside it so you
10 can be able to function it, sir.

11 MR. McCARTHY: Your Honor, at this time may I
12 display 675 to the jury?

13 MR. STAVIS: Your Honor, the exhibit was
14 introduced subject to connection, I understand.

15 THE COURT: Given the proffer, I am going to
16 permit it.

17 (Government Exhibit 675 was displayed to the
18 jury)

19 MR. McCARTHY: Your Honor, may I read from the
20 side of the weapon?

21 THE COURT: Yes.

22 MR. McCARTHY: "Uzi, semiauto, Model A, 9
23 millimeter, Para, IMI Israel."

24 Your Honor, I would withdraw the offer of that
25 tape until a slightly later time.

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1 THE COURT: OK.

2 Q You say you switched places in the car with
3 Mr. Siddig Ali?

4 A Yes, sir.

5 Q On the way to the safe house?

6 A Yes, sir.

7 Q What happened on the way -- withdrawn.

8 What did you do on the car ride from New Jersey
9 to New York?

10 A I was video -- excuse me, sir. I was
11 videotaping, sir.

12 Q Who asked you to videotape?

13 A Mr. Siddig Ibrahim Siddig Ali, sir.

14 Q What was the purpose of videotaping?

15 A Videotaping the police points at the entrance of
16 the tunnel, the cameras inside the tunnels, the line which
17 Mr. Siddig told me the equators, the equator, and where is
18 the bomb will be placed inside the tunnel, and how was
19 the -- which route the person will take after he placed the
20 bomb and leave, which route he should take in case of
21 Lincoln Tunnel, and the other route to the other side in
22 case of Holland Tunnel, sir.

23 Q Was there any videotape playing equipment in the
24 safe house?

25 A Yes, sir.

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1 Q What was the purpose of making the tape?

2 A Mr. Siddig Ibrahim Ali brought a VCR from his
3 house and asked me to bring the camera to make this
4 surveillance to the tunnels so he can play the tape later on
5 for Mr. Amir, Mr. Fares, Mr. -- the whole group, sir. And
6 explain to him who will go where, who will go where, and
7 where the bomb will be put and what -- explain the whole
8 procedure, sir.

9 MS. AMSTERDAM: Your Honor, may we have a time
10 frame for this?

11 Q Mr. Salem, do you recall exactly what day this
12 occurred?

13 A Yes, sir, I recall.

14 Q What day was it?

15 A That was the day, the 23rd, the same day the FBI
16 moved and arrested everybody, sir.

17 Q Was there a time stamp on the videotape that you
18 made?

19 A Yes, sir.

20 Q Mr. Salem, I am showing you Government Exhibit
21 369, the videotape, and ask you if you recognize that item.

22 A Yes, sir, I do.

23 Q Have you reviewed it prior to testifying here
24 this morning?

25 A Yes, sir.

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1 Q What do you recognize that to be a tape of?

2 A It is the videotape. I made it, sir.

3 Q The videotape that you just spoke about in your
4 testimony?

5 A Yes, sir.

6 MR. McCARTHY: Your Honor, the government offers
7 369.

8 MS. AMSTERDAM: I have no objection.

9 MS. LONDON: May I have a brief voir dire?

10 THE COURT: All right.

11 VOIR DIRE EXAMINATION

12 BY MS. LONDON:

13 Q Mr. Salem, was this your video camera?

14 A Yes, ma'am.

15 Q Was it your video camera or a video camera
16 supplied by the FBI?

17 A No. My own video camera, ma'am.

18 Q Was it your own videotape or a videotape supplied
19 by the FBI?

20 A It was my videotape, ma'am.

21 Q Was it a new tape that you used for that occasion
22 or a used tape?

23 A I'm not sure, ma'am.

24 Q The time/date stamp that was put on it, did that
25 automatically go on the video every time you recorded a

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1 video?

2 A No, unless I press certain buttons so the time
3 will appear, ma'am.

4 Q Did you press those buttons when you made this
5 videotape?

6 A Yes.

7 Q What did you do with this tape after you recorded
8 it?

9 A I took it off the video camera, and I placed it
10 inside the glove compartment in my car, ma'am.

11 Q Then what happened to it?

12 A And then when the FBI raid into the safe house,
13 they locked everybody up, I get sick, they took me to the
14 hospital, and I told them that there is a videotape in my
15 glove compartment in my car, please take it. It is
16 important. And they aired that to the people in the safe
17 house and they -- since then they took it, they have it.

18 Q When was the next time you saw this videotape
19 again?

20 A The last couple of weeks.

21 MS. LONDON: Thank you.

22 MS. AMSTERDAM: I just have a few voir dire
23 questions.

24 THE COURT: Ms. Amsterdam.

25 VOIR DIRE EXAMINATION

5641

1 BY MS. AMSTERDAM:

2 Q Were any agents with you when this tape was made?

3 A No, ma'am.

4 Q Who was present when the tape was made?

5 A Mr. Siddig Ibrahim Ali, ma'am.

6 Q And yourself, correct?

7 A It's in my car, ma'am.

8 Q Thank you.

9 A You're welcome.

10 THE COURT: Absent objection, 363 is received.

11 MR. McCARTHY: 369, your Honor.

12 THE COURT: I'm sorry, 369.

13 (Government's Exhibit 369 for identification was
14 received in evidence)

15 MR. McCARTHY: Your Honor, at this point the
16 government would ask to read from 369T, which is a six-page
17 transcript, and then play the videotape.

18 THE COURT: Fine.

19 MR. McCARTHY: I believe 369 is in the jury's
20 books, your Honor.

21 THE COURT: If you would take out your notebooks
22 and turn to tab 369/T.

23 MR. STAVIS: May I just have one moment, your
24 Honor, with Mr. McCarthy.

25 MR. KHUZAMI: Your Honor, Mr. Fitzgerald will be

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1 the voice of Siddig Ali and I will be the voice of Emad
2 Salem. Ms. Chu will be the voice of an unidentified female.

3 THE COURT: All right. Go ahead.

4 (Government Exhibit 369T was read to the jury)

5 MR. McCARTHY: I believe the way the courtroom is
6 wired now you have to have the headset on to hear the audio
7 portion of the video.

8 (Videotape played)

9 THE COURT: Why don't we take a break, and we
10 will resume afterwards. Ladies and gentlemen, we are going
11 to take a short break. Please leave your notes and other
12 materials behind. Please don't discuss the case, and we
13 will resume in a short time.

14 (Recess)

15 MR. McCARTHY: Your Honor, we can only to get it
16 to work without the headsets.

17 MR. SERRA: I'm sorry, your Honor?

18 THE COURT: He said he could only get it to work
19 without the headsets. So what is your preference? Without
20 the headsets?

21 MR. McCARTHY: Right. We will just play it as we
22 have been doing up until now.

23 THE COURT: Fine.

24 THE DEPUTY CLERK: Get the jury?

25 THE COURT: Yes.

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1 (Jury present)

2 THE COURT: Ladies and gentlemen, it turns out
3 the only way they can get it to work with the sound is
4 without the earphones, so we are going to do it without the
5 earphones.

6 Mr. McCarthy.

7 MR. McCARTHY: Thank you, your Honor. Agent
8 Liguori, if you could proceed with the tape. Thank you.

9 (Videotape played)

10 MR. McCARTHY: Agent Liguori, would you stop the
11 tape for a moment.

12 BY MR. McCARTHY:

13 Q Mr. Salem, did you see the tape pan along the
14 wall of the tunnel?

15 A Yes, sir.

16 Q That happened a few times as we have observed it,
17 is that correct?

18 A Yes, sir.

19 Q What was the point of panning along the walls of
20 the tunnel?

21 A I am sorry, sir.

22 Q What was the point of those pans along the walls
23 of the tunnel?

24 A I am sorry. I don't understand the question,
25 sir.

5644

1 Q You shot the film of the walls of the tunnel,
2 correct?

3 A Yes, sir.

4 Q Did we just see a booth also?

5 A Yes.

6 Q Can you explain what the point was of shooting
7 film along the walls of the tunnel.

8 A It was few reasons, sir. Number one, to get the
9 cameras which was being posted on the upper side of the
10 walls so we know how far between each camera. Number two,
11 to get the booths on the side, which is the people who
12 monitor the traffic.

13 Q You said the booths?

14 A The booths, yes, sir, to get how many booths
15 there, how many there is people constantly in there or not.
16 So when we leave the bomb inside the tunnel, Mr. Siddig want
17 to figure out how fast they can come to the car which
18 supposedly they will think that it's broken, but it's loaded
19 with bomb.

20 Q You mean the car is broken?

21 A Yes, sir. So he can ask me to adjust the timer
22 for enough time to go off before they can tow it out.

23 Q You mean the timer of the bomb?

24 A Yes, sir.

25 MR. McCARTHY: Agent Liguori, would you continue

5645

1 the film, please.

2 (videotape continued)

3 MR. McCARTHY: Agent Liguori, would you pause it
4 for a moment.

5 Q Mr. Salem, what is going on at this portion of
6 the tape where you just come out of the tunnel?

7 A Mr. Siddig Ibrahim Siddig Ali ask me to focus on
8 the green signs, which it shows the person who will place
9 the bomb inside the tunnel, which route he should take so he
10 can show that on the videotape in the safe house later on,
11 sir.

12 MR. McCARTHY: Would you continue the tape.

13 (Videotape continued)

14 MR. McCARTHY: Agent, could you pause that for a
15 moment.

16 Q What happened at that point in the tape, where
17 the screen went blank?

18 A We finished surveilling one tunnel, and then
19 Siddig asked me to stop. I said stop it here? He said yes.
20 So I turned it off.

21 Q Did you turn it back on again?

22 A Yes, sir.

23 MR. McCARTHY: Continue the tape, please.

24 (Videotape continued)

25 MR. McCARTHY: Agent Liguori, would you stop the

5646

1 tape, please.

2 Q Mr. Salem, can you tell us what was going on at
3 that point in the conversation that you were having with
4 Mr. Siddig Ali.

5 A Mr. Siddig asked me to focus on the police booth
6 at the entrance, and he told me we should not direct their
7 attention because they are checking out if we are carrying
8 hazardous material, oils or -- and then he said haddutas,
9 means bombs, and they will check on us. So I told him but
10 if we are carrying weapons, no big deal. So he laughed and
11 said no, weapons is no problem, it's called toys, it's
12 called kids' toys.

13 Q What did you understand him to mean by kids'
14 toys?

15 A He trying to put code name for weapons, because
16 he don't want me to say weapons, and --

17 MR. McCARTHY: Thank you.
18 Would you continue the tape.

19 (Videotape continued)

20 MR. McCARTHY: Stop the tape, please.

21 Q Mr. Salem, at the point of the tape that we just
22 saw, can you tell us what was going on and what your
23 discussion was.

24 A Mr. Siddig Ali was asking me to take some booths,
25 and then we came to this blue sign -- it was prior to

5647

1 this -- and he said right here, right here we going to place
2 the bomb, take it right and left, it's right here.

3 Q Was there some discussion of the Equator, of the
4 middle?

5 A Yes, sir.

6 Q What was that about?

7 A The Equator, which is the middle line of the
8 earth and this blue line is the middle lane of the tunnel,
9 sir.

10 MR. McCARTHY: Agent, continue, please.

11 (Videotape continued)

12 Q Mr. Salem, where did you go after that film was
13 made?

14 A We went to the safe house, sir.

15 Q Mr. Salem, before we played the videotape, I
16 asked you a few minutes ago about a conversation you had
17 with Mr. Amir Abdelgani and Mr. Siddig Ali driving through
18 Manhattan. Do you recall that?

19 A Yes, sir.

20 Q Was that conversation tape recorded?

21 A Yes, sir.

22 Q Mr. Salem, can you tell us, please, when you
23 first met Tarek Elhassan.

24 A First time I saw him, that was in Salaam mosque
25 in New Jersey.

5648

1 Q What were you doing in Salaam Mosque in New
2 Jersey that night?

3 A He was --

4 Q I asked, sir, what you were doing in Islam
5 mosque?

6 A I was there to attend a dispute between Sheik
7 Omar Abdel Rahman and the board of directors of El Salaam
8 Mosque, sir.

9 (Continued on next page)

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1 Q Had anyone asked you to go to the Salem mosque?

2 A Yes, sir.

3 Q Who?

4 A Sheik Omar.

5 Q Who else was there?

6 MS. LONDON: Excuse. Me, can we get a time
7 frame, please.

8 THE COURT: Give us the time, please.

9 MR. McCARTHY: Yes, your Honor.

10 Q Do you recall approximately when that was?

11 A Around the time of the election of the board of
12 directors.

13 Q Do you recall -- withdrawn.

14 Do you know whether it was before or after you
15 started tape recording conversations for the FBI?

16 A I think after, sir.

17 Q Who else was there that evening?

18 A Mr. Tarig Elhassan was bodyguarding the sheik.
19 Some of the -- Mr. Siddig Ibrahim was there; I was there;
20 Mr. Fares Khallafalla was there, Mr. Amir Abdelgani was
21 there; some of the American Muslims from Al Taqwa mosque,
22 they came also.

23 Q When did you next see Tarig Elhassan?

24 A I saw him in the mosque at First Avenue and 11th
25 Street, sir.

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1 Q Can you tell us about -- withdrawn.

2 How long after the first time did you see the
3 Mr. Elhassan the second time?

4 A A few days, sir.

5 Q What was the occasion of seeing him the second
6 time?

7 A I went to do the evening prayer, so we can pick
8 up Mr. Amir Abdelgani and Mr. Fares Khallafalla, and I saw
9 Mr. Tarig with Mr. Siddig went to the back of the mosque in
10 a corner and they kept talking for a long time.

11 Q Did you speak with Mr. Elhassan on that occasion?

12 A No, sir, I did not.

13 Q Did there come a time that you did meet and speak
14 with Tarig Elhassan?

15 A Yes, sir, I did.

16 Q How long after the second occasion that you told
17 us about?

18 A It was right after, a couple -- a few -- it was
19 so close to the same time, day, two days, something like
20 that.

21 Q Tell us about the first time you met and spoke
22 with Tarig Elhassan.

23 A Mr. Siddig Ali brought him into my car with
24 Mr. Fares and Mr. Amir Abdelgani.

25 Q When you say "Mr. Fares," you are referring to

5651

1 the defendant Fares Khallafalla?

2 A Yes, sir.

3 Q Tell us about the meeting.

4 A We started driving the car. Mr. Siddig asked me
5 to pick them up one by one, don't come three of them
6 together.

7 Q Let me stop you.

8 When you say, he asked you "to pick them up one
9 by one," who is the "them" you are referring to?

10 A Mr. Tarig Elhassan, Mr. Fares Khallafalla and
11 Mr. Amir Abdelgani, sir.

12 Q Tell us about meeting Mr. Tarig Elhassan.

13 A He came to the car and then he noticed -- we were
14 driving around the mosque in that time.

15 Q Which mosque?

16 A The First Avenue and 11th Street mosque, sir.

17 Q That is the one in Manhattan?

18 A Yes, sir.

19 Q What happened?

20 A He saw some buckets at the sidewalk and he said,
21 "Let me pick this up."

22 He get out of the car.

23 He picked up some of these buckets and some of
24 them were chained into the light column.

25 Q Let me stop you for a moment. When you say

5652

1 "buckets chained to the light column," first of all, the
2 "light column," do you mean street lamps on the street?

3 A Yes, sir.

4 Q What do you mean by "buckets"?

5 A Buckets, buckets to put water in it and stir.

6 Q OK. What happened?

7 A He picked up two or three of them, I don't recall
8 how many exactly, and he tried to break the handle for a big
9 one, it was chained to the column, and I told him, "no, no,
10 forget it, because I don't want troubles."

11 So he left this, but he picked up these buckets
12 and brought it to the car. He was acting as a homeless man
13 looking through garbage. These buckets -- it was a garbage,
14 for garbage purposes. So he made himself like a homeless
15 man trying to eat out of the garbage, and he spilled the
16 garbage and brought the buckets into the car to take it to
17 the safe house.

18 Q Was there some discussion about what the buckets
19 were needed for?

20 A Yes, sir.

21 Q What was that?

22 A Needed to mix the bombs, sir.

23 Q Did there come a time that you had a conversation
24 with Mr. Elhassan about the structure of bridges and
25 tunnels?

5653

1 A Yes, sir.

2 Q Who else was present?

3 A It was Mr. Siddig Ibrahim Ali, sir, Mr. Amir
4 Abdelgani. He wasn't close to us, but he was back and
5 forth, doing mixing bombs.

6 Q Where did this conversation take place?

7 A In the safe house, sir.

8 Q Was it recorded?

9 A Yes, sir.

10 Q Can you tell us what the conversation was about
11 the structure of bridges and tunnels?

12 A Mr. Tarig Elhassan told me that he knows a civil
13 engineer. He is a good brother and he is a good mujahed,
14 and he loves jihad, and he will make a study to bring the
15 blueprints of the tunnels and bridges so we can see the weak
16 points. And also he said it will be a good idea to send
17 these blueprints to mujahed countries like Sudan and
18 countries in that effect probably for future operations. I
19 asked him if this engineer knows what he's doing.

20 He said, "Not really, but he is suspecting that
21 there is something."

22 I said, "Will you bring him over to explain to
23 us?"

24 Mr. Tarig said, "I will see what can I do."

25 Q What do you mean "bring him over to explain to

5654

1 us"?

2 A I asked him if he can let this civil engineer,
3 who have access to blueprints of the tunnels, can come to
4 the safe house to explain to us the blueprints. And
5 Mr. Tarig said that he will talk and see what's will happen.

6 Q You told us earlier in your testimony that you
7 had some conversations during the spring of 1993 about
8 obtaining detonators, do you recall that?

9 A Yes, sir.

10 Q What detonators were you trying to obtain?

11 A Detonators to detonate the bombs.

12 Q Was there discussion about obtaining explosives?

13 A Yes, sir.

14 Q With whom did you have discussions about
15 obtaining explosives?

16 A I discussed that with Dr. Rashid. Mr. Siddig Ali
17 and myself discussed that with Dr. Rashid. I mean, with
18 everybody, everybody was present on so many different
19 occasions.

20 MR. JACOBS: Object to "everybody," your Honor.

21 THE COURT: The last part is stricken.

22 Go ahead.

23 MR. McCARTHY: Yes, your Honor.

24 Q Did you have a conversation with Mr. Siddig Ali
25 about sources for explosives?

5655

1 A Yes, sir.

2 Q Do you recall when that conversation took place?

3 A I don't remember when, sir.

4 Q Do you recall whether it was during the spring of
5 1993?

6 A Yes, sir.

7 Q What, if anything, did Mr. Siddig Ali tell you
8 about who his sources were for explosives?

9 A He said that he has two sources. One of them is
10 Dr. Rashid, and the other one is a guy in Philadelphia. His
11 name is also Abdul Rashid, but he told me another alias name
12 for him. As far as I recall, Abu Jaleel.

13 Q Abu Jaleel?

14 A Yes, sir.

15 He said that Abu Jaleel is a good mujahed. He's
16 an American Muslim, he participated in Pennsylvania camp
17 training, and he will check with him and with Dr. Rashid and
18 see who can bring us the explosives.

19 Q Let me ask you first about the person you've
20 identified as Abu Jaleel who you say was also known as Abdul
21 Rashid.

22 A Yes, sir, that's his real name.

23 Q Did there come a time that you and Siddig Ali
24 went to see this person?

25 A Yes, sir.

5656

1 Q How did you travel?

2 A We traveled by my car. We went to Philadelphia
3 to meet with Abdul Rashid.

4 Q Was your conversation back and forth from
5 Philadelphia tape recorded?

6 A Yes, sir.

7 Q Did you actually meet with Abu Jaleel or the
8 person known to you as Abdul Rashid from Philadelphia?

9 A Yes, sir. He just came to me and say "hello" and
10 described to us the routes.

11 Q Did you have any discussion with him otherwise
12 about explosives or anything else?

13 A No, sir.

14 Q When you got to Philadelphia, what did Mr. Siddig
15 Ali do?

16 A Mr. Siddig Ali said that he will be waiting for
17 us in parking lot in front of McDonald's in Philadelphia.
18 We went over there. We saw his car running, and the
19 headlights is on. Mr. Siddig Ali gets out of my car, went
20 to his car and started to have discussion with him.

21 I backed up my car a little bit. I dictated the
22 license plate number of his car into the microphone in the
23 car.

24 Q In your car?

25 A Yes, sir.

5657

1 Q Mr. Salem, were you present and listening to the
2 conversation between Siddig Ali and the person you have
3 identified as Abdul Rashid from Philadelphia?

4 A No, sir.

5 Q I am now going to ask you about the defendant
6 Hampton-El who you have also identified as Abdul Rashid.

7 A Yes, sir.

8 Q When with Siddig Ali do you recall first meeting
9 with Mr. Hampton-El?

10 A We met with him -- I don't recall when. We met
11 with him twice, once in his safe house and once in Farooq
12 mosque.

13 Q Can you tell us, please, about the conversation
14 you had with Mr. Hampton-El at the safe house.

15 A We talked about what is our operation all about.
16 Mr. Siddig told him that we going to bomb the United
17 Nations. Dr. Rashid said that it was "one of my projects."
18 We asked --

19 Q Let me stop you for a moment. When you say
20 "Dr. Rashid," who are you referring to, sir?

21 A Mr. Hampton-El, sir.

22 Q You heard him say it was one of his projects?

23 A Yes, sir.

24 Q What did you understand that to mean?

25 A That mean he was planning to blow up the United

5658

1 Nations and it wasn't -- I mean it just accidentally that we
2 were planning to do it as well.

3 Q Prior to your conversation with Mr. Hampton-El,
4 did Mr. Siddig Ali have a conversation with you about the
5 plan to murder President Mubarak?

6 A Yes, sir.

7 Q What, if anything, did Siddig Ali say about
8 Mr. Hampton-El's role in the plan to murder President
9 Mubarak?

10 A Mr. Siddig Ali told me that Mr. Hampton-El will
11 supply the weapons.

12 Q What, if anything, did Mr. Siddig Ali tell you
13 about whether Mr. Hampton-El was told who the target was?

14 A Mr. Siddig Ali said that Mr. Hampton-El does not
15 know what is the target, but he was very concerned about the
16 Shari'a point of view.

17 Q The Shari'a point of view?

18 A Yes. The Shari'a point of view means the Islamic
19 point of view in this operation.

20 Q Did Mr. Siddig Ali tell you whether or not
21 Mr. Hampton-El agreed to supply the weapons?

22 A Yes, sir, he did.

23 Q Yes, sir, he told you, or yes, sir, he did?

24 A Yes, sir, he told me that he had agreed, but he
25 never obtained it.

5659

1 Q You're saying that Mr. Hampton-El agreed, but
2 Mr. Siddig Ali never obtained the weapons?

3 A Yes, sir.

4 Q Returning your attention to the meeting at the
5 safe house, to be clear, what safe house are you talking
6 about?

7 A On Rogers Avenue, sir.

8 MS. AMSTERDAM: Your Honor, I would object to the
9 term "safe house."

10 THE COURT: You can cross on it. Go ahead.

11 Q What, if any, advice did Mr. Hampton-El give you
12 about, that is, you and Mr. Siddig Ali, about the plan to
13 bomb the United Nations?

14 A Mr. Hampton-El said that we should slow down and
15 be very cautious and careful, and we must leave evidence
16 behind us to mislead the FBI, like he did once before.

17 Q Did he make a suggestion about what kind of
18 evidence you could leave behind?

19 A Yes, sir.

20 Q What did he say in that regard?

21 A He said, "You can leave some evidence to make it
22 looks like the Jews did it or the Mafia."

23 Q Was there any discussion about explosives?

24 A Yes, sir.

25 Q What was the discussion about explosives?

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1 A We were asking -- Mr. Siddig Ali and myself asked
2 him to get us some hand grenades, some detonators and C-4.

3 Q What did Mr. Hampton-El say?

4 A He said that he have source for the C-4 and he
5 will check what he can do about the hand grenades.

6 Q Did he indicate to you whether there was any
7 difficulty with his source at that time?

8 A Yes, sir.

9 Q What did he say in that regard, that is, what did
10 Mr. Hampton-El say?

11 A Mr. Hampton-El said that his source for the C-4
12 right now in jail, and it's very hard to talk to them, but
13 he will see what can he do about it.

14 Q Was there any discussion about removing
15 detonators from grenades?

16 A Yes, sir.

17 Q Could you explain that discussion to the ladies
18 and gentlemen of the jury.

19 A He told me, "What do you need the hand -- the
20 balls for?"

21 I told him, "To take the detonator out of it."

22 And he said, "Why you should jeopardize yourself
23 if we can get you detonators?"

24 I said, "Well, that would be good."

25 Q Was there any discussion about Sheik Omar Abdel

5661

1 Rahman?

2 A Yes, sir.

3 Q What was the discussion about Sheik Omar Abdel
4 Rahman?

5 A Mr. Hampton-El said that one day there was a
6 dispute or big argument between Sheik Omar Abdel Rahman
7 and --

8 MS. STEWART: Could we have a time frame on this?

9 Q Did Mr. Hampton-El indicate when this happened?

10 THE COURT: I think she means the conversation.

11 You mean the conversation with Mr. Hampton-El or
12 the dispute?

13 MS. STEWART: Both.

14 THE COURT: Start with the conversation.

15 MR. McCARTHY: Yes, your Honor. All right.

16 Q You are describing now, are you not, the
17 discussion you had at Rogers Avenue?

18 A That's correct, sir.

19 Q In terms of what your testimony was a few moments
20 ago about the safe house, am I correct that this is not the
21 safe house in Queens where you said bombs were kept.

22 A No, sir. No, sir.

23 Q This is a different place?

24 A Yes, sir.

25 Q Where was the Rogers Avenue location that you saw

5662

1 Mr. Hampton-El in?

2 A In Brooklyn, sir.

3 Q Did you tape record this conversation?

4 A Yes.

5 Q Can you tell us what Mr. Hampton-El said about
6 this dispute involving Sheik Omar Abdel Rahman?

7 First let me ask you: Did he indicate to you
8 when the dispute involving Sheik Omar Abdel Rahman had taken
9 place?

10 A I don't recall that he did mention that, sir.

11 Q Did he tell you where it took place?

12 A Yes, sir. He said in the Farooq mosque.

13 Q Can you tell us what he said about that
14 particular dispute.

15 A He said that it was 150 persons mad at Sheik
16 Omar, and he stood in front of them and said, "Any man will
17 lay a hand on this guy, or this person, got to answer to God
18 and me."

19 Q Did the topic of El Sayyid Nosair come up?

20 A Yes, sir.

21 Q What did Mr. Hampton-El have to say on that
22 occasion at Rogers Avenue about El Sayyid Nosair?

23 A He said, "Do you know that the day of killing
24 Kahane, I supposed to be the second man over there?"

25 And I said, "Really?"

5663

1 And he said, "Yes, but there is some
2 circumstances happened. I wasn't there."

3 Q Was Mr. Siddig Ali also present during that part
4 of the conversation?

5 A Yes, sir.

6 Q This was tape recorded?

7 A Yes, sir.

8 Q What, if anything, did Mr. Hampton-El say about
9 going to visit Mr. Nosair in jail?

10 A Mr. Hampton-El said that, "I want to go visit
11 Sayyid Nosair in jail, but Sheik Omar told me it's not a
12 good idea."

13 Q Did he indicate whether he had visited him in
14 jail or not, that is, whether Mr. Hampton-El had visited
15 Mr. Nosair in jail?

16 A No, he did not, sir.

17 Q Can you describe this tape recording.

18 A Yes, sir.

19 Q Please do.

20 A It was noisy, a lot of music at the background.
21 And I buried the tape in that time very deeply because I was
22 told not to take any devices with you.

23 Q Let me stop you for a moment. I didn't ask you
24 what you were instructed.

25 A I'm sorry.

5664

1 Q I am asking you to describe what, if any, noise
2 was going on through the tape.

3 A Yes. It was a lot of music at the background,
4 sir.

5 Q How long was the meeting that day at Rogers
6 Avenue?

7 A It took a few hours, a couple of hours, something
8 like that.

9 Q Was the music playing throughout at the time?

10 A Constantly, sir.

11 Q Mr. Salem, was there discussion about how the
12 bombs that were being built at the safe house were going to
13 be delivered to the targets?

14 A Yes, sir.

15 Q When did that discussion take place?

16 A It took place -- I don't recall when, but
17 sometimes we talked about it in Mr. Siddig's house, in the
18 safe house and in the cars.

19 Q I would like you to answer this question yes or
20 no. Was there some discussion about stolen cars?

21 A Yes, sir.

22 Q Who do you recall having the discussions about
23 stolen cars?

24 A Mr. Fares Khallafalla Mr. Victor Alvarez,
25 Mr. Wahid --

5665

1 Q When you say "Mr. Wahid," that is the defendant
2 Wahid Saleh that you identified earlier?

3 A Yes, sir. And Mr. Amir was present in these
4 discussions; Mr. Tarig Elhassan was present in these
5 discussions; Mr. Siddig was present, and myself, sir.

6 Q Where did the discussions take place, if you
7 recall?

8 A One of them was in the safe house, sir. Another
9 one was in the car.

10 Q When you say "the safe house," you are talking
11 about the garage in Queens?

12 A Yes, sir.

13 Q What was the discussion about the stolen cars?

14 A Mr. Siddig Ibrahim Ali brought Mr. Wahid to the
15 safe house and asked him that we need stolen cars. And
16 Mr. Wahid asked why these cars needed for and how long it
17 will be driven and why specifically stolen.

18 Mr. Siddig Ali explained to him briefly, and
19 later on Mr. Wahid bend toward Mr. Siddig, who whispered in
20 his ear and told him that, "Don't worry. These cars, it
21 will be blown, boom, pow, like that."

22 Q When you say "boom, pow," those noises --

23 A Yes.

24 Q -- who made that statement?

25 A Mr. Siddig to Mr. Wahid in his ears.

5666

1 Q When did this conversation with Wahid Saleh take
2 place?

3 A It was the last day right before the FBI raid
4 into the safe house, sir, and arrested everybody.

5 Q About how long was the conversation --

6 MS. AMSTERDAM: Objection, your Honor, as to
7 "everybody."

8 THE COURT: Overruled.

9 Q About how long was the conversation with Wahid
10 Saleh?

11 A It wasn't that long, sir. It took like half an
12 hour, 20 minutes.

13 Q I am showing you Government's Exhibit 382 for
14 identification.

15 A Yes, sir.

16 Q Have you reviewed that item?

17 A Yes, sir.

18 Q What do you recognize this videotape to be?

19 A It is the discussion between Mr. Siddig Ibrahim
20 Ali, Mr. Wahid Saleh, Mr. Tarig Elhassan, Mr. Amir and
21 myself, sir.

22 Q You have reviewed this tape, correct?

23 A Yes, sir.

24 Q The sound that you referred to before, you said a
25 popping sound --

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1 A Yes, sir.

2 Q -- were you able to hear that on the tape?

3 A Yes, sir. Clear, sir.

4 MR. McCARTHY: Your Honor, the government offers
5 382. I don't intend to play from it at this time.

6 MR. NOOTER: Mr. McCarthy, may I just clarify
7 what this is?

8 MR. McCARTHY: Yes.

9 (Pause)

10 MR. McCARTHY: Your Honor, I will withdraw the
11 offer of the tape at the moment.

12 THE COURT: Fine.

13 Q Mr. Salem, at the point where your discussion
14 with Mr. Wahid Saleh began, did you show Mr. Wahid Saleh
15 anything?

16 A Yes, sir.

17 Q What did you show him?

18 A I show him the timer; I show him the bombs.

19 Q Did you use the word "bombs" at all when you
20 discussed the matter with him?

21 A No, sir.

22 Q Mr. Wahid Saleh, after you showed him the timers,
23 did he give you any advice about the safe house?

24 A Yes, sir.

25 Q What advice did he give you?

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1 A He said that, "This place must be cleaned very
2 well after you leave, and you shouldn't leave any trace of
3 this."

4 Q Can you tell us, please, what was your discussion
5 with Victor Alvarez and Fares Khallafalla and Amir Abdelgani
6 about stolen cars?

7 MS. AMSTERDAM: Can we have a time frame for
8 this, your Honor?

9 Q When did you discuss the -- withdrawn.
10 Do you recall approximately when you met Victor
11 Alvarez?

12 A 1993.

13 Q The arrests that were referred to before occurred
14 in the early morning hours of June 24, 1993, do you recall
15 that?

16 A Yes, sir.

17 Q How long prior to the arrests did you meet Victor
18 Alvarez?

19 A It wasn't that long, sir.

20 Q When you say "it wasn't that long," what do you
21 mean?

22 A Sir, I cannot -- I cannot recall time. I cannot
23 say ten days and it turn out to be five days, sir.

24 Q As you sit here today, do you think it's days,
25 months, years?

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1 A Days.

2 Q Prior to June 24?

3 A Yes, sir.

4 Q What conversation was there between yourself,
5 Mr. Alvarez, Mr. Khallafalla, Mr. Abdelgani and Mr. Siddig
6 Ali about stolen cars?

7 A Mr. Siddig Ali asked Mr. Mohammed -- Mr. Victor
8 Alvarez and Mr. Fares Khallafalla to get us stolen -- to buy
9 some stolen cars. And Mr. Fares Khallafalla contributed
10 \$100, Mr. Amir Abdelgani contributed \$200, and Mr. Victor
11 Alvarez went out with Mr. Fares, and they met with --

12 MS. AMSTERDAM: Objection, your Honor. He's not
13 present.

14 THE COURT: We will find out how he learns this.

15 MR. MCCARTHY: OK.

16 DEFENDANT SAID SALEH: Can you just show for him
17 to translate --

18 THE COURT: Excuse me, remain silent, please.

19 Q Where did you get your information about where
20 Mr. Fares Khallafalla and Victor Alvarez went as far as
21 stolen cars were concerned?

22 A We were sitting in the car and Mr. Fares
23 Khallafalla and Mr. Mohammed Alvarez said, they both said,
24 "We going," and they went and they came back. They said
25 that, "We give him the beeper number. When he get the car,

5670

1 he will page us back." They were talking about the guy who
2 will sell the cars for them.

3 Q Sell stolen cars?

4 A Correct, sir.

5 Q Did there come a time that you met Fadil
6 Abdelgani?

7 A Yes, sir.

8 Q When did you meet Fadil Abdelgani?

9 A That was the last day of the -- right before the
10 FBI made the raid on the safe house and made the arrests,
11 sir.

12 Q Had you seen Fadil Abdelgani before the last day?

13 A Once, briefly, sir.

14 Q Can you explain the circumstances under which you
15 had seen him once briefly before the day of the raid.

16 A It came a time Mr. Amir Abdelgani said that he
17 will go bring some money to give it to Mr. Victor Alvarez
18 and Mr. Fares Khallafalla to go buy stolen cars.

19 So he took us to his cousin's home --

20 (Continued on next page)

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1 Q Who took you to whose cousin's?

2 A Mr. Amir, sir.

3 Q Took you where?

4 A Somewhere where is his cousin live. And he went
5 upstairs to meet his cousin, and then Mr. Mohammed Abd Fadil
6 came to the window, how are you --

7 Q Let me stop you. When you say Mr. Mohammed Abd
8 Fadil, who are you referring to?

9 A Mr. Mohammed --

10 MR. BERNSTEIN: Judge, I couldn't hear the name.

11 THE COURT: Can you slow it down?

12 MR. McCARTHY: Yes, your Honor.

13 Q You mentioned the name Mohammed Abd Fadil
14 Abdelgani?

15 A Yes, sir.

16 MR. McCARTHY: I believe Abd is A-B-D-O.

17 MR. LAVINE: Your Honor, I am going to object to
18 the spelling as offered by Mr. McCarthy. With due respect
19 to his spelling skills, I suggest we hear it from the
20 witness himself.

21 THE COURT: Sustained.

22 MR. McCARTHY: It is with undue respect.

23 Q Mr. Salem, how would you spell Abd?

24 A A-B-D, A-B-D.

25 Q A-B-D?

5672

1 A A-B-D.

2 Q How were you introduced to the person that you
3 call Mohammed Abd Fadil Abdelgani?

4 A He came to the safe house the day they delivered,
5 or the day they brought the diesel fuel barrels.

6 Q The diesel fuel barrels?

7 A Yes, sir.

8 Q How did you learn that to be his name?

9 A At the beginning Mr. Siddig Ali introduced him to
10 me with his alias Abou, A-B-O-U, Zabiha, G-H-B-A-H-A. I am
11 sorry. That's the best I can do.

12 Q That was how he was presented to you by
13 Mr. Siddig Ali?

14 A Abou Zabiha.

15 Q How did you come to know him as Mohammed Abd
16 Fadil Abdelgani?

17 A Little later after Mr. Siddig Ali introduced him
18 to me as Abou Zabiha, he said that he was one of us in the
19 Pennsylvania camp training --

20 MR. LAVINE: Objection to the "he" unless it is
21 clarified.

22 A Mr. --

23 Q Let me stop you, sir. There is no question. Who
24 said who was with us in the Pennsylvania training?

25 A Mr. Siddig Ibrahim Siddig Ali, sir, said that

5673

1 Mr. Abou Zabiha in that time was with Mr. Siddig Ibrahim Ali
2 in the Pennsylvania camp training, sir.

3 Q Did there come a time that you learned Abou
4 Zabiha to be Mohammed Abd Fadil Abdelgani?

5 A Yes.

6 Q How did that happen?

7 A As far as I recall, he himself, I told him what's
8 your real name then, since you are here.

9 Q Let me interrupt you again. When you say he
10 himself, what is the he you are talking?

11 A Mr. Mohammed Abd El Fadil Abdelgani.

12 Q Let me ask you this: Do you see that person in
13 court today?

14 A Yes, sir.

15 Q Can you point him out?

16 A He is number 4, is your, in the line from the
17 left.

18 THE COURT: Indicating Mr. Fadil Abdelgani. Go
19 ahead.

20 Q It was Mr. Fadil Abdelgani, whom you just
21 identified, who identified himself to you by that name?

22 A He identified himself as Mohammed, and then I
23 told him, that's the way -- I said oh yeah, tell me that's
24 Mohammed, because you scared me when you Abou Zabiha, and we
25 joked about it, sir.

5674

1 Q You joked about it, you said?

2 A Yes, sir.

3 Q Let's go back to the first time you met him.

4 What was going on when you first met Fadil Abdelgani?

5 A Mr. Amir Abdelgani, he said I am going to meet my
6 cousin to bring some money from him. And he came back and
7 had \$200, sir.

8 Q What did you understand the money to be for?

9 A To buy some stolen cars, sir.

10 Q Tell us what happened the second occasion when
11 you met Mr. Fadil Abdelgani in the safe house in Queens.

12 MR. LAVINE: Judge, I am sorry. I have an
13 objection. I don't know if you want me to make it now or
14 make it at side bar.

15 THE COURT: To what is coming up?

16 MR. LAVINE: No, to what just occurred.

17 THE COURT: Do it later. Proceed.

18 Q Tell us about the second occasion when you met
19 Fadil Abdelgani.

20 A The second occasion, sir, when he came with his
21 cousin Mr. Amir Abdelgani, brought barrels full of diesel
22 oil.

23 Q Barrels?

24 A Yes, sir.

25 Q Full of diesel oil?

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1 A Yes, sir. And he was introduced to me as Abou
2 Zabiha, and then I told him, do you know what's going on
3 over here? And he looked around and he said yes. I said
4 are you willing to participate with us? And he said let me
5 do salaat al-Istikhara prayer first.

6 Q Let me stop are you for a moment. You said
7 istikhara prayer?

8 A Yes, sir.

9 Q You have mentioned that earlier in your
10 testimony?

11 A Yes, sir.

12 Q What is istikhara prayer?

13 A It's a special kind of prayer you do before you
14 go to sleep, and during your prayer to ask God to give you
15 the wisdom, if this deed is good for you then God give you
16 sign, if it's not good for you, God during your dream will
17 give you a sign as well.

18 Q Did there come a time after this conversation you
19 had with Fadil Abdelgani about istikhara prayer where you
20 saw him again?

21 A Yes, sir.

22 Q About how long after?

23 A Couple of hours, if not that long. He left the
24 safe house and he came back.

25 Q What happened when he came back?

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1 A He came back and he stood for awhile looking to
2 the bombs. In that time everybody was mixing. He put his
3 hand on his --

4 MS. LONDON: Judge, objection again to everybody.

5 Q Who was present at this time in the safe house
6 when Mr. Fadil Abdelgani came back, if you recall?

7 A Mr. Siddig Ibrahim Ali, myself, Mr. Tarek
8 Elhassan, Mr. Amir Abdelgani. That's as far as I recall,
9 sir.

10 Q Was that on videotape, sir?

11 A Yes, sir.

12 Q What happened when Fadil Abdelgani came back?

13 A He came and he stood for awhile, kept looking at
14 the bombs, looking at everybody mixing, and after few
15 minutes he just moved in and he start to mix.

16 (Continued on next page)

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1 Q Mr. Salem, on June 24 --

2 THE COURT: Before you move to that, may I see
3 Mr. Lavine and you at the side.

4 MR. McCARTHY: Yes, sir.

5 (At the side bar)

6 THE COURT: There was some conversation about
7 getting \$200 which I think was the subject of your
8 objection. I think what happened was that started earlier
9 and veered off to something else, and we never got the basis
10 for the determination that it had come from his cousin.

11 MR. LAVINE: You asked him what about the first
12 time and all we had was Amir getting \$200. In retrospect
13 maybe I should have kept my mouth shut, but that is my job
14 as a attorney. Then you asked about the second occasion
15 without developing the first occasion.

16 MR. McCARTHY: Your Honor, I realize I did that.
17 Part of the reason I have done this, obviously a lot of
18 stuff that is on tape, I am not looking to have him give
19 explanations of things we will have independently. If a
20 misimpression has been created, I am happy to clear it up.

21 MR. LAVINE: How are you going to do that?

22 MR. McCARTHY: I will return him to the first
23 occasion and ask him where he understands the money came
24 from.

25 MR. LAVINE: The personal knowledge was the issue

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1 that concerned me. Thank you.

2 (In open court)

3 BY MR. McCARTHY:

4 Q Mr. Salem, I want to return your attention to the
5 first occasion when you saw Fadil Abdelgani.

6 A Yes, sir.

7 Q Do you recall you told us about Mr. Amir
8 Abdelgani getting some money?

9 A Yes, sir.

10 Q I want you to answer this question yes or no.
11 Did you learn from Mr. Amir Abdelgani where that money came
12 from?

13 A His cousin, sir. I am sorry. I am sorry. I am
14 sorry, your Honor.

15 THE COURT: That is stricken. Just answer yes or
16 no.

17 THE WITNESS: I am sorry, sir.

18 THE COURT: Did you learn where the money came
19 from him?

20 THE WITNESS: Yes, I did.

21 Q You did learn?

22 A Yes, sir.

23 Q Where did the money come from, according to
24 Mr. Amir Abdelgani?

25 A He said from, he said from his cousin, sir.

5679

1 Q Thank you.

2 MR. LAVINE: Your Honor, I will have another
3 application with respect to striking this.

4 THE COURT: All right. We can do it later.
5 Let's do it later.

6 MR. LAVINE: Yes, your Honor.

7 Q I am going to ask you to answer this question yes
8 or no.

9 A Yes, sir.

10 Q Did you have an understanding of who Amir
11 Abdelgani's cousin was?

12 A In that --

13 MR. LAVINE: Objection as to time, your Honor.

14 THE COURT: Sustained.

15 Q Directing your attention to the spring of 1993,
16 in the time in mid to late June 1993, do you recall that
17 time frame?

18 A Yes, sir.

19 Q Yes or no, did you get an understanding at that
20 time of who Amir Abdelgani's cousin was? Yes or no.

21 A Yes.

22 MR. LAVINE: Objection.

23 THE COURT: From whom?

24 MR. McCARTHY: I want to establish that he had an
25 understanding and then I was going to ask that.

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1 THE COURT: All right, ask him.

2 Q Did you have that understanding?

3 A Yes.

4 Q From whom did you get that understanding?

5 A Mr. Amir Abdelgani, sir.

6 Q Was that on the basis of something he told you?

7 A Yes.

8 Q Can you tell us what it is that he told you?

9 A He told me that Mr. Mohammed Abd Fadil Abdelgani
10 is his cousin, sir.

11 Q Mr. Salem, let me direct your attention to the
12 late evening and early morning hours of June 23 into June
13 24, 1993.

14 A Yes, sir.

15 Q Were the bombs that were being constructed in the
16 garage in Queens completed at that time?

17 A No, sir.

18 Q Did you have a conversation on the evening of
19 June 23, 1993, with Mr. Hampton-El?

20 A Yes, sir.

21 Q Was that a conversation that you had in person or
22 over the telephone?

23 A It was over the phone, sir.

24 Q Can you describe that conversation to the ladies
25 and gentlemen of the jury?

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1 A I was asking him that we are depending on God and
2 you to bring us the stuff, and he answered back to me that
3 don't worry, don't tell me, it's a duty, that's my duty, and
4 I will keep doing my best to get you the stuff.

5 Q Mr. Salem, what was the stuff that you understood
6 that you were speaking about with Mr. Hampton-El?

7 A The hand grenades and/or the C-4, sir.

8 Q I am showing you again Government's Exhibit 393
9 for identification, which you have seen a little earlier
10 this morning.

11 A Yes, sir.

12 Q Have you reviewed that prior to testifying, this
13 videotape?

14 A Yes.

15 Q What is depicted on the videotape?

16 A It's in the safe house, sir.

17 Q These are scenes from the safe house?

18 A Yes.

19 MR. McCARTHY: Your Honor, the government offers
20 393.

21 MS. LONDON: Objection, your Honor, and voir
22 dire.

23 THE COURT: Go ahead.

24 MS. AMSTERDAM: Your Honor, could we just get a
25 time frame as to when this is?

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1 BY MR. McCARTHY:

2 Q Mr. Salem, do you recall the different scenes
3 that are depicted on this videotape, do you recall when they
4 took place?

5 A As it is written on the 6/24/93, sir.

6 Q Is there also a date stamp on the film itself?

7 A Yes.

8 Q This videotape, as you have reviewed it, is this
9 the entirety of the videotape of June 24 or parts of it?

10 A I am not sure, sir.

11 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the government renews
2 the offer of 393.

3 THE COURT: May I see you and Mr. McCarthy at the
4 side briefly.

5 MR. SERRA: Your Honor, may one or two other
6 counsel attend also?

7 (At the side bar)

8 THE COURT: I just wanted to know how long your
9 voir dire is.

10 MS. LONDON: Probably not that long, 5 minutes,
11 10 minutes, your Honor. And I do have an objection right
12 now as to the introduction of it.

13 THE COURT: Why don't we break for lunch. We can
14 talk about it, and then you can do what you have to do this
15 afternoon.

16 MR. McCARTHY: Your Honor, I just want to make
17 one application. It is obvious to me from the way he
18 answered the last question that he doesn't remember whether
19 this is the whole tape or a portion of the tape, and he has
20 seen a good number of them. I would like to at lunchtime
21 let him look at this tape again. I don't believe he has
22 seen this for a few days. I realize voir dire is about to
23 start, but I would like to at least let him look at it.

24 THE COURT: At least we can tell whether it is
25 whole or in part.

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1 MR. McCARTHY: I can represent that it is in
2 part.

3 THE COURT: All right.

4 (In open court)

5 THE COURT: Ladies and gentlemen, we are going to
6 break now for lunch. Please leave your notes and other
7 materials behind. Please don't discuss the case. Have a
8 pleasant lunch, and we will resume at 2:00.

9 (Jury excused)

10 (Witness excused)

11 MR. McCARTHY: Your Honor, may I have a moment
12 with Mr. Lavine?

13 THE COURT: Sure.

14 MR. McCARTHY: Your Honor, I believe Mr. Lavine
15 and I will speak after lunch, and he can decide at that
16 point whether he wants to go forward with his application or
17 not.

18 THE COURT: Why don't I find out what Miss London
19 wanted to tell me about her objection. You had an objection
20 to the tape.

21 MS. LONDON: Yes, I did, your Honor. Mr.
22 McCarthy said that the witness said he didn't know whether
23 it was in whole or in part. That was my objection, and the
24 time. After lunch I will either renew that objection or
25 make a different one.

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1 THE COURT: If you know now what the different
2 one is, could you tell us, or do you want to do it at that
3 time? Does it depend on what he says, seriously?

4 MS. LONDON: No, your Honor. I do have another
5 objection to this tape. I believe that testimony after
6 lunch will show that it is a composite tape.

7 THE COURT: If that is the nature of the
8 objection, we can deal with it. I didn't know what the
9 nature is.

10 MS. LONDON: That will be the nature of the
11 objection. Do you wish to deal with it now?

12 THE COURT: No. It is hard to deal with it until
13 we determine it is a composite. Let's assume it is a
14 composite.

15 MR. McCARTHY: It is about an 8-minute film,
16 different parts of a long evening.

17 THE COURT: The objection is to the fact that it
18 is a composite?

19 MS. LONDON: The objection goes beyond that, your
20 Honor. We have not yet heard the testimony of the agent who
21 wired the safe house. Based on exhibits turned over by the
22 government, I believe that this is a composite of a
23 composite. The composite number 1, which would be the
24 father or parent of this video, has not been entered, so may
25 go back to originals that have not even been obtained. So

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1 my objection is on those grounds.

2 THE COURT: Regardless of whether it is a copy or
3 original, the question, I suppose, is whether it is a fair
4 and accurate representation of some portion of events that
5 went on at the safe house. If it is, I don't know that it
6 matters what the lineage is, so far as which generation copy
7 it is. Is there anything I ought to look at over lunch?

8 MR. McCARTHY: I guess we could simply the
9 videotape to the court.

10 THE COURT: No, that is not what I meant. Is
11 there any case law that you want me to look at or not?

12 MR. McCARTHY: Off the top of my head, I don't
13 know. I don't know that it is different from a still
14 photograph, frankly. It is just a moving picture instead.
15 I would think Rule 106, your Honor, is the only authority
16 that applies, that I know.

17 THE COURT: All right. We will deal with it
18 after lunch.

19 MR. SERRA: Your Honor, one other thing about
20 this particular tape. The videos, needless to say, 90
21 percent of them do have an audio track. The composite copy
22 that I have gotten from the government of this exhibit does
23 not have an audio track. It is not clear to me as to why
24 Mr. McCarthy is offering this without an audio track.
25 Perhaps a limited offer would clear that, perhaps it

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1 wouldn't.

2 MR. McCARTHY: I don't have any desire at this
3 time, your Honor, to offer the audio portion because that
4 will come in later when we get the transcripts in, which we
5 haven't done at this point.

6 THE COURT: That was not his question. His
7 question is, I guess, what are you offering it to prove if
8 you are not offering the audio.

9 MR. McCARTHY: They are photographs of the
10 defendants in the case mixing bombs in the safe house on the
11 night that the arrests took place.

12 MR. SERRA: Your Honor, if the government is
13 simply offering it in the nature of still photographs, it
14 nonetheless should be made clear to the jury that what they
15 are seeing has an audio track which does accompany it, which
16 has been removed.

17 THE COURT: Which they may see later.

18 MR. SERRA: Which they may see later.

19 MR. McCARTHY: That is fine.

20 THE COURT: See you after lunch.

21 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted: 2:10

THE COURT: Mr. Jacobs, I have been told that you were at some point going to have to leave this afternoon.

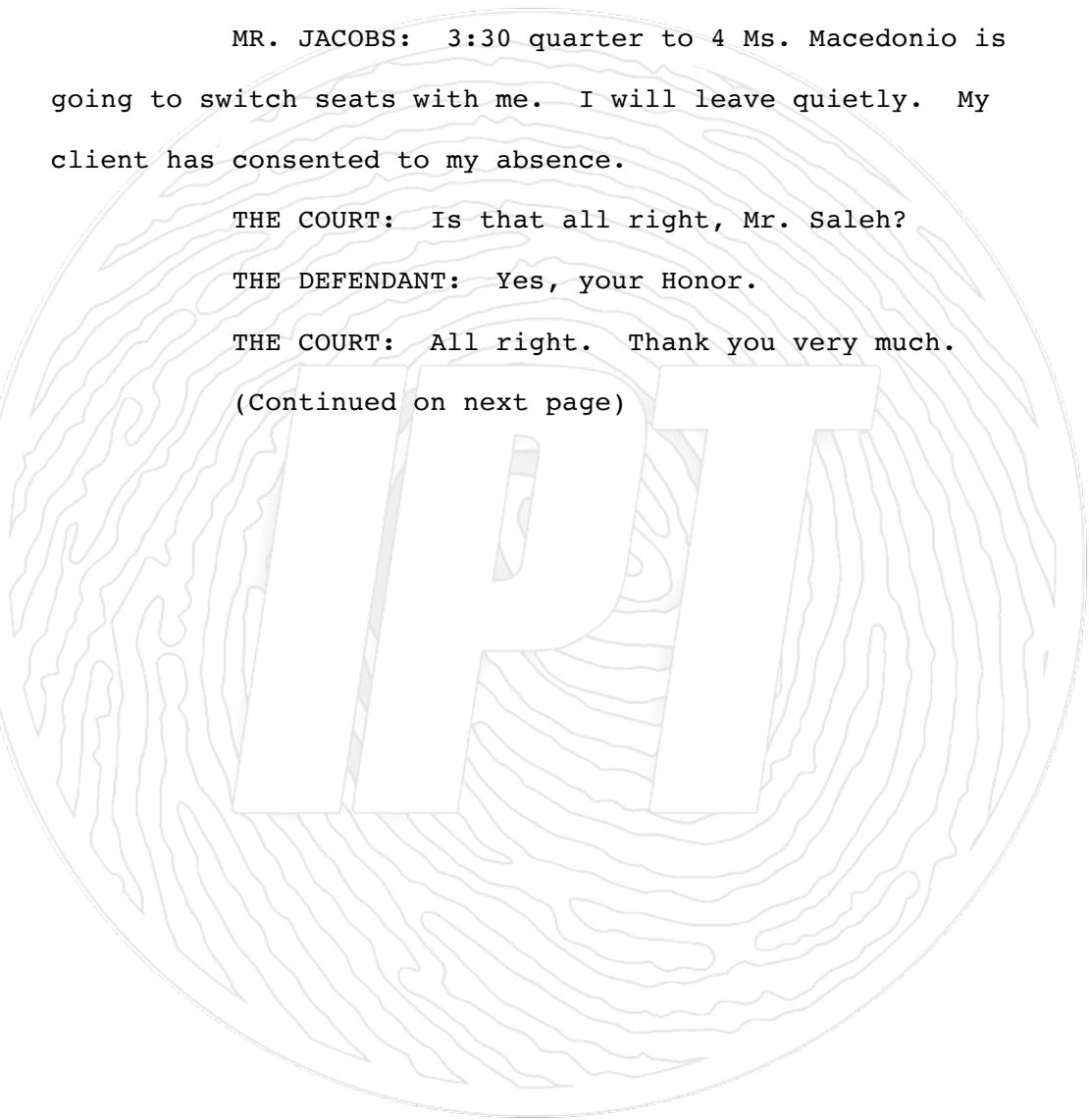
MR. JACOBS: 3:30 quarter to 4 Ms. Macedonio is going to switch seats with me. I will leave quietly. My client has consented to my absence.

THE COURT: Is that all right, Mr. Saleh?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Thank you very much.

(Continued on next page)



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1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 THE JURY: Good afternoon.

5 THE COURT: Mr. McCarthy?

6 MR. McCARTHY: Thank you.

7 DIRECT EXAMINATION (Continued)

8 BY MR. McCARTHY:

9 Q Good afternoon, Mr. Salem?

10 A Good afternoon, sir.

11 Q Mr. Salem, before we go back to the videotape
12 that we were talking about right before lunchtime --

13 A Yes, sir.

14 Q I want to ask you about a few things that you
15 testified about this morning.

16 A Yes, sir.

17 Q Let me direct your attention to the first time
18 that you saw a person you have identified as Fadil
19 Abdelgani.

20 A Yes, sir.

21 Q Can you give us some idea of how long the meeting
22 you had with Fadil Abdelgani was.

23 A It was just a few seconds, sir.

24 Q Can you tell us exactly what happened.

25 A He came to the car, say "hi" and just left right

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1 away.

2 Q He came to the car and said "hi" and just left?

3 A Yes, sir.

4 Q Then you saw him again a few days later?

5 A Yes, sir.

6 Q All right.

7 The day that you first saw him, did you ever see
8 him exchange any money with Amir Abdelgani?

9 A No, sir.

10 Q You never saw Amir Abdelgani get any money from
11 the person you identified as Fadil Abdelgani?

12 A No, sir, I didn't see it.

13 Q You also testified this morning about a
14 conversation that you had with Wahid Saleh and Mr. Siddig
15 Ali, do you recall that?

16 A Yes, sir.

17 Q You testified, I believe, that you heard
18 Mr. Siddig Ali make a popping sound and then something like
19 a (making sound)?

20 A Yes, sir.

21 Q Immediately prior to Mr. Siddig Ali making that
22 sound, can you tell us please what was going on in the --
23 withdrawn.

24 Immediately prior to Mr. Siddig Ali making that
25 sound, were you able to hear what Mr. Siddig Ali and

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1 Mr. Wahid Saleh were saying to each other?

2 A No, sir, I wasn't.

3 Q Why were you not able to hear?

4 A Because Mr. Wahid bowed to the front and
5 Mr. Siddig Ali whispered in his ear.

6 Q I believe in your testimony this morning you may
7 have used the expression "cars being blown."

8 Did you hear anyone say the words "cars being
9 blown"?

10 A No, sir.

11 Q Mr. Salem, I want to show you Government Exhibit
12 676 for identification and ask you whether you have ever
13 seen this item.

14 A Yes, sir.

15 Q Can you tell us where you saw this item?

16 A In the safe house, sir, we were sitting on it and
17 praying on it.

18 Q There is drawing on this item, correct?

19 A Yes, sir.

20 Q Did you see this item get drawn on?

21 A Yes, sir.

22 Q Who did the drawing on the item?

23 A Mr. Siddig Ibrahim Siddig Ali, sir.

24 Q Where was that done?

25 A Inside the safe house, sir.

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1 MR. McCARTHY: Your Honor, the government offers
2 Exhibit 676.

3 MR. SERRA: Your Honor, may we know when it was
4 done?

5 Q Do you know when the drawing was done on this
6 item?

7 A During the period -- it was so many times, more
8 than one time he draw on it during the time inside the safe
9 house.

10 Q That was in May and June of 1993?

11 A Yes, sir.

12 MR. McCARTHY: Your Honor, the government offers
13 676.

14 MR. BERNSTEIN: May I have a voir dire on it,
15 Judge?

16 THE COURT: Yes.

17 Mr. Bernstein, representing Amir Abdelgani.

18 MR. BERNSTEIN: Thank you, Judge.

19 Judge, a may I approach the witness, please.

20 THE COURT: Yes, you may.

21 VOIR DIRE EXAMINATION

22 BY MR. BERNSTEIN:

23 Q Mr. Salem, on Government Exhibit 676 for
24 identification, you said you saw Mr. Siddig Ali draw on this
25 on several occasion, correct?

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1 A Correct, sir.

2 Q On how many different occasions, if you can
3 recall?

4 A How many different locations?

5 Q Occasions.

6 A I believe two to three times.

7 Q In what months were those?

8 A The last time -- the time we went in the safe
9 house, that was five and six months.

10 Q Fifth and sixth months, May and June of 1993?

11 A Yes.

12 Q Do you know if it was written on the last night
13 the people were in the safe house?

14 A No, it was no written on it because I was sitting
15 there when he was writing in front of me.

16 Q And which night --

17 MS. LONDON: I'm sorry. I can't hear the
18 witness's answers.

19 THE COURT: Could you try to please speak into
20 the microphone because it is difficult to hear.

21 THE WITNESS: Yes, sir.

22 Q How many nights were you in the safe house, sir?

23 A I don't recall, sir.

24 Q How many nights was this item written on?

25 A Two to three times.

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1 Q Always by Mr. Ali?

2 A Yes. He wrote most of that stuff here, yes.

3 Q Were you watching him do the writing on each of
4 those occasions?

5 A Yes, sir.

6 Q Were you close to him on each of the occasions?

7 A Yes, sir.

8 Q Did you see the original, meaning the first
9 writings on 676?

10 A It was no writing on it at the very beginning.

11 Q You saw it when it was blank?

12 A Yes, sir.

13 Q When for the first time did you see Siddig Ali
14 write on this?

15 A I don't recall when, sir.

16 Q Can you pinpoint it any better within the number
17 of meetings at the safe house?

18 A We can look at the videotape. You are going to
19 see it, sir.

20 Q Are any of the markings or writings put on this
21 diagram by yourself, sir?

22 A No, sir.

23 Q Were there any times that you looked at this and
24 saw writings on it that you had not actually seen written by
25 anyone?

5695

1 A No, sir.

2 MR. McCARTHY: Objection to form.

3 THE COURT: If he can understand it, he can
4 answer it.

5 Q Did you understand the question, sir?

6 Were there any times you looked at this and found
7 writings on there that you hadn't seen on a prior occasion?

8 A Can you repeat the question, please, sir.

9 Q Were there ever times that you looked at this
10 item, 676, and saw writings on it that you hadn't seen when
11 you looked at it before?

12 A No, sir.

13 MR. BERNSTEIN: I have no further questions, your
14 Honor.

15 THE COURT: All right.

16 MS. AMSTERDAM: I have a couple of questions.

17 THE COURT: Ms. Amsterdam representing
18 Mr. Khallafalla?

19 VOIR DIRE EXAMINATION

20 BY MS. AMSTERDAM:

21 Q Do you know when this cardboard was first brought
22 into the garage in Queens?

23 A The first time we went over there to the garage
24 in Queens, someone, I believe either Mr. Amir or Mr. Fares
25 brought it, and they put it down to sit on it and we did

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1 prayers on it.

2 Q Would I be correct in saying that there is ink
3 scribbling marks on it? Would that be a fair
4 characterization?

5 A Yes, ma'am.

6 Q Can you say as you look at this thing which of
7 the markings were made on which of each of the two or three
8 days. Do you understand my question?

9 A I think I do understand the question.

10 Q Thank you.

11 A No. I cannot say which written when and which is
12 written when.

13 Q Thank you, sir.

14 THE COURT: Ms. London, representing Mr. Tarig
15 Elhassan.

16 VOIR DIRE EXAMINATION

17 BY MS. LONDON:

18 Q Mr. Salem, you just testified, did you not, that
19 the cardboard was blank when you came into the safe house,
20 is that your testimony?

21 A Yes, ma'am.

22 Q Did you examine both sides of it when it was
23 brought in?

24 A I did not examine the other side, but it was one
25 side we put it up because we prayed on it, and after we

5697

1 finish, we fold it in so it won't touch the floor because
2 the reason we pray on something so we don't pray on the
3 floor. So the surface we draw on it, it's always folded in,
4 and it's opened out again for prayers, ma'am.

5 Q So it is your testimony that the surface that was
6 facing up was blank when it was brought in?

7 A Yes, ma'am.

8 Q Is it also your testimony that the surface that
9 was against the ground you did not examine so you do not
10 know if there was writing on it or not?

11 A That's correct, ma'am.

12 Q As you sit here today, do you recall who was
13 present in the safe house when Siddig Ali wrote on that
14 cardboard?

15 A One time it was Mr. Fares and Mr. Amir, one time
16 was Mr. Nosair, Mr. Amir, Mr. Victor Alvarez, Mr. Tarig
17 Elhassan, and myself.

18 Q Do you recall when those times were?

19 A During the period in the safe house, which is May
20 and June.

21 Q As you sit here you don't know exactly when they
22 were, they were just sometime in that period?

23 A Ma'am, the whole tapes have dates --

24 Q That is not my question, sir.

25 A I'm sorry. OK. I'm sorry.

5698

1 THE COURT: Her question concerns your
2 recollection of whether you can place it any more precisely
3 than sometime during the period when you were going to the
4 safe house.

5 THE WITNESS: No, I don't recall precise time,
6 ma'am.

7 Q OK.

8 THE COURT: 676 is received.

9 (Government's Exhibit 676 for identification was
10 received in evidence)

11 MR. McCARTHY: Your Honor, may I ask the witness
12 to step down for a moment.

13 THE COURT: Do you mean in front of the jury box?

14 MR. McCARTHY: Yes, your Honor.

15 THE COURT: Yes.

16 Q Mr. Salem, let me ask you to step over here near
17 the microphone, please.

18 A Yes.

19 Q Mr. Salem, I want to ask you to describe what you
20 understand to be the different diagrams that are drawn here.

21 THE COURT: All right. When he does it, can you
22 get him near a microphone in some fashion.

23 MR. McCARTHY: Yes, your Honor.

24 THE COURT: Thank you.

25 A Over here there is two roads and another two

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1 roads here. It shows some arrows going up and one arrow's
2 coming down. That is the time where Mr. Siddig Ali was
3 explaining the tunnels and the direction of the traffic and
4 the other tunnel, the other direction of the traffic.

5 Q Mr. Salem, I'm sorry. Let me stop you for just a
6 moment.

7 We are looking at the diagram -- could you just
8 step aside for a moment -- with the exhibit sticker upside
9 down on the bottom left side, and you have been pointing to,
10 as you look at the diagram that way, you have been pointing
11 to the top left-hand corner of the diagram.

12 A Yes, sir.

13 Q You can continue your explanation.

14 A Over here there is one line, two lines, three
15 lines, and arrows going, two arrows going that way and one
16 arrow coming here, which is repeating for the same diagram
17 here, and in the center of this line he poked the cardboard
18 with the pen, and where is that the bomb will going to be
19 placed in the middle of the tunnel.

20 Q Mr. Salem, again you are talking about the top
21 left-hand portion of the diagram?

22 A Yes, sir.

23 Q Can you move on to another area of the diagram?

24 A Over here --

25 Q You are now in approximately, for the record, the

5700

1 center of the diagram toward the top.

2 A Yes, sir.

3 Q Go ahead.

4 A That is how Mr. Siddig Ali draw the United
5 Nations building, and you see here this parking lot area --
6 one, two, three, four -- this is where supposedly Mr. Siddig
7 Ali said that the parking area here, under the United
8 Nations where the car which is carrying the bomb will be
9 located.

10 Q Can you move to the other area, is there another
11 area on the right?

12 A Yes. This is how Mr. Siddig Ali draw the 26
13 Federal Plaza --

14 Q Mr. Salem, I'm sorry. Let me stop you for a
15 moment. I don't mean to interrupt you. Again, we are
16 talking about the left side of the diagram now, toward the
17 center, but bearing left, correct?

18 A Yes, sir.

19 Q That is under and slightly to the right as you
20 look at the diagram, the first part that you described to
21 us?

22 A Yes, sir.

23 Q OK.

24 A That is how Mr. Siddig Ali draw the 26 Federal
25 Plaza, and over here, this street, rectangular, that is the

5701

1 ramp going down underneath the Federal Plaza and through
2 this ramp, Mr. Siddig Ali said that he saw when the FBI
3 brought Mr. Mahmud Abouhalima, brought him through this
4 tunnel to the basement.

5 That is where the cars should go with the bomb
6 through this ramp, this basement underneath 26 Federal
7 Plaza.

8 MR. McCARTHY: Thank you. You can resume your
9 seat.

10 MS. AMSTERDAM: From where I was standing, it was
11 very hard to see the writing because it is in ink, and I
12 would just ask whether or not all the jurors had an
13 opportunity to actually see the writing.

14 THE COURT: Do you want the exhibit passed to the
15 jury?

16 MS. AMSTERDAM: I do, your Honor, yes.

17 THE COURT: All right. Would you do so.

18 (Exhibit 626 was published to the jury)

19 MR. McCARTHY: May I proceed, your Honor.

20 THE COURT: Yes.

21 Q Mr. Salem, I am placing before you Government's
22 Exhibits 338A, B and C for identification.

23 A Yes, sir.

24 Q Do you recognize the scene depicted in those
25 photographs?

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1 A Yes, sir.

2 Q Can you tell us what the scene is.

3 A It is a still picture inside the safe house.

4 Q Do you recognize the persons depicted in the
5 photograph?

6 A Yes, sir.

7 Q Can you tell us who the persons depicted in the
8 photographs are.

9 A Mr. Siddig Ibrahim Siddig Ali on the left of the
10 picture; myself right next to him --

11 THE COURT: Is this A?

12 MR. McCARTHY: This is 338A, your Honor.

13 THE COURT: Go ahead.

14 A Mr. Fares Khallafalla right after me on the
15 right, the middle right of the picture, and Mr. Amir
16 Abdelgani to the extreme right of the picture.

17 Q The person you have pointed to as Amir Abdelgani
18 is standing, as you look at the photograph, in front of
19 Mr. Fares Khallafalla?

20 A Yes, sir.

21 Q 338B, just tell us if you recognize the persons
22 depicted in that photograph.

23 A Yes, sir, I do.

24 Q Who are they?

25 A Mr. Fares on the left, Mr. Siddig in the middle

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1 sitting on the bench, Mr. Amir on the right, sir.

2 Q Finally, 338C.

3 A Mr. Fares on the left, Mr. Siddig in the middle,
4 Mr. Amir sitting beside Mr. Siddig, on the right.

5 Q Mr. Salem, are these still photographs from the
6 videotape?

7 A Yes, sir.

8 MR. McCARTHY: Your Honor, the government offers
9 338A, B, and C.

10 MS. AMSTERDAM: I have no objection, your Honor.

11 THE COURT: 338A, B, and C are received without
12 objection.

13 (Government's Exhibits 338A, 338B and 338C for
14 identification were received in evidence)

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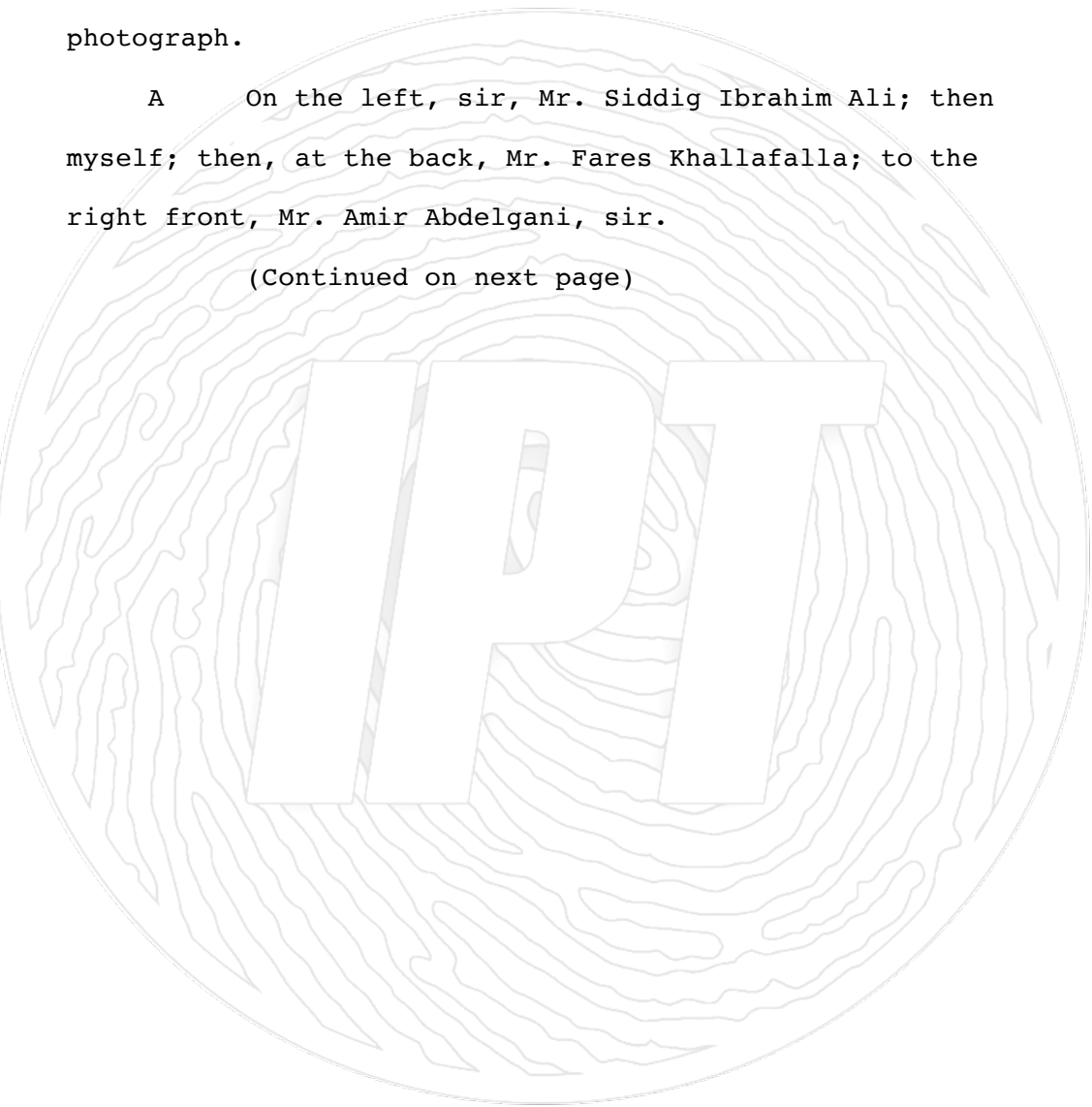
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MR. McCARTHY: Your Honor, I believe 338A, B and C are in the jurors' books.

Q Mr. Salem, in 338A, can you briefly describe, going left to right, the four people depicted in that photograph.

A On the left, sir, Mr. Siddig Ibrahim Ali; then myself; then, at the back, Mr. Fares Khallafalla; to the right front, Mr. Amir Abdelgani, sir.

(Continued on next page)



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1 THE COURT: We are going to have to stop for a
2 moment. We are going to take a short break, ladies and
3 gentlemen. Please leave your notes and other materials
4 behind. Please don't discuss the case. We will resume in a
5 couple of minutes.

6 (Jury excused)

7 (Witness excused)

8 THE COURT: May I see counsel briefly at the
9 side. It doesn't have to be everybody, a representative
10 sample.

11 (At the side bar)

12 THE COURT: Please pass this on to everybody
13 else. Juror number 18 has a stomach problem, and when she
14 gives the high sign we have to stop. That is all it is.

15 (Pause)

16 (Witness resumed)

17 (Jury present)

18 THE COURT: Mr. McCarthy, you were examining
19 about 338A.

20 MR. McCARTHY: Thank you, your Honor. Yes, your
21 Honor.

22 (Continued on next page)

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1 BY MR. McCARTHY:

2 Q Mr. Salem, directing your attention again to
3 338A, I think you have identified Mr. Siddig Ali, yourself,
4 Mr. Khallafalla, and Mr. Amir Abdelgani, running left to
5 right, correct?

6 A Correct, sir.

7 Q As you look at the picture?

8 A Yes, sir.

9 Q Can you tell us what Mr. Fares Khallafalla is
10 wearing?

11 A He is -- excuse me.

12 Q What I am asking you is, what color shirt he has
13 on.

14 A It is kind of reddish.

15 Q Looking at 338B.

16 A Yes, sir.

17 Q Running again left to right as you look at the
18 photograph, can you tell us who you see depicted?

19 A On the left is Mr. Fares Khallafalla; in the
20 center, Mr. Siddig Ibrahim Ali; on the right is Mr. Amir
21 Abdelgani.

22 Q Can you tell us what area of the garage in Queens
23 they are sitting at, or they appear at in this photograph?

24 A They are sitting on the bench, if you stepped
25 into the safe house it's on the extreme right, at the end of

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1 the garage, and that is where I start work on.

2 Q Where you started to work on what?

3 A On the timer and the electronic things, later on.

4 Q Finally, 338C, looking left to right in the
5 photograph, can you tell us who is depicted?

6 A Mr. Fares Khallafalla on the extreme left,
7 Mr. Siddig in the middle, Mr. Amir Abdelgani on the right.

8 Q Thank you.

9 A You are welcome.

10 Q Mr. Salem, finally let me again show you
11 Government's Exhibit 393 for identification.

12 A Yes, sir.

13 Q Did you review that videotape over the lunch
14 break?

15 A Yes, sir.

16 Q Can you tell us what is depicted in the
17 videotape?

18 A It's couple of scenes from the safe house on the
19 videotape.

20 Q Do you recall what date, having looked at the
21 videotape?

22 A Start 23rd, 24th.

23 Q About how long is the videotape?

24 A I would say like 10 minutes, 8, 10 minutes.

25 Q Does the videotape contain the entirety of what

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1 happened that evening in the safe house?

2 A No, sir.

3 Q What does it contain?

4 A Just couple of scenes out of it.

5 MR. McCARTHY: Your Honor, the government would
6 offer the video portion of Government's Exhibit 393, and
7 would hold back on the audio portion until a later point in
8 the proceeding.

9 THE COURT: Ms. London?

10 MS. LONDON: No objection, your Honor, except as
11 previously stated.

12 THE COURT: That objection is overruled.

13 I am going to instruct the jury that, as you have
14 heard, these are simply some scenes that were from a longer
15 videotape. Also, all that you are going to see is the video
16 portion. There is an audio portion that you may hear later
17 on. All you are getting at this point is the picture.

18 393 is received.

19 (Government's Exhibit 393 received in evidence)

20 (Videotape played)

21 MR. McCARTHY: If you could just hold the frame
22 there.

23 Q Mr. Salem, can you tell us, please, what part of
24 the safe house we see depicted and what individual we see
25 depicted at this point in the beginning of the film.

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1 A That's the extreme right end when you get from
2 the door, enter from the safe house, you turn right, walk to
3 the end, that's the bench in front of us. On the right
4 there is a dark area. This is a small, tiny room, has no
5 light inside it. I am sitting on the chair and Mr. Victor
6 Alvarez standing in front of me, sir.

7 MR. McCARTHY: Play the tape, please.

8 (Videotape continued)

9 MR. McCARTHY: Detective, could you stop the tape
10 for a moment.

11 Q Who do we see depicted now, Mr. Salem?

12 A I am on the left, Mr. Victor Alvarez in the
13 middle of the picture, Mr. Siddig Ali on the right of the
14 picture, sir.

15 Q What if anything is Mr. Siddig Ali holding?

16 A He is holding the machine gun in his left hand,
17 and he took the magazine out of it with the right hand, sir.

18 MR. McCARTHY: Go ahead, Detective Corrigan.

19 Q While the tape is rolling, Mr. Salem, do you
20 recall what Mr. Siddig Ali was displaying to Mr. Alvarez
21 about the gun?

22 A Yes, sir.

23 Q What was that?

24 A He was blaming him, or showing him the machine
25 gun, that it's empty, there is no bullets in it.

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1 Q That's the gun you told us about earlier in your
2 testimony today?

3 A Yes, sir.

4 Q Mr. Salem, looking at the work bench as it
5 appears on the screen now -- Detective, could you stop the
6 tape for a moment. Let me first direct your attention to
7 the work bench. Do you see a video monitor on the work
8 bench?

9 A Yes, sir.

10 Q Is that the one that you mentioned earlier in
11 your testimony today, the video monitor?

12 A That's a video monitor, sir, but what I mentioned
13 earlier, it was a VCR.

14 Q Who do we see depicted in the film at this point,
15 which I think says 12:40:56?

16 A Appears to be myself on the extreme left of the
17 picture; Mr. Tarig Elhassan standing in the middle;
18 Mr. Siddig to the right, sitting down; Mr. Amir Abdelgani on
19 the extreme right bottom of the picture, sir.

20 Q That is as you look at the screen?

21 A That is correct, sir.

22 MR. CLARK: Thank you. Could you continue the
23 tape.

24 (Videotape continued)

25 MR. McCARTHY: Would you stop the tape for just a

5711

1 moment.

2 Q Mr. Salem, could you tell us, please, what part
3 of the safe house we are seeing at this point?

4 A That, after you get into the safe house from the
5 door, you walk all the way to the extreme right and to
6 the -- after you go to the end, you walk to the right again,
7 and that's the corner of the end of the safe house.

8 MR. McCARTHY: Would you run the tape for a
9 little bit.

10 (Videotape continued)

11 MR. McCARTHY: Could you stop the tape, please,
12 for a moment.

13 Q Mr. Salem, can you please describe who and what
14 we are seeing on the screen at this point.

15 A Mr. Mohammed Alvarez sitting down and have some
16 buckets in front of him, full of diesel oil and fertilizer,
17 and he is mixing it. Right next to him Mr. Tarig Elhassan,
18 wearing a rubber glove on his hand and mixing into the big
19 barrel. Right to his right, at the back, towards me,
20 Mr. Fadil Abdelgani, and in front of him Mr. Amir Abdelgani.
21 They are both helping mixing. To the extreme right of the
22 picture is Mr. Siddig Ibrahim Siddig Ali, sir.

23 (Continued on next page)

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1 MR. McCARTHY: For the record, the tape shows
2 1:12:17 at that point.

3 Q Can you tell us, please, what the black barrels
4 are.

5 A These are the barrels full of diesel oil and some
6 of them get mixed with fertilizer.

7 Q Do you see the cardboard that you referred to
8 earlier?

9 A The cardboard on the left on the floor, sir.

10 Q Is that the cardboard exhibit that we saw earlier
11 in your testimony this afternoon?

12 A Yes.

13 MR. McCARTHY: Could you run the tape, please.

14 (Videotape played)

15 MR. McCARTHY: Stop the tape for a moment.

16 Q Mr. Salem, did you see a bag just brought to the
17 foreground?

18 A Yes, sir.

19 Q Who brought the bag, and what is it?

20 A That is Mr. Siddig Ibrahim Siddig Ali carried a
21 bag of fertilizer and he put it right next to the barrel,
22 sir.

23 MR. McCARTHY: Would you continue rolling the
24 tape.

25 (Videotape played)

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1 MR. McCARTHY: Would you pause it, please, just
2 for a moment.

3 Q Do you see someone in the background with a long
4 rod?

5 A Yes.

6 Q Would you explain who and what is that?

7 A That is Mr. Amir Abdelgani, sir, and he having a
8 metal long rod, putting it inside the barrel to mix the
9 fertilizer with the diesel oil, sir.

10 Q Who is in the back area as we look at the film
11 right now while he's doing that?

12 A Which back area, sir?

13 Q At the area where he's got the long rod.

14 A On his left hand is Mr. Siddig Ali, and next to
15 him to the left, his back to us, is Mr. Fadil Abdelgani.

16 MR. McCARTHY: OK. Would you run the tape,
17 please.

18 (Videotape played)

19 MR. McCARTHY: Your Honor, I have no further
20 questions at this time.

21 (Continued on next page)

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1 (At the side bar)

2 THE COURT: You have a logistical problem?

3 MS. STEWART: Yes, it is solved, but it is
4 unsolved. I have eight boxes of materials out in the
5 hallway ready to bring in, and I need to set up myself also
6 nearer to the podium. So if we could take a break earlier
7 rather than later.

8 THE COURT: OK. Do you want to take a break now?

9 MS. STEWART: Is that OK?

10 THE COURT: That is fine.

11 You need that to start? Again, you know what you
12 are going to do. I don't.

13 MS. STEWART: I can start, I guess. Yes, I guess
14 I can start, but I might have to take a break a little
15 earlier. I don't have like more than 20 minutes to start
16 with. Then I am going to need papers I think.

17 THE COURT: OK. Why don't we do that and we will
18 take the afternoon break, is that OK?

19 MS. STEWART: OK. The second thing, Judge -- and
20 I hate to mention this -- we may have to stop somewhat
21 earlier today only because these materials didn't get here
22 until after lunchtime.

23 THE COURT: That is fine. I understand.

24 MS. STEWART: I was going to do some
25 coordination. There are a lot of logistics to this.

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THE COURT: I understand. That is fine.

2

Just give me a nod or some other appropriate

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signal.

4

MS. STEWART: All right.

5

THE COURT: OK.

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MS. STEWART: I also have a legal matter I need

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to bring up. But I can save that also.

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THE COURT: For the end?

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MS. STEWART: It has to do with polygraph.

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THE COURT: OK. Good.

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(Continued on next page)

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1 (In open court)

2 THE COURT: All right. Cross, Ms. Stewart?

3 CROSS-EXAMINATION

4 BY MS. STEWART:

5 Q Good afternoon, Mr. Salem.

6 A Good afternoon, ma'am.

7 Q I guess it was about two and a half weeks ago
8 when you started your testimony.

9 You recounted to us all in this courtroom how you
10 had lied about your past, is that right?

11 A Yes, ma'am.

12 Q You told us that you lied about your past in the
13 Egyptian Army, is that right?

14 A Yes, ma'am.

15 Q You told us that you had told people that you
16 were a member of Sadat's Republican Guard and had actually
17 risked your life trying to save his life, is that right?

18 A Yes, ma'am.

19 Q You also told us how you had told people that you
20 were wounded defending Egypt in the 1973 war against Israel,
21 is that right?

22 A Yes, ma'am.

23 Q You told these lies not just once in a while, but
24 you basically told them to almost everyone you met, is that
25 correct?

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1 A Yes, ma'am.

2 Q You told your wife-to-be, Barbara Rogers, these
3 things, is that right?

4 A Yes, ma'am.

5 Q You told doctors in the hospital when you were
6 sick about the bullets in your knee and in your face, is
7 that right?

8 A Yes, ma'am.

9 Q You told your wife-to-be the second time, the
10 person you have the contract with, you told her these
11 stories as well, is that correct?

12 A Yes, ma'am.

13 Q You also told us that, when it suited you, you
14 lied to the FBI, is that correct?

15 A Yes, ma'am.

16 Q You lied about being a member of Egyptian
17 intelligence, is that correct?

18 A Yes, ma'am.

19 Q You lied about being personally acquainted with
20 Qaddafi of Libya, is that right?

21 A Yes, ma'am.

22 Q Hussein of --

23 A Yes --

24 Q Iraq, is that correct?

25 A Correct, ma'am.

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1 Q You also told us that you did all of this to make
2 yourself a "big shot," is that right?

3 A Yes.

4 Q You also told us that you lied in court, is that
5 correct?

6 A Yes, ma'am.

7 Q You were under oath in that court, right?

8 A Right.

9 Q Just like the oath you took here, is that
10 correct?

11 A Yes, ma'am.

12 Q You have never been prosecuted for perjury, have
13 you?

14 A No, ma'am.

15 Q One thing you didn't tell us about was that you
16 lied to get your American citizenship, isn't that correct?

17 A I don't recall, ma'am.

18 Q Well, did you lie to become an American citizen?

19 A I am not so sure.

20 Q Well, did you tell the people who interviewed you
21 for being an American citizen that you were living with
22 Barbara Rogers, that you were married to her at a time when
23 you were actually separated from her?

24 A We wasn't completely separated, ma'am. She used
25 to come to stay with me two, three nights and go back to her

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1 apartment at 81st. So our relationship was on and off,
2 ma'am.

3 Q But you weren't actually living together at that
4 point, isn't that true?

5 A True, ma'am.

6 Q You had a legal separation, isn't that true?

7 A True ma'am.

8 Q That legal separation was from the courts, isn't
9 that right?

10 A No, ma'am.

11 Q It was an agreement between the two of you?

12 A Yes, ma'am.

13 Q You did not tell Naturalization that, did you?

14 A No, I did not, ma'am.

15 Q So in becoming an American citizen you lied, is
16 that correct?

17 A Yes, ma'am.

18 Q In order to get what you wanted, is that right?

19 A Yes, ma'am.

20 Q When you swore loyalty to the United States, when
21 you raised your right hand at that ceremony right here in
22 this courthouse, was that true or was that a lie as well?

23 A It was true, ma'am.

24 Q That was true?

25 A Yes.

5720

1 Q Notwithstanding your relationship to Egyptian
2 intelligence, is that right?

3 A I'm sorry.

4 Could you repeat the question, please?

5 Q Notwithstanding your relationship to Egypt, is
6 that right?

7 A I'm not sure that I understand your question,
8 ma'am. Please, I'm sorry.

9 Q I will rephrase the question, Mr. Salem, make it
10 easier.

11 Just because you had loyalty to Egypt didn't
12 interfere with your loyalty as an American, is that right?

13 A That's right, ma'am.

14 Q Are you sure?

15 A Positive.

16 Q Even though Egypt is the place where you were
17 born and where you want to be buried, is that right?

18 A Right.

19 Q Those are your words, are they not?

20 A It's my words, yes, ma'am.

21 Q You are telling this jury today that when you
22 took that oath of American citizenship you were not lying on
23 that occasion?

24 A No, I was not.

25 Q When you were involved in this case, it's fair to

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1 say that when you reported details to the FBI those
2 sometimes were not true, is that correct?

3 A Correct, ma'am.

4 Q That you many, many times exaggerated what was
5 going on, is that right?

6 A What was going on where, ma'am?

7 Q Within this investigation. And when I use the
8 term "this investigation," let me set the parameters, if I
9 may. Is it fair to say this investigation began sometime in
10 the beginning of November 1991 and extended, with breaks,
11 until June 24, 1993? Is that a fair assessment of this
12 investigation that you have been involved in?

13 A Yes, ma'am.

14 Q It's fair to say that at certain times when you
15 reported things to the FBI you were not telling the truth,
16 is that correct?

17 A Correct, ma'am.

18 Q You would exaggerate?

19 A Correct, ma'am.

20 Q I bring to your attention on one occasion when
21 you reported that my client, Dr. Abdel Rahman, was moving
22 his troops from Pakistan to Afghanistan. Do you remember
23 that occasion?

24 A I do remember that, ma'am.

25 Q That was not true, was it?

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1 A It was true, ma'am.

2 Q It was true?

3 A Yes, ma'am.

4 Q You overheard this conversation, is that correct?

5 A Correct, ma'am.

6 Q It was a telephone conversation, is that correct?

7 A Correct, ma'am.

8 Q Did you know at that time that there was a
9 wiretap on Dr. Abdel Rahman's telephone?

10 A No, I don't, ma'am.

11 Q You did not know that?

12 A I did not know, ma'am.

13 Q Are you sure you didn't know that?

14 A I'm positive, ma'am.

15 Q When you testified here a couple of days ago
16 about debugging the sheik's phone --

17 A Yes.

18 Q -- didn't you say that you had to tell the FBI
19 that they should know that you did this?

20 A Yes, ma'am.

21 Q Didn't that indicate that you were aware that the
22 FBI had a bug on his phone?

23 A No, ma'am.

24 Q You did not know that there were wiretaps on his
25 phone --

5723

1 A No, I don't.

2 Q Do you know it as you sit there today? Did you
3 come to learn that?

4 A Yes, ma'am.

5 Q When did you come to learn that?

6 A I don't recall. Later on I overheard that they
7 put a tap on Sheik Omar Abdel Rahman's telephone.

8 MS. STEWART: Judge, if we could break at this
9 point.

10 THE COURT: Fine.

11 MS. STEWART: I have to get some papers.

12 THE COURT: Ladies and gentlemen, we are going to
13 take an afternoon break. It may be a little bit longer than
14 usual, but we will resume sometime later on. Please leave
15 your notes and other materials behind. Please don't discuss
16 the case, and we will resume in a few minutes.

17 (The jury was excused)

18 (Continued on next page)

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(Jury not present)

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THE COURT: You may step down.

3

(Witness excused)

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THE COURT: Ms. Stewart, if you could just let me
deputy know when you are ready.

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MS. STEWART: Thank you, Judge.

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1 (Witness resumed)

2 (Jury present)

3 THE COURT: Go ahead, Miss Stewart.

4 MS. STEWART: Yes, Judge.

5 BY MS. STEWART:

6 Q Mr. Salem, I think when we left off we were
7 talking about a phone call to Pakistan, is that correct?

8 A Correct, ma'am.

9 Q This took place, did it not, somewhere in early
10 April 1993? Do you remember that?

11 A I don't recall the date, ma'am.

12 Q Do you remember you were in Dr. Abdel Rahman's
13 apartment and this conversation took place on a speaker
14 phone; isn't it correct?

15 A Correct, ma'am.

16 Q So you could hear both sides of the conversation,
17 is that right?

18 A Right, ma'am.

19 Q And you reported back to John Anticev, is that
20 right?

21 A Right.

22 Q Could you tell us who John Anticev is, or was at
23 that time to you?

24 A He is an FBI agent.

25 Q Was he assigned to you? Was that the agent you

5726

1 reported to?

2 A Yes, ma'am.

3 Q And you reported this to John Anticev, is that
4 right?

5 A I am not so sure who that I reported to, but I
6 think yes.

7 Q You told him that the sheik had talked to a
8 person named Abdullah, is that right?

9 A Yes, ma'am.

10 Q You know, do you not, that the sheik has a son
11 that is in Pakistan, do you?

12 A No, ma'am.

13 Q You didn't know that?

14 A No, ma'am.

15 Q You reported to him that the sheik was moving his
16 troops from Pakistan to Afghanistan, is that right?

17 A Yes, ma'am.

18 Q And you told Nancy Floyd the same thing the next
19 day, is that right?

20 A I don't recall, ma'am.

21 Q Who exactly is Nancy Floyd?

22 A She is an FBI agent.

23 Q She is a special agent just like John Anticev?

24 A Yes, ma'am.

25 Q Just like Louis Napoli?

5727

1 A No, ma'am.

2 Q He is a detective in the New York City police
3 department, is that right?

4 A Yes, ma'am.

5 Q You knew Nancy Floyd before you knew either John
6 Anticev or Louis Napoli, is that correct?

7 A Yes, ma'am.

8 Q And you maintained that friendship with her even
9 though she was not the person you reported to, is that
10 correct?

11 A Yes, ma'am.

12 Q So very often you would report something to Louis
13 or to John, and you would also call Nancy, is that right?

14 A Yes, ma'am.

15 Q And this was one of those occasions, is that
16 correct?

17 A I don't recall if I called her on this occasion
18 or not, ma'am.

19 Q Let me show you a transcript -- this would be,
20 Judge, X, the first document next to tab X. I believe you
21 have a binder up there. I ask you just to take a look at
22 this, Mr. Salem, look at the cover and tell whether this is
23 a conversation between yourself and Ms. Floyd?

24 (Pause)

25 A Yes, ma'am, it's conversation with Agent Nancy

5728

1 Floyd and myself.

2 Q And I will turn to page 3 and ask if that
3 refreshes your recollection as to whether or not you
4 discussed the movement to Pakistan?

5 To repeat myself -- the interpreters are not
6 getting me -- I ask if this refreshes your recollection as
7 to whether or not that conversation was about the movement
8 of troops from Pakistan to Afghanistan?

9 A Yes, ma'am.

10 THE COURT: Would you turn the microphone around.

11 Q Your answer was question yes, Mr. Salem, now you
12 remember having that conversation with Miss Floyd?

13 A Yes, ma'am.

14 Q And you also reported this conversation that you
15 overheard to another intelligence service, is that correct?

16 A Correct, ma'am.

17 Q What intelligence service was that?

18 A The military intelligence service in Egypt,
19 ma'am.

20 Q You told them that after the troops left
21 Afghanistan they would be moving to Egypt, is that right?

22 A Yes, ma'am.

23 Q And you know as you sit there now that there was
24 a tape made of the entire conversation you overheard, is
25 that correct?

5729

1 A Which conversation, ma'am?

2 Q Between Dr. Abdel Rahman and Abdel Abdullah.

3 A No, I don't, ma'am.

4 Q You don't know that?

5 A No, I don't, ma'am.

6 Q You told us a little while back that you know now
7 that there had been a wiretap.

8 MR. McCARTHY: Objection, form.

9 THE COURT: Sustained as to form.

10 Q You remember testifying before the break a few
11 moments ago, is that right?

12 A Yes.

13 Q Did you not tell us at that time that you knew
14 now that there was a wiretap in place on Dr. Abdel Rahman's
15 telephone?

16 A But I don't know when this wiretap start, when
17 his wire phone, ma'am.

18 Q In other words, you didn't know at the time that
19 you overheard this telephone conversation, is that right?

20 A Yes, ma'am.

21 Q And you reported it to three different -- two FBI
22 agents and an Egyptian intelligence agent, is that right?

23 MR. McCARTHY: Objection to form.

24 MS. STEWART: Two questions in one. I will
25 adhere to Mr. --

5730

1 MR. McCARTHY: That wasn't my objection.

2 THE COURT: I don't think that is the objection,
3 but the objection is overruled in any event.

4 A Can you please --

5 THE COURT: The question was whether you reported
6 it to three separate agents from two intelligence services.

7 A Yes, I reported it to the FBI and the Egyptian
8 military intelligence, ma'am.

9 Q You also saw fit to not tell the truth or to lie
10 to old friends about things --

11 A Yes --

12 Q -- isn't that right, when you were involved in
13 this investigation? During the time of this investigation
14 you lied to old friends of yours from Egypt, is that right?

15 A I am sorry. I don't understand the question,
16 ma'am.

17 Q During the time of the investigation, did you
18 also tell lies to old friends from Egypt about yourself?

19 A Could you tell me, ma'am, who is these people? I
20 don't recall.

21 Q Yes. You have a cousin named Yousery, is that
22 correct, that lives somewhere in Fairfax, Virginia?

23 A Yes, ma'am.

24 Q And you talked to him about doing an arms deal
25 with Libya, is that correct?

5731

1 A No, ma'am, that is not correct.

2 Q You never spoke with him about an arms deal to
3 Libya?

4 A I spoke to him, but I am not the one who is
5 talking to him, he is the one who is talking to me.

6 Q Yes, but you were agreeing, were you not,
7 Mr. Salem?

8 A Yes, ma'am.

9 Q You were the one that was to go to Tripoli and
10 accompany the arms from Tripoli to Dar-es-Salaam for Uganda.

11 A That is correct, ma'am.

12 Q Was that true? Were you going to do that?

13 A I reported to the FBI and I waited for them and
14 they will instruct me to go do the shipment or not.

15 Q But you were not telling Youseery the truth, isn't
16 that a fact, Mr. Salem?

17 A Yes, ma'am, it's a fact.

18 Q You were playing a role, isn't that right?

19 A Right, ma'am.

20 Q And when you told people in this case, defendants
21 in this case that Sheik Abdel Rahman had given you a fatwa,
22 that was not true either, was it?

23 A It was true, ma'am.

24 Q It was not true with regard to the United
25 Nations, was it?

5732

1 A It was true, ma'am.

2 Q Did you listen to CM 10 yesterday that was played
3 before this court?

4 A Yes, ma'am.

5 Q Did you hear Sheik Abdel Rahman say no, it is bad
6 for Muslims?

7 A And I also heard him, ma'am, when he say it is
8 not prohibited.

9 Q Is that an order to do something?

10 A This is a fatwa, ma'am. I ask of him, is it
11 prohibited or permissible? The fatwa came back to me from
12 Sheik Omar Abdel Rahman, it is not prohibited. Period.

13 Q That is your understanding of it, is that
14 correct?

15 A Correct, ma'am.

16 Q And that was your understanding of it at the
17 time, is that correct?

18 A Yes, ma'am.

19 Q Do you remember the following day you were
20 speaking with a man named Adnan Constantine?

21 A Yes, ma'am.

22 Q Do you remember telling him about what the sheik
23 had told you the night before?

24 A No, I don't recall, ma'am.

25 MS. STEWART: This is KFD, CM 12, D as in David.

5733

1 Q Do you remember saying to Adnan Constantine on
2 tape, the problem is, the sheik has tied our hands --

3 MR. McCARTHY: Objection. I don't know where she
4 is --

5 MS. STEWART: I am sorry. Bottom of page 20, top
6 of page 21.

7 MR. McCARTHY: Thank you.

8 Q Do you remember saying: The problem is, the
9 sheik has tied our hands. We want to get ready for work and
10 he said no.

11 A I don't recall, ma'am. If you would be kind, let
12 me listen to this part of the tape, I will tell you what
13 went on.

14 MS. STEWART: Mr. McCarthy, will you stipulate
15 that I read correctly?

16 MR. McCARTHY: I will.

17 MS. STEWART: Thank you.

18 Q You also, I believe, indicated to Mr. McCarthy
19 that you had not told the truth about Muhammed Salameh, one
20 of the defendants in the World Trade Center case, is that
21 correct?

22 A Correct, ma'am.

23 Q You said you had mixed him up with someone else,
24 is that correct?

25 A Correct, ma'am.

5734

1 Q When you told the FBI that Muhammed Salameh had
2 gone to Egypt and been held there by military intelligence
3 for six months, that was not true, was it?

4 A That's not what I said, ma'am.

5 Q You did not tell the FBI that Muhammed Salameh
6 has gone to Egypt prior to the World Trade Center and was
7 held by Egyptian intelligence for six months?

8 A Yes, ma'am, I said that.

9 Q And that was not true?

10 A That's what that being said to me. That what I
11 was told, ma'am.

12 Q Who told you that?

13 A Mr. Mohammed El-Gabrownny, ma'am.

14 Q That is a person that you met as a result of your
15 work for the FBI on this case, is that right?

16 A Yes, ma'am.

17 Q Was there a tape made of that conversation?

18 A No, ma'am.

19 Q One of the things that you mentioned often to the
20 agents and to others in this case was torture as it occurred
21 in Egypt, is that right?

22 A Yes, ma'am.

23 Q Were you lying about that, Mr. Salem?

24 A Yes, ma'am.

25 Q You were lying? Torture does not occur in Egypt,

5735

1 is that right?

2 A I wouldn't say it's not occurring in Egypt, but
3 what I said to the agents -- I am sorry, not to the agents.
4 What I said about torture was not true.

5 Q Was it not true that it was going on at the time
6 that you were in the military?

7 A The military has nothing to do with the torture.
8 There is no torture in the military, ma'am.

9 Q Is there not a military prison called Liman
10 Torah?

11 A No, ma'am.

12 Q There is no such place as that?

13 A There is such a place but it is not a military
14 place.

15 Q Is it a prison?

16 A It is a prison but --

17 Q Is it run by the military?

18 A No, ma'am.

19 Q It is not run by the military?

20 A No, ma'am.

21 Q Is Egypt under military rule at this point?

22 A Yes, ma'am.

23 Q When you say you lied about torture in Egypt, are
24 you saying you lied as to your role in torture in Egypt or
25 that you lied about the fact that torture took place?

5736

1 A I lied when I showed some pictures of people
2 being tortured, that these pictures is true. These picture,
3 it's part of a movie, ma'am.

4 Q These pictures were in a book, is that correct?

5 A Yes, ma'am.

6 Q Like an album, is that right?

7 A Right, ma'am.

8 Q And this album was on your coffee table in your
9 living room, is that right?

10 A Yes, ma'am.

11 Q And you showed them to a New York State Times
12 female reporter, is that right?

13 A Yes, ma'am.

14 Q And this book also had pictures of your family in
15 it, did it not?

16 A No, ma'am, just personal pictures of some
17 friends.

18 Q Personal pictures of friends?

19 A Yes, ma'am.

20 Q Friends in the military?

21 A Yes, ma'am.

22 Q And it had pictures of guns and weapons in it
23 also, did it not?

24 A Yes, ma'am.

25 Q The particular picture you are referring to was

5737

1 of a woman naked to the waist, is that right?

2 A No, ma'am.

3 Q It is not right?

4 A It was not naked to the waist. Her clothes was
5 just being ripped, but it's not naked completely.

6 Q Was the breast exposed to a lit cigarette in the
7 picture?

8 A No, ma'am.

9 Q It was not. Can you tell us what was in the
10 picture then.

11 A It was the man who is making makeup, holding a
12 brush in his hand and making some marks on her chest like
13 she is being tortured, ma'am.

14 Q But you told people that it was torture actually
15 happening, didn't you?

16 A Yes, I did, ma'am.

17 Q And you told more than one person that, isn't
18 that true?

19 A True, ma'am.

20 Q You told Siddig Ali that on more than one
21 occasion, did you not?

22 A I don't recall that, ma'am.

23 Q Do you remember him being at your apartment and
24 going through the book with you?

25 A Yes, ma'am.

5738

1 Q And your telling him that that was a picture of a
2 woman being tortured?

3 A I couldn't tell him that, ma'am, for one simple
4 reason: that the woman is a super star in the Arab world,
5 and Mr. Siddig Ali is Arabic speaker, and he will know her
6 right away.

7 Q Mr. Salem, how did you come to have such a
8 picture on your coffee table?

9 A It was among album, ma'am.

10 Q Pardon me.

11 A It was among bunch of pictures in the album on my
12 coffee table, ma'am.

13 Q And you pointed it out to a female journalist, is
14 that right?

15 A Yes, ma'am.

16 Q It also showed persons in Egyptian army uniform
17 standing around this person, is that right?

18 A Which person, ma'am?

19 Q The woman.

20 A No, ma'am.

21 Q It did not show people in Egyptian army uniform?

22 A No, ma'am. It shows the director and the man who
23 is making the makeup, and I believe another assistant of the
24 director of the movie.

25 Q Do you still have this picture?

5739

1 A Yes, ma'am.

2 Q Would you bring it tomorrow, if you can.

3 A I will do my best to bring it tomorrow, ma'am.

4 Q In the course of your military career, did you
5 ever have anything to do with prisons in Egypt?

6 A No, ma'am.

7 Q Did you ever have occasion to observe what
8 happened in prisons in Egypt?

9 A No, ma'am.

10 Q So that when you spoke with the FBI and
11 graphically told them what was happening in Egypt, those
12 were all lies, is that correct?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Did you have conversations with the FBI in which
16 you talked to them about the torture that occurred in
17 Egyptian prisons?

18 A I don't recall that, ma'am.

19 (Continued on next page)

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5740

1 Q Do you remember at the time that Mahmud
2 Abouhalima was arrested in Egypt?

3 A Yes, ma'am.

4 Q Do you remember talking to John Anticev about
5 that?

6 A Yes, ma'am.

7 Q Do you remember telling the special agent that,
8 "You better get him out of there because he is hanging
9 upside down in a freezing cold room right now"?

10 A I don't recall that, ma'am.

11 Q Do you remember saying to him that, "They are
12 questioning him day and night, putting him under certain
13 pressures to get what they want out of him"?

14 Do you remember telling Agent Anticev that?

15 A I don't recall, ma'am.

16 Q Do you remember telling Agent Anticev that the
17 Egyptian intelligence could kill him by taking him out in
18 the desert and letting him get bitten by snakes?

19 Do you remember telling Agent Anticev that?

20 A I don't recall, ma'am.

21 Q Do you remember at the time that Mr. Abouhalima
22 was produced in this country asking Agent Anticev if the
23 cigarette burns around his groin showed?

24 A Yes, I remember, ma'am.

25 Q You remember asking him that?

5741

1 A Yes, ma'am.

2 Q You remember that you were told that they took
3 him to a doctor and the doctor verified it, do you remember
4 that?

5 A Yes, ma'am.

6 Q Do you remember telling Special Agent Anticev
7 that he needed to learn how things are done the Egyptian
8 intelligence way?

9 A I don't recall that, ma'am.

10 Q And that you had a videotape, a videotape shot
11 inside a political Egyptian jail?

12 A I have -- I may have made a statement that I got
13 a tape for torturing, yes. But I don't recall making
14 statement that it is being shot inside a political military
15 jail.

16 Q Let me try to show you -- sorry for the lack of
17 coordination, Judge -- I believe it is under T. This is
18 source 11-15, page 3. Mr. Salem, if you would pick up the
19 book next to you, the one that has a T --

20 A Letter?

21 Q T.

22 A T.

23 Q If you would count in five pages from the binder.

24 A No. 3?

25 Q OK. The middle of the page where it says "Salem:

5742

1 by the way" --

2 A Yes, ma'am.

3 Q Does that refresh your memory?

4 A Once again, can I read it, please?

5 (Pause)

6 A Yes, ma'am.

7 Q Does that refresh your memory that you -- let me
8 get back to the mike.

9 Sorry, Judge.

10 Does that refresh your memory that you said to
11 Special Agent Anticev that you have a video showing torture
12 inside a political Egyptian jail?

13 A Yes, ma'am. I told him I got a tape -- a
14 videotape somehow for torturing being done inside the
15 political jail.

16 Q You wanted to share that with him, is that right?

17 A I want to give it to him, yes.

18 Q You wanted to go over it with him; it was
19 important to his work you thought, is that right?

20 A Right, ma'am.

21 Q Do you remember on another occasion speaking to
22 Agent Floyd and telling her that Abouhalima should be glad
23 he was brought here because otherwise he would be kept naked
24 in a freezing cold room hanging like a piece of meat.

25 A Yes, ma'am.

5743

1 Q You urged Agent Anticev to get him back quickly
2 before anything should happen to him, is that correct?

3 I am talking about Abouhalima now.

4 A Yes.

5 Q You knew that from your experience in Egypt, is
6 that correct?

7 A Yes, ma'am, not personal experiences.

8 Q Not personal experiences?

9 A Not personal experiences.

10 Q Just from being a citizen of that country up
11 until the time you came here?

12 A Yes, ma'am.

13 Q You were a soldier in 1982 at the time of Sadat's
14 death, is that right?

15 A Yes, ma'am.

16 Q Did you participate at all in the torture of my
17 client, Dr. Abdel Rahman, in the Egyptian military prison?

18 A Me?

19 Q Yes.

20 A No, ma'am.

21 Q Were you present there?

22 A No, ma'am.

23 Q You said that you saw him in jail, is that right,
24 in Egypt in 1982? You told a journalist that.

25 Was that a lie, too?

5744

1 A Yes, ma'am.

2 Q You never saw him in jail?

3 A No, ma'am.

4 Q But you know of your own personal knowledge that
5 torture does exist in the Egyptian jails, is that correct?

6 A Yes, ma'am.

7 Q You mentioned that also to Adnan Constantine
8 again, is that right?

9 A I don't recall that, ma'am.

10 Q Well, do you remember the conversation we talked
11 about a moment ago that was held on May -- well, strike
12 that.

13 Do you remember the conversation that we talked
14 about a few moments ago in which you told Adnan that the
15 sheik has said "tied our hands"? Do you remember having
16 that conversation in his home?

17 A Yes. I remember I had a conversation with
18 Mr. Adnan Constantine in his home, but I don't recall that
19 specific words.

20 MS. STEWART: This is at Tab D, and it is page 4,
21 which is the second page in back of that tab.

22 Q Do you remember saying to Adnan Constantine,
23 "Once I went to visit a general, my colleague who was in the
24 military prison. I found a gentleman standing nude. He was
25 a professor in the Egyptian university" --

5745

1 THE COURT: Ms. Stewart, the interpreter can't
2 hear you.

3 MS. STEWART: I'm sorry.

4 Q Do you remember saying to Adnan Constantine:
5 "Once I went to visit a general, my colleague who was in the
6 military prison. I found a gentleman standing nude. He was
7 a professor in the Egyptian university. He spoke against
8 the government. They tortured him. I was there when he was
9 tortured. My heart was broken. He was raped by a German
10 shepherd dog. When I saw that scene I decided to leave the
11 country."

12 Do you remember telling Constantine this?

13 A Yes, ma'am, I remember.

14 Q Was that true? Were you in an Egyptian military
15 prison and saw this?

16 A No, ma'am, it was not true.

17 Q That was not the reason you decided to leave
18 Egypt and come to America?

19 A No, ma'am.

20 Q Did you ever personally interrogate people while
21 you were in Egypt?

22 A No, ma'am.

23 Q Did you personally torture anyone?

24 A No, ma'am.

25 Q Do you remember having a conversation with

5746

1 Special Agent Anticev and talking to him about
2 interrogation? This is source tape 20-10. Do you remember
3 having -- I am getting ahead of myself here -- in which you
4 talked to him about interrogating, interviewing people?

5 A I don't recall, ma'am.

6 Q Do you remember ever telling him that "none of my
7 interrogation failed"?

8 A I could have said that.

9 Q Do you remember saying, "I was putting humongous
10 pressure, and thank God I always was the winner" -- or
11 "winner." "I was always winner"?

12 A I may say that, yes.

13 Q You were urging them to do the same thing, is
14 that right, at that time?

15 A I beg your pardon.

16 Q You were urging him to do the same thing?

17 A Absolutely not.

18 Q Were you speaking to Agent Anticev about
19 interviewing someone that had information you thought they
20 needed for their investigation, a fellow named Wahid in New
21 Jersey?

22 A Yes.

23 Q Do you remember asking him, you said, "Doesn't
24 stop you from interviewing him, confronting him with this
25 point, and, you know, you and Louie, Louie is very good at

5747

1 jumping the people very hard"? You were urging him to put
2 humongous pressure on this person, were you not?

3 A Yes, ma'am.

4 Q There came a time, did there not, Mr. Salem, in
5 the course of your relationship with Barbara Rogers, your
6 ex-wife, that you sent her a fax showing someone being
7 tortured in Egypt, is that right?

8 A Yes, ma'am.

9 Q You sent that as a threat to her, did you not?

10 A No, ma'am.

11 Q You didn't send it to test your fax, as you told
12 her over the phone, did you?

13 A That's what it is, ma'am.

14 Q Do you remember what you sent?

15 A Yes, I remember what I sent.

16 Q It was a picture, was it not, in an Arabic
17 newspaper of a person being tortured?

18 A That's correct, ma'am.

19 Q You chose to test your fax at the very moment
20 that you are having a very difficult marital problem with
21 Barbara Rogers, is that right?

22 A No, ma'am.

23 In that time we were in a friendly relationship,
24 and I just bought a fax machine and she was in her office
25 and she send me faxes, I send her faxes back because I was

5748

1 trying to set up the fax to work with the answering machine.

2 Q You chose this picture in this Arabic newspaper
3 to send to her?

4 A It was given to me by one -- by Sheik Abdel
5 Khalik.

6 MS. STEWART: Judge, would you direct --

7 THE COURT: Yes. The question was simply did you
8 choose that picture?

9 THE WITNESS: Yes, ma'am, I did.

10 MS. STEWART: Judge, I would just ask that that
11 be marked.

12 THE COURT: Well, you do your own marking of
13 exhibits. What do you want to call it?

14 MS. STEWART: I don't know where we were up to on
15 ours. It's been a long time since I have marked anything.

16 THE DEPUTY CLERK: I think it is C.

17 THE COURT: Call it C.

18 MS. STEWART: C.

19 THE COURT: Abdel Rahman C.

20 Q I would just like to show you, Mr. Salem --

21 A Yes.

22 Q I would like to show you, Mr. Salem, what's been
23 marked Dr. Abdel Rahman C and just ask you if you would
24 identify that as the fax that you sent.

25 A Yes, ma'am.

5749

1 Q Does it not have your fax number at the top?

2 A That's correct, ma'am.

3 MS. STEWART: Judge, if this is a convenient
4 time --

5 THE COURT: All right. Ladies and gentlemen, we
6 are going to break for the day. Please leave your notes and
7 other materials behind. Please don't discuss the case, and
8 we will resume tomorrow at 9:30.

9 Before you leave, one piece of news for advance
10 planning: As you know, we have over the last several weeks
11 lost a number of days, and, just to make sure that we don't
12 go beyond where I hope we will go, I want to make up some of
13 that time.

14 So in April we are going to start sitting
15 alternate Fridays in the morning only, beginning April 21.
16 So it will be April 21, May 5, May 19. Those are the Friday
17 mornings on which we will sit and, if we have to continue
18 after that, we will. If not, we will simply pare it back to
19 where we are now.

20 But I wanted you to know those dates so you could
21 plan and make your own plans accordingly. Thank you very
22 much. Please don't see, hear, or read anything about the
23 case. We will see you tomorrow morning. Good night.

24 (Continued on next page)

25

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: Did you have a matter you wanted to
5 raise?

6 MS. STEWART: Yes, Judge. Your previous ruling
7 on polygraph testimony was that we may ask about the fact of
8 polygraph, but we may not ask the questions or the results.

9 My sense is, Judge, having read the transcript
10 where the government went into polygraph, and this is at
11 page 4943, that the government has opened the door at this
12 point by creating a misimpression for the jury.

13 THE COURT: Well, as luck has it, I don't have
14 that one. Do you have it?

15 MS. STEWART: I think I do.

16 Am I correct in my assessment, Judge, that we
17 were precluded from going into the questions asked as well
18 as the results?

19 THE COURT: I don't recall that precisely.

20 I was taking your word on it.

21 MS. STEWART: I was corrected by co-counsel who
22 raised the point.

23 MR. LAVINE: I think Mr. McCarthy and I had
24 agreed that the results of the polygraph would not be gone
25 into, but the issue itself would be gone into. I don't

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1 believe we ever fine-tuned it to the point where the court
2 precluded us from asking the questions.

3 MR. McCARTHY: Your Honor, our position is the
4 questions are 3500 material, because they include statements
5 that are relevant to his testimony, but I don't think it
6 should come in that those particular questions --

7 THE COURT: Were asked on the polygraph?

8 MR. McCARTHY: Correct.

9 MR. LAVINE: I don't mean to push the point, but
10 I don't have a copy of the lengthy letter that I had
11 submitted to you outlining our position. But I believe
12 there is some authority, and the case that comes to mind is
13 named Rathgab, R-A-T-H-G-A-B. It is not a Second Circuit
14 case, which does allow the development of the questions that
15 are posed by the polygraph examiner if indeed they are
16 relevant. It is in the letter. I don't remember exactly --

17 THE COURT: I have your letter inside, not in
18 front of me. Let me read the transcript. It is 4943?

19 MS. STEWART: Yes. The argument that I would
20 make for the results coming in as well, at least initially,
21 is that I think the government created disinformation for
22 the jury when they asked during the course of this
23 investigation: "Had you ever been polygraphed before?" And
24 he answered: "Yes."

25 And the question then was: "How long before this

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1 conversation that you had with Mr. Dunbar?"

2 And he answered: "It was at the beginning of the
3 investigation, long time ago."

4 I think that implied that he passed that part of
5 the polygraph. The truth is that that, like all of the
6 polygraphs up until the very last one, were inconclusive,
7 and the last one was deceptive. So I think we should be at
8 least allowed to bring out --

9 THE COURT: I will read the transcript. I don't
10 see the implication, but let me read it again. I will also
11 reread Mr. Lavine's letter.

12 MS. STEWART: The implication in my mind, Judge,
13 is that if he took it a long time ago and continued with the
14 investigation, he must have done OK or they wouldn't have
15 let him do that when in fact that's exactly what they did.

16 MS. AMSTERDAM: In addition, your Honor,
17 Mr. Lavine's letter, I believe -- although it's been a
18 while -- does cite your Honor to Mr. Khuzami's opening
19 statement, and part of Mr. Lavine's argument is predicated
20 on the fact that Mr. Khuzami opened the door for this in his
21 opening statement.

22 I would just ask your Honor, if you were going to
23 look at the minutes of the direct testimony, that you also
24 refer to the pages cited by Mr. Lavine of Mr. Khuzami's
25 opening statement.

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1 THE COURT: I will read both.

2 MS. AMSTERDAM: Thank you, your Honor.

3 THE COURT: OK.

4 MR. MCCARTHY: Your Honor, I just want to point
5 out that with respect to what Ms. Amsterdam just pointed
6 out, that fact, the fact of what was said in the
7 government's opening, combined with Mr. Lavine's argument
8 that day, was the basis for the ruling that the fact of the
9 polygraph could come in.

10 When I elicited the testimony, it was with the
11 ruling that the court had made in mind that the fact of the
12 polygraph could come in, or the fact that it had occurred,
13 and that there were three of them, and that they had
14 occurred at certain particular times.

15 Given that, I think the questioning was
16 consistent with the way the court ruled. I don't see how it
17 is that doing it the way your Honor basically ruled should
18 open the door to more, since the whole assumption of getting
19 the ruling in the first place was so that we would know how
20 to conduct ourselves on the direct examination.

21 MS. AMSTERDAM: My point is that the record Ms.
22 Stewart makes in connection with the questions asked by Mr.
23 McCarthy doesn't stand for that, that it should be looked in
24 the totality of the circumstances -- the opening plus the
25 questioning -- and it's our argument that that those two

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1 things created a misunderstanding in the jury's mind.

2 MR. McCARTHY: Your Honor, they knew when the
3 polygraphs were given at the time that we argued this the
4 first time around. They also knew that the polygrapher who
5 had given the polygraph thought he passed and they found it
6 to be inconclusive down in Washington. I don't think it's
7 right to lay low in the tall grass while we hash this out,
8 have me elicit the information consistent with the court's
9 ruling, and now argue that a misimpression was created, when
10 not a peep was heard from anyone at the time.

11 THE COURT: I am willing to think it wasn't lying
12 low in the tall grass but rather just serendipity for them,
13 but I will take a look at it.

14 MS. STEWART: Would you also read the 3500
15 material, 3534 --

16 THE COURT: Is that the examination?

17 MR. McCARTHY: Your Honor, I think that I
18 supplied the court, as I said I would on a prior occasion,
19 with the polygraph reports themselves, but they are a 3500
20 exhibit. If the court needs it, we'll get it.

21 MR. STAVIS: There is an additional citation,
22 your Honor, which I would give to the court, and that is
23 3534D, pages 8-11. It is an FBI teletype of April of 1993
24 which states that Mr. Salem was "closed because polygraphs
25 show deception regarding his reporting of violent acts

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1 planned and encouraged by Rahman and Nosair," which relates
2 back to the opening statement and the arguments that my
3 co-counsel had made where the opening statement was that
4 Mr. Salem and the FBI parted, had an amicable parting of
5 ways because Mr. Salem did not wish to testify. This 3500
6 material I think your Honor should review in reassessing the
7 issue.

8 MR. McCARTHY: Does your Honor want me to respond
9 to that?

10 THE COURT: Yes.

11 MR. RICCO: Andy, there was one thing I wanted to
12 add.

13 MR. McCARTHY: Sure.

14 MR. RICCO: It becomes relevant for an additional
15 reason: It appears as though one of the reasons why
16 Mr. Salem left the FBI is because the FBI wanted to verify
17 the various information that he had given them about Nosair
18 and about Mr. El-Gabrownny, amongst other things. So he was
19 given the choice, he was given a choice to either wear a
20 wire -- but if you wear a wire you might have to testify --
21 or be polygraphed.

22 He chose, for whatever reason, to be polygraphed.
23 Our argument is that as a result of that polygraph there was
24 a separation of, parting of the ways. It wasn't just simply
25 that he flunked a polygraph examination, nor was it simply a

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1 matter of there being a parting of the ways, because, as the
2 government said, he didn't want to testify. It is a little
3 bit more complicated than that.

4 MS. AMSTERDAM: It is that aspect, I think, your
5 Honor, that is of most concern to the defense because
6 obviously the man has said 500 times "I have lied," so the
7 fact that he failed a polygraph is not really of enormous
8 importance to the defense because he's already admitted on
9 many, many occasions he lied.

10 The significance is that that is the reason that
11 he and the FBI terminated their relationship and that in
12 order to get back into the FBI's good graces he has to do
13 more than simply provide information because they are
14 skeptical of working with him at this point. That is what
15 we want to develop, not the fact that he lied to a
16 polygrapher. He's lied to hundreds of people. It is
17 irrelevant if that is one more person.

18 MR. MCCARTHY: Theories are fine until they run
19 into fact. What in fact happened here is that the polygraph
20 he took at the time that the relationship with the FBI ended
21 was the inconclusive one. The one that they say that he
22 failed and that the reports indicate that he failed didn't
23 occur until September 28, which was more than two months
24 after he was no longer working for the FBI.

25 I also tried to offer into evidence -- and there

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1 were objections to it, I think it's still pending on the
2 table -- tape recordings that were made at the time that he
3 parted with the FBI. I think that there is more to the
4 situation than the description that Mr. Ricco gave. At the
5 time that he parted with the FBI, what the testimony was and
6 what the tape recordings show is that he didn't -- it is not
7 exactly right to say that he was given a choice to either
8 make the tape or take the polygraph. He agreed to make the
9 tape with the condition, that they wouldn't accept, which
10 was that he should give the tape back to them or that he
11 should get the tape back himself so that there wouldn't be a
12 tape in existence because of his security concerns.

13 But the fact is that the polygraph that he took
14 in July is the inconclusive -- or one of the inconclusive
15 polygraphs. The person who gave him the polygraph found him
16 to be credible. When it went down to Washington, they
17 changed the result.

18 He did not take the polygraph that they are
19 referring to, I believe, until September 28, which is a long
20 time after he was already out. So if it is the polygraph
21 where they concluded that he was deceptive, and, according
22 to the defense's theory, is the reason why he left the
23 investigation, that simply is not going to stack up with the
24 facts.

25 MR. RICCO: Your Honor, just one last point: The

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1 government and I just disagree over what the facts are. If
2 the court looks at 3534, the court will find that there is
3 an interview with Special Agent Crouthamel, Detective
4 Napoli and Agent Floyd. I am just reading from the reports.

5 The reports indicate that Mr. Salem was given a
6 choice, that he was giving the FBI very important
7 information, information about danger, threats, bomb plots,
8 and what the FBI simply wanted to do was to verify it
9 because they thought the public was at risk. So what the
10 FBI did was they gave him a choice --

11 THE COURT: Look, give me the pages. Your
12 characterization of what's there --

13 MR. RICCO: OK. Your Honor, 3534C, and you will
14 find it on the first page, 3534C your Honor is a compilation
15 of reports by different agents. One of the reports is
16 Crouthamel's report. The other exhibit would be a letter to
17 Assistant U.S. Attorney William Pollard, and what the court
18 will find on page 3 on a memo dated July 2, 1992 to the
19 director of the FBI, the report indicates that: Due to the
20 violent nature of the information provided by the source,
21 New York needs to expeditiously verify the intent of the
22 captioned subject and set forth who those subjects are. On
23 July 6, Carson Dunbar meets with Emad regarding his
24 cooperation with the FBI. It is in that meeting, as
25 reported in the FBI reports, that Emad was advised -- I'm

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1 sorry, your Honor, in those reports Emad was advised that
2 the FBI would accept his offer to undergo a polygraph in
3 view of the need to attempt to verify recent information
4 provided, that he selected the polygraph as a means of
5 verifying the information that he was providing.

6 MR. STAVIS: Your Honor, I am handing the pages
7 up to make life a little easier.

8 THE COURT: The ones he is talking about?

9 MR. STAVIS: Yes, your Honor.

10 THE COURT: Good.

11 MR. PATEL: 219, I believe, is the page, your
12 Honor.

13 MR. RICCO: In that July 6, 1992 report Emad says
14 that he is opposed to wearing a monitoring device; however,
15 he stated that he would submit to a polygraph for the
16 purpose of verifying the information as long as the
17 polygraph was limited to the information that he was
18 providing the FBI.

19 THE COURT: All right. You told me that already.

20 MR. RICCO: So it is not just simply our theory
21 that that was the purpose of the polygraph. It appears as
22 though this is what the FBI is saying was the purpose of the
23 polygraph, you know, if we are to credit their reports.

24 MR. McCARTHY: Two things, I think: Number one,
25 it remains the law of this circuit that the polygraph

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1 results are inadmissible. I don't think that should get
2 lost in the discussion of what doors got opened by who went
3 along with the ruling. Also, the FBI, as has been pretty
4 evident throughout, speaks with a number of voices.

5 THE COURT: In a sense there is no such thing as
6 the FBI. They are just a bunch of people.

7 MR. McCARTHY: Right.

8 THE COURT: But, was he advised of the results,
9 and if so, when? Is that in the record?

10 MR. McCARTHY: It is not in the record that he
11 was advised of the results.

12 THE COURT: OK.

13 MS. AMSTERDAM: Not as to when. In phone calls,
14 it is clear that he knows the results because he speaks in
15 numerous recorded conversations that he himself recorded
16 about the fact that he failed the polygraph.

17 THE COURT: When?

18 MR. McCARTHY: That's not with respect to every
19 polygraph, and there are three.

20 MR. RICCO: Your Honor, the FBI reports indicate
21 that at some point in early July after he took these exams
22 that some agent, Special Agent Lilly told him that he passed
23 the polygraph.

24 THE COURT: July of?

25 MR. RICCO: I'm sorry.

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THE COURT: '92?

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MR. RICCO: Yes, your Honor.

3

MR. McCARTHY: Lilly is the polygrapher.

4

THE COURT: All right.

5

MR. RICCO: He was informed by that person that

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he passed the polygraph. That is the only reference that we

7

have to him being informed of the results in the FBI reports

8

themselves.

9

THE COURT: When does he learn that there is some

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question about the result?

11

MR. STAVIS: I have a citation for your Honor,

12

source tape 19-1, page 5, in which Mr. Salem --

13

THE COURT: What is the date of the conversation?

14

MR. STAVIS: I will leave it to them to date the

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source tapes. I can't date them, Judge.

16

MR. RICCO: Judge, the short of it is it is very

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difficult to date the source tapes. The only way to date

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them is by making references to other things. It is

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difficult. If you give us a few minutes, we should be able

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to find a ballpark date as to when those tapes were made.

21

MS. AMSTERDAM: In any event, I still think there

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is really no prejudice to the government for this coming out

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because this man has said on 500 occasions, "I've lied to

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everyone." What does it matter if he lied to a man giving a

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polygraph exam? Obviously, that's not why the defense has

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1 attempted to elicit it. This would have limited impact to
2 the jury. He is an admitted liar by his own testimony.

3 MR. McCARTHY: I don't think it's that obvious.
4 Not only does the law prohibit it, but the circuit says it
5 is a gross invasion of a jury's prerogative to have another
6 fact finder's finding about the credibility of a witness.

7 MR. STAVIS: It is not offered for the truth,
8 however, your Honor. We are talking about something
9 completely different from that.

10 MR. McCARTHY: It is --

11 THE COURT: The only reason I asked about his
12 knowledge of the results is insofar as it raises an argument
13 about motive.

14 MR. McCARTHY: I'm sorry, your Honor?

15 THE COURT: I said, the only reason I asked about
16 his knowledge of the results is insofar as it raises an
17 argument about motive.

18 MR. McCARTHY: Your Honor, the conversation you
19 were just referred to took place in March of 1993, and what
20 Mr. Salem is quoted as saying here is: "I spoke to Dunbar
21 before -- meaning Carson Dunbar. "He was suspicious in me,
22 and he put me on a polygraph exam, and he didn't believe me
23 and, uh, he waited until the bomb went off. It takes a bomb
24 to go off for him to believe that I was saying the truth."

25 That doesn't indicate that he knew what the

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1 results were. It indicates that he was angry.

2 THE COURT: No, it doesn't.

3 Do you have another conversation?

4 MR. RICCO: Yes, your Honor. There are at least
5 ten conversations about the polygraphs. Mr. McCarthy
6 referred to one. However, one conversation --

7 THE COURT: That is the one he was referred to.

8 MR. RICCO: 11-33, there is a conversation
9 between Emad and a supervisor at the FBI. Mr. Salem makes a
10 statement that essentially that he is trained to determine
11 the outcome of a polygraph, and that when the FBI gives him
12 a polygraph, he can determine what the outcome of a
13 polygraph examination will be.

14 THE COURT: That is not responsive to what I
15 asked. What I'd like you to do is, if you can come up with
16 a datable tape or any other piece of evidence that shows
17 when and whether he knew about a result, I would like to
18 know about what the date was. If you can agree on when it
19 was, all the better. If you can't, I will figure it out for
20 myself, but at least give me something to look at in
21 addition to what else you have given me.

22 MS. STEWART: Judge, I initiated this, and I just
23 want to reiterate.

24 THE COURT: Thank you very much.

25 MS. STEWART: My main concern -- I knew you would

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1 be glad to hear that, your Honor -- is that, my reason for
2 bringing it up was that by conveying to the jury that
3 somehow or another the polygraphs were not an ongoing
4 problem, it creates the idea that somehow or another he must
5 have taken it very, very early and done all right.

6 Of course, he is talking about my client very
7 very, very early so, therefore, I want to clear that up, if
8 nothing else, by at least bringing out that he took four
9 tests, all of which were inconclusive until he finally took
10 one where he flunked.

11 MS. AMSTERDAM: Getting back to the conversation
12 that Mr. McCarthy referred to, if your Honor remembers -- it
13 was so long ago, there is no particular reason that you
14 should -- but I stood up in my opening statement and I said
15 to the jury, in effect, that he was terminated by the FBI,
16 that he then watched the World Trade Center either close or
17 far -- you know, literally or figuratively watched the World
18 Trade Center blow up, and then showed up his with his hands
19 full of blood saying, "Give me my million dollars."

20 I made an argument that he in fact was prepared
21 not to provide information because he didn't believe the
22 information would be believed by the FBI, but he allowed the
23 act to happen so that he could cash in at that point. That
24 does go straight to motive. If he had reason to believe
25 that the FBI would not believe his information, he may have

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1 chosen to let it happen.

2 THE COURT: Simply because you made an argument
3 in your opening isn't going to get this thing in.

4 MS. AMSTERDAM: I understand that. But in terms
5 of fashioning an argument about motive, I think that is
6 right there in terms of motive. He says, and I take it Mr.
7 McCarthy refers to --

8 THE COURT: You are not arguing anything that has
9 to do with the admissibility of the test.

10 MS. AMSTERDAM: I just disagree with, your Honor.
11 I do.

12 THE COURT: OK. Good. That is one more.

13 MR. RICCO: I don't think that anybody is going
14 to argue -- well, I will take that back. I am not going to
15 argue to the jury that because Mr. Salem took a polygraph
16 and it was inconclusive that he's, therefore, not being
17 truthful and honest with them. I am not seeking to get that
18 information in for that type of argument.

19 However, I would like to have an opportunity to
20 have put before the jury my explanation, which I think is
21 verified in the FBI documents, as to what was going on with
22 Mr. Salem about wearing a wire, about visiting Nosair, and
23 the options that he had and the options that he chose and
24 why we believe there was a parting of the ways, which was
25 not just related to him testifying. It was related to

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1 another issue, and the FBI wanted to move on the seriousness
2 of the allegations that he made and they were unable to do
3 so because Mr. Salem did not want to wear the wire up to
4 Attica.

5 THE COURT: None of which I think you would be
6 barred from arguing regardless of whether the polygraph
7 comes in or not.

8 MR. RICCO: The problem, your Honor, is that a
9 lot of the questions that were associated with the taking of
10 the polygraph specifically relate to things that Mr. Salem
11 told the FBI that Mr. El-Gabrownny had participated in.

12 THE COURT: We are really starting to spin our
13 wheels. Ms. Stewart, I take it you don't need a ruling on
14 this in order to proceed with your examination.

15 MS. STEWART: No. I have a few other things that
16 I can do.

17 THE COURT: Good. I will look at the documents
18 you referred me to.

19 MS. STEWART: Thank you.

20 THE COURT: Have a pleasant evening.

21 (Proceedings adjourned to March 23, 1995 at 9:30
22 a.m.)

23

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----x
20 March 23, 1995
21 9:50 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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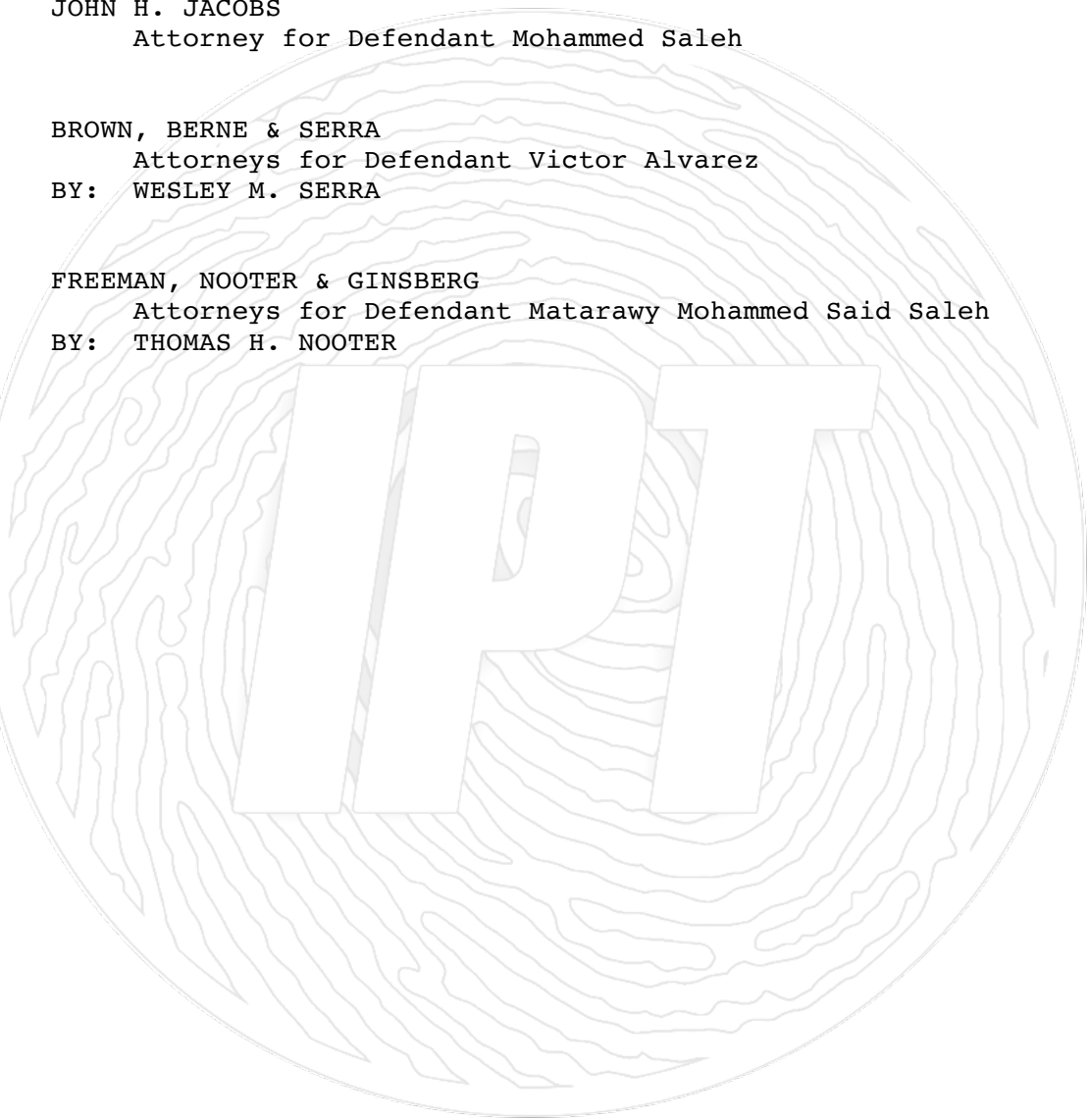
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 THE COURT: Good morning. As some of you may be
2 aware, Ms. Stewart called my chambers this morning to say
3 that she's got some intestinal problem that doesn't allow
4 her to appear. I guess my question is, is there anybody who
5 is prepared to proceed today?

6 (No response)

7 THE COURT: The record should reflect silence. I
8 am going to go back and tell the jurors that we can't
9 proceed because one of the participants can't go ahead
10 today. I would like to see counsel afterwards about one or
11 two other matters. I will come back and we can talk about
12 those.

13 I'm sorry, Mr. Stavis?

14 MR. STAVIS: I was just standing because I
15 thought your Honor was leaving.

16 (In the jury room)

17 THE JURY: Good morning.

18 THE COURT: Good morning. As usual when I walk
19 in this door, I am here to tell you that we can't go ahead
20 today. One of the participants is ill, and we simply can't
21 do it. Obviously, with the number of people that we have,
22 it just increases exponentially the chance that somebody is
23 going to be down a day. All I can tell you is there will
24 come a time when the cold season will pass.

25 JUROR NO. 2: You hope.

1 THE COURT: Yes.

2 At that point we'll do better than we are doing.
3 I should also tell you that we are trying to get everybody
4 to use the time productively to shorten things rather than
5 lengthen them. So the short message is you will have
6 another day off, and we will see you on Monday. Thank you
7 very much.

8 THE JURY: Thank you.

9 THE COURT: Have a good weekend.

10 (In open court)

11 THE COURT: All right. May I see some of the
12 lawyers, if you all want to come obviously, you can all
13 come. I would like to see --

14 MR. SERRA: I'm sorry. I can't hear you.

15 THE COURT: I would like to see a representative
16 group of counsel in the robing room, if I could.

17 (Pages 5773 to 5775 were sealed by order of the
18 Court)

19 (Proceedings adjourned to Monday, March 27, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.
5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

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S5 93 Cr. 181 (MBM)

March 27, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

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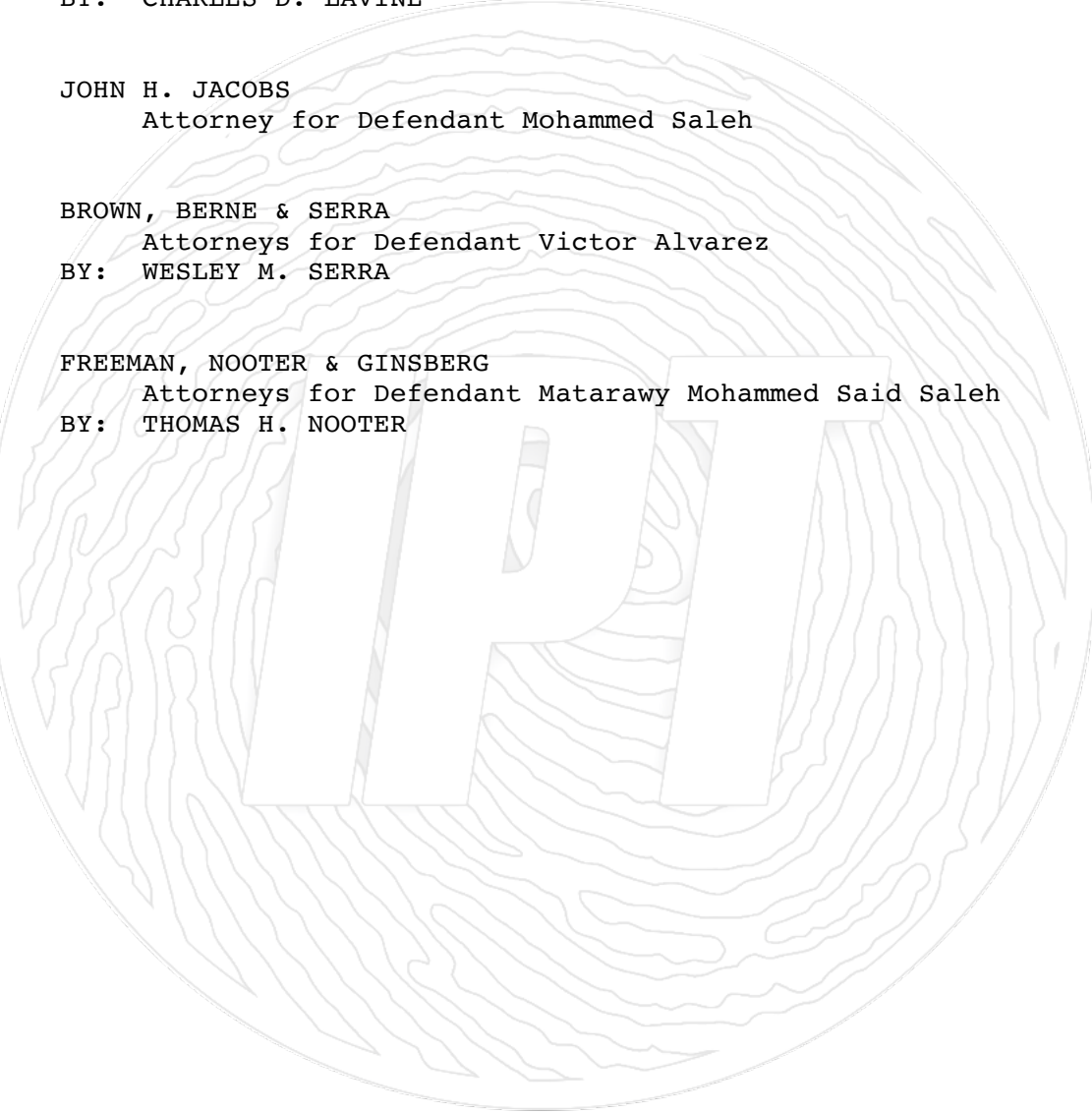
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Miss Stewart, do you
4 feel better?

5 MS. STEWART: I wouldn't say all, but better.
6 Capable.

7 THE COURT: Do we have to deal with the polygraph
8 issue before we start, or not?

9 MS. STEWART: I would say it should be dealt with
10 early. I think I am into it fairly quickly, within the
11 first hour.

12 THE COURT: Let me tell you what you can do and
13 what you can't do.

14 I am being asked to mumble louder, so I will.

15 It seems to me that the fact that he was given a
16 test and the subjects that were covered on the test are
17 relevant insofar as they bear on his response and his state
18 of mind, and what he did later on or didn't do later on. If
19 someone were to tell me that they wanted to take a polygraph
20 on whether I robbed a bank last week, I suppose I would have
21 a different reaction in dealing with them than I would have
22 if they hadn't asked me to. However, the results are in no
23 way admissible, and I don't want any question asked that in
24 any way suggests a negative result. I am going to give an
25 instruction on the general subject of polygraphs and I will

1 give it to you now. But understand, and I will say it
2 again, I don't want any question that suggests that there
3 was a negative result on a polygraph exam. If such a
4 question gets asked, then understand what I am going to do.
5 I am going to sit the lawyer down, number one. Number two,
6 I am going to tell the jury that they are suggesting
7 something that did not in fact happened. And number three,
8 I am suggesting to the jury that it violate their oath, that
9 they base their verdict on the evidence and not what the
10 lawyers say.

11 MS. STEWART: Is it permissible, since there are
12 a series of polygraph tests and different questions asked at
13 different times --

14 THE COURT: Absolutely.

15 MS. STEWART: As long as there is no indication
16 as to cause and effect, I guess.

17 THE COURT: I don't know what your question --

18 MS. STEWART: In other words, am I right, I
19 cannot say to him at the end, and shortly thereafter you
20 were terminated, is that right?

21 THE COURT: That is right.

22 MR. JACOBS: I am sorry.

23 THE COURT: Because that doesn't go to anything
24 that has to do with his thought processes, it has to do with
25 the FBI's thought processes. That is totally irrelevant.

1 MR. JACOBS: If something happened with the FBI,
2 that is proper cross-examination. I am not -- not proper to
3 necessarily say as a result of the polygraph you were
4 terminated, but if on a particular date something happened,
5 I don't see how your Honor can restrict cross-examination on
6 that point.

7 THE COURT: I will not restrict cross-examination
8 on that point, but that is not the question that Miss
9 Stewart proposed.

10 MR. RICCO: What do we do with the situation as
11 follows: The government has already asked Mr. Salem, was
12 there any conversation in a meeting that you had with
13 Mr. Dunbar, whether you would continue in the investigation
14 in connection with the polygraph? And the answer was, he
15 said he wants me to continue, but I --

16 THE COURT: Mr. Dunbar was the polygraph
17 examiner?

18 MR. RICCO: Dunbar was the person who proposed to
19 him the option of taking the polygraph and what was the
20 polygraph to be for, and I certainly want to question him
21 around this because it appears from reading Dunbar's reports
22 that his statement was false.

23 THE COURT: There is no reason you can't examine
24 him about the falsity of the statement, so long as you don't
25 do what I said you can't do.

1 MR. RICCO: I think what I will try to do is
2 before I get into that area is discuss with the court my
3 questions. It is a couple of days away.

4 THE COURT: I am not asking you to clear your
5 questions with me or with anybody else, although if you feel
6 safer doing that, that is fine. I think the instruction is
7 not difficult to follow.

8 MR. RICCO: Judge, it is only a little difficult
9 because of the type of answers that Mr. Salem gave around
10 the polygraph exam itself.

11 THE COURT: You mean on the exam or at the time
12 of the exam?

13 MR. RICCO: On the exam and at the time of the
14 exam. I would prefer to just discuss each one.

15 THE COURT: Fine. The answers that he gave are
16 probably close to irrelevant. They were all in essence
17 denials of whatever negative inference was present in the
18 questions.

19 MR. RICCO: I understand.

20 THE COURT: As I said, I have an instruction, and
21 I will hand it out.

22 (Pause)

23 MS. STEWART: Judge, the only thing would be on
24 page 2 where it says you do not know, for example, what
25 particular questions were asked. If I heard you

1 correctly --

2 THE COURT: You want to be able to ask that
3 question.

4 MS. STEWART: Either I or someone else down the
5 line will ask particular questions.

6 THE COURT: Then let's strike that one out.

7 MR. McCARTHY: The whole sentence?

8 THE COURT: No, just that phrase.

9 THE COURT: You do not know, for example, how the
10 questions were asked and in what order, and you don't know
11 whether everyone who analyzed the results came to the same
12 conclusion. I think you are entitled to explore the same
13 kind of thing that I mentioned in my hypothetical.

14 MR. McCARTHY: Your Honor, there is one other
15 matter. Miss Stewart was good enough to tell me that she is
16 going to get either this morning or this afternoon to the
17 torture facts, what have been called the torture facts.

18 MS. STEWART: Exhibit Abdel Rahman C.

19 THE COURT: We touched on that.

20 MR. McCARTHY: I don't think it is admissible. I
21 don't think it goes in any way to truth telling or any
22 matter that is relevant to let trial, and I would object.

23 THE COURT: Miss Stewart?

24 MS. STEWART: Judge, I think that it was
25 successful impeachment of Mr. Salem's claim that he was not

1 involved in torture in any way, that he didn't use torture,
2 that he didn't show pictures of torture, that he was in no
3 way connected to anything of torture, except that he sent a
4 fax to his exwife containing a torture picture and a story
5 about torture.

6 THE COURT: I am not going to allow it. You have
7 your record.

8 MS. STEWART: It is pure impeachment.

9 THE COURT: It is pure independent impeachment on
10 a collateral matter. You have already asked him about what
11 is in the record. I am not going to permit the exhibit.

12 (Jury present)

13 EMAD SALEM, resumed.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.

16 JURORS: Good morning.

17 THE COURT: Mr. Salem, you are still under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: Miss Stewart.

20 MS. STEWART: Yes, Judge. Judge, in the interim
21 I have marked as defense Exhibits D and E the two volumes,
22 and I would ask to put these by Mr. Salem, if I may.

23 THE COURT: Go ahead.

24 MS. STEWART: Judge, may I?

25 THE COURT: Go ahead.

1 MS. STEWART: Thank you.

2 CROSS-EXAMINATION continued.

3 BY MS. STEWART:

4 Q Mr. Salem, when we left off on Wednesday of last
5 week we were discussing torture in Egypt, is that correct?

6 A Yes, ma'am.

7 Q You recall, do you not, attending a press
8 conference in which the sheik asked for Mubarak to open the
9 jails of Egypt and let the human rights organizations in, to
10 see what was going on --

11 MR. McCARTHY: Objection, Rule 801.

12 THE COURT: I will allow it and see where it
13 goes. Go ahead.

14 Q Do you recall the sheik saying that at a press
15 conference?

16 A Yes, ma'am.

17 Q And you reported that to Egyptian intelligence,
18 isn't that right?

19 A I am not sure, ma'am.

20 Q If you would look at tab R, and that would be
21 page 71. The numbers are stamped either at the top or at
22 the bottom.

23 A Page number what, ma'am?

24 Q 71. This is at R, as in rapid.

25 Would you like some help, Mr. Salem?

1 A Please, can you. Thank you.

2 Q Directing your attention to the middle of the
3 page.

4 (Pause)

5 A You want me to read the rest of the second page,
6 ma'am?

7 Q No, just to enable you to answer the question?

8 A Yes, I did report it. I remember.

9 Q And you also reported at that time, did you not,
10 that the statement of the man who does not see is confirmed?
11 Do you remember reporting that?

12 A No, I don't.

13 Q Turn to page 73, one page or two pages beyond
14 where you were reading.

15 A 73, ma'am?

16 Q 73.

17 THE COURT: It begins at the bottom of page 72,
18 doesn't it?

19 A I am sorry. I am not getting the meaning out of
20 it.

21 MS. STEWART: Judge, is it possible to have a
22 simultaneous Arabic translator aid Mr. Salem by standing
23 next to him and perhaps reading allowed?

24 MR. MCCARTHY: Your Honor, I don't think that --

25 MS. STEWART: It would expedite.

1 MR. McCARTHY: Respectfully, your Honor, I think
2 it is the question.

3 THE COURT: It is the question. The question
4 simply asks him about words, it doesn't ask him about
5 meaning. If you asking about the meaning?

6 MS. STEWART: He says he doesn't understand what
7 it is saying. Am I right?

8 THE COURT: I don't think that is what he is
9 saying. Why don't you reframe the question.

10 Q At the end of this particular report to Egyptian
11 intelligence, did you not say to them that the statement of
12 the man who does not see is confirmed?

13 A I cannot understand the translation of "has been
14 confirmed." What I was referring to, I don't recall what I
15 was referring to from reading the transcript, ma'am.

16 Q And did you also in that transcript or in that
17 conversation said -- this is the English, of course. You
18 were speaking in Arabic, am I right?

19 A Yes.

20 Q That the case of Abouhalima is confirmed, do you
21 know what that would have meant?

22 A Regarding to the torture part?

23 Q Yes.

24 A I may have said something like that effect, yes.

25 Q And the case for human rights is confirmed. Did

1 you also report that to them at that occasion?

2 A I am not getting the meaning of confirmed. What
3 did I say, how did I say it in Arabic, what did I meant,
4 confirmed is not giving me the meaning what I meant in that
5 time.

6 Q You passed a test in English, did you not, to
7 become an American citizen, Mr. Salem?

8 A Yes, ma'am, I did.

9 Q And you don't understand what the word confirmed
10 is?

11 A I know what confirmed means it's positive.
12 Confirm means it confirm what happened. But I am not
13 linking this word to the statement I made in that time.

14 Q Did you also say it would cause a very serious
15 worry here? Did you also tell your contact in Cairo that?

16 A I may said it. I am not sure.

17 Q Would you look at the end of that page.

18 THE COURT: That page being which?

19 MS. STEWART: Page 73. I am sorry.

20 MR. McCARTHY: Top of the page.

21 THE COURT: Top of 73.

22 THE WITNESS: Yes, sir.

23 A Yes, ma'am.

24 Q What did you mean when you said is caused very
25 serious worry here?

1 A Of course Americans, they are the top civilized
2 people in the world, and my understanding to the Americans
3 when I came here, that they disagree about torture, and when
4 they saw Mahmoud Abouhalima have some cigarette burns,
5 everybody around me, from the people I am in touch with,
6 they were so worried about it, that there is something like
7 that and that's inhumane.

8 Q And you reported that to your contact in Egyptian
9 intelligence, is that right?

10 A Yes, ma'am.

11 Q Directing your attention back in time to
12 September 1987, that is the month and year that you
13 immigrated to America, is that right?

14 A Yes, ma'am.

15 Q You had retired after 18 years in the army?

16 A Yes, ma'am.

17 Q And you got a visa on September 15 to enter the
18 United States?

19 A Could be. I am not so sure about the date,
20 ma'am.

21 MS. STEWART: I am trying to get the 3500
22 numbers. I am sorry.

23 I am told I am incorrect, there is no 3500
24 material for this, so we will mark it. I have premarked
25 exhibits up to O, so I would ask that this be marked P. It

1 is three pages.

2 THE COURT: It will be designated Abdel Rahman P.

3 MS. STEWART: Thank you, Judge.

4 Q Would you look through that, and at the third
5 page in particular.

6 A It's December 14?

7 Q What is the date?

8 A December 14.

9 Q Is that the expiration date?

10 A I am sorry, September 15.

11 Q September 15?

12 A Yes.

13 Q It shows that you actually arrived here on
14 September 25, 1987, is that right?

15 A I recall that, yes, ma'am.

16 Q Between September 15 and September 25, you
17 divorced your wife of 15 years, Naima, is that right?

18 A Right.

19 Q On September 19, is that right?

20 A I don't recall the date.

21 Q What was your purpose in I am greying here,
22 Mr. Salem?

23 A Actually, I wasn't planning to immigrate to
24 United States. I was planning to make a trip, started by
25 United States, England, Denmark, and I was planning to stay

1 in Denmark.

2 Q Do you remember a tape that you made a few days
3 after you arrived here and sent back, actually, to your
4 divorced wife Naima, an audiotape?

5 A I don't recall, ma'am. That's seven years ago,
6 or six.

7 Q If you would look at tab U, and this is at page
8 61, the very end of that section. Do you see down around 10
9 lines in that, you indicate that you have arrived on Friday?

10 A Would you just please help me a little bit to
11 locate it.

12 Q Sure.

13 (Pause)

14 A Should I read to the rest of the page?

15 Q It is very long, but does that refresh your
16 recollection --

17 A About which part, ma'am?

18 Q Does that refresh your recollection, first of
19 all, that you sent this tape as a letter to your exwife
20 Naima? Do you recall it now?

21 A No, ma'am.

22 Q You don't remember when you were a few days into
23 this country sending back a tape recounting all your
24 experiences as they occurred here?

25 A I know that I am always in touch with my exwife

1 until today because we have two children between us and we
2 have a very friendly relationship. I may send letters, yes.
3 I may send tapes, yes. But I don't recall that particular
4 tape, ma'am.

5 Q In that particular tape, do you remember telling
6 her about your first experiences with your cousin in this
7 country and actually meeting Barbara Rogers?

8 MR. McCARTHY: Objection to form.

9 Q Your experiences with your cousin in this
10 country?

11 A I may have said that, yes.

12 Q And do you remember actually telling her about
13 meeting Barbara Rogers?

14 A I may said it, yes.

15 Q Barbara Rogers was known to you at that moment in
16 time as a person working for her Ph.D, her doctorate in
17 chemistry, is that right?

18 A That's what she told me, yes. She told me that
19 she is a Ph.D already, she is a doctorate. That's what she
20 told me. She is not working on it. That was my
21 understanding.

22 Q Would you turn to page 64. Didn't you say at the
23 bottom of that page that she is now working on her Ph.D?

24 A Can you point it to me. I am lost here, please.

25 A I may said that, ma'am.

1 Q You just told us that you came here as part of a
2 longer trip but that you had no intention of immigrating
3 here, is that correct?

4 A Yes, ma'am.

5 Q So that when you said in this document or in this
6 tape that you sent back to Egypt that you were going to take
7 it slow and get someone to marry you so you could get the
8 green card, it was not true, is that right?

9 A That was what we discussed between Barbara and
10 myself, and it end up that we married within couple of
11 weeks. She has her reasons, I have my reasons.

12 Q Did you say to your wife: Pray for me, may God
13 help me. Of course I am trying to plant the idea of
14 marriage with Barbara in her head, but very careful, because
15 all the Americans here know that the Egyptians come here and
16 get married for the green card, so they play hard to get.
17 But Barbara is very stiff and I am treating her the same
18 way, so she would not think of me this way, in spite of the
19 fact that someone told her to take care, that Emad will
20 marry you and then leave you after he gets the green card.
21 Therefore I am trying to give her the feeling that I do not
22 do these things and I will leave the rest to God.

23 MR. McCARTHY: Objection, Rule 613(b).

24 THE COURT: Overruled.

25 Q Is that what you said on this occasion?

1 A Yes, ma'am, I may said that.

2 Q And you went on to say: If my salary without the
3 green card is for example, 10 cents a day, when I get the
4 green card my salary in the same job becomes 40 cents.

5 A Yes, ma'am.

6 Q Is it still your testimony that it was not your
7 motivation to immigrate to this country, Mr. Salem?

8 A No, ma'am. This issue of the green card and
9 increasing my salary after we both talked about marriage,
10 and at the beginning she said we can live together just like
11 that. I told her, I have six months visa, I am not going to
12 break my visa and stay in the country to be arrested, I am
13 going to my trip, if you are interested in me then we should
14 get married, I get my green card, I work legally. These all
15 discussions happened between me and Barbara in that time,
16 and with a good relationship with my exwife in that time, I
17 was just telling her what's going on.

18 Q And I reminded you earlier, Mr. Salem, this tape
19 was sent within three days of your arrival here, isn't that
20 right?

21 A I have no idea. I don't recall that I am making
22 this tape, but once the statement is here, I recall the
23 subjects being provoked in that time, but I don't know where
24 did I send this tape or when. I don't recall at all.

25 Q This tape itself says I arrived here last Friday,

1 does it not?

2 A That's what's being written here, yes.

3 Q You didn't leave Egypt and come here to spy, did
4 you, Mr. Salem?

5 A No, ma'am.

6 Q You left a a military career that you had begun
7 at the age of 18, is that right?

8 A Yes, ma'am.

9 Q In 1968.

10 A Yes, ma'am.

11 Q At that time you were just a high school
12 graduate, correct?

13 A No, ma'am.

14 Q You were not a high school graduate?

15 A I was high school graduate and then I got a
16 diploma after high school, and then I joined the army.

17 Q What was that diploma in that you got after high
18 school?

19 A Wireless communication.

20 Q When you joined the army, you later remained in
21 the army and went to school or you dropped out of the army
22 to go to college, I think you told us?

23 A What do you mean dropped out?

24 Q Were you still in the army while you were
25 attending college?

1 A It's a military college, and once I get to the
2 army, at the beginning, it was as a recruit. That's the
3 mandatory duty for me to do for Egypt. And then during that
4 time, I applied for the college and I moved from soldier
5 recruit to college as a cadet.

6 Q Can you tell us what the name of that college
7 was, or is?

8 A The military technical institute, ma'am.

9 Q That is a college from which you graduate as a
10 first lieutenant, is that right?

11 A Second lieutenant.

12 Q So it is not a college with a degree then, it is
13 a technical institute, is that right?

14 A No, it's a college with a degree, because you get
15 two certificates: bachelor's in military art, and diploma
16 in engineering, on the branch you became specialized in.

17 Q There is another military college, though, from
18 which you graduate as a first lieutenant in Egypt, is that
19 right?

20 A Can you say the question please again.

21 Q Is there not another military college and the
22 graduates from that institution graduate as first
23 lieutenants, is that right?

24 A Yes, there is, ma'am.

25 Q You told us that you worked on radar stations

1 when you were in the military and then you began, I think
2 you termed it, as a representative shipping arms for the
3 Egyptian army, is that right?

4 A It took a part of my job in a certain time, yes,
5 ma'am.

6 Q Were you part of intelligence at the time that
7 you were shipping arms?

8 A No, ma'am.

9 Q You were not part of intelligence then?

10 A Absolutely not.

11 Q It is very sensitive, is it not, shipping arms,
12 sensitive issue internationally]?

13 A What do you mean sensitive?

14 Q Did you have any special security clearances to
15 ship arms?

16 A Any officer in the army have a security
17 clearance. Otherwise won't be in the army.

18 Q Did you have any contacts with the American CIA
19 during this period?

20 A Absolutely not.

21 Q Which countries did you ship arms to?

22 A I cannot reveal that, ma'am.

23 Q Do you remember sometime in February of 1992
24 having conversations with your cousin Yousery?

25 A Yes.

1 Q Regarding the shipment of arms?

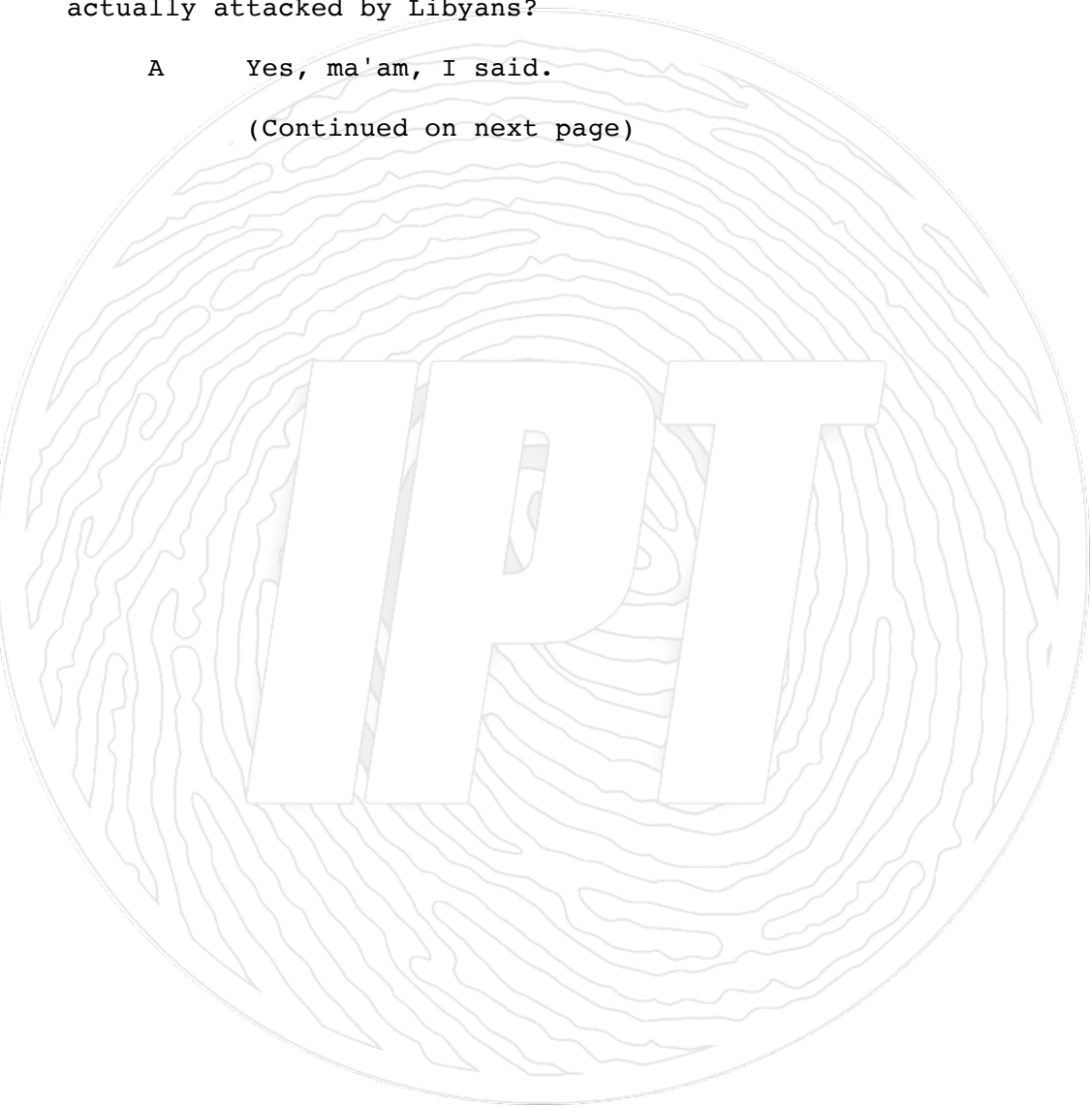
2 A Yes, ma'am, I remember.

3 Q And do you remember in that conversation telling
4 him that you were shipping arms to Iraq and that you were
5 actually attacked by Libyans?

6 A Yes, ma'am, I said.

7 (Continued on next page)

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1 Q Was that true?

2 A It was true.

3 Q Where exactly did this attack take place?

4 A I cannot reveal this information, ma'am.

5 Q Did the Libyans blow up the arms that were going
6 for Iraq?

7 A No, they did not.

8 Q Was this done under the United States'
9 authorization, shipping arms to Iraq?

10 A I'm sorry. Say that again, please?

11 Q Let me rephrase the question.

12 Did the United States have any part in this arms
13 shipment?

14 A I have no idea, ma'am.

15 Q It is still your testimony that you were not part
16 of Egyptian intelligence at that time?

17 A Absolutely not, ma'am.

18 Q You remember in the course of your conversation
19 with your cousin in Virginia that you were making
20 arrangements with him to deliver an arms shipment from Libya
21 to Dar-es-Salaam and ultimately to Uganda, is that correct?

22 A First of all, he is not my cousin. He is not
23 even my relative. He used to be husband of my mother's
24 cousin. So he is not my cousin. He used to be a husband
25 for my mother's cousin and he's divorced and I remember -- I

1 recall, yes, I discussed with him shipments he wants me to
2 do it from Libya to Uganda, yes, I remember that.

3 Q You were supposed to receive \$10,000 for your
4 share in this, is that right?

5 A I don't recall exactly how much he promised me.

6 Q You were supposed to also get licenses from the
7 Uganda government to do diamond mining and gold mining, is
8 that right?

9 A That's his proposal to me, not my suggestions to
10 him.

11 Q To aid in that proposal, you proposed, did you
12 not, that you send to the interested parties your expert
13 certificate in arms and ammunition given to you by the
14 Egyptian intelligence?

15 A It's given to me by the Egyptian Army, which is
16 being reviewed -- any certificate going out to any officer
17 who leaving the Army, they -- I required as a retired
18 officer, what kind of jobs I had done in the military. It
19 is like we call it here -- a resume. So the Egyptian
20 intelligence must review the work I have done, and it's
21 being signed by the defense ministry, and it's part of my
22 experience, is ammunition and explosive and these sorts of
23 things.

24 Q You faxed him a copy of this certificate, did you
25 not?

1 A Faxed it to whom?

2 Q To Yousery.

3 A I am not so sure, ma'am, if I did. I may, but I
4 don't recall.

5 Q You told him, did you not, this was issued, this
6 is at Tab P, and the page numbers are at the top, 32 --

7 MS. STEWART: If I may approach the witness,
8 Judge.

9 THE COURT: Yes. It is actually designated 2 and
10 page 32.

11 A Yes, ma'am. I said it's issued by the Egyptian
12 intelligence by the department of ammunition and weapons.

13 Q You also in that conversation -- well, strike
14 that.

15 By this time, in February 1992, you had become an
16 American citizen, is that right?

17 A I don't recall the date, but, yes.

18 Q You had in your possession an American passport,
19 is that right, a blue-covered passport?

20 A Yes, ma'am.

21 Q Did you retain your Egyptian passport as well?

22 A I kept it with me, yes.

23 Q In this conversation, you explained to
24 Mr. Yousery how you could enter Libya from Egypt using your
25 Egyptian passport, is that right?

1 A That's correct, ma'am.

2 Q Had you applied to be a dual national, have two
3 nationalities, Mr. Salem, in February of 1992?

4 A No, I did not, ma'am.

5 Q Had you ever filed any papers registering
6 yourself at any time from 1987 to the present time
7 registering yourself as an agent, an enemy agent in this
8 country?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Do you want to rephrase that. If you mean agent
12 of a foreign power --

13 MS. STEWART: I got it.

14 THE COURT: Good.

15 Q From the time that you entered this country in
16 1987 up until the present time have you ever registered as
17 an agent of a foreign power in this country?

18 A I don't understand what you mean. I did not file
19 anything, but I don't get what the question is. I was
20 reporting to the FBI what was going on, what Yousery asked
21 me to do, the shipment between Libya and Uganda.

22 THE COURT: The question was whether you ever
23 filed something --

24 THE WITNESS: All right.

25 THE COURT: -- to indicate you were an agent of a

1 foreign power. I take it the answer is no?

2 THE WITNESS: The answer is, no, I did not.

3 THE COURT: Go ahead.

4 Q When you were involved in this conversation with
5 Yousery, it did not -- strike that.

6 You never said to him, "Libya is an enemy of the
7 United States. We are not allowed to deal with them. We
8 can't do this," did you?

9 A I may have said, yes, ma'am.

10 Q You said, "We're not allowed to deal with them"?

11 A Yes, ma'am.

12 Q You were prepared to do it anyway, at least to
13 his weighty ears, is that right?

14 A Say it again, please.

15 Q Were you prepared to use your Egyptian passport
16 to enable this to happen, at least as far as Mr. Yousery
17 thought?

18 A That's what I told --

19 MR. MCCARTHY: Objection.

20 THE COURT: Did you tell Mr. Yousery that you
21 were prepared do it.

22 THE WITNESS: Yes. I said I'm prepared to do it.

23 Q You turned those two taped conversations in to
24 the FBI, is that right?

25 A That's right, ma'am.

1 Q Did you tell Mr. Yousery that you did that?

2 A That I reported to the FBI that we're doing --
3 no, I did not.

4 Q Whatever happened with this weapons deal?

5 A I have no idea. The FBI is responsible for that.

6 Q In April of that same year, you were going down
7 to Virginia to visit him, weren't you?

8 A Yes, ma'am.

9 Q You were going down with Nancy Floyd, the FBI
10 agent that you turned the tapes in to, is that right?

11 A That's not right.

12 Q Didn't you loan her your car ultimately and not
13 go yourself?

14 A I may loan her my car once, but she didn't come
15 to Virginia with me.

16 Q No, you did not -- you stayed at home, is that
17 right -- strike that.

18 Do you remember a weekend in April when you had
19 plans to visit your cousin in Virginia --

20 A Yes.

21 Q -- this would be April '92?

22 A Yes, ma'am.

23 Q You were going to travel there with Agent Nancy
24 Floyd, is that right?

25 A She never came with me. She never --

1 THE COURT: The question is whether you planned
2 to travel with her.

3 THE WITNESS: I don't recall.

4 THE COURT: Did you or did you not?

5 THE WITNESS: I don't recall.

6 Q Do you remember having a conversation with
7 Mr. Yousery in which you talked to him about the fact that
8 you could not reach him so you let Nancy take the car and
9 you remained in New York?

10 A I don't recall that, ma'am.

11 Q It is your testimony here that you had a
12 conversation with Mr. Yousery in February in which you
13 promised to help him in this arms deal and that you don't
14 know what happened to it after that, is that your testimony?

15 A Yes, ma'am. I --

16 Q He never called you, and you never called him?

17 A No, he did call me in some other things. And
18 it's being reported to the FBI as well.

19 Q But this arms deal where you were going to be
20 flying to Cairo, going to Tripoli, getting on the ship, he
21 was making the arrangements, he was going to the Emirate,
22 nothing ever was said after that between you and him about
23 that particular deal?

24 A I never traveled -- we never finished the whole
25 thing. The thing did not happen.

1 Q With regard to Libya, you at the beginning of
2 your cooperation with the United States government spoke to
3 Nancy Floyd about Libya, is that right?

4 A That's right.

5 Q You told us that you never had met Colonel
6 Qaddafi, is that correct?

7 A I'm sorry, say it again?

8 Q You told Ms. Floyd or Agent Floyd that you had
9 met Colonel Qaddafi in the course of your years of dealing
10 arms -- or, not dealing arms, but working with arms
11 shipments, is that right?

12 A I recall that I told her that I saw him and he
13 have certain scars, yes, I said that, but it's not in
14 connection with arms shipments.

15 Q Well, strike the arms shipments.

16 You remember having this --

17 A Yes, ma'am, I remember.

18 Q -- conversation with her, is that right?

19 A Right.

20 Q It is a conversation in which you gave a lot of
21 so-called intelligence about the Middle East situation, is
22 that right?

23 A That's right.

24 Q Do you remember telling Ms. Floyd about Colonel
25 Qaddafi that everyone considered him in the Middle East to

1 be crazy?

2 A That's true.

3 Q Do you remember telling her that in the Arab
4 world that when a child is bad, mean and crazy acting, the
5 Arabs believe then that the child has black blood, is that
6 right?

7 A That's right, ma'am.

8 Q And that in order to alleviate that the Arabs cut
9 slits in the person's forehead?

10 A Right, on the side, yes.

11 Q To let out this bad black blood, is that right?

12 A That's right, ma'am.

13 Q And the blood flows out and the black blood is
14 gone and the person is cured, is that right?

15 A That's right, ma'am.

16 Q Was that true?

17 A That's true, but that's not my own experiences.
18 I overheard it from different people, and I said it to her
19 it's like my own experiences, but it was not my own
20 experiences.

21 Q You said that that's where you can see where
22 Qaddafi had scars on his temple, is that right?

23 A Yes, ma'am.

24 Q From the black blood being let out?

25 A Yes, from the razor blades' cuts.

1 Q Now, when you retired from the Army in 1987 you
2 were only 37 years old, is that right?

3 A Yes, ma'am.

4 Q It was sort of a mid-career decision, is that
5 right?

6 A Yes, ma'am.

7 Q You had a pension, but it was an early age to
8 retire, is that correct?

9 A That's correct, ma'am.

10 Q Is there a reason why you decided to retire?

11 A It's various reasons.

12 Q What were they?

13 A Some of them that my marriage was falling apart,
14 and some of them that I was just depressed. I wasn't happy
15 in my personal life, and that reflected on my career, so I
16 decided to resign and just leave.

17 Q It isn't a fact that you really didn't retire but
18 just transferred to military intelligence, is it, Mr. Salem?

19 A No, ma'am. It's not true.

20 Q When you were in the Army, did you ever have a
21 problem accepting an assignment to Israel?

22 A I never get assignments to Israel, ma'am.

23 Q When you left Egypt, you left the officers' clubs
24 you've told us about, is that right?

25 A I'm sorry. Say it again, please?

1 Q When you left Egypt --

2 A Yes.

3 Q -- you left behind the officers' clubs that
4 you've told us about?

5 A What do you mean I left the officers' clubs?

6 Q You mentioned to us that you had many, many
7 friends and you used to see them regularly in the officers'
8 clubs,

9 A Yes.

10 Q Is that right?

11 A Yes, ma'am.

12 Q You left those behind you, is that correct?

13 A That's correct, ma'am.

14 Q You also had a driver and a private car, is that
15 right?

16 A During a certain time during my job, yes, ma'am.

17 Q You were relatively well off at the time you
18 retired, is that right?

19 A I'm sorry. I am afraid I'm --

20 Q You were financially well off at the time you
21 retired, is that right?

22 A I was comfortable.

23 Q You left all that to come to the United States,
24 is that right?

25 A No, ma'am. My target was not United States. I

1 was having a trip starting in the United States, England,
2 for a reason, but not to stay over there.

3 Q Didn't you tell Ms. Floyd that before you left
4 Egypt you had been given the job of locating five military
5 officers that had absconded and not come back to Egypt?

6 A Yes, ma'am, I did say that.

7 Q You told this jury the same thing, is that right?

8 A I don't recall. I may have said it.

9 Q You don't recall what you said here in the last
10 two weeks, Mr. Salem?

11 A No, I don't.

12 Q You're saying that you were only here, though,
13 for a tourist visit, is that right?

14 A That's right, ma'am.

15 Q You said you were comfortable.

16 Do you remember in that same letter, that tape
17 that you wrote to your wife that we looked at earlier,
18 that's bootleg 44 -- it is you -- that you outlined to her
19 the money situation for her as far as you were concerned, do
20 you remember doing that?

21 A No, ma'am, I don't recall.

22 Q Well, if you would open the book to U, and it's
23 page 65, at the very bottom of the page, ten lines up, can
24 you find that?

25 A Which part, ma'am, I'm sorry? Could you just

1 point to it for me, please?

2 MS. STEWART: May I, Judge?

3 THE COURT: Yes.

4 A The end of the page?

5 Q Just to the bottom of that page, yes.

6 A Yes, ma'am.

7 Q Does that refresh your recollection that you told
8 your ex-wife about what appear to be large sums of money, is
9 that right?

10 A That's right, ma'am.

11 Q That was left behind by you in Egypt, is that
12 right?

13 A That's right, ma'am.

14 Q You, nonetheless, a few days after you came here,
15 you took a job in a, I guess, what we would call a
16 greasy-spoon-type restaurant and luncheonette in New York,
17 is that right?

18 A That was for one day.

19 Q And you then later got another job after that in
20 a drugstore, is that right, being a watchman of sorts?

21 A No, ma'am.

22 Q For one day, an Egyptian who owned a drugstore
23 gave you a job?

24 A No.

25 Q You slept over?

1 A No, ma'am.

2 Q Well, it is in the same letter, but I'll go on to
3 other things.

4 Are you certain, Mr. Salem, that you did not come
5 here to specially situate yourself as an agent of the
6 Egyptian government?

7 A Absolutely not, ma'am.

8 Q The only job that you had was these five
9 officers, is that right?

10 A That was not a job, ma'am.

11 Q You were told if you found them you should let
12 people know back in Egypt, right?

13 A If you find it, just let us know about it, but it
14 was not a job, ma'am.

15 Q You had someone specific to call back if Egypt,
16 is that right?

17 A That's right, ma'am.

18 Q After you arrived, you made trips back to Egypt,
19 is that correct?

20 A Yes, ma'am.

21 Q And those trips were in -- well, you tell me.

22 When did you first go back to Egypt after you
23 arrived in September 1987?

24 A I have no idea.

25 Q Well, did you make a trip in 1987 back to Egypt?

1 A I don't recall, ma'am, dates. I may not -- I'm
2 not sure. I remember I went Egypt so many times, yes.

3 Q Can you estimate for us, just between the time
4 you arrived in '87 and the time that the arrests took place
5 in this case, in June of 1993, how many times you traveled
6 back and forth between New York -- or the United States and
7 Egypt?

8 A I am not so sure, but I will give approximate,
9 five times.

10 Q You traveled there by virtue of the fact that you
11 had applied for a green card, is that right, before you even
12 got the green card?

13 A I'm sorry. I don't understand the question,
14 please.

15 Q You traveled there before you received your green
16 card, your permanent resident alien card, is that right?

17 A I traveled, if I remember correct, under the
18 temporary residency, yes.

19 Q What were the reasons for your traveling this
20 often back and forth to Egypt?

21 A My mother was sick in the hospital, and she was
22 having trouble with my brother-in-law. I went, I solved the
23 problems, I came back. My mom's health get very bad. I
24 went, I visited her. I came back. She passed away a few
25 days after I came back. So it was a lot of problems going

1 back and forth, and family issues for us over there is --

2 Q It was only family issues?

3 It wasn't intelligence that required your
4 presence back there?

5 A No, ma'am.

6 Q You made trips in -- December 23, 1988, do you
7 remember reentering the United States on that date?

8 A I don't recall, but probably.

9 Q And August 11, 1989, do you remember entering the
10 United States on that date?

11 A I don't recall, ma'am.

12 Q March 18, 1990, do you recall entering the United
13 States on that date?

14 A Probably.

15 Q Again, March 20, 1988, do you remember entering
16 on that date?

17 A I don't recall, ma'am.

18 Q On that occasion you told them that your brother
19 had passed away. Do you remember telling Immigration that
20 that was the reason you were traveling?

21 A I don't recall.

22 Q Did you ever travel telling immigration that your
23 reason was because your brother passed away, when in fact
24 your brother hadn't passed away?

25 A I don't recall, ma'am. I may have said it, but I

1 don't recall that I said it.

2 Q Where was the money coming from for these trips
3 back and forth from here to Egypt?

4 A There is two sources to this money: Number one,
5 I was working; number two, I had some money with me because
6 after my retirement the money you just mentioned, big money,
7 this is my retirement reward. I left some of this money for
8 supporting my kids back home in Egypt and I brought some
9 money with me.

10 Q Approximately how much does it cost to fly from
11 New York to Cairo, round trip?

12 A It's different. Sometimes \$450, sometimes \$700.

13 Q That is one way or round trip?

14 A Round trip, ma'am.

15 Q When was the last time you traveled to Egypt?

16 A I don't recall dates, but -- I don't recall
17 exactly, ma'am.

18 Q The March 1990 trip to Egypt was a trip you made
19 with Barbara Rogers, your then wife, Barbara Rogers-Salem,
20 is that right?

21 A That's correct, ma'am.

22 Q Do you remember that you were met at the airport
23 on the runway by friends of yours from the Army?

24 A That's correct, ma'am.

25 Q And you told her, did you not, that they were

1 your friends from military intelligence, is that right?

2 A That's what I told her, yes.

3 Q And there was a special shuttle bus and you
4 didn't have to go through customs and you were delivered to
5 the officers' club where you stayed, is that right?

6 A That's right, ma'am.

7 Q To some degree you were showing Barbara off on
8 this trip, is that correct?

9 A That's correct, ma'am.

10 Q Your American wife, is that right?

11 A That's right, ma'am.

12 Q You took her to the clubs and introduced her to a
13 lot of your friends, is that correct?

14 A That's correct, ma'am.

15 Q You also took her, did you not, to a prison where
16 you told her torture took place beyond those walls and you
17 were going in to see a friend of yours?

18 A Absolutely not.

19 Q You got custody of your children on this trip, is
20 that correct?

21 A No, ma'am.

22 Q Your children were not released by your wife to
23 your custody on this particular trip?

24 A It was negotiations, but not on this trip. My
25 kids being released later on with her agreement and the

1 power of attorney and court signed it and things like that.

2 Q When was that, if you remember?

3 A I don't recall, ma'am.

4 Q Well, would 1991 refresh your memory at all, the
5 year following the trip with Barbara?

6 A It may be, yes, ma'am.

7 Q I think you told us, did you not, Mr. Salem, that
8 the reason why you took custody was that your wife had
9 remarried, is that correct?

10 A That's --

11 Q You didn't want someone else raising your
12 children?

13 A That's correct, ma'am.

14 Q When you applied for citizenship you submitted a
15 document which you claimed to be a document by which your
16 wife had turned over custody to you, is that right?

17 A I'm sorry. Say it again, please.

18 Q Let me rephrase the question. I think it is a
19 little awkward.

20 When you applied for citizenship, you gave the
21 Immigration and Naturalization office a power of attorney
22 from your wife --

23 A Right.

24 Q -- that you claim gave you custody, is that
25 right?

1 A That's right.

2 Q That was dated May 15, 1991. Does that ring a
3 bell?

4 A Probably.

5 Q And by this certificate Ms. Naima Taha Salem,
6 ex-wife of Mr. Emad Elden Ali Abdou Salem certifies that she
7 has given up the right to custody, is that right?

8 A Yes, ma'am.

9 Q She is still using your name, is that right,
10 Salem, when she gives up the custody?

11 A No, ma'am, that's her name, salem.

12 Q That is her name?

13 A Because she is my first cousin. She is Naima
14 Taha Salem; I am Emad Ali Salem, Salem family. And she's my
15 cousin and in Egypt we are allowed to marry our cousins, so
16 she is using her real name, Salem.

17 Q And it is not her new husband's name, is it,
18 Salem?

19 A No. In Egypt we don't take husband's name. In
20 Egypt you can be married and you keep Stewart as it is, if
21 that's what's your maiden name, and the husband keep his
22 name. It is not like here.

23 Q The power of attorney, does it turn over custody
24 or does it merely give you the right to have the children
25 with you? Did she surrender custody to you?

1 A I am not so sure what you mean exactly.

2 Q By virtue of this document which you filed with
3 Immigration and Naturalization, did your wife give you sole
4 custody, the right to never return the children to her if
5 that's what you decide to do?

6 A That wasn't the agreement, because she is my
7 cousin, this is our children. We are still in a very good
8 relationship. I let the kids to talk to her over the phone
9 and --

10 Q You are in a very good relationship but you took
11 the children away from her, is that right?

12 A I did not take them away from her as a
13 punishment. I want to raise up my kids. She's not able.
14 She is married.

15 Q She is not able? Why was she not able?

16 A Because her husband was mistreating my children.

17 Q What is his name?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q Mr. Salem, isn't it a fact that you threatened to
21 put this woman on the black list in Egypt to get her in
22 trouble with intelligence people if she didn't give you your
23 children?

24 A Which woman, ma'am?

25 Q Naima Salem.

1 A No, ma'am. I did not.

2 Q During the time that you were in Egypt with
3 Barbara Rogers in March of 1990, were you in touch with
4 military intelligence people at all during that period of
5 time?

6 A Yes, I was.

7 Q Did you ever come back to Barbara and tell her
8 that you were given a last mission and have a suitcase full
9 of cash, or at least an attache case I should say?

10 A No, ma'am.

11 Q Did you return to the U.S. -- about three weeks
12 after you first arrived in Egypt, did you return back to the
13 U.S.?

14 A Yes, ma'am.

15 Q With Barbara, is that right?

16 A Yes, ma'am.

17 Q In July of 1990, did you tell Barbara that you
18 were going to the airport to see a blind prince from
19 Afghanistan arrive?

20 A I don't recall.

21 Q Did you go to an airport to see a blind prince
22 from Afghanistan arrive?

23 A No.

24 Q Wasn't this your last mission, to keep track of
25 the blind prince?

1 A Absolutely not.

2 Q When I use that term "the blind prince," what do
3 you understand me to mean?

4 A I understand that is that's what I used to
5 indicate Sheik Omar Abdel Rahman.

6 Q Did you ever go to Egypt for the purpose of
7 carrying out a mission in another country as opposed to the
8 United States?

9 A I'm sorry. I didn't understand the question,
10 please.

11 Q Before 1990, did you ever make a trip to Egypt
12 where you went to another country, not the United States,
13 and carried out a mission there?

14 A No, ma'am.

15 Q Never went to Libya with regard to an atom plant?

16 A No, ma'am.

17 Q During your course of work for the FBI -- and by
18 that I mean from approximately October 1991 through June
19 1993 -- you had contacts with Egyptian intelligence, is that
20 right?

21 A That's right, ma'am.

22 Q There was a fellow named Masum --

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 MS. STEWART: Judge, can we approach?

1 THE COURT: No.

2 Q You were in touch with a person at the Egyptian
3 consul here in New York City, is that right?

4 A That's right, ma'am.

5 Q This is someone that you knew from when you were
6 both second lieutenants in the Egyptian Army, is that right?

7 A He was higher ranked than me, yes, ma'am.

8 Q And you also had contact with someone in Egypt
9 named Ativ, is that right?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q Did you also have contact in Egypt with someone
13 from general intelligence or someone else other than the
14 person I just named, someone other than that person?

15 A I'm sorry. Can you repeat your question, please?

16 Q Directing your attention to your intelligence
17 contacts in Egypt --

18 A Yes, ma'am.

19 Q -- I just gave you one contact, the second
20 contact --

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q Did you have contact with more than one person,
24 Mr. Salem?

25 A Yes, ma'am.

1 Q How many people were you in contact with in Egypt
2 during the course of this investigation?

3 A Three. I'm sorry, excuse me. Three from the
4 military intelligence. That's it.

5 Q All of them were from military intelligence?

6 A Yes, ma'am.

7 Q I think you explained to us that there are two
8 separate branches of intelligence, is that correct?

9 A Three, ma'am. Three branches.

10 Q Three branches. Would you describe them again
11 for us, please.

12 A This is the general intelligence, which is
13 equivalent to the CIA here, which we -- it's called
14 Mukhabarat. This is the law enforcement, which have the
15 capacity of intelligence, intelligence gathering, which is
16 equivalent to the FBI. And there is the third intelligence
17 agency, which is the military intelligence, ma'am.

18 Q All three of your contacts were connected with
19 military intelligence, is that right?

20 A That's right, ma'am.

21 Q They were just in different offices, different
22 levels of command, would that be a fair statement?

23 A I couldn't -- I couldn't say that, ma'am. I
24 can't reveal that.

25

1 Q In January of 1992, you were contacted by a
2 person from general intelligence here in New York, is that
3 correct?

4 A That is correct, ma'am.

5 Q He gave his name as Mohammed Nasser, is that
6 right?

7 A Yes, ma'am.

8 Q You did not believe that that was his true name,
9 is that right?

10 A Yes, ma'am.

11 Q He told you that he had come from Cairo, is that
12 right?

13 A That's what he said.

14 Q You did not believe that either, is that right?

15 A I am not sure.

16 Q Didn't you think he had really come from
17 Washington?

18 A Yes, I thought so.

19 Q When he first approached you, he called you on
20 the telephone, is that right?

21 A That is correct, ma'am.

22 Q And you weren't sure who he was even though he
23 gave you the name of the person who was your friend in the
24 consulate, isn't that correct?

25 A That is correct.

1 Q So you called the FBI at that point, right?

2 A Right.

3 Q And they came down and they surveiled the meeting
4 that you set up with this person from general intelligence,
5 is that correct?

6 A That is right.

7 Q You met in a Japanese restaurant, is that
8 correct?

9 A That is correct.

10 Q I would just like to show you an exhibit that has
11 been marked as Exhibit O.

12 A Yes, ma'am.

13 Q What do you recognize that to be, Mr. Salem?

14 A This is the meeting occurred between me, myself,
15 and the person who claimed that he is friend of mine in that
16 time.

17 Q This picture was taken by the FBI, was it not, to
18 the best of your knowledge?

19 A That is correct, ma'am.

20 Q Shows you meeting at a Japanese restaurant near
21 your home, is that right?

22 A That is right.

23 MS. STEWART: Judge, I would move Exhibit O into
24 evidence.

25 MR. McCARTHY: Objection, relevance.

1 THE COURT: Sustained.

2 Q Did you tell the person you were meeting,
3 Mr. Salem, that you were wearing a galabia?

4 A That is correct, ma'am.

5 Q What is a galabia?

6 A It's a white loose outfit. It's being worn by
7 most of the Arab world.

8 Q In that picture, are you wearing a galabia?

9 A Yes, ma'am.

10 Q Are you wearing a turban in that picture?

11 A No, ma'am.

12 Q Did you tell him you were wearing a turban also,
13 or a hat?

14 A A hat, yes.

15 Q With which to go and pray, is that right?

16 A Could you say the question, please.

17 Q Strike the question.

18 Did you tell him that on the telephone he could
19 also recognize you by the style of hat you were wearing?

20 A Probably, yes.

21 Q Were you wearing that style of hat?

22 A That's what I am wearing, I am wearing a hat,
23 yes.

24 Q Just a regular hat, nothing Egyptian about the
25 hat?

1 A No, nothing Egyptian about it.

2 Q The next day, did you meet this person again?

3 A Yes, ma'am.

4 Q Did you tell the FBI about that?

5 A Yes, ma'am.

6 Q What was their response to the second meeting?

7 A I don't recall.

8 Q Did anybody come and hide in your closet, in your
9 apartment?

10 A It wasn't on this occasion. Somebody came hide
11 in my closet on a different occasion, yes, but not on this
12 occasion.

13 Q The time that somebody hid in your apartment
14 closet, was that Special Agent Anticev?

15 A Was one of them, yes, ma'am.

16 Q Were you also meeting someone from intelligence
17 on that occasion?

18 A No, ma'am.

19 Q On the second occasion that you met with this
20 person from intelligence, from general intelligence, was the
21 FBI surveiling that particular meeting?

22 A The second, no, ma'am.

23 Q Did you tell them about it?

24 A Yes, ma'am.

25 Q Did you tell the person you met that you could

1 not work with him without getting approval from the FBI --
2 is that right?

3 A That is correct, ma'am.

4 Q And also from Egyptian military intelligence, is
5 that correct?

6 A Correct, ma'am.

7 Q So it is fair to say by January 8, 1992, you were
8 enrolled with Egyptian intelligence, military intelligence,
9 that is.

10 MR. McCARTHY: Objection to form.

11 THE COURT: Can you come up with something other
12 than enrolled?

13 MS. STEWART: Yes.

14 Q This meeting took place on January 8, 1992, is
15 that right?

16 A I don't recall the date, but --

17 Q Sometime in January 1992?

18 A Could be, yes.

19 Q And you told this person who had contacted you
20 from general Egyptian intelligence that you would first have
21 to get clearance from Egyptian military intelligence, is
22 that right?

23 A That's right, ma'am.

24 Q So it is fair to say that you were at that time a
25 contact person for Egyptian military intelligence in the

1 United States.

2 A I wouldn't say contact, because that wasn't a
3 permanent duty for me, ma'am. I was in touch with them,
4 yes.

5 Q On a regular basis.

6 A No, not a regular basis. Every once in a while
7 when I see something I think it's dangerous to Egypt, I
8 reported to them.

9 Q Do you remember telling Mr. Nasser that if he
10 wanted to check up on you he could check with the records of
11 Egyptian military intelligence?

12 A Yes, ma'am.

13 Q And they are kept separately, is that correct,
14 from other military records in Egypt?

15 A Say it again, please.

16 Q Intelligence records, that is, records of
17 officers who serve in Egyptian military intelligence, are
18 kept separate from regular military records, which are open
19 to the public, is that right?

20 A No, that's not right.

21 Q They are not kept separate?

22 A I don't know if it's kept separate or not, but
23 there is no files being open to the public.

24 Q There are no files in Egypt open to the public at
25 all?

1 A Not military.

2 Q No military files. If someone wanted to check if
3 someone was getting a pension, that would be impossible, is
4 that your testimony?

5 A If you have connection in the pension department
6 you can, yes.

7 Q Only if you have connections, though?

8 A Yes, if you have connections, but legally, you go
9 apply paper to get a form that rank so and so getting
10 pension so and so, ma'am.

11 Q You told this person, though, check your military
12 intelligence files, is that correct?

13 A Military intelligence file? There is no military
14 intelligence file on me, ma'am.

15 (Continued on next page)

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1 THE COURT: Could you come to a convenient break
2 point in the next 10 minutes.

3 MS. STEWART: Right now would be fine.

4 THE COURT: Ladies and gentlemen, we are going to
5 take a short break. Please leave your notes and other
6 materials behind. Please don't discuss the case. We will
7 resume in a few minutes.

8 (Jury excused)

9 (Witness excused)

10 THE COURT: Mr. Jacobs.

11 MR. JACOBS: Your Honor, I think at least three
12 times the witness stated in response to a question that he
13 couldn't answer the question because he couldn't reveal
14 something. I am not aware of a legal objection that this
15 witness has to interpose such a statement. Obviously if the
16 government wants to do a legal objection under Federal Rules
17 of Evidence that is one thing, but I don't think that is a
18 responsive answer. I didn't want to interrupt Miss
19 Stewart's examination, but this witness has absolutely no
20 legal right to interpose that type of statement in this
21 trial under the Federal Rules of Evidence. Just for the
22 record, the next time the witness does it --

23 THE COURT: When you say just for the record, do
24 you want a ruling?

25 MR. JACOBS: No. I am asking your Honor that

1 that is not a responsive answer, that it should be stricken
2 and the witness should be directed to answer the question
3 unless there is a proper legal objection made by counsel for
4 the government which your Honor can rule on. I didn't want
5 to interrupt the examination, but I don't think that that is
6 a proper response.

7 MR. McCARTHY: I just disagree with Mr. Jacobs.
8 I think there are a lot of privileges and a lot of other
9 interests that a witness has that the government may not
10 have. The matters that he declined to answer on were not
11 particularly relevant to the trial. The fact that I don't
12 want to sit here and object to every borderline relevant
13 matter in front of the jury doesn't mean that he ought to be
14 forced to answer with respect to extraneous matters that
15 don't bear on the trial. Certainly if he had marital
16 privilege or other types of privilege that I didn't
17 interpose an objection on the basis of, he would be free
18 like with his Fifth Amendment privilege to assert them on
19 his own. So I think Mr. Jacobs's statement that a witness
20 doesn't have a right up there to decline to give an
21 answer --

22 THE COURT: I think his statement was a lot more
23 focused than that. I think what he was saying is that he
24 can't interpose a claim that he doesn't want to violate some
25 secrecy or confidentiality by disclosing the information.

1 The questions -- there was one in particular that I think I
2 recall. The questions were, I think, largely irrelevant,
3 and I would have sustained a relevance objection and will
4 sustain relevance objection if it is made to a question like
5 that.

6 MR. McCARTHY: I must say, there were two
7 questions that were asked --

8 THE COURT: One had to do with the location of
9 some particular event, which I frankly couldn't see the
10 relevance of and would have sustained a relevance objection
11 to.

12 MR. JACOBS: Your Honor, I don't have a problem
13 to a relevance objection. The government has a perfect
14 right to assert a relevance objection. I just don't
15 think -- it is not a privilege question. I don't know what
16 privilege he is claiming. Technically it should be
17 stricken. If the government wants to stand up on their feet
18 and -- it doesn't have any relevance here in this American
19 courtroom, period.

20 MR. McCARTHY: Your Honor, I do not want to be in
21 a position of objecting. There is an awful lot of stuff
22 that may be objectionable that we are not objecting to.
23 Counsel knew that the names of the Egyptian intelligence
24 people were off limits. They have been off limits for over
25 a year in this trial. That didn't stop the questions from

1 coming.

2 THE COURT: And I sustained objections.

3 MR. McCARTHY: I realize that. My point is that
4 if he interposes --

5 THE COURT: Unless it becomes clear that a flurry
6 of questions is being asked simply for the purpose of
7 eliciting objections, I think you have an obligation to make
8 relevance objections; otherwise we are going to be here
9 forever.

10 MR. McCARTHY: I will do that, Judge.

11 MR. JACOBS: Thank you.

12 MS. STEWART: Judge, I want to be clear that I
13 did not consider myself to be violating any order which
14 prohibited us from using those names. My understanding is
15 that those names are all over the bootlegs. They are not
16 redacted.

17 THE COURT: I thought I sustained redactions of
18 names in the bootlegs.

19 MR. McCARTHY: You did; they are redacted.
20 However, we allowed the tapes to be given to the defense
21 expert to conduct testing on. He turned around and gave
22 copies without authorization from the government to certain
23 defense counsel.

24 MS. STEWART: Judge, in defending the sheik, the
25 sheik got no tapes from Mr. Ginsberg, got no transcripts

1 from Mr. Ginsberg, got nothing until I got into the case and
2 that --

3 THE COURT: Regardless how it came to be, the
4 fact is that I upheld redactions of names.

5 MS. STEWART: I was not aware of that, Judge.

6 THE COURT: I am not suggesting that you did it
7 with malice aforethought. I don't think it is a big deal,
8 frankly. But I did uphold it and I am going to continue to
9 uphold it. I also don't see it as relevant. Let's take a
10 break.

11 (Recess)

12 (Witness resumed)

13 (Jury present)

14 THE COURT: Miss Stewart.

15 MS. STEWART: Thank you, Judge.

16 (Continued on next page)

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1 BY MS. STEWART:

2 Q Mr. Salem, do you remember telling this person
3 from general intelligence that he should go and check out
4 your files in military intelligence, is that right?

5 A I don't recall saying word file, but even if I
6 said it, I meant go check on me with Egyptian intelligence.

7 Q And you also told him, did you not, to check out
8 your background with Egyptian military intelligence?

9 A I may said it.

10 Q And you told us you never worked for Egyptian
11 military intelligence as such, is that right?

12 A I am sorry.

13 Q You told us that you yourself did not work for
14 them except for an assignment you might have gotten through
15 a friend, is that right?

16 A It was not an assignment, ma'am. I did not work
17 and paid for the Egyptian intelligence. I cooperated with
18 them, yes.

19 Q You said you did not work or get paid for
20 Egyptian intelligence, is that right?

21 A From them, I did not.

22 Q Yet nonetheless you sent this person that came
23 from general intelligence to check your files at military
24 intelligence, is that correct?

25 A I told him to get me the green light from them to

1 make sure who he is.

2 Q You told him that he would have access to your
3 files and background information at military intelligence,
4 did you not?

5 MR. McCARTHY: Objection to form.

6 THE COURT: Did you tell him that in that way?

7 A I don't recall.

8 Q Do you remember reporting this meeting to
9 Egyptian intelligence officers?

10 A I may did, yes.

11 Q And do you remember saying to him, and this is at
12 R, page 118 near the bottom.

13 A What letter, ma'am?

14 Q R, page 118.

15 A Which part of the page, please?

16 Q The next to the last paragraph, where you are
17 speaking.

18 MS. STEWART: May I approach the witness, Judge?

19 THE COURT: Yes. Just point to it.

20 A Yes, ma'am.

21 Q Do you remember now telling him that he would
22 have access to your files and your background at military
23 intelligence? Is that right?

24 A That's right.

25 Q You didn't tell him that you were working for the

1 FBI, is that correct?

2 A That's correct.

3 Q But you did tell people in Egyptian intelligence
4 about this meeting, is that correct?

5 A Yes.

6 Q After you told him the FBI through Nancy Floyd
7 asked you how he came to visit you. Do you remember that?

8 A Yes.

9 Q And at that time you revealed, did you not, that
10 you had contacted, perhaps mistakenly, Egyptian intelligence
11 with regard to the assassination direction supposedly given
12 by Sheik Abdel Rahman, is that right?

13 A I am sorry. Repeat your question, please.

14 Q Yes. There came a time, did there not, when the
15 FBI asked you how did this guy come to contact you, is that
16 right?

17 A Yes, ma'am.

18 Q It was Nancy Floyd that asked that question, is
19 that right?

20 A Yes, ma'am.

21 Q After you explained how he came to contact you,
22 she gave you certain instructions, did she not?

23 A I don't recall.

24 Q Do you remember her telling you to provide
25 absolutely no information to any Egyptian officials without

1 direct and specific tasking by the New York FBI office?

2 A Yes.

3 Q Do you remember her telling you that you should
4 notify her of any time that anybody from Egyptian
5 intelligence contacted you or tried to contact you?

6 A Yes.

7 Q Do you remember her telling you in a telephone
8 conversation, you're not going to be able to give them
9 anything else? Do you remember her telling you that after
10 this contact?

11 A I am sorry. I don't understand the question.

12 Q Do you remember Nancy Floyd telling you over the
13 phone, you're not going to be able to give them anything
14 else?

15 A I don't recall, ma'am.

16 Q In any event, after the contact, you called
17 Egypt, is that right?

18 A Yes.

19 Q You also spoke to your contact at the New York
20 consular office for Egypt, is that right?

21 A My contact?

22 A Yes.

23 A No, ma'am, he is not a contact.

24 Q Your friend?

25 A Yes.

1 Q And he actually at a party mentioned it to you,
2 did he not?

3 A I am sorry. Say it again, please.

4 Q Do you remember attending a party at the Egyptian
5 consulate and your friend mentioned to you that they had
6 word that you had been contacted by the general
7 intelligence?

8 A It was not in the consulate but I attended a
9 party, yes.

10 Q And your friend from the consulate mentioned it
11 to you, did he not?

12 A Mentioned what?

13 Q That you had been contacted by someone from
14 general intelligence.

15 A Yes.

16 Q You never heard back from this person from
17 general intelligence, is that right?

18 A That is right.

19 Q Did you ever establish any contact yourself with
20 a person during the entire course of this investigation,
21 with any person from general Egyptian intelligence?

22 A I am sorry. Say the question, please, again.

23 Q During the course of the entire investigation,
24 from October 1991 through June 1993, did you ever establish
25 a contact person to whom you reported in Egyptian general

1 intelligence?

2 A No, ma'am.

3 Q All of your contacts were in Egyptian military
4 intelligence, is that right?

5 A That's right.

6 Q Even after Nancy Floyd gave you the direction,
7 you went right on giving them information, is that right?

8 MR. McCARTHY: Objection, giving whom?

9 Q Egyptian military intelligence.

10 A Nancy did not instructed me not to give any
11 information to the military intelligence. It was -- well,
12 that's it.

13 Q She did not tell you to provide absolutely no
14 information to any Egyptian officials without direct and
15 specific tasking by the New York FBI office?

16 A Yes.

17 Q She told you that?

18 A She was talking about the Egyptian military
19 intelligence.

20 Q To any Egyptian officials.

21 A No, ma'am, that is not to my understanding
22 because I maintained the clearing to the FBI to the last day
23 that I am in touch with the military intelligence
24 constantly, and nobody instructed me not to contact them.

25 Q You are saying you never got this direction from

1 Nancy Floyd in these words, is that right?

2 A If she said these words, she went the general
3 intelligence, but the military intelligence, everybody from
4 from the FBI knows that I am in touch with them and they
5 know why.

6 Q And when she said to you on the telephone -- this
7 is at U, page 51 -- you're not going to be able to give them
8 anything else, you don't remember that conversation?

9 A The "them" is the general intelligence.

10 Q You differentiate between general intelligence
11 and military intelligence, is that what you are telling us?

12 A There is a difference, yes.

13 Q And you made that differentiation, you made a
14 difference between the two of them in your mind?

15 A That is correct.

16 Q Before you actually started working on this case,
17 you gave Nancy Floyd an overview of the situation in Egypt,
18 is that correct, with regard to persons that Egyptian
19 intelligence was looking at? Do you remember that?

20 A Which intelligence?

21 Q Military intelligence.

22 A Yes, ma'am.

23 Q That took place, did it not, at about sometime in
24 late October of 1991?

25 A I don't recall the date.

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MS. STEWART: May I approach, Judge?

THE COURT: Yes.

(Continued on next page)



1 Q Just look at the first paragraph, Mr. Salem.

2 A Yes, ma'am.

3 Q Does that refresh your recollection as to the
4 date?

5 A I didn't read it yet, ma'am, if I can, please?

6 Q OK.

7 A I'm sorry.

8 I didn't understand what you mean here.

9 Q Does that refresh your recollection as to when --
10 you can turn the pages. I realize some of it is blacked out
11 there, but if you just read on.

12 Does that refresh your recollection as to when
13 you told Nancy Floyd about what Egyptian intelligence,
14 military intelligence was doing?

15 A Yes, ma'am.

16 Q Do you remember talking to Nancy Floyd sometime
17 at the end of October 1991?

18 A I don't recall the date, but I recall that we
19 talked, yes.

20 Q Do you remember at that time giving her a list of
21 21 people that Egyptian Army intelligence was keeping close
22 track of?

23 A Yes.

24 Q You provided that list to her in 1991, I think
25 you just said, is that right?

1 A Probably.

2 Q Do you remember the list of 21 names that you
3 supplied her with?

4 A I don't remember the names, but I remember I did
5 supply her names, yes.

6 Q Do you remember you said that these individuals
7 are all involved in al-jihad movement and terrorist
8 activities?

9 A Yes, ma'am.

10 Q Isn't it a fact, Mr. Salem, that all of those men
11 had either been executed or were serving long prison terms
12 at the time that you gave them to Nancy Floyd?

13 A Not all of them, some of them was caught in that
14 time, some of them was still at large.

15 Q Weren't all of them co-defendants of Sheik Omar
16 Abdel Rahman in the assassination attempt of Sadat?

17 A That's right, ma'am.

18 Q Should we go down each name, Mr. Salem.

19 Are you sure that there were any that were at
20 large at that time?

21 A No, I'm not sure.

22 Q You basically gave Nancy Floyd a list of people
23 that were either executed or in prison, isn't that right?

24 A I have no information that they get executed or
25 imprisoned. I read their names in a certain book and I gave

1 all of them to Nancy Floyd.

2 Q In a certain book. What book was that?

3 A I don't recall the name right now but it is a
4 book about the assassination of president Anwar Sadat and
5 these names was written in it that they were involved in the
6 assassination with Sheik Omar.

7 Q You knew about the trials that took place in
8 Egypt, did you not?

9 A Everybody -- yes, I know.

10 Q You were still in Egypt in 1982 when these trials
11 took place, were you not?

12 A Yes.

13 Q So that when you gave this information, this was
14 not true, is that correct?

15 A Not all of it true. That was not totally true,
16 yes.

17 Q Because these persons were not people that
18 military intelligence had any need to keep an eye on any
19 longer, isn't that right?

20 A I'm not sure, because, like I told you, that some
21 of them was, as my understanding, some of them was at large
22 or some of them wasn't being caught.

23 Q The first name on the list, Abd El Hamed Hameed
24 Abd El Salam Abd El Al Ali, was executed, was he not?

25 A Not to my knowledge, ma'am.

1 Q Mohammed Abd El Salem Fraal Attai, excuse my
2 pronunciation --

3 A That's OK.

4 Q -- he was executed, was he not?

5 A Not to my knowledge, ma'am.

6 Q You only know this because you got them out of a
7 book somewhere?

8 A Right.

9 Q You knew the FBI would never check, is that
10 right?

11 A I don't know.

12 Q If they had checked, they might have found out
13 this, isn't that correct?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q You gambled on the fact that they would never
17 check these names out, isn't that a fact?

18 A No, ma'am.

19 Q You took a chance, did you not, in 1991 by
20 supplying these names that the FBI would never check them
21 out?

22 A No, ma'am.

23 Q One name was still at large, isn't that a fact,
24 Mr. Salem?

25 A I don't know.

1 Q Well, the name of Dr. Omar Ahmed Ali Abdel
2 Rahman, he was still at large, wasn't he?

3 A I think Sheik Omar in that time was in Egypt.

4 Q In 1991?

5 A Oh, I don't know. No, I'm -- don't take me on
6 dates. I don't recall dates.

7 Q Sheik Abdel Rahman was acquitted in that trial,
8 isn't that true?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q Shortly after supplying this information -- let
12 me take my book back -- as part of that information on that
13 occasion you talked about the arrest of Dr. Abdel Rahman in
14 connection with the assassination of Sadat, is that correct?

15 A I may have.

16 Q Were you present when he was arrested?

17 A No, I was not.

18 Q Did you check the information that you gave the
19 FBI?

20 A No, I did not.

21 Q Did this also come out of a book somewhere?

22 A Probably, yes.

23 Q Did the FBI ever come back to you and say,
24 "Listen, we checked this out, this is not where he was
25 arrested"?

1 A No, they did not.

2 Q They never came back and said your information
3 was no good, is that right?

4 A No, they did not.

5 Q When you gave it to them you held yourself out as
6 an Egyptian intelligence officer and that you had this
7 information by virtue of that, is that right?

8 A That's right.

9 Q You initially began working in early November
10 1991, is that correct?

11 A Yes, ma'am.

12 Q You were sent basically to deal with the trial of
13 Mr. Nosair, is that right?

14 A Yes, ma'am.

15 Q But you also identified for the FBI Sheik Omar
16 Abdel Rahman at that time, is that right?

17 A That's right.

18 Q Egypt was very interested in the sheik, is that
19 correct, at that time?

20 A I don't understand what you mean, "very
21 interested."

22 Q Well, you told the FBI, did you not, that your
23 Egyptian contacts were also interested in knowing any of the
24 information you might get about Sheik Omar Abdel Rahman?

25 A Yes, ma'am.

1 Q By the way, I am using the word "sheik."

2 In the tapes you used that name repeatedly, and
3 not just for Sheik Omar, is that right?

4 A The word "sheik"?

5 Q Yes.

6 A Yes.

7 Q You used that in addressing Mr. Siddig Ali, you
8 called him, "sheik," is that right?

9 A Right.

10 Q You called Mr. El-Gabrownny that on occasion, is
11 that right?

12 A Right.

13 Q You called Mr. Nosair that on occasion, is that
14 right?

15 A Right.

16 Q Is that just a term of respect when you use it in
17 that way?

18 A Yes, ma'am.

19 Q But Sheik Omar is a true sheik, is that correct,
20 he has the Ph.D. to prove it, is that right?

21 A Ma'am, Ph.D. has nothing to do with sheik. The
22 word "sheik," it's just like "Mr."

23 It has nothing to do with Ph.D. There is no true
24 sheik and fake sheik. The word "sheik" is a respect to any
25 individual who is after 40 years old supposedly. If

1 somebody under 40 years old, and we call him "sheik," it's
2 extra respect in the religious groups.

3 Q Speaking of that, you indicated that people who
4 use the name "Abu" were using an alias. Do you remember
5 your testimony here regarding that?

6 MR. McCARTHY: Objection.

7 A Abu?

8 Q Abu.

9 THE COURT: The question is, did you say that?

10 THE WITNESS: I don't recall saying that.

11 MS. STEWART: I will come back to it.

12 Q In any event, use of the word "Abu," means
13 "father of," does it not?

14 A That's correct, ma'am.

15 Q And it's also used as signifying respect to
16 someone, is that right?

17 A If you have a boy's son, then they call Abu and
18 they name the son, yes, it's kind of --

19 Q It is a called a "kunia," is that correct, in
20 Arabic?

21 A I'm sorry, say it again, please.

22 Q It's called a "kunia."

23 My pronunciation may be bad.

24 A I'm sorry. I didn't get what you mean, please.

25 Q Well, I have a son named Jeffrey.

1 A Yes.

2 Q I would be Am Jeffrey, the mother of Jeffrey?

3 A Right.

4 Q His father would be Abu Jeffrey, is that correct?

5 A That's correct.

6 Q It is a term of address, much like "Mr.," is that
7 right?

8 A That's right.

9 Q In early December 1991 you told us you were
10 attending the El Salaam mosque, is that correct?

11 A Yes.

12 Q Where was that located?

13 A In Jersey City at Kennedy Boulevard.

14 Q Where was it located in the building?

15 A The third story. The ground level, second level
16 and third level.

17 Q Was this a mosque that you would describe as very
18 richly furnished?

19 A No, ma'am.

20 Q It was a very plain mosque, is that correct?

21 A That's correct, ma'am.

22 Q Almost a poor mosque, would you say?

23 A I will say it's a regular mosque.

24 Q Now, you indicated that there was someone at the
25 mosque who was handing out flyers regarding a trip to

1 Detroit, is that correct?

2 A Yes, ma'am.

3 Q Who was that person?

4 A Mr. Ahmed Hassan.

5 Q And what nationality is Mr. Hassan?

6 A Sudanese.

7 Q Did you opine that maybe he's Sudanese
8 intelligence to the FBI?

9 A Yes, ma'am.

10 Q He was handing out flyers, and I would just like
11 to show you what is 35340.

12 Do you see that?

13 A Yes, ma'am.

14 Q I ask you if you recognize that as the flyer that
15 Mr. Hassan was handing out that night at the mosque.

16 A One of them, yes.

17 Q Did you receive more than one from him?

18 A I think there was another one in Arabic as well.

19 Q Were there two pages for this particular flyer?

20 A There was a lot of flyers being distributed, and
21 I don't really recall, ma'am.

22 Q Well, you turned over this flyer, did you not, to
23 the FBI, is that right?

24 A I think I did, ma'am.

25 Q You also turned it over to the fellow who

1 contacted you from Egyptian intelligence, did you not?

2 A Yes, ma'am.

3 Q You gave him some pictures also at that time,
4 didn't you?

5 A I don't recall.

6 MS. STEWART: Judge, I would move this into
7 evidence. It had an exhibit number at one time I think.

8 THE COURT: We can let it be 35340. Fine.

9 Is there any objection?

10 MR. McCARTHY: I am reading it to see if there is
11 anything objectionable.

12 No objection.

13 THE COURT: 35340 is received.

14 (Defendants' Exhibit 35340 for identification was
15 received in evidence)

16 THE COURT: Go ahead.

17 Q Besides outlining what a room would cost at this
18 conference -- well, let me start with that.

19 Did this flyer talk about what room and board
20 would cost to attend this conference in Detroit?

21 A I don't recall, ma'am.

22 MS. STEWART: May I, Judge?

23 THE COURT: Yes.

24 A Yes, ma'am.

25 Q Your answer was?

1 A Yes, ma'am.

2 Q It did talk about how much room and board would
3 cost for this particular conference, is that right?

4 A That's right, ma'am.

5 Q It also talked about a contest for charity where
6 first prize was a round trip to Mecca for the Umrah, is that
7 right?

8 A Probably, yes.

9 Q And it detailed that the name of this conference
10 was "Towards a Global Islamic Economy," is that right?

11 A That's right, ma'am.

12 Q After you received this flyer, you approached
13 Sheik Abdel Rahman, is that right?

14 A Yes, ma'am.

15 Q And asked him if he was going and if you could
16 come along, is that correct?

17 A Yes, ma'am.

18 Q Then you rented a van to accommodate everyone
19 that was going, is that right?

20 A Yes, ma'am.

21 Q That van was paid for by the FBI, I think you
22 told us?

23 A Yes, ma'am.

24 Q I would be correct if I said that none of the
25 conversations from that weekend were taped, is that correct,

1 Mr. Salem?

2 A Yes, ma'am.

3 Q There was no tape recorder installed in the van,
4 is that right?

5 A That's right, ma'am.

6 Q There were no agents following the van and
7 listening on a separate recorder through a microphone
8 installed in the van?

9 A Not to my knowledge, ma'am.

10 Q You were not wearing a body wire on that
11 occasion, is that right?

12 A No, ma'am.

13 Q The FBI hadn't given you a special pair of pants
14 with something in them?

15 A No, ma'am.

16 Q This was the first time that you had an extended
17 conversation with Dr. Abdel Rahman, is that true, or were
18 with him for an extended period of time, I should say?

19 A During that trip?

20 Q Yes.

21 A Yes, ma'am.

22 Q Nothing was taped at all, is that right?

23 A Yes, ma'am.

24 Q The reason why you went on this trip was to
25 collect money at the request of Mr. El-Gabrownny for

1 Mr. Nosair's defense fund, isn't that right?

2 A One of the reasons, yes.

3 Q You were not able to do that, is that correct?

4 A Correct, ma'am.

5 Q Because the sheik collected for the al-jihad
6 organization, is that right?

7 A That's right, ma'am.

8 Q And Sheik Abdel Khalik collected for the mosque,
9 El Salaam mosque, is that right?

10 A That's right, ma'am.

11 Q Now, going back to the morning when you picked
12 everybody up in Jersey City, is it fair to say that you
13 picked up people at the mosque? Is that right?

14 A Yes, ma'am.

15 Q Then you picked up Dr. Abdel Rahman at his
16 apartment, is that right?

17 A As far as I recall, yes.

18 Q And the last person to be picked up was Mr. Hamdi
19 Moussa, is that correct?

20 A As far as I recall, yes, ma'am.

21 Q By the way, the apartment where you picked up the
22 sheik, was he still living there in 1993, was that the same
23 apartment?

24 A I'm not sure, ma'am.

25 Q Do you remember telling us here that the sheik

1 said to you that America is the head of the snake and Israel
2 and Egypt are the tail of the snake? Those were his words?

3 A Yes, ma'am.

4 Q They are not your words, are they?

5 A No, ma'am.

6 Q Do you remember talking to Special Agent Anticev
7 on a bootleg tape --

8 A Bootleg tape?

9 Q On a source tape, on a tape that you made of your
10 conversation with him?

11 A About what?

12 Q About the work you were carrying on on behalf of
13 the FBI? Do you remember speaking with him?

14 A I don't remember. I talked so many times to him.

15 Q Well, do you remember saying to him, this is
16 source 25 4. I don't think it's in my book, page 12.

17 Do you remember saying to him:

18 "They think that they are exactly -- let me put
19 it that way. The United States of America is the head of
20 the snake.

21 "Anticev: Uh-huh.

22 "Salem: Egypt is the tail, or the Arab world is
23 the tail of the snake, Israel is the tail. They don't want
24 to head tails of course. They have a certain grudge against
25 Egypt."

1 Now, those are your words saying the head of the
2 snake and the tail of the snake, isn't that right,
3 Mr. Salem?

4 A No, ma'am, it's not right.

5 Q Well, were you quoting anyone there?

6 A I was quoting Sheik Omar.

7 Q Did you tell Special Agent Anticev that you were
8 quoting Sheik Omar in this particular tape?

9 A No, I did not.

10 Q You were just using that analogy yourself, is
11 that right?

12 A I'm sorry. Say it again, please?

13 Q You were just using the image of the snake
14 yourself, is that right?

15 A That's right.

16 Q Now, you also told about a time during the
17 conference that someone searched your clothing?

18 A Yes, ma'am.

19 Q And you told us that that person was Adil, a
20 Palestinian, you thought, with whom you were sharing a room?

21 A Yes, ma'am.

22 Q Is that right?

23 A That's right.

24 Q You had a discussion, a loud discussion with him
25 about this, is that right?

1 A Right.

2 Q Do you remember telling the FBI that Hamdi Moussa
3 was the one who searched your belongings?

4 A No, I don't.

5 Q You do remember reporting to the FBI about the
6 conference, do you not?

7 A Yes, ma'am, I did.

8 Q Do you remember telling them, and this would be
9 Special Agent Ron Edelberg -- do you remember speaking to a
10 special agent by that name?

11 A Probably, yes.

12 Q Do you remember telling him that Moussa searched
13 T-1's clothes and wallet and found T-1's military
14 identification?

15 A No, ma'am.

16 Q Moussa accused T-1 of being Egyptian intelligence
17 on a mission, or being a CIA or FBI operative.

18 A That was Adil, ma'am.

19 Q That was Adil? It was not Moussa?

20 A No, ma'am, it was not Moussa.

21 Q You are saying that you reported it correctly and
22 they got it wrong? Is that what you are saying?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Q It is still your testimony that Adil searched

1 your clothing, is that right, or searched your wallet, is
2 that correct?

3 A Yes, ma'am.

4 Q On the trip to Detroit on the way out, where were
5 people sitting in the van as you left New Jersey after
6 everyone had been picked up?

7 A I end up sitting by Sheik Omar, and I believe
8 Hamdi Moussa was driving, Hamdi Ali ride beside him, and I
9 don't recall who was sitting behind me except the last one
10 in the van was Sheik Abdel Khalik.

11 Q There were seven of you in this van, is that
12 correct?

13 A Let me count them for a second.

14 Yes, ma'am.

15 Q The van was positioned with three separate rows
16 of seats, is that correct?

17 A I don't recall.

18 Q Let me clear it up.

19 There were two seats at the driver's and
20 passenger positions, is that right?

21 A That's right, ma'am.

22 Q Then there was a bench seat in the middle of the
23 van, is that right?

24 A Yes, ma'am.

25 Q And then there was a bench in the back of the

1 van, is that correct?

2 A Yes, ma'am.

3 Q You started out driving, is that correct?

4 A As far as I recall, yes.

5 Q Then Hamdi Moussa said he knew the way, he would
6 drive, you were going too slow, do you remember that?

7 A As far as I recall, yes.

8 Q You got out at that point?

9 A Yes.

10 Q Where did you go to sit at that point?

11 A I believe I stepped back beside Sheik Omar.

12 Q On the bench in the middle, is that right?

13 A Yes.

14 Q Are you certain?

15 A Yes, ma'am, I am sure.

16 Q Isn't it a fact that the sheik slept most of the
17 way to Detroit, that he was asleep?

18 A It came a time he slept for a while, yes. It was
19 a 16-hour trip, ma'am.

20 Q You made frequent stops, did you not, because of
21 the sheik's diabetic condition?

22 A It was one of the reasons, yes, ma'am.

23 Q You collected all the receipts, isn't that right?

24 A I think I did, yes.

25 Q Even when somebody bought some batteries you took

1 that receipt, is that right?

2 A I don't recall, ma'am.

3 Q In any event, you have recounted here that
4 Dr. Abdel Rahman upon meeting you the first time asked you
5 to murder President Mubarak, is that correct?

6 MR. McCARTHY: Objection. "Upon meeting the
7 first time."

8 MS. STEWART: Upon this occasion.

9 A Yes, ma'am.

10 Q There were six other people in the van at that
11 time, is that right?

12 A Yes, ma'am.

13 Q You also told us that when you got to Detroit he
14 asked you in front of three other people if you knew how to
15 use dynamite, is that correct?

16 A I don't recall, three or more, but, yes, he did
17 ask me that.

18 Q When you got to Detroit there was a discussion
19 about who would sleep where, is that correct?

20 A Yes, ma'am.

21 Q You asked to be able to stay with the sheik, is
22 that right?

23 A I don't think I did that, ma'am.

24 Q Did you get into an argument with Hamdi Moussa
25 about where you would sleep?

1 A No, ma'am.

2 Q Did you ever say, "I will get my own room"?

3 A Absolutely not.

4 Q But your testimony is that you and Adil slept in
5 a room and the sheik slept on the floor in the suite, is
6 that correct?

7 A Yes, ma'am.

8 Q The sheik was a guest at this particular
9 conference, is that your understanding?

10 A Yes, ma'am.

11 Q He was invited to speak there, is that correct?

12 A That's correct, ma'am.

13 Q You also told us that Hamdi Moussa became
14 suspicious of you when, in unloading the car, he saw a
15 camera, is that right?

16 A That's right, ma'am.

17 Q Asked you what you were going to use that for, is
18 that right?

19 A That's right, ma'am.

20 Q Was it just a camera, or was it lots of cameras,
21 cameras zooming and booming all over the place?

22 A I'm sorry?

23 Q Did you have more than one camera, Mr. Salem?

24 A Yes, ma'am.

25 Q Did you take pictures during the conference?

1 A Yes, ma'am.

2 Q You took pictures of people in the audience, is
3 that right, not necessarily the people on the dais who were
4 speaking, is that right?

5 A Yes, ma'am.

6 Q That was for the FBI, is that correct?

7 A Yes, ma'am.

8 Q Where are those pictures? Did you turn them in?

9 A I don't recall, to be honest.

10 Q Did you send them to Egypt?

11 A I don't recall.

12 Q Did you give them to the fellow from general
13 intelligence?

14 A I may give him a picture or something.

15 Q After you returned home, you returned home and
16 the sheik stayed in Detroit, is that correct?

17 A Yes, that's correct.

18 Q After you got back, there was a question about
19 payment for the van, for the rental of the van, is that
20 right?

21 A Right.

22 Q It was suggested by the imam, Abdel Khalik, that
23 everybody should contribute \$50 toward the van, is that
24 right?

25 A That's right, ma'am.

1 Q But Hamdi Moussa said he wanted to see the
2 receipt before he contributed anything, is that right?

3 A That's right, ma'am.

4 Q And you said, "Forget it," is that right? "I'll
5 take care of this," is that right?

6 A Yes, ma'am.

7 Q But actually it wasn't you taking care of it,
8 isn't that right?

9 A Yes, ma'am.

10 Q It was the FBI taking care of it, isn't that
11 correct?

12 A As far as I recall, yes, ma'am.

13 Q Do you remember having a conversation about this
14 with Mr. El-Gabrowni and telling him, "I paid with the help
15 of God, and he is keeping a record"?

16 A Yes, ma'am, I did say that.

17 Q Did you believe that?

18 A Believe what?

19 Q That you paid with the help of God.

20 A I believe that I did pay with the help of the
21 FBI.

22 Q Were they keeping a record?

23 A I don't know, ma'am.

24 Q Well, is God keeping a record, Mr. Salem?

25 MR. McCARTHY: Objection.

1 A Of course --

2 THE COURT: Sustained.

3 Q After you returned to New York -- actually, you
4 were living in New York, at this time, is that correct?

5 A Yes, ma'am.

6 Q You were living here in Manhattan?

7 A Yes, ma'am.

8 Q At approximately 85th and Broadway, is that
9 correct?

10 A Yes, ma'am.

11 Q And you received a call from a participant in the
12 conference?

13 A Yes, ma'am.

14 Q What was his name again?

15 A As far as I recall, if I am correct, Dr. Hassan
16 Yahya.

17 Q By the way, just going back to the search of your
18 belongings for a moment, or the search of your wallet, you
19 on occasion would search other people's wallets in
20 connection with this investigation, isn't that right?

21 A That's right, ma'am.

22 Q On one occasion at a mosque you searched the
23 wallet of Mahmud Abouhalima, isn't that correct, while he
24 was praying?

25 A I'm not sure it was in the mosque or in

1 Mr. Mohammed El-Gabrownny -- I remember I searched his
2 jacket, yes, but I don't recall the location exactly.

3 Q In any event, after you returned, you got a call
4 from -- would you tell us the name again. I'm sorry.

5 A Dr. Hassan Yahya.

6 Q Yes. He had been a participant in the
7 conference, is that correct?

8 A Yes, ma'am.

9 Q He told you that the sheik would be returning to
10 Newark Airport, is that right?

11 A That's what he told me, yes.

12 Q Would I be correct, Mr. Salem, in saying that the
13 relationship between you and Hamdi Moussa was very, very
14 difficult during this conference?

15 A Yes, ma'am.

16 Q He was very rough with you, I think you told
17 Mr. McCarthy?

18 A Yes, ma'am.

19 Q He didn't want to let you get near the sheik at
20 all, is that correct?

21 A That's correct, ma'am.

22 Q He didn't want you taking any pictures at all, is
23 that right?

24 A That's right.

25 Q Yet, nonetheless, when Mr. Yahya called you, you

1 called Hamdi Moussa, didn't you?

2 A Yes, ma'am.

3 Q You are telling this jury that you called
4 Mr. Moussa to get directions to Newark Airport, is that
5 right?

6 A That's right, ma'am.

7 Q You had been a taxicab driver, hadn't you,
8 Mr. Salem?

9 A For a couple of weeks, yes.

10 Q You could read English signs, couldn't you?

11 A Not that quickly in that time.

12 Q Well, you had traveled to Jersey City. You
13 didn't see those big signs that said "Newark Airport"?

14 A No, I get lost easily, ma'am.

15 Q So you didn't call Special Agent Nancy Floyd and
16 ask her, "How do I get to Newark Airport"?

17 A If I recall correctly, I called one of the
18 agents, and I couldn't get hold of him or her to get
19 description to go to Newark Airport. When I failed to get
20 hold of them, I called Mr. Hamdi Moussa.

21 Q You described Mr. Moussa as being a very close
22 intimate of Sheik Abdel Rahman, right?

23 A Yes, ma'am.

24 Q Actually he owns a pizza parlor and a pita place,
25 is that right?

1 A No, ma'am, that's not to my knowledge.

2 Q You don't know?

3 A I do know that Mr. Hamdi Ali owns a pizza in New
4 Jersey, not Hamdi Moussa.

5 Q Are you certain of that?

6 A Yes. That's what I know, ma'am.

7 Q In any event, you called Hamdi Moussa to get
8 directions to Newark Airport, is that right?

9 A Yes, ma'am.

10 Q Where did you call him?

11 A Where?

12 Q Yes.

13 A He give me his phone number. I don't recall if
14 that was his home or what it was.

15 Q Was it a toll call?

16 A I beg your pardon?

17 Q Was it a toll call? Do you remember?

18 A What do you mean, "toll"?

19 Q Did you call out of your own area code?

20 A Yes. It's in New Jersey, ma'am.

21 Q And you were told not to bother, don't go, is
22 that right?

23 A That's right, ma'am.

24 MS. STEWART: Just give me one minute, Judge.

25 Q You also recounted to us -- let me withdraw that.

1 You also recounted to us, did you not, a
2 situation at El Salaam mosque after your return from Detroit
3 where people saw you praying with your dog tags on, is that
4 right?

5 A That's right, ma'am.

6 Q They all said he must be FBI or intelligence to
7 be wearing dog tags, is that right?

8 A Some of them, yes, ma'am.

9 Q You told a lot of people about that fact, is that
10 right?

11 A Yes, ma'am.

12 Q There was also, of course, Hamdi Moussa saying
13 that he believed you were Egyptian intelligence or FBI
14 because of what he found in your wallet, is that right?

15 MR. McCARTHY: Objection.

16 THE COURT: May I hear it again.

17 Q I said: And Hamdi Moussa was also saying that
18 you were working with the FBI or Egyptian intelligence
19 because of what he found in your wallet?

20 MR. McCARTHY: Objection.

21 THE COURT: "Also saying" when?

22 MS. STEWART: At the same time, in mid-December,
23 1991.

24 THE COURT: Did you know whether he was saying
25 that?

1 THE WITNESS: Hamdi Moussa did not say I'm an FBI
2 cooperative or Egyptian intelligence because of what he saw
3 in my wallet. He said that because he saw the dog tag
4 chain, ma'am.

5 Q Did he see in your wallet your retired military
6 card showing that you had been a member of the Egyptian
7 military?

8 A I don't know what he saw in my wallet.

9 Q Were you confronted with that as being proof that
10 you must be working for Egyptian intelligence by him?

11 A I saw the wallet out of order, so probably they
12 went through it all.

13 Q Did anyone mention to you that they thought you
14 were FBI or Egyptian intelligence because they found this
15 card in your wallet?

16 A No, not because they find this card, ma'am. No.

17 Q Did you report to the FBI that Hamdi Moussa said
18 you were FBI or Egyptian intelligence because he found this
19 card in your wallet?

20 A I don't recall. He may said it.

21 Q In any event, you continued to attend at that
22 point the El Salaam mosque in Jersey City where Sheik Omar
23 preached on some occasions, is that right?

24 A Yes, ma'am.

25 Q If you know, he preached other places as well, is

1 that correct?

2 A Yes, ma'am.

3 Q Your testimony was that during the trial of
4 Mr. Nosair a lawyer from Egypt named Zayyat sat next to you
5 in court, is that correct?

6 A That's correct, ma'am.

7 Q You told this jury, did you not, that after you
8 saw Mr. Zayyat in court you saw him at the mosque, is that
9 correct?

10 A Yes, ma'am.

11 Q At that time you observed him and Sheik Abdel
12 Rahman go into a corner where Mr. Zayyat received from the
13 sheik a small package wrapped in newspaper, is that your
14 testimony?

15 A Yes, ma'am.

16 Q Did you report that to the FBI?

17 A Yes, I did, ma'am.

18 Q Did you report that he received a package from
19 the sheik?

20 A I think I did, yes, ma'am.

21 Q Didn't you report --

22 MS. STEWART: This is at 3534C, page 44.

23 MR. McCARTHY: All right.

24 Q -- that Zayyat was going to meet with Sheik
25 Omar's wife, who was under house arrest in Egypt?

1 A That's what I understood, yes, ma'am.

2 Q There was no mention of any package at that time,
3 is that right?

4 MR. McCARTHY: Mentioned by?

5 A No, there was no --

6 MR. McCARTHY: I'm sorry. Objection.

7 THE COURT: You are asking him whether he
8 mentioned a package?

9 MS. STEWART: I'm asking Mr. Salem whether he
10 mentioned a package to the FBI.

11 A Yes, ma'am, I did.

12 Q Isn't it a fact that you told the FBI that you
13 thought that Mr. Zayyat should be stopped at the airport and
14 searched for any possible contraband or documents?

15 A Yes, ma'am.

16 Q Did you mention that he had been given a package
17 wrapped in newspaper by Sheik Omar Abdel Rahman?

18 A That's what I meant, ma'am, yes.

19 Q That's what you meant, but you never used the
20 word "package" in making your report, is that right?

21 A I don't recall what term I used, ma'am.

22 Q And you didn't tell us here anything about the
23 sheik's wife --

24 MR. McCARTHY: Objection.

25 Q -- in Egypt, the intended recipient of that

1 package?

2 THE COURT: Did you say anything about the
3 sheik's wife being the intended recipient of the package, if
4 you recall?

5 THE WITNESS: I don't recall, sir.

6 Q This is at page 4693 of the transcript: Can you
7 tell us -- this is Mr. McCarthy questioning you --

8 MR. McCARTHY: May I have a moment, please.

9 Ms. Stewart, could you just give me a line.

10 MS. STEWART: Starting at 7.

11 MR. McCARTHY: Objection under 613(b).

12 THE COURT: May I see the page?

13 Sustained.

14 MS. STEWART: I'm sorry, Judge. I didn't hear.

15 THE COURT: Pardon?

16 MS. STEWART: I didn't hear you.

17 THE COURT: Sustained.

18 Q Is it your testimony, Mr. Salem, that you did
19 tell us that Mr. El-Zayyat was going to see Sheik Omar's
20 wife when he was in Egypt?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained. If you want to go into
23 that subject, you can go into it on your own without regard
24 to prior testimony.

25 Q Was it your understanding in December of 1991

1 that Mr. El Zayyat was going to meet with Sheik Omar Abdel
2 Rahman's wife who was under house arrest in Egypt?

3 A I wasn't sure that she's under house arrest, but
4 my understanding that probably he were going to deliver this
5 package to her, yes, ma'am.

6 Q You told the FBI that she was under house arrest,
7 is that right?

8 A I don't recall, ma'am.

9 MS. STEWART: May I approach, Judge.

10 THE COURT: Yes.

11 MR. McCARTHY: Your Honor, I am going to object
12 on foundation grounds to this line of questioning.

13 THE COURT: That is overruled. Could you come to
14 a convenient break point?

15 (Continued on next page)

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1 MS. STEWART: Pardon me.

2 THE COURT: If you could come to a convenient
3 break point in the next five minutes.

4 MS. STEWART: I can take it at this point, Judge.

5 THE COURT: It is your choice.

6 MS. STEWART: OK. That is fine.

7 THE COURT: Is that all right?

8 MS. STEWART: Sure.

9 THE COURT: Ladies and gentlemen, we are going to
10 break for lunch, please leave your notes and other materials
11 behind. Please don't discuss the case and we will resume at
12 2 o'clock.

13 (The jury was excused)

14 (Jury not present)

15 THE COURT: You may step down.

16 (Witness excused)

17 THE COURT: Just for my edification, I don't
18 understand the foundation objection.

19 MR. MCCARTHY: If the question, your Honor, is,
20 did he tell the agents she was under house arrest, I have no
21 problem with that. But if this is being put in for the fact
22 that she was under house arrest, that's hearsay as to him.
23 I don't think he has competent knowledge of whether it is
24 true or not, and it is, in any event, irrelevant, so --

25 THE COURT: That wasn't the objection. It was a

1 foundation objection, which I didn't understand and still
2 don't. The question is, did he tell that to the FBI. Is
3 that the question?

4 MS. STEWART: That's right.

5 THE COURT: That he can answer.

6 I will see you this afternoon.

7 MR. NOOTER: Your Honor, at some convenient time
8 today may I just have a word with you about -- remember we
9 discussed it last week, an exhibit, if you would.

10 THE COURT: I haven't changed my mind.

11 Do you want to see me now?

12 MR. NOOTER: At any point.

13 THE COURT: Fine, come on back.

14 (Pages 5880-5884 were sealed by order of the
15 court)

16 (Luncheon recess)

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AFTERNOON SESSION

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2:00 p.m.

(In open court; jury present)

EMAD SALEM, resumed.

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Miss Stewart.

MS. STEWART: Thank you, Judge.

CROSS-EXAMINATION continued

BY MS. STEWART:

Q I think where we left off, Mr. Salem, was in December of 1991, with the lawyer El Sayyid from Egypt, is that right?

A Yes, ma'am.

Q You told us, did you not, on your direct examination -- strike that.

It is your testimony that Mr. Sayyid accepted a small package from Sheik Omar at El Salaam Mosque sometime in September 1991, is that right?

A Yes, ma'am.

Q What did you do as a result of observing that?

A I tried to get as close as much to them to hear what's being said, and that's it.

Q Did you notify the FBI afterwards?

A Yes, ma'am.

1 Q Did you ask them to do something?

2 A Yes, ma'am.

3 Q What did you ask them to do?

4 A I asked them if it's possible to search Mr.
5 Sayyid's luggage to see what's being sent.

6 Q You knew, I think you told us, that Mr. Sayyid
7 was departing on a specific flight to Cairo from JFK
8 Airport, is that right?

9 A Yes, ma'am.

10 Q How did you come by that information?

11 A Mr. Sayyid told me.

12 Q He told you the flight number?

13 A Yes, ma'am.

14 Q If I were to tell you that Mr. Sayyid flew to
15 Saudi Arabia and not to Cairo, would that be incorrect?

16 A I have no idea.

17 Q But you reported to the FBI that you knew the
18 flight number to Cairo, is that right?

19 A Yes, ma'am.

20 Q What did the FBI tell you to do?

21 A They told me that's not the law here, we cannot
22 search his luggage according to the law here, but if you
23 will let your friends overseas in Egypt to check it, go
24 ahead.

25 Q This was in December 1991, is that right?

1 A I am not sure about the date, ma'am.

2 Q It was before the end of the Nosair trial, isn't
3 that correct?

4 A Yes, ma'am.

5 Q Did you let your friends in Egyptian
6 intelligence, Egyptian military intelligence, know?

7 A I did let them know, yes.

8 Q Did you tell them something else when you let
9 them know?

10 A I don't know.

11 Q In any event, as you sit there now are you aware
12 that Mr. Sayyid was arrested in Egypt and did serve seven
13 months in jail? Are you aware of that as you sit there?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 MR. McCARTHY: Move to strike.

17 THE COURT: I simply remind the jury as I have on
18 several other occasions that lawyers' statements aren't
19 evidence. Go ahead. Statements or questions. Go ahead.

20 Q Did anyone from Egyptian military intelligence
21 ever contact you with regard to what happened when Mr.
22 Sayyid eventually returned to Egypt?

23 A No, ma'am.

24 Q You never heard another word about it after you
25 gave them this information?

- 1 A Not from the Egyptian military intelligence, no.
- 2 Q Did anyone from the FBI ever tell you yes, he was
3 searched and this package was found?
- 4 A Not as far as I recall, no, ma'am.
- 5 Q You weren't carrying around any of your recording
6 gadgets at this time either, is that right?
- 7 A I don't think, no, ma'am.
- 8 Q And this was at a time after you had made the
9 trip to Detroit, is that correct, that this occurred?
- 10 A Yes, ma'am.
- 11 Q You testified, I believe, about a party that was
12 held at Abu Bakr Mosque following the partial acquittal of
13 Nosair, is that correct?
- 14 A Yes, ma'am.
- 15 Q I would like to show you a copy of something that
16 is marked in evidence, I believe on your examination, 384G1.
- 17 A Yes, ma'am.
- 18 Q Who did you tell us that you recognized that to
19 be in that picture, the upper picture of the two?
- 20 A Individual called Abd El Rahman.
- 21 Q What is the ending part of his name?
- 22 A Abd El Rahman.
- 23 Q Is it El Sayyid difficult, part of his name?
- 24 A I don't know his last name, ma'am.
- 25 Q This is not the same person as Abdel Rahman

1 Haggag who lived next door to the sheik, is it?

2 A No, ma'am.

3 Q But this is a person who sometimes served to
4 drive the sheik back and forth to Brooklyn, is that correct?

5 A Yes, ma'am.

6 Q And you identified him, I believe, as an Iraqi,
7 is that right?

8 A Yes, ma'am.

9 Q He is an Egyptian, isn't he?

10 A He told me he is from Iraq, ma'am.

11 Q He told you that? When did he tell you that?

12 A I don't recall, I believe in El Salaam Mosque one
13 day, either in El Salaam Mosque or in Sheik Omar's
14 apartment, because he was living with him.

15 Q Do you know what he does for a living?

16 A No, ma'am.

17 Q You are saying that you did not recognize him as
18 a fellow Egyptian from his accent or from his name or
19 anything else?

20 A No, ma'am.

21 Q By the way, at this particular celebration that
22 took place, Sheik Omar did not attend that, did he?

23 A No, ma'am.

24 Q Beginning in late December and January 1991, you
25 stopped attending El Salaam Mosque in Jersey City, is that

1 right?

2 MR. McCARTHY: Objection, time frame.

3 Q Can you tell us when if ever you stopped
4 attending El Salaam Mosque in Jersey City during the months
5 of December or January?

6 A I don't recall when, but it came a time after the
7 issue of the chain dog tag I start to cut down going to El
8 Salaam Mosque, ma'am.

9 Q And you told a lot of people -- you told some
10 people -- strike that. You remarked upon this to people on
11 certain occasions, is that right, that you were no longer
12 attending there because you were suspected?

13 A I think yes, I did.

14 Q You told Siddig Ali, did you not, that you really
15 hadn't attended during the whole year of 1992 until 1993, at
16 El Salaam, as a result of the suspicion and someone who had
17 said that you were FBI.

18 A I recall I told him that I cut down from El
19 Salaam but I do not recall that I told him this period of
20 time.

21 Q Would it be fair to say that during the year
22 1992, you were concentrating your efforts mainly in
23 Brooklyn, in the Abu Bakr and some of the other mosques
24 there, is that right?

25 A Yes, ma'am.

1 Q You it was in midJanuary, was it not, of 1992
2 that you first took a polygraph test with the FBI?

3 A I don't recall the date, but sometimes I took the
4 polygraph test with the FBI, yes.

5 Q Would it refresh your recollection, was it at or
6 about the time that you met with Mohammed Nasser of general
7 intelligence?

8 A Could be.

9 Q It wasn't as late as February that you took the
10 first test, was it?

11 A I am not sure, ma'am, about dates.

12 Q Let me see if I can -- hang on.

13 MS. STEWART: The government has offered to
14 stipulate, Judge, that the first test was on or about
15 January 8, 1992.

16 THE COURT: You can take that as a given.

17 MS. STEWART: Thank you.

18 Q Would you just tell us what they did with you on
19 this polygraph test?

20 A They asked me a lot of questions, and they put me
21 on a polygraph machine and they repeated the questions and
22 that's it.

23 Q When you say they put you on a machine, they
24 monitored parts of your body, is that right?

25 A Yes, ma'am.

1 Q And the machine, if you observed it, made certain
2 notations, is that right?

3 A Yes, ma'am.

4 Q They talked to you before they took the exam, did
5 they?

6 A I beg your pardon.

7 Q Did the FBI operator of this test talk to you
8 before they took the exam?

9 A I am sorry. I don't get the question.

10 Q When you came on January 8 to take this polygraph
11 exam -- strike that.

12 A All right.

13 Q Is another name for polygraph lie detector test?

14 A That is correct, ma'am.

15 Q When you came on January 8 to take this test, did
16 the polygraph operator speak with you before you took the
17 test?

18 A Yes.

19 Q Did he speak with you after you took the test?

20 A Yes.

21 Q You spent about three hours altogether with him,
22 is that right?

23 A It was a long time. I don't recall how long
24 exactly.

25 Q You had basically told people you were trained to

1 take polygraph exams, hadn't you?

2 A I may said that sometimes, yes.

3 Q You complained to Nancy Floyd that this test that
4 you thought should have taken 20 minutes took hours, is that
5 right?

6 A Yes, ma'am.

7 Q They asked you on this occasion questions about
8 your relationship with Egyptian intelligence, isn't that
9 right?

10 A I think yes.

11 Q And you spoke to the operator about how Egyptian
12 intelligence had asked you to find those five missing
13 officers, is that right?

14 A Right, ma'am.

15 Q Following that -- that was not the last polygraph
16 exam you were to take, is that right?

17 A No, it was not.

18 Q There came a time in July of 1992 that you took
19 another polygraph exam, is that right?

20 A I took another polygraph, yes.

21 Q Then you took another one at the end of
22 September, is that correct?

23 A Yes, ma'am.

24 Q On each of those exams, among other questions you
25 were asked about your relationship to Egyptian intelligence,

1 is that right?

2 A Yes, ma'am.

3 Q You were questioned, were you not, about whether
4 or not the FBI knew that you had a connection with Egyptian
5 intelligence, is that right?

6 A I don't recall the exact questions, ma'am.

7 Q But it suffices that you were asked questions
8 about your relationship with Egyptian intelligence and your
9 relationship with the FBI.

10 A Yes, ma'am.

11 Q You said you were trained to take polygraph
12 tests. Who trained you?

13 A Nobody. I just said that to brag about myself.

14 Q Did you read about polygraph tests and how to get
15 passed on them?

16 A I have a little machine which is, it gives
17 indication of your electrical body situation, and I used to
18 put it on my fingers and try to relax myself and control the
19 machine, and when I get aggravated the machine gives
20 increase of the whistle. I did that on my own, yes.

21 Q The last time you took a polygraph exam or a lie
22 detector was the end of September 1992, is that right? Do
23 you remember going to Newark to take an exam?

24 A Yes, ma'am.

25 Q You told us that in midJuly you stopped working

1 with the FBI, you went to Puerto Rico for a trip and you
2 stopped working for them, is that --

3 MR. McCARTHY: Objection.

4 THE COURT: Did you stop working for the FBI in
5 July of 1992?

6 THE WITNESS: Yes, I did.

7 Q They even stopped paying your parking tickets, is
8 that right?

9 A Yes, ma'am.

10 Q Yes, ma'am.

11 Q At this exam on September 28, 1992, you told the
12 polygraph operator that you had past and present ties to
13 Egyptian military intelligence, is that right?

14 A I am sorry. Would you please just repeat the
15 question, please.

16 Q Yes. In having the exam, taking the exam in
17 September 1992, you told the agent -- his name was Holliman,
18 I think, who gave you the exam -- that you had ties with
19 intelligence past and present, with Egyptian intelligence.

20 A Egyptian military intelligence.

21 Q Military intelligence.

22 A Yes, ma'am, I did.

23 Q You told him actually that the morning before you
24 came to see him you had been on the phone with them, is that
25 right?

1 A I may said that.

2 Q Do you remember that conversation at all with
3 them?

4 A No, ma'am.

5 Q Do you remember who you might have spoken to that
6 morning?

7 A That's like two years ago, ma'am. Sorry.

8 Q You also told them you were discussing your
9 future travel plans with Egyptian military intelligence, to
10 Egypt. Did you travel to Egypt any time subsequent or after
11 September 1992?

12 A I don't recall. I remember I made one trip after
13 my trip with Barbara Rogers, but I don't recall when, ma'am.

14 Q On that trip, did you pay for the ticket or did
15 Egyptian military intelligence pay for the ticket?

16 A The last one?

17 Q Yes.

18 A No, I did not pay, nor the Egyptian intelligence
19 paid.

20 Q Who paid?

21 A Mr. Yousery.

22 Q Mr. Yousery?

23 A Yes, ma'am.

24 Q That is your cousin in Fairfax?

25 A No, ma'am.

1 Q Not your cousin, your mother's sister's ex
2 husband in Fairfax, Virginia.

3 A No, ma'am. He is my mother's cousin's ex
4 husband, ma'am.

5 Q Mother's cousin's ex husband. Did that have
6 anything to do with arms dealing and going to Libya?

7 A No, ma'am.

8 Q Were you working when you went to Egypt on that
9 occasion that the ticket was paid for by Mr. Yousery?

10 A What do you mean, working?

11 Q Did you have work to do when you got to Egypt in
12 connection with a job, work?

13 A For Mr. Yousery, yes, ma'am.

14 Q When you spoke with the polygraph operator in
15 January 1992, is that the first time you had ever mentioned
16 the five military officers that you had been asked to look
17 for?

18 A No, ma'am.

19 Q You had told other people in the FBI before that?

20 A I think yes, I did.

21 Q Do you remember who or when you spoke to?

22 A I believe I said to Agent Nancy Floyd or Agent
23 Nancy Floyd and Agent John Anticev. I am not so sure.

24 Q Do you remember when that might have been?

25 A No, ma'am.

1 Q I would like to direct your attention, Mr. Salem,
2 to the middle of January 1992, January 17, 1992. Do you
3 recall that date at all?

4 A No, ma'am.

5 Q Do you remember you were called by Dr. Mohammed
6 Mehdi of New York, New York, and told about a big meeting
7 that was about to take place on the evening of January 17,
8 1992?

9 A Yes, ma'am.

10 Q It was to involve the young Islamists, young
11 Muslims, young men in this city and it was a big meeting to
12 decide about the Islamic future in America, is that right?

13 A Yes, ma'am.

14 Q This was an open meeting, anyone could attend it,
15 is that right?

16 A Yes, ma'am.

17 Q You reported your invitation to that meeting on
18 the 7th for the 17th of January 1992 to Nancy Floyd, is that
19 right?

20 A I may. I don't recall.

21 Q Would it have been your practice if you had been
22 invited to this kind of meeting to tell the FBI about it?

23 A Yes, ma'am.

24 Q Shortly thereafter, were you called by Ibrahim
25 El-Gabrownny and told about this meeting by him and asked if

1 you would attend it on behalf of Nosair?

2 A Yes, ma'am.

3 Q This was at a time prior to Nosair's sentencing,
4 isn't that correct?

5 A Probably.

6 Q It was January 17. Do you recall that the
7 sentencing was January 31, 1992?

8 A Could be.

9 Q In any event, he asked you also to attend this
10 meeting, is that right?

11 A Yes, ma'am.

12 Q But you reminded him of a conflict, is that
13 right?

14 A I don't --

15 Q Do you remember that you had a conflict, you were
16 to attend a security meeting at Al-Taqwah and go from there
17 out to Queens to discuss security in the mosques -- does
18 that refresh your recollection about a conflict, another
19 meeting for that night?

20 A I recall that I attended a meeting in Al-Taqwah
21 Mosque about the security, another meeting in Shabazz
22 Mosque. But I don't recall the connection between the
23 meeting and the other conference.

24 Q Do you remember on the 17th of January 1992, you
25 were to meet Al Sattar and Ali Rashid in Al-Taqwah and

1 travel to Queens, to a mosque in Queens where you were to
2 meet and discuss security for the upcoming sentencing, as
3 well as security in general?

4 A I recall it was a time that Mr. Sattar talked to
5 me about security, Mr. Shinawy and they referred me to go to
6 meet with Mr. Ali Abdel Karim in Al-Taqwah Mosque, but I
7 don't recall that we went to Queens, ma'am.

8 Q Do you recall reporting to Detective Napoli, who
9 was then working on the FBI's task force --

10 A Yes, ma'am.

11 Q -- that you attended an El Gamiya Mosque on
12 Sutphin Boulevard in Queens, in Jamaica?

13 A I don't recall that.

14 Q Do you remember that in the course of this
15 meeting the people who had gathered there, 50 to 75 young
16 man in black uniforms exited the meeting?

17 A Yes, I recall, ma'am, yes, I remember.

18 Q And do you remember they stood outside a drug
19 dealer's home and said leave the neighborhood, leave our
20 children alone?

21 A Yes, ma'am, I remember.

22 Q You reported all that to Detective Napoli, did
23 you not?

24 A I believe I did.

25 Q And you told him something about a Dr. Rafiq that

1 you met at that meeting, is that right?

2 A I don't recall the name.

3 Q In any event, you went to that meeting with
4 Mohammed Al Sattar, is that right? Do you remember him
5 attending?

6 A I am not sure about Mr. Al Sattar but I am sure
7 Mr. Nasser, the Palestinian, attend, and I believe, if I am
8 not -- I believe Mr. Hussein El Shinawy also attend.

9 Q With regard to Mr. Al Sattar, do you remember he
10 was wearing his uniform that night from the post office, he
11 came right from work and met you from Al-Taqwah; do you
12 remember that?

13 A I met him so many times in uniform so it won't
14 make a difference to me, ma'am.

15 Q So you don't remember him on this particular
16 occasion?

17 A No, I don't.

18 Q Going back, do you remember telling Mr.
19 El-Gabrownly that it would be impossible for you to attend
20 Dr. Mehdi's meeting with the Islamic youth that night,
21 January 17?

22 A I may said that, but I don't recall.

23 Q Did you attend the meeting with the Islamic youth
24 and Dr. Mehdi?

25 A Yes, ma'am.

1 Q Was that particular meeting organized by the be
2 Arab organization the Resistance Against American
3 Interference?

4 A I don't recall the name of the organizer, ma'am.

5 (Continued on next page)

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1 Q Do you remember that Ramsey Clark, my
2 cocounsel --

3 MR. McCARTHY: Objection, your Honor, Rule
4 611(b), scope.

5 THE COURT: Sustained.

6 Q Did you attend a meeting on January 17, 1992,
7 with Dr. Mehdi at the Shekara -- excuse my pronunciation --
8 mosque?

9 MR. McCARTHY: Same objection.

10 THE COURT: Same ruling. May I see you at the
11 side.

12 MS. STEWART: Yes.

13 (AT the side bar)

14 MS. STEWART: I am trying rather laboriously, I
15 admit, to get to the point --

16 THE COURT: It is an economical cross.

17 MS. STEWART: -- that he reported to the FBI that
18 on the evening of January 17 he was in three different
19 places -- I would contend at the same time -- I don't know
20 what his answers will be -- the last of which is supposedly
21 a meeting with my client.

22 THE COURT: I will allow that.

23 MS. STEWART: That's where it is going, I mean.

24 THE COURT: He already said he remembers the
25 meeting.

1 MS. STEWART: Right.

2 THE COURT: And I think he remembers the other
3 meeting, too, so you have two out of the three by my count.

4 MS. STEWART: I just have to establish which he
5 attended and whether he attended.

6 THE COURT: And then the geography, I guess,
7 whether it makes it possible or impossible.

8 MS. STEWART: Right.

9 (In open court)

10 (Continued on next page)

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1 BY MS. STEWART:

2 Q Mr. Salem, directing your attention to the
3 meeting at the mosque in Queens, how long would you say that
4 meeting lasted?

5 A The one we left the mosque --

6 Q Yes.

7 A I don't recall.

8 Q Do you remember going to attend Dr. Mehdi's
9 meeting after or before you attended the mosque in Queens?

10 A I don't recall.

11 Q Let me show you -- perhaps I can refresh your
12 recollection.

13 A Yes, ma'am.

14 MS. STEWART: This is at 3534C. Page 35. Judge,
15 may I approach?

16 THE COURT: Yes.

17 A Yes, ma'am.

18 Q Does that refresh your recollection as to whether
19 or not you attended either or both of those meetings on
20 January 17, 1992?

21 A I have a recollection of attending the security
22 meeting and I went out with them, and I have a recollection
23 that I attended a meeting for the Palestinian group. I
24 don't recall what was the address in that night. I don't
25 recall that I saw Dr. Mehdi there. But I attended and I

1 believe Mr. El-Gabrownly came with me and we distributed
2 flyers to collect money for Mr. Sayyid Nosair.

3 Q Is it your recollection that those occurred on
4 different nights?

5 A I am sorry, ma'am. I cannot recall.

6 Q After you attended the meeting at the mosque in
7 Queens on the 17th, do you remember what you did thereafter?

8 A No, ma'am.

9 Q Do you remember if you came back to Abu Bakr
10 Mosque?

11 A I don't recall, ma'am.

12 Q I think you told us that previously -- strike
13 that. Do you remember if you had a meeting that night --
14 strike that.

15 Q Where is Abu Bakr Mosque located?

16 A If you go on the grounds avenue in Queens you
17 turn right on Foster Avenue, at the right end of the Foster
18 Avenue before the subway overpass.

19 Q That is in Brooklyn?

20 A Yes we, ma'am.

21 Q About how far is it from the mosque you were
22 attending in Queens?

23 A I don't recall, ma'am.

24 Q Do you remember if you drove to this meeting in
25 Queens or who drove?

1 A I don't recall, ma'am.

2 Q You remember one person that went with you but
3 not any more than one person?

4 A I remember specifically Mr. Nasser, the
5 Palestinian, and I am not so sure that Mr. Sattar attend or
6 not, and probably Mr. Hussein Shinawy attend but I am not so
7 sure as well.

8 Q Do you remember coming from that meeting and
9 attending a meeting with Sheik Omar at the mosque that
10 night?

11 A I don't recall, ma'am.

12 Q Do you remember reporting to the FBI that you on
13 the 17th of January 1992 attended a meeting with Sheik Omar
14 at Abu Bakr Mosque?

15 A I don't recall, ma'am.

16 MS. STEWART: This is at 3534C page 40.

17 A I don't recall, ma'am, exactly. I know that's
18 being written but I don't recall.

19 Q Is it that you do not recall the date involved
20 here, which is January 17, 1992?

21 A I don't recall.

22 Q Do you have any recollection of going from the
23 mosque in Queens to the mosque in Brooklyn, probably fairly
24 late at night, and having this meeting?

25 A See, I have been going between the whole mosques

1 so many times, so it is hard for me to recollect two years
2 ago of going where to where in certain things.

3 Q Are you telling us, Mr. Salem, that you don't
4 remember when Sheik Omar said that he was glad that you were
5 getting involved in training?

6 A Yes, I remember he said that, but I don't
7 remember when.

8 Q And you don't remember where?

9 A I recall in his house in New Jersey, and --

10 Q Mr. Salem, we are talking about 1992.

11 MR. McCARTHY: Objection.

12 Q This is 1992, January 1992. Do you remember at
13 any time meeting with him and other people at Abu Bakr
14 Mosque when he said to you words to the effect that he was
15 glad you were getting involved in training?

16 A He may say something like that but I am not so
17 sure the dates, ma'am.

18 Q You weren't taping at this time, is that right?

19 A No, ma'am.

20 Q None of your gadgets at this time?

21 A No, ma'am.

22 Q Mr. Salem, I think you recounted to us an
23 incident that took place regarding a phone being ripped off
24 the wall. Do you recall that incident?

25 A Yes, ma'am.

1 Q And you told us, did you not, that you heard this
2 incident while you were at El Salaam Mosque in Jersey City,
3 is that right?

4 A Yes, ma'am.

5 Q You told us that Hamdi Moussa came out of the
6 kitchen and told how Mahmud Abouhalima had pulled the phone
7 off the wall, is that right?

8 A Yes, ma'am.

9 Q And Sheik Omar was sitting there at that time, is
10 that right?

11 A Yes, ma'am.

12 Q And he recounted that it was during a telephone
13 call from El Sayyid Nosair, is that right?

14 A Yes, ma'am.

15 Q Do you have any idea when that might have been
16 occurred?

17 A No, ma'am.

18 Q You told us earlier that you had not been to El
19 Salaam Mosque after, very much after February, the beginning
20 of February 1992, isn't that right?

21 MR. McCARTHY: Objection.

22 THE COURT: Is that your testimony?

23 THE WITNESS: I don't know, sir.

24 MS. STEWART: I lost the thread here, Judge.

25 THE COURT: He is not certain that he in fact

1 said that.

2 Q Do you remember saying that you told Siddig Ali
3 that you had not attended El Salaam Mosque because of the
4 accusations that were being made about you from January 1992
5 until March of 1993?

6 A I don't recall saying dates because I am very bad
7 at dates, so I will never say since so until so. I remember
8 I told him that I cut my visits to El Salaam Mosque after
9 they start to suspecting me in El Salaam Mosque.

10 Q Do you have any way of identifying when this
11 incident would have happened?

12 A Sorry, ma'am.

13 Q Did you report this incident to the FBI?

14 A Yes, ma'am.

15 MS. STEWART: 3534C, page 120.

16 Q Did you inform the FBI that Mahmoud Abouhalima
17 told you that he had received a telephone call and ripped
18 the phone off the wall?

19 A Mahmoud Abouhalima told me?

20 Q Yes. No, ma'am.

21 Q This would be reporting events from March 5 to
22 March 31, 1992. Does that refresh your memory at all?

23 A If that was during Mr. Sayyid Nosair's trial,
24 ma'am?

25 Q March a 5, 1992 is the question.

1 A Yes.

2 Q Between March 5 and March 31, 1992, do you recall
3 reporting your activities to the FBI?

4 A Yes.

5 Q And you reported them, did you not, to one of the
6 agents, is that right?

7 A Pardon me.

8 Q You reported them, did you not, to one of the
9 agents?

10 A Reported what, ma'am?

11 Q Your activities between March 5 and March 31,
12 1992, to one of the agents of the FBI, one of the people who
13 worked there.

14 A If I was working that time, yes, I did report it,
15 of course.

16 Q And you reported to them, did you not, that
17 Mahmoud Abouhalima had informed you that he received a
18 telephone call from El Sayyid Nosair who was in Attica, and
19 Nosair requested that arrangements could start regarding
20 getting him out of prison, and Abouhalima told you that he
21 pulled the phone out of the wall because he believed that
22 the FBI is reporting all the conversations.

23 A I recall some conversation with Mr. Mahmoud
24 Abouhalima about Mr. Sayyid Nosair calling him from jail and
25 blaming him, but I don't recall these details.

1 Q You told us that this was recounted to you by
2 Hamdi Moussa in El Salaam Mosque, is that right?

3 A That is right, ma'am.

4 Q Would your testimony change if this was told to
5 you directly by Mahmoud Abouhalima?

6 A No, it's not changed, ma'am. It was told, it was
7 told by Hamdi Moussa in the presence of Sheik Omar Abdel
8 Rahman in El Salaam Mosque.

9 Q And that was never reported to the FBI, was it,
10 Mr. Salem?

11 A I don't know. If it happened, I reported it.

12 Q You reported that Mahmoud Abouhalima told you
13 directly that he pulled the phone off the wall.

14 A No, ma'am, I am sorry, I did not report that.

15 Q You never reported that?

16 A No, I did not.

17 Q Did you also report at that particular time that
18 Sheik Omar was out of the city, he was out in Chicago and
19 out in Los Angeles, he was not around in March of 1992?

20 A I recall I reported certain time Sheik Omar
21 disappeared, and I asked some people in the community and
22 they told me he is in Chicago and Los Angeles, things like
23 that, and I did reported that, ma'am.

24 Q Are you certain as you sit there that the
25 conversation you reported originated from Attica State

1 Prison?

2 A I am sorry.

3 Q Are you certain that the conversation which made
4 the person pull the phone off the wall originated, came from
5 Attica State Prison?

6 A That's what Mr. Hamdi Moussa said.

7 Q You are insisting that Mr. Hamdi Moussa said
8 this, is that right?

9 A Yes, ma'am.

10 Q And it was said in front of Sheik Omar at the
11 mosque?

12 A Yes, ma'am.

13 Q And you never reported that Mahmoud Abouhalima
14 told you?

15 A I don't recall that I did that, ma'am.

16 Q Do you think there were two incidents where
17 Mr. Abouhalima pulled the phone out of the wall?

18 A No, it was one incident.

19 Q And that the FBI got this wrong in their reports?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q This didn't happen at the mosque, did it,
23 Mr. Salem?

24 A Which is, ma'am?

25 Q This incident that you are recounting here, this

1 was not told at the mosque. You weren't even attending the
2 mosque any more in March of 1993 -- '92.

3 A No, ma'am. It happened in the mosque. Sheik
4 Omar was sitting in front of me, I was sitting on the floor
5 in front of him. Mr. Hamdi Moussa came from my right which
6 is the kitchen in the El Salaam Mosque, and stated the
7 statements that I stated to you.

8 Q If you know, Mr. Salem, Mr. Nosair never went to
9 Attica until after January 31, 1992. He was not sentenced
10 until then, was he?

11 A I don't know.

12 Q You were there, weren't you, at the sentencing?

13 A Yes, but I don't recall the date, ma'am.

14 Q Following your meeting with the Egyptian general
15 intelligence man in midJanuary 1992, did you continue to
16 talk to your friends from Egyptian intelligence, military
17 intelligence?

18 A Yes, ma'am.

19 Q Were you sending them tapes of your work here?

20 A Not of my work. I send them some tapes taking
21 out of the news media.

22 Q Did you send them any tapes that you had reported
23 yourself?

24 A No, ma'am.

25 Q Did you send them any videotapes that you had

1 recorded yourself?

2 A No, ma'am.

3 Q The way these tapes got taken to Egypt was a
4 relative of yours would carry them over there, is that
5 right, if they were returning to Egypt -- your niece was an
6 airline stewardess, is that right -- I guess they don't use
7 that word any more.

8 A I am sorry.

9 Q Your niece was an airline stewardess, is that
10 right?

11 A My niece is an airline steward, that's right, but
12 she did not carry anything.

13 Q And her mother, did her mother carry tapes back
14 for you on at least one occasion?

15 A Her mother never came to United States of
16 America, no.

17 Q Did your sister come to the United States -- that
18 is, not her mother.

19 A I am sorry.

20 Q Strike that. Did your sister carry tapes for you
21 back to Egyptian intelligence?

22 A Yes, ma'am.

23 Q And they would meet her at the plane, is that
24 right, and take the tapes so she wouldn't have to go through
25 customs and everything else, is that right?

1 A Yes, ma'am.

2 Q It was during the spring of 1992 that you were
3 staying away from El Salaam Mosque in Jersey City, is that
4 right?

5 A I cannot say right because I don't recall the
6 date, ma'am.

7 Q But it was after the Detroit trip, is that right?

8 A Yes, I start to cut down little bit, yes.

9 Q You spoke to Sheik Abdel Khalik about the fact
10 that you weren't attending. Do you remember that?

11 A I am sorry.

12 Q Did you speak to the imam of El Salaam and tell
13 him the reason you were not attending, Sheik Abdel Khalik?

14 A Yes, I recall something like that.

15 Q Did you speak with Emad Abdou and tell him also
16 that you felt that the sheik was mad at at you and you were
17 not attending because he was very cold to you?

18 A Yes, ma'am.

19 Q But you kept on working in Brooklyn in connection
20 with the security there, is that right, and training, is
21 that correct, in the mosques?

22 A I kept working in Brooklyn, yes, ma'am.

23 Q And you made some trips to Attica, is that right?

24 A Yes, ma'am.

25 Q And you were reporting these things to the FBI,

1 is that correct?

2 A Yes, ma'am.

3 Q And also to Egyptian intelligence, is that right?

4 A I don't recall that, ma'am.

5 Q Do you recall on May 31, 1992, you received a
6 call from your sister in Egypt saying that Brigadier Ali was
7 due to be in New York and that she had received a call that
8 you should meet him?

9 A Could you repeat what you said again, please,
10 because that's never -- I don't recall that at all.

11 Q Do you remember receiving a phone call from your
12 sister Fatima in Egypt around May 31, 1992?

13 A Fatima called me so many times, ma'am.

14 Q That she told you that Brigadier Ali from
15 Egyptian military intelligence had contacted her and
16 requested that she get in touch with you as soon as
17 possible. Do you remember that?

18 A It may happen but I don't recall.

19 Q Do you know someone from Egyptian intelligence
20 named Brigadier Ali?

21 A Yes, I do know.

22 Q And you reported this to the FBI, did you not?

23 A I don't recall.

24 Q Do you remember if you ever met with him?

25 A With who?

1 Q Brigadier Ali.

2 A Here in United States?

3 Q Yes.

4 A No, ma'am, never.

5 Q Did you meet with him any place else?

6 A When I go to Egypt I meet with him, yes.

7 Q Isn't he a United States citizen, Mr. Salem?

8 A He is an Egyptian military intelligence officer,
9 ma'am. So no way for him to be American citizen.

10 Q Did you tell the FBI that you hadn't seen him for
11 two years before this?

12 A I don't recall that, ma'am.

13 Q Do you remember telling Special Agent Floyd that
14 you would get back to your sister and if a meeting was
15 necessary you would fly to Egypt and you would let her know
16 about that?

17 A About what, ma'am?

18 Q About meeting with Brigadier Ali.

19 A Ma'am, I never met with Brigadier Ali in United
20 States. To my knowledge, Brigadier Ali never been in United
21 States, to my knowledge.

22 Q I am asking, Mr. Salem, about a phone call from
23 your sister.

24 A Yes.

25 Q Which requested that you get into contact with

1 Brigadier Ali, whether it be here or in Egypt.

2 A It could happen that my sister relayed message
3 for me to contact Brigadier Ali, but I don't recall.

4 Q Do you remember that you wouldn't give further
5 information to the FBI about this person because you thought
6 he might be compromised?

7 A I don't recall that, ma'am.

8 Q You also in June reported to the FBI that you had
9 another contact from Egyptian military intelligence, is that
10 right?

11 A I don't recall it.

12 Q Do you remember that they supposedly contacted
13 you and you contacted the FBI about an assassination that
14 took place in Egypt?

15 A I don't recall.

16 Q You reported to the FBI, did you not, that this
17 assassination took place in Dairut or Dairut, Egypt?

18 A I don't recall.

19 Q Did you say that Dairut, did you tell the FBI
20 that Dairut was a town near Abdel Rahman's home in Egypt?

21 A I don't recall, ma'am.

22 Q You know, do you not, that Dairut is 300
23 kilometers away from Dr. Abdel Rahman's home?

24 A I know that there is Dairut but I don't recall
25 that I reported it is close to Abdel Rahman's apartment or

1 house.

2 Q Was there any communication that you had from
3 Egyptian intelligence during the months after you saw the
4 general intelligence officer until you stopped working
5 sometime in July 1992, that you did not report to the FBI?

6 A Could you please repeat the question again.

7 Q Did you have any contact of any kind with
8 Egyptian military intelligence from January 1992 till July
9 1992, that you did not report to the FBI?

10 A I have constant contacts with Egyptian
11 intelligence, and it's not every time I contact them I go
12 report to the FBI that I contacted them. It was not a
13 secret, what I am doing, to the FBI.

14 Q You taped certain conversations with regard to
15 those contacts, is that right?

16 A I taped most of my conversations.

17 Q These were tapes that were thrown or hidden in
18 that chair in your bedroom, is that right?

19 A Yes, ma'am.

20 Q These were source tapes that were discovered
21 sometime after the arrests in this case had taken place, is
22 that right?

23 A I am not sure discover is the right -- I mean, I
24 told them about it, ma'am.

25 Q Your phone call records would reveal that you

1 called Egypt frequently, is that right?

2 A Yes, ma'am.

3 Q And you called numbers of contacts in Egyptian
4 military intelligence frequently, is that correct?

5 A Yes, ma'am.

6 Q You also made calls to Israel, is that correct?

7 A I don't think that I did that at all.

8 Q And you also made calls to the CIA on occasion,
9 is that right?

10 A That's right, ma'am.

11 Q That was only in connection with your employment,
12 though?

13 A That is correct, ma'am.

14 Q Your hoped-for employment there, is that right?

15 A That is correct, ma'am.

16 Q In any event, as of July 1992 when the FBI took
17 you off the payroll and wouldn't pay your parking tickets
18 any more, you were officially terminated as of that time, is
19 that right?

20 A I walked out on the FBI. The FBI did not
21 terminated me, ma'am.

22 Q The FBI wanted you to either wear a wire, is that
23 right -- in other words, wear some kind of recording device,
24 is that right?

25 A Yes, ma'am.

1 Q -- and/or take polygraph exams, is that right?

2 A It wasn't that way, ma'am.

3 Q Tell me what way it was.

4 A The FBI wants me to testify and I refused to be
5 put on the witness stand in that time. I said I am not
6 going to testify no matter what. Then they said OK, if you
7 are not going to testify, you can wear a wire to tape Mr.
8 Sayyid Nosair in jail. I accepted to wear wire to tape Mr.
9 Sayyid Nosair in jail, on one condition: to keep the tape
10 with me, so they don't obligate me to testify. I accepted
11 to wear the wire. They did not accept to let me take the
12 tape after I tape Mr. Sayyid Nosair. And then I said then
13 I'm out of here, I am not going to testify.

14 That's what happened, ma'am.

15 Q Mr. Salem, you had not been taping anything up
16 until July 1992, is that right, up until this point where
17 you were terminated? You were not taping conversations, is
18 that right, for the FBI?

19 A I don't think that I did. I don't recall.

20 Q Didn't the FBI want to verify what you were
21 reporting to them? Wasn't that the reason they gave you
22 these alternatives?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained as to the form of that.

25 Q In any event, in July of 1992, you were no longer

1 work are for them and you were officially terminated
2 sometime in the fall, is that right?

3 A Yes, ma'am.

4 Q From that time you had no contacts with the FBI,
5 is that right?

6 A No, ma'am, I maintained some contacts with them,
7 with some agents.

8 Q I am sorry, and what were those?

9 A I think when Mr. Sayyid Nosair called me from
10 jail through Mr. Ibrahim El-Gabrownny, I reported that to the
11 agents right away. When Mr. Mahmoud Abouhalima called me
12 after long period of time not calling me, I reported that to
13 the agents as well. I think I was still in touch with Agent
14 Nancy Floyd as well.

15 Q But you were not being paid during this period of
16 time, is that right?

17 A No, I was not, ma'am.

18 Q And it wasn't until after February 1993, the
19 World Trade Center explosion, that you made an effort to go
20 back to work again for the FBI, is that right?

21 A No, ma'am. The FBI came to me by the car, they
22 pick me up front of my own house, and they took me to the
23 Federal Plaza, asking me to go back to work for them, ma'am.

24 Q They called you?

25 A I don't recall who called who, but I don't recall

1 that, I called Agent John Anticev to report Mr. Mahmoud
2 Abouhalima that I find where he is, to let him know where he
3 is.

4 Q Do you remember somewhat earlier speaking to
5 Nancy Floyd and asking her whether Muhammed Salameh had ever
6 visited Nosair in jail?

7 A Yes, ma'am.

8 Q And she told you and you said thank you, and then
9 you called the other agents and told them that you had said
10 to them that he had visited in jail with Nosair?

11 A I told you before, ma'am, that I had a confusion
12 between Muhammed and another Mohammed, and I was confused
13 between both names.

14 Q But do you remember getting that information from
15 Nancy Floyd?

16 A The information -- yes, Agent Nancy Floyd told me
17 that he did visit, yes.

18 Q And you needed that information, did you not?

19 A I needed to confirm my theory, yes.

20 Q Also during this period of time you spoke with
21 John Anticev about methods -- strike that. You spoke with
22 John Anticev about how you would go about working with these
23 particular -- strike that, too.

24 You spoke with John Anticev about how you could
25 convict Sheik Omar, isn't that right?

1 A I am sorry. How can?

2 Q Convict Sheik Omar.

3 A I have no power to convict nobody, ma'am.

4 Q Do you remember speaking with John Anticev, a
5 conversation in which he said to you, bingo, then you have
6 him?

7 A No, I don't recall. I mean, we said, we talked a
8 lot but I don't recall which conversation you are referring
9 to, ma'am.

10 Q If you would look at divider S in the book in
11 front of you, the first conversation.

12 A Yes, ma'am. First page?

13 Q I would direct you to read pages -- may I
14 approach, Judge?

15 THE COURT: Yes.

16 Q Mr. Salem, just let me ask you to spot-check
17 through that conversation and see if that refreshes your
18 recollection as to the conversation.

19 A OK, ma'am.

20 MS. STEWART: Judge, may I approach the witness?

21 THE COURT: Yes.

22 MS. STEWART: May I just speak to him to direct
23 him?

24 THE COURT: Sure.

25 (Pause)

1 MS. STEWART: Judge, the witness has informed me
2 that it would take him a long time to do this. Is this an
3 appropriate time to --

4 THE COURT: It is, but do you want to focus him
5 on a particular area?

6 MS. STEWART: I want to see if it refreshes
7 recollection. I had a number of questions.

8 THE COURT: It is your examination, but I guess
9 if you could pose a question or questions, you could see
10 whether it refreshed his recollection about those subjects.

11 Q Mr. Salem, do you remember in the course of this
12 conversation -- you were taping this conversation, am I
13 right?

14 A Yes, ma'am.

15 Q -- that John Anticev mentioned to you that Sheik
16 Omar was under a deportation order, is that right? Does
17 that refresh your recollection?

18 A He may said it but I don't recall it, ma'am.

19 Q If you look at what is labeled page 8.

20 A Yes.

21 Q About nine lines down from the top -- may I
22 approach, Judge?

23 THE COURT: Yes.

24 (Pause)

25 A Ma'am, I don't see bingo at all.

1 Q I am asking you about deportation now, Mr. Salem.
2 We will come to bingo. Do you recall that Agent Anticev
3 spoke to you about the fact that Sheik Omar was under a
4 deportation order?

5 A I recall that we talked about his deportation
6 case, yes.

7 Q You indicated, did you not, that it would
8 probably take two years or more before that case would
9 finally be resolved?

10 A I don't think I said that, because how do I know
11 it will take two years? I mean, I am not familiar with the
12 law system, ma'am.

13 Q If you look down towards the bottom of page 8,
14 Mr. Salem. Do you see where it says A?

15 A Yes.

16 Q Seven lines up.

17 A So you are talking couple of years, OK.

18 Q Do you remember saying that to Agent Anticev?

19 A I don't remember, but if it is here, means I said
20 it.

21 Q You were taping this yourself, right?

22 A Yes, ma'am.

23 Q And you asked Agent Anticev, did you not, if
24 Sheik Omar could be taken to Egypt to tried for what he told
25 you about the assassination of Mubarak.

1 A I may ask of him, yes.

2 Q What was Agent Anticev's opinion on that, if you
3 remember?

4 MR. McCARTHY: Objection.

5 THE COURT: Overruled.

6 A I don't recall, ma'am.

7 Q If you look on page 9, four lines down,

8 A He said I don't think so, I don't know, that's a
9 good question.

10 Q And then further on in the middle of the page.

11 THE COURT: Do you want to pose a question, Miss
12 Stewart.

13 Q Does that refresh your recollection as to whether
14 he said that he didn't think it could be done?

15 A I don't recall, ma'am.

16 Q And reading this doesn't refresh your memory at
17 all?

18 A If I hear it it would refresh my -- reading, I am
19 struggling with reading as much as --

20 Q This was a conversation that was conducted in
21 English, is that right, between you and the agent?

22 A Yes, sir yes, ma'am.

23 Q He didn't speak Arabic, is that right?

24 A Agent John Anticev?

25 Q Yes.

1 A No, ma'am.

2 Q Do you remember going on to talk to him about
3 what would be necessary under the laws of the United States
4 in terms of Sheik Omar and conspiracy? Do you remember
5 talking to Anticev about that?

6 A We talked about Sheik Omar a lot but I don't
7 recall this specific thing, ma'am.

8 Q Do you remember that Special Agent Anticev said:
9 No, he's a tough guy to get?

10 A He may say that.

11 Q Do you recall him saying to you: And the sheik
12 says uh uh very good, bingo, the sheik is in the conspiracy?

13 A He may say that.

14 Q Do you have any recollection of that at this
15 time?

16 A No, ma'am.

17 Q Do you have any recollection about when this
18 conversation took place?

19 A No, ma'am.

20 Q Do you remember talking to him on another
21 occasion where you asked him whether you could bug the
22 place, throw something in the sheik's place?

23 A I may ask, yes.

24 Q And he told you no, you're thinking the Egyptian
25 intelligence way, is that right?

1 A He may said that, yes.

2 Q Did you ever throw a bug in the sheik's place for
3 Egyptian intelligence, Mr. Salem?

4 A No, ma'am.

5 Q Finally, do you remember speaking with Louis
6 Napoli -- this is around the time of the World Trade Center
7 explosion -- about coming back to work? Do you remember
8 speaking with Napoli on the phone about this?

9 A I spoke to him so many times.

10 Q Do you remember talking to him about what would
11 be necessary for you to come back to work, your demands, the
12 FBI's demands?

13 A I may spoke about it, yes.

14 Q Do you remember Louis Napoli saying to you -- I
15 don't have this. It's bootleg 1 at page 13. Do you
16 remember him telling you that the FBI wants the sheik, they
17 want him as bad as you themselves. I told them it would
18 make you very happy if the United States government could
19 bring your work, you, you could culminate it and take that
20 one person down. Do you remember him telling you that?

21 A No, I don't recall, ma'am.

22 Q But you do remember having a conversation at or
23 about March 1993 with Louis Napoli, is that correct?

24 A I remember talking to Louis Napoli on so many
25 occasions on the phone. I don't remember when and which one

1 specifically about what.

2 (Continued on next page)

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1 Q Eventually you made a deal with the FBI, is that
2 right, to go back to work for them after the World Trade
3 Center?

4 A Yes, ma'am.

5 Q You are still dealing at this point with Egyptian
6 military intelligence, is that right?

7 A Up until now?

8 Q Right.

9 A Yes, ma'am.

10 Q Was Egyptian military intelligence paying you for
11 the material?

12 A Absolutely not.

13 Q You never were paid anything?

14 A Never.

15 Q The money that you left behind you in Egypt did
16 not come from military intelligence, but just from your
17 regular pension, is that right?

18 A Yes, ma'am.

19 Q That was many thousands of dollars that you left
20 behind you in Egypt, is that right, when you first came to
21 the United States?

22 A Well, I had -- I used to have money in my bank
23 account there, yes. I had -- some of this money came from
24 my father's, I inherited from my father, I inherited from my
25 brother, I got my reward after my retirement.

1 Q What reward did you get?

2 A I get certain amount of money after my
3 retirement, after -- the system in Egypt, when you spend
4 certain amount of time in the military, and you get retired,
5 you get X amount of money as a reward for your service.

6 THE COURT: Ms. Stewart, could you come to a
7 convenient break point?

8 MS. STEWART: Yes, that's fine, Judge.

9 THE COURT: Is this all right?

10 MS. STEWART: Yes.

11 THE COURT: Ladies and gentlemen, we are going to
12 take a short break. Please leave your notes and other
13 materials behind. Please don't discuss the case and we will
14 resume in a few minutes.

15 (The jury was excused)

16 (Continued on next page)

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1 THE COURT: You may step down.

2 (Witness excused)

3 (Recess)

4 MS. STEWART: Your Honor, may I approach briefly
5 with the government.

6 (At the side bar)

7 MS. STEWART: I just want to let you know that I
8 am running out of gas to some degree. I can feel that I am
9 propping myself up on the lectern there. I am happy to work
10 until 4:30 or even later if I am in the middle of something,
11 but --

12 THE COURT: OK.

13 MS. STEWART: -- I would appreciate --

14 THE COURT: You think you are going to have the
15 remainder of the day and then some?

16 MS. STEWART: Yes.

17 THE COURT: All right.

18 MS. STEWART: I mean, I have work. I mean, I
19 will work.

20 THE COURT: I understand that.

21 MS. STEWART: But I am just feeling like a
22 headache is incipient here, and the cough --

23 THE COURT: Do you want Tylenol?

24 MS. STEWART: I took some aspirin at the break.

25 THE COURT: I dispense nonprescription drugs, in

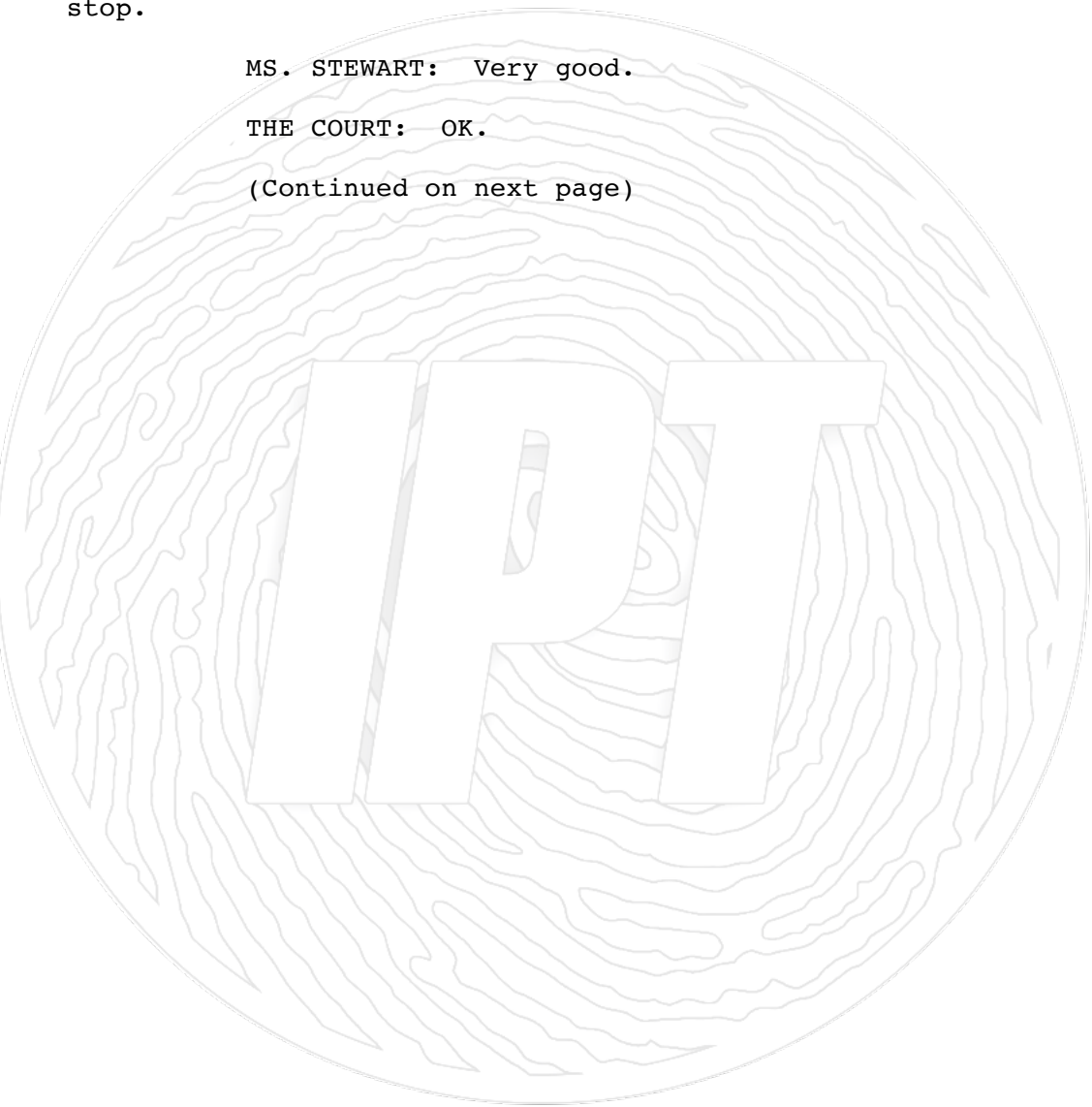
1 violation of probably several statutes. Anyway, why don't
2 you just give me some sort of sign when you feel you have
3 had it or you have come to some point where you are going to
4 start something that is going to spill over, and we will
5 stop.

6 MS. STEWART: Very good.

7 THE COURT: OK.

8 (Continued on next page)

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1 (In open court)

2 EMAD SALEM, resumed.

3 (Jury present)

4 THE COURT: Ms. Stewart?

5 MS. STEWART: Thank you.

6 CROSS-EXAMINATION (continued)

7 BY MS. STEWART:

8 Q Mr. Salem, before we took the break, I had asked
9 you whether or not you were receiving any money from
10 Egyptian intelligence in return for your services to them.

11 A No, ma'am, I did not.

12 Q Did they ever send you airline tickets to come
13 back to Egypt, or go back and forth to Egypt?

14 A Absolutely not.

15 Q Did they ever make arrangements for you to be
16 involved as a partner in any kind of a venture, any kind of
17 a business deal that would otherwise not be available to
18 you?

19 A No, ma'am, absolutely not.

20 Q They never paid you any money or made any account
21 with you at all, is that right?

22 A That's right.

23 Q Do you remember about a week before the arrests
24 took place in this case speaking with your contact in Egypt
25 and he said to you, "After, I have one other thing, that all

1 engagements and commitments and the sensitive financial
2 things that are connected to the, the company so that all
3 your accounts and checks be paid and accounted for."

4 And you replied: "Exactly like this, because
5 initially who was the one that employed me in this company."

6 And he responded: I know, dear, I, I, meaning
7 it's done, you see."

8 He was asking you about sensitive financial
9 arrangements, is that right?

10 A No, ma'am, it was not right.

11 Q Oh, what was he asking you about, then?

12 A The person who I was talking to, he is a close
13 friend to me. When I reported to him the incident that
14 Sheik Omar told me to kill President Mubarak, he said,
15 "Look, I'm going to refer you to somebody who can receive
16 this from you."

17 So he referred me to another individual in the
18 military intelligence who start to receive this information
19 from me.

20 When I was talking to this individual, I told
21 him, "Who employed me at this company?"

22 That means, "Who referred me to this person?"

23 "Of course, you."

24 He said, "Yes."

25 The issue of your checks and finances with them

1 to be straight means he want to make sure that the
2 information I referred it, or I delivered to that -- another
3 individual, it is being credited for me, and it's not just
4 being said, "sources said." That's what he meant.

5 Q Slightly further down, where he says, "My money
6 is your money, and things, no difference or anything," is he
7 referring to the information that you gave?

8 A What I am interested in, it is the same, you are
9 interested in it.

10 Q So while you were charging the FBI, I think the
11 figure was a million and a half for this information, you
12 were giving it free to Egyptian intelligence, is that right?

13 MR. McCARTHY: Objection.

14 THE COURT: Were you giving the same information
15 to Egyptian intelligence free that you were going to charge
16 for?

17 THE WITNESS: I never get any money from the
18 Egyptian military intelligence, ma'am.

19 Q I think you told Ms. Amsterdam that you had a lot
20 of taping gadgets, is that right?

21 A Yes, ma'am.

22 Q You had body tapes, is that correct?

23 A I'm sorry?

24 Q You had tapes that you could wear on your body,
25 is that right?

1 A Yes, ma'am.

2 Q There was a phone attachment, is that right?

3 A Yes, ma'am.

4 Q Did there ever come a time that you threw out any
5 old tapes that might be connected to this investigation?

6 A I don't think so, because everything I used to
7 throw it in the box.

8 Q Is it fair to say that the only Egyptian
9 intelligence tapes basically are from April, May and June of
10 1993, of phone conversations?

11 A I don't recall times.

12 Q Now, you indicated that you had an automatic
13 device on your phone that automatically taped every
14 conversation. Are you saying you did not have to push a
15 button and activate that in order for it to tape?

16 A No. Once you pick up the handset, it start to
17 record, ma'am.

18 Q Isn't it a fact that on many of these source
19 tapes that you taped yourself there is no beginning, it
20 doesn't start out with, "Hello. How are you?" it starts out
21 in the middle of the conversation, isn't that true?

22 A Sometimes, yes.

23 Q Didn't there come a time that you sent tapes to
24 Cairo to guarantee your position with the FBI in case
25 anybody should double-cross you?

1 A No, ma'am.

2 Q You never sent any tapes to Cairo other than the
3 ones you have told us about earlier, is that right?

4 A That's right, ma'am.

5 Q You never -- well, strike that.

6 There were times when you have told us you were
7 taping with a body recorder as well as your tape in the
8 briefcase, is that right, and you would get two tapes of the
9 same conversation, isn't that correct?

10 A Sometimes, yes.

11 Q What was the reason for doing that, Mr. Salem?

12 A For example, the day I went to Dr. Rashid's safe
13 house, I was warned by the FBI not to take recording devices
14 with me because they are very alert for surveillance. They
15 are surveillance conscious and they probably have the
16 equipment to frisk me.

17 I took devices --

18 MS. STEWART: Judge, move to strike. Either the
19 question wasn't clear or the answer is not responsive.

20 THE COURT: Part of the answer is not responsive.

21 A I'm sorry. Could you repeat your question?

22 Q You have told us on your direct examination or
23 during one of the voir dices that there were times when you
24 carried the device given to you by the FBI and you also were
25 wearing your own body tape, you were making your own tape at

1 the same time, is that true?

2 A True, ma'am.

3 Q Why would you do that?

4 A Just in case the briefcase, I couldn't bring it
5 close to me, it will be suspicious, then I can flip my body
6 recorder and I get the conversation, ma'am.

7 Q Do you remember any times that it happened that
8 you did not get it on the briefcase, but you got it on the
9 body recorder?

10 A The time when Mr. Siddig Ali talked to Sheik Omar
11 about the explosive test in Abu Bakr mosque, I did not get
12 it on the briefcase, I get it on the body recorder, ma'am.

13 Q But the briefcase was not running on that
14 occasion, isn't that right? You did not have the briefcase
15 there, isn't that correct?

16 A I did not turn the briefcase on in that time,
17 because it will be very funny to walk through the mosque
18 back and forth carrying a briefcase, ma'am.

19 Q I am talking about times, Mr. Salem --

20 A Yes.

21 Q -- to make it clear, when you would have one tape
22 from your own tape recorder, your own cassette tape --

23 A Yes.

24 Q -- that you supposedly would throw in your chair,
25 and there would be another tape that would be turned over to

1 the FBI. Why would you make the second tape is my question.

2 A Oh, OK. I understood.

3 Just in case if the first tape turns to be not
4 good and I couldn't do it, then I have the backup tape,
5 ma'am.

6 Q My second question was: When did you ever have
7 to use the backup tape because the first tape was not good?

8 A In the first -- in the meeting in Dr. Rashid's
9 safe house that I left the briefcase so far from me because
10 I was concerned that he will get suspicious and I used my
11 body recorder, but the briefcase was working in the same
12 time.

13 Q Did you turn that tape over to the FBI?

14 A Which one, ma'am?

15 Q The one from the briefcase?

16 A Yes, ma'am.

17 Q Would that have been at the same time that you
18 turned -- strike that.

19 Did you ever send tapes to Cairo that were
20 directed to your family to turn them over to CNN if anything
21 were to happen to you?

22 A No, ma'am, I did not.

23 Q Did you ever tell anyone that you were doing
24 that?

25 A Yes, ma'am, I said that.

1 Q That was a lie?

2 A I said that to the FBI because in that time I
3 felt that I'm under big threat and I tried to make them feel
4 if something wrong going to happen to me, everything will be
5 on the CNN, yes, I did say that.

6 Q When you came back to work for them in March of
7 1992, one of the -- well, the first thing that you did with
8 Sheik Omar was an interview on Channel One news, is that
9 right, New York One?

10 A It was one of them, yes, ma'am.

11 Q That is an all-news program on cable TV, is that
12 right?

13 A I beg your pardon, please?

14 Q That is an all-news program on cable TV, New York
15 One?

16 A I'm sorry. I don't get the question, please.

17 Q I asked you if you arranged an interview for
18 Sheik Omar on New York One, and you told me you did, is that
19 right?

20 A Yes, ma'am.

21 Q I asked you if you know that New York One is an
22 all-news channel on cable TV.

23 A Yes, ma'am.

24 Q Is that right?

25 A Yes, ma'am.

1 Q You listened to it a lot, is that right --

2 A To what?

3 Q -- when you were living in New York?

4 A New York One?

5 Q Yes.

6 A Yes, ma'am.

7 Q You arranged that with Karim Haggi, who is here
8 in the audience, is that right?

9 A Yes, ma'am.

10 Q You first called the sheik, and that was in March
11 29, 1993, is that right, and left a message for him, is that
12 correct?

13 A Probably I did, I don't recall.

14 MS. STEWART: This is not included in there. May
15 I approach, Judge, to show it to him?

16 THE COURT: Yes.

17 MS. STEWART: This is 11 9, page 1.

18 A Yes, ma'am. I --

19 Q Does that refresh your recollection that you left
20 a message on Dr. Abdel Rahman's answering machine?

21 A Yes, ma'am.

22 Q You hadn't spoken to him in a very, very long --
23 well, in a long time, is that right?

24 A I wasn't -- yeah, I didn't spoke to him for a
25 while, yes.

1 Q Because you said to him, "This is Emad Salem, I
2 hope you still remember me."
3 Isn't that right?
4 A I think I said that, yes.
5 Q You said that you had arranged this interview and
6 he should get back to you, is that correct?
7 A Yes, ma'am.
8 Q He did get back to you, didn't he?
9 A I don't recall, but I remember we did the
10 interview, yes.
11 Q Do you remember a conversation or do you remember
12 him giving you directions on how to get to his place to pick
13 him up to take him to the interview?
14 A I don't recall, but probably maybe happened.
15 Q Do you remember him saying "Fairview, Fairview
16 with an F"?
17 A Yes.
18 Q And spelling it for you and telling you what it
19 meant even, because you had never been to that apartment, is
20 that right, the one on Fairview at that time?
21 A I think, yes, ma'am.
22 Q You reported that address to the FBI, did you
23 not?
24 A I guess I did, but I don't recall, ma'am.
25 Q You told the sheik that you would serve as a

1 translator for this particular interview, is that correct?

2 A Yes, ma'am.

3 Q But then you called Egypt, did you not, military
4 intelligence, and you asked them what they thought about
5 your acting as the translator, and they told you it would
6 not be good, that you should not do it, is that right?

7 A That's right, ma'am.

8 Q That you should not be associated on the
9 television with the sheik, is that correct?

10 A That's correct, ma'am.

11 Q So you didn't do it then, is that right?

12 A That's right, ma'am.

13 Q You had told the FBI already that you were going
14 to be his translator, but then when you got to the studio
15 you were not the translator, is that right?

16 A Yes. I -- yes, ma'am.

17 Q They had to get someone at the last minute in the
18 studio to do the translating, is that correct?

19 A No, ma'am. It's not correct, because it was not
20 the last minute. Mr. Sattar offered to translate for him,
21 and I said that's a good idea, and I pushed it to be a good
22 idea, and I withdraw myself.

23 Q But you were following the directions at that
24 point of Egyptian military intelligence, is that right?

25 A That's right, ma'am.

1 Q This came after a long period where you were not
2 in contact with Sheik Omar, is that right?

3 A I don't think so, because right, the day before
4 this interview, I was with the sheik, ma'am, and we talked
5 about the interview, and he said: "It must be on the air.
6 I must get the questions in advance," so he won't get
7 surprised with questions, "and they got to give me certain
8 amount of time worth of statement at the beginning and then
9 they can ask me the questions." And then Mr. Karim Haggi
10 responded to that, ma'am.

11 Q You recollect as you sit there this conversation
12 the day before the interview, is that right, the specifics
13 of this conversation?

14 A I just read it now here, and it reminded me that
15 the day before that's what I read.

16 Q I guess my question should be to you, Mr. Salem:
17 Before the arrangements about this particular interview, you
18 had been out of touch with the sheik for a long time, is
19 that right?

20 A I don't recall, ma'am.

21 Q Well, that is why you had to say to him: "This
22 is Emad Salem, if you remember me."

23 A It's not necessarily because I said that that he
24 doesn't remember me. It could be in the tone of a joke, "I
25 hope you remember me." Something to that effect. But I am

1 not so sure if I did not visit him for a long time or not.

2 Q Well, you had told Siddig Ali that you did not
3 visit the El Salaam mosque from sometime in 1992 until after
4 the World Trade Center bombing, isn't that right?

5 MR. McCARTHY: Objection.

6 THE COURT: Did you tell that to Siddig Ali?

7 THE WITNESS: I recall -- I said to Mr. Siddig
8 something in that effect, yes.

9 Q On direct examination you testified, did you not,
10 that after you got involved in work, you told Special Agent
11 Nancy Floyd that you had been lying about a lot of things,
12 do you remember that testimony?

13 A I remember, yes, but I did not say I was lying
14 about a lot of things. I mean, that statement specifically,
15 I didn't say. But I --

16 Q Go ahead. I am listening.

17 A What I said that, I tried to pay her attention,
18 that I wasn't really an intelligence officer.

19 Q The question to you was: Did there ever come a
20 time after you originally gave Agent Floyd that information
21 that you told her that the things that you originally told
22 her were not true?

23 A Yes, ma'am.

24 Q Are you referring only to the report that you
25 gave her about conditions in the Middle East that you told

1 her that was not true?

2 A No. I told her that -- I don't recall exact
3 words, but the meaning I remember that I wasn't really an
4 Egyptian intelligence officer like I told you, and I thought
5 that every other information came regarding to that she will
6 understand that it's not true as well.

7 Q When was it that you told her this?

8 A I don't recall the time, ma'am.

9 Q Well, you said, "After we get involved in work
10 more" --

11 A Yes.

12 Q "I told her that I want to clear the picture."

13 A Right.

14 Q Well, when would that have been?

15 What would the work have been that you were more
16 involved in?

17 A I don't recall the exact date or time or month.

18 Q Do you remember where you were when you cleared
19 the picture?

20 A I believe it was in a restaurant.

21 Q Do you remember what restaurant?

22 A We have been in so many restaurants. That is how
23 we used to meet, ma'am.

24 Q It is your testimony that you just told her that
25 you were not really military intelligence?

1 A That's as far as I recall, yes.

2 Q Did you tell her that you were not on the
3 reviewing stand when Sadat was assassinated? Did you tell
4 her that also?

5 A No, I did not specify each instance, but I
6 cleared the issue that I am not really -- I wasn't really an
7 intelligence officer, and I assumed that everything came as
8 an intelligence officer after that she will understand it is
9 not true.

10 Q Did this happen before or after the man from
11 Egyptian general intelligence came to visit you and you went
12 to the sushi restaurant with him?

13 A I don't recall, ma'am.

14 Q Did it come before or after Special Agent Floyd
15 told you about dealing with Egyptian intelligence officers?

16 A Agent Nancy Floyd knows from the very beginning
17 that I'm dealing with Egyptian military intelligence, ma'am.

18 Q My question to you was: Did this meeting with
19 her where you cleared the picture, did that come before or
20 after she gave you specific instructions about giving
21 information to Egyptian intelligence?

22 A I don't recall, ma'am.

23 Q Did it come during the period of time when you
24 were taking the polygraph tests during 1992?

25 A I don't recall, ma'am.

1 Q You don't remember whether it happened before or
2 after?

3 A No, ma'am.

4 Q Were you concerned that once you made this
5 admission you no longer would be in the employ of the FBI?

6 A No, I wasn't.

7 Q Did you ask her not to report that to her
8 superiors?

9 A No, I did not.

10 Q Did she tell you that she reported it to her
11 superiors?

12 A No, she did not.

13 Q Was this sort of a friendship thing when you told
14 her this?

15 A I'm sorry?

16 Q Were you telling her officially or were you just
17 doing it sort of on a friendship basis that you cleared the
18 picture?

19 A I don't know what's the difference, ma'am. I
20 told her what I said.

21 Q It was only that you said that you were not --
22 you did not work for military intelligence while you were in
23 Egypt, is that right, that was the one things you cleared
24 up?

25 A I told her that issue, that I am being an

1 intelligence officer wasn't really that true. And that's as
2 far as I recall.

3 Q It wasn't really that true, is that what you told
4 her?

5 A I don't recall specific words, ma'am, but I tried
6 to make it very light. I was, of course, embarrassed that I
7 did not tell her the truth. So I'm not coming to make it
8 like official statement. I tried to make it as light as
9 possible.

10 Q But you limited it to just the military
11 intelligence in your background, is that right?

12 A As far as I recall, yes, ma'am.

13 Q But she knew that you were dealing with military
14 intelligence during the time of this investigation, is that
15 right?

16 A Yes, ma'am.

17 Q Did that conversation take place prior to your
18 beginning to tape conversations for the FBI, authorized by
19 the FBI?

20 A I believe, yes, ma'am.

21 Q There came a time in the spring of 1993 when you
22 told us that you went to the sheik's apartment and debugged
23 it, is that right?

24 A Debugged it?

25 Q Yes.

1 A I'm sorry. I don't understand.

2 Q You checked for bugs?

3 A Yes.

4 Q You checked for wiretaps, you checked for
5 listening devices of any kind, is that right?

6 A That's right, ma'am.

7 Q And did you also tell us that you had a name and
8 your name was the exterminator because you checked for bugs
9 all the time?

10 A Yes, ma'am.

11 Q You told us also that the sheik had his own
12 debugging device, is that correct?

13 A That's correct, ma'am.

14 Q Do you remember in a conversation that was
15 recorded by you for the FBI -- this is at O, CM48, page 86.

16 Isn't it a fact, Mr. Salem, that you gave him
17 that debugging device?

18 A I had one to give it to him, yes, but he didn't
19 take it because he had one more sophisticated than the one I
20 brought. And I hooked it up for him, and I reported to the
21 agents.

22 Q You told the fellows, did you not, that you had
23 given him a debugging device, is that right?

24 A I --

25 Q Did you tell Siddig Ali and Victor Alvarez and

1 other people --

2 A I may say that, yes, ma'am.

3 Q Let me show you what's been marked into evidence
4 as 407A, B, and C.

5 A Yes, ma'am.

6 Q Do you recognize these, Mr. Salem?

7 A This is part of the equipment which is belonged
8 to Sheik Omar Abdel Rahman.

9 Q You gave it to him, didn't you?

10 A Absolutely not.

11 Q You are telling me that this blind man in an
12 apartment needed a debugging device of his own, is that
13 right?

14 A He have more than this, ma'am. That's not the
15 only device I saw over there, ma'am.

16 Q Please answer my question, Mr. Salem.

17 A Yes, ma'am.

18 Q Did you give him this equipment?

19 A No, ma'am.

20 Q You gave him other equipment, is that it?

21 A I tried to give him antiphone bugging device; he
22 didn't take it. And he asked me to hook up another device
23 which is not here now, ma'am.

24 Q On that occasion, Mr. Salem, did you also give
25 him a bulletproof vest?

1 A No, absolutely not, ma'am.

2 MS. STEWART: Judge, since I seem to have mislaid
3 the pad that has my cross-examination, I wonder if we could
4 call it a day.

5 THE COURT: You want to break now?

6 MS. STEWART: Yes.

7 THE COURT: Ladies and gentlemen, we are going to
8 break. Please leave your notes and other materials behind.
9 Please don't discuss the case. Have a pleasant evening.
10 Don't read, see or hear anything about the case.
11 See you tomorrow morning.
12 Good night.

13 (Jury not present)

14 THE COURT: All right. We are adjourned.

15 (Proceedings adjourned to Tuesday, March 28, 1995
16 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMED ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

19 Defendants.

-----x

March 28, 1995
9:35 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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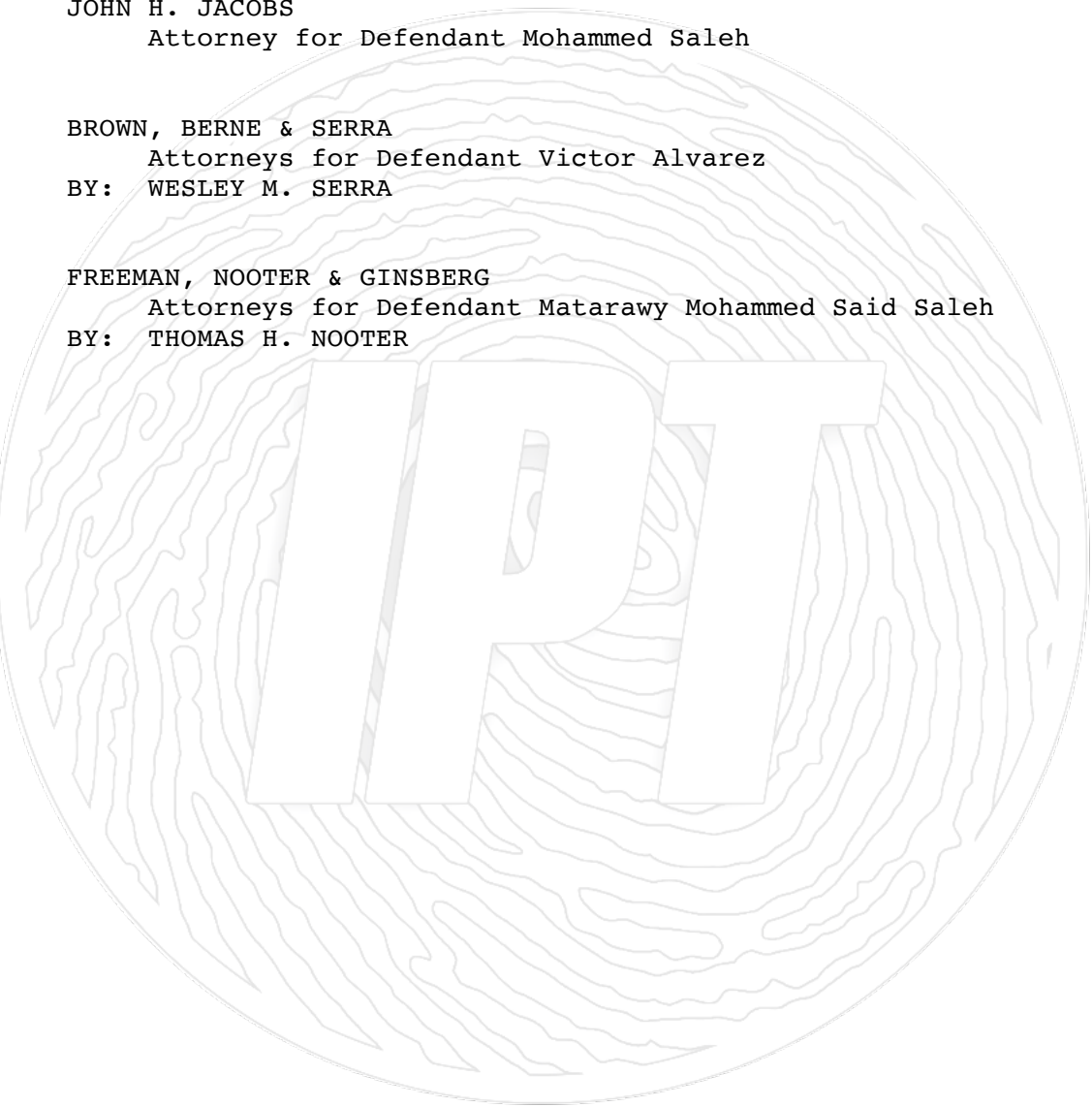
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed; jury not present)

2 THE COURT: Good morning.

3 MR. McCARTHY: Good morning, your Honor.

4 Emad Salem, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 THE JURY: Good morning.

8 THE COURT: Mr. Salem, you are still under oath.

9 Ms. Stewart?

10 MS. STEWART: Thank you, Judge.

11 CROSS-EXAMINATION (continued)

12 BY MS. STEWART:

13 Q. Mr. Salem, I think you've told us on prior
14 occasions that you were -- you began taping for the FBI
15 officially on May 7, 1993, is that right?

16 A. Again, ma'am, I don't recall the exact date,
17 but -- I don't recall the exact date.

18 Q. During this time you were also making your own
19 unofficial tapes, is that right?

20 A. Sometimes, yes.

21 Q. Those were the ones that were thrown into the
22 chair in your bedroom at your apartment in Manhattan, is
23 that right?

24 A. Yes, ma'am.

25 Q. Do you remember Mother's Day, 1993, shortly after

1 you had begun using your briefcase to tape people with, do
2 you remember that day, a Sunday in May, 1993?

3 A. No, ma'am.

4 Q. Do you remember calling up Ahmed El Sattar and
5 going to his home and spending the morning at his home and
6 then in the afternoon going to a park in Brooklyn where the
7 sheik was speaking?

8 A. I remember I went to the park with Sheik Omar,
9 yes. I remember I went to Mr. Sattar's home, but that was
10 night, it wasn't morning, ma'am.

11 Q. Was it after you were in the park?

12 A. I don't know.

13 Q. Did you tell us that you were bodyguarding the
14 sheik that day at the park, is that what your duties were?

15 A. It was part of it, yes.

16 Q. I'd like to show you what has previously been
17 marked F through J --

18 THE COURT: Is there a number on it?

19 MS. STEWART: It is Abdel Rahman F through J.

20 THE COURT: I'm sorry. Go ahead.

21 Q. I would just ask you to look at those, Mr. Salem.

22 A. Yes, ma'am.

23 Q. Are they a fair and accurate representation as
24 well as you remember of that occasion in the park with Sheik
25 Omar?

1 A. Yes, ma'am.

2 Q. Thank you.

3 A. You're welcome.

4 MS. STEWART: Judge, I wonder if I can pass these
5 to the jury.

6 THE COURT: Do you want to offer them first?

7 MS. STEWART: I'm sorry, Judge. I offer them
8 into evidence.

9 MR. MCCARTHY: I have seen them before. I would
10 just ask Ms. Stewart to show me at some point -- it doesn't
11 need to be now -- so I know which ones they are.

12 THE COURT: OK. F through J I gather are
13 received without objection. Do you want to pass them?

14 MS. STEWART: Sure.

15 THE COURT: Go ahead.

16 (Abdel Rahman Exhibits F through J were published
17 to the jury)

18 MS. STEWART: Judge, may I approach the witness.

19 THE COURT: Yes.

20 Q. Mr. Salem, is it a fact that in four of those
21 pictures you are standing directly behind Sheik Omar?

22 A. Yes, ma'am.

23 Q. In the fifth, you are nowhere to be seen, is that
24 right?

25 A. Yes, ma'am.

1 Q. Isn't it a fact you asked the photographer to
2 take the pictures of you standing with the sheik, that was
3 the reason why you were standing behind him?

4 A. No, ma'am.

5 Q. This meeting, this was a public park, was it not?

6 A. Yes, ma'am.

7 Q. In Brooklyn, is that correct?

8 A. I think, yes, ma'am.

9 Q. Did you go to this meeting with El Sattar?

10 A. I think, yes, ma'am.

11 Q. It was not the only time that you saw Sheik Omar
12 preach in the park, is that correct?

13 MR. McCARTHY: Objection, Rule 611(b). Scope.

14 THE COURT: Overruled. I will allow it.

15 A. I think this is the only time I saw him in the
16 park. I don't recall -- I went with him to another park. I
17 went to mosques, but no parks.

18 Q. Is that other park Lincoln Park in New Jersey?

19 Do you remember a time that he preached in
20 Lincoln Park in Jersey City?

21 A. I wasn't there, ma'am.

22 Q. This was a public preaching, open to anyone who
23 wanted to attend, is that right?

24 A. Yes, ma'am.

25 Q. In the picture you see children sitting there

1 with their father?

2 A. Yes, ma'am.

3 Q. In one of those pictures you see El Sattar, do
4 you know -- could you just tell us which picture that is.

5 A. Yes, ma'am, No. 1.

6 Q. I think it is I.

7 A. I, I'm sorry.

8 Q. As you look at those pictures, there is not one
9 other person that is on trial here attending that particular
10 preaching, isn't that --

11 MR. McCARTHY: Objection.

12 THE COURT: Overruled.

13 Q. You do not see any person who on is on trial here
14 attending at that preaching, is that right?

15 A. I'm sorry, I don't understand.

16 Q. If you would look through the pictures --

17 A. Yes.

18 Q. -- tell me if you see any of the people here on
19 trial attending that preaching in May of 1993.

20 A. Mr. Sattar is not here.

21 Q. Well, he's not on trial, is he?

22 A. No, I'm sorry.

23 Q. Thank you.

24 A. Only Sheik Omar.

25 Q. That is correct. Thank you.

1 Do you remember if on this day you had the tape
2 recorders installed in your car?

3 A. I don't recall.

4 Q. How long after you were given the briefcase were
5 you given the tape recorders for your car?

6 A. I don't recall. I remember the first time I met
7 with Mr. Amir Abdelgani and Mr. Fares Khallafalla, that is
8 the day that recorder being installed to my car, but I don't
9 recall when.

10 Q. Up until then all the recordings were done
11 through the briefcase, is that correct? Up until that time
12 all of the CM's, the exhibits that you introduced, were done
13 using your briefcase as the microphone and recording device,
14 is that right?

15 A. Yes, ma'am.

16 Q. Do you remember that on this day you indicated
17 this would be at the beginning of CM3, which is not in my
18 book, Exhibit 303, that you indicated you were loading a new
19 tape after meeting with Ahmed El Sattar and heading for New
20 Jersey, do you remember that?

21 A. No.

22 Q. Do you remember testifying here about a tape that
23 didn't work and failed?

24 A. There is more than one. Which one do you mean,
25 ma'am?

1 Q. Do you remember you told us that you met once
2 with El Sattar and the taping did not work?

3 A. Yes, ma'am.

4 Q. Is that right?

5 A. Yes, ma'am, I remember.

6 Q. When you say it did not work, does that mean that
7 the tape never started, in other words, it didn't go from
8 one reel to the other? How do you mean it did not work?

9 A. Somehow, after the meeting is finished I give it
10 to the -- I believe Detective Louis Napoli, and it was very
11 important information on it, and I checked next day, I said,
12 "How was the tape?

13 He said, "Nothing."

14 I said, "That's impossible. I don't know what
15 happened to the tape."

16 But he came back to me. He said, "There is no
17 voice in it. There is some kids talking in a certain
18 point." And that is what I recall, but it didn't tape.

19 MR. JACOBS: Your Honor, I am having a little
20 trouble back here. Could the witness speak up just a drop.

21 MS. STEWART: I think I turned the microphone,
22 Judge. That may be the problem.

23 THE COURT: OK.

24 Q. But you are certain as you sit there that you did
25 turn in that tape to Louis Napoli, is that right?

1 A. As far as I recall, yes, ma'am.

2 Q. And when you changed the tape, when you said, I'm
3 loading a new tape, you took off that tape, and at that
4 point you didn't know that anything had gone wrong, is that
5 right?

6 A. Yes, ma'am.

7 Q. When you were spot checking tapes in this case in
8 preparation for testifying here, did you hear that tape at
9 all with just the kids' voices on it?

10 A. I don't recall, ma'am.

11 Q. The source tapes, those are the tapes that you
12 kept in your home, and this was an apartment between 85th
13 and 86th on Broadway, is that right?

14 A. Yes, ma'am.

15 Q. I think you told us that you never went back to
16 that apartment after the arrests happened, is that right?

17 A. No, I did go the day we moved the household
18 goods.

19 Q. That was the same day that the arrests took
20 place, isn't that correct?

21 A. No, ma'am. That was a few months later.

22 Q. Do you remember that you were speaking to a
23 contact, an Egyptian intelligence source on the telephone
24 the day the arrests took place?

25 A. Yes, ma'am.

1 Q. Do you remember on that tape saying, "Yes, I have
2 arrived home now, and there are four persons with machine
3 guns sitting with me. The people have been arrested and
4 will be taken to court within an hour ago for indictment."

5 A. Yes, ma'am.

6 Q. So you were home that day, is that right?

7 A. That's true. Right after the arrest, the FBI --

8 Q. Please answer my question, Mr. Salem.

9 A. Yes, ma'am.

10 Q. Right after the arrest you went back to the
11 apartment with apparently some agents from the FBI, is that
12 right?

13 A. No, ma'am. We went to the hospital.

14 Q. After you went to the hospital, Mr. Salem --

15 A. Yes.

16 Q. -- in a panic attack I believe that was, wasn't
17 it?

18 A. Yes, ma'am.

19 Q. You then went to your home, is that right?

20 A. That's right, ma'am.

21 Q. This is not what you told us on your direct
22 examination, isn't that right?

23 MR. McCARTHY: Objection.

24 A. I --

25 THE COURT: That is sustained.

1 Q. You said two minutes ago that you went there a
2 couple of months later, that was the same day, June 24,
3 wasn't it, 1993?

4 A. My understanding, ma'am, that once I left home,
5 did I go back again to home? I said, no. I went back
6 couple of months later. I left home once with my wife and
7 my kids, the day the case being taken down. I didn't go
8 home after that unless -- I don't know how long, but it was
9 couple of months or long time the day we picked up the
10 house, our goods from there.

11 Q. While you were there on that day, your wife was
12 collecting things, or the woman you were living with at that
13 time, Karen, was collecting things, is that right, to take
14 with you at that moment?

15 A. She's already almost packed because I called her
16 from the hospital.

17 Q. Did you do anything whatsoever with the tapes
18 that were in the chair?

19 A. Absolutely not.

20 Q. Could anyone see those tapes? Were they out?
21 Were they in the chair seat? Were they available? Were
22 they visible?

23 A. No, ma'am.

24 THE COURT: Which of those questions would you
25 like answered?

1 MS. STEWART: I think the witness answered,
2 Judge, but I will separate --

3 THE COURT: They were all the same question?

4 MS. STEWART: All the same question, I guess.

5 A. No, ma'am, there was not visible.

6 Q. Did you have occasion to go into the bedroom for
7 anything on that occasion?

8 A. I may went to the bedroom. I mean, I wasn't
9 feeling well -- excuse me, I wasn't feeling well. I don't
10 recall exactly where did I go, I may have went to the
11 bathroom, I, I could have went to the bedroom, yes.

12 Q. You weren't feeling well, but I think you managed
13 to call Egypt five times while you were at the apartment,
14 isn't that right?

15 A. I didn't count. Probably.

16 Q. And taped all the calls, isn't that right?

17 A. The whole calls was taping automatically, ma'am.

18 Q. When was it you first told the government about
19 the existence of these tapes in the chair?

20 A. It was a day in, someplace in different state, I
21 met with the government and we were talking about the
22 defendants, and I said, "By the way, I have a conversation
23 with one of the defendants, and I recorded it on my phone
24 conversation."

25 He said, "Where is this tape?"

1 I said, "I believe it's home."

2 "You have some other tapes?"

3 I said, "Yes."

4 Since -- the government -- the government told me
5 since these tapes have something to do with the case, it
6 must be turned over to us.

7 I said, "OK. I'll go and get them."

8 Q. Were you speaking with the FBI agents at this
9 time?

10 A. It was the prosecutor and some of the FBI agents
11 was present in that time.

12 Q. Did the FBI agents know that you were making
13 tapes that were not authorized before that date? Had you
14 ever told any of the agents that?

15 A. I think I mentioned one day to Agent Nancy Floyd
16 that I had some tape.

17 Q. When was that, if you recall?

18 A. I don't recall, ma'am.

19 Q. Was it at the same restaurant that you told her,
20 that you cleared the picture about your military
21 intelligence background?

22 A. I am not sure where it was.

23 Q. You told us that when you made these unauthorized
24 tapes you would report it to the FBI, you would report the
25 fact of making the tapes to the FBI, is that right?

1 A. I said that, ma'am?

2 Q. Well, let me rephrase it.

3 You said you would report to the FBI the
4 underlying fact that a conversation took place. Do you
5 remember saying that?

6 A. I'm sorry, I don't understand what you mean,
7 ma'am.

8 Q. Do you remember when we were discussing, when you
9 were asked questions about a taping that you did of Sheik
10 Omar and Siddig Ali at the mosque in Brooklyn --

11 A. Yes, ma'am.

12 Q. -- you said, "I reported it to the FBI and threw
13 the tape with all the other tapes"?

14 Do you remember saying that?

15 A. No, I don't remember, ma'am.

16 Q. Do you remember saying that you reported the fact
17 of this conversation to the FBI?

18 A. The fact of the conversation, yes.

19 Q. Yes.

20 A. But I did not report that I taped my own tape.

21 Q. You weren't telling them that, is that right?

22 A. I don't recall -- not constantly. I remember I
23 told Agent Nancy Floyd once. I don't remember telling the
24 rest of the agents about it.

25 Q. Did the agents ever say to you, "Mr. Salem, your

1 memory is not good. You ought to make tapes so you can
2 remember the details of things"?

3 A. I stated that -- one of the agents that I asked
4 for some tapes, I said, "Can you give me some tapes because
5 sometimes I don't recollect very well. I would like to make
6 some, dictate some of the" -- because I used to meet five
7 times, six times, with the people and I meet with the agent
8 once or twice a week.

9 So for five, six times, six, seven hours a day to
10 come to meet with the agent once or twice for an hour or a
11 couple of hours is not enough for me to remember everything,
12 ma'am.

13 Q. But you told us that you never played these tapes
14 once you threw them in your chair.

15 A. No, that's not what I meant, ma'am. I am talking
16 about the telephone tapes and these tapes. The tapes I
17 dictated to memorize myself, I memorized myself with it.

18 But --

19 MR. JACOBS: I'm sorry. Can I have that read
20 back, your Honor.

21 THE COURT: Can you get it from the transcript?

22 MR. JACOBS: Pardon me?

23 THE COURT: Can you get it from the transcript?

24 Let's proceed.

25 A. Yes.

1 Q. Did you finish your answer, Mr. Salem?

2 I'm sorry.

3 A. Yes.

4 Q. So then you did play them back for yourself to
5 memorize them, is that right?

6 A. The tapes I dictated information on, I played it
7 back to myself before I leave to meet with the agent. The
8 tapes I took it from the telephone or took it from the
9 subjects, this is -- I didn't bother because I reported it
10 to them right away. I threw it in the box under my desk.

11 Q. During May and June of 1993, you were taping on a
12 daily basis almost, is that fair to say?

13 A. I think, yes, ma'am.

14 Q. As far as Dr. Abdel Rahman is concerned, you
15 taped a number of public meetings, is that right, press
16 conferences, arrangements for press conferences, things of
17 that nature, is that right?

18 A. Yes, ma'am.

19 Q. These were taped both officially and
20 unofficially, is that right, tapes you turned over to the
21 FBI, tapes you did not turn over to the FBI?

22 A. Yes, ma'am.

23 Q. There was an official tape which was a short
24 conversation as you drove Sheik Omar to the mosque in New
25 Jersey one time, is that right?

1 A. Yes, ma'am.

2 Q. You were his driver on that day, isn't that
3 right?

4 A. Yes, ma'am.

5 Q. Many people were his drivers on different days,
6 isn't that right?

7 A. Yes, ma'am.

8 Q. It was considered an honor to drive him, isn't
9 that right?

10 A. To some other people, ma'am, yes.

11 Q. To some other people, yes?

12 A. Yes.

13 Q. Not to you, is that right?

14 A. Yeah, that's right.

15 Q. But you didn't tell anyone this at that time, did
16 you?

17 A. I beg your pardon?

18 Q. You didn't tell him that at this time, did you?

19 A. No, I did not.

20 Q. There were a series of two tapes in May; one was
21 a press conference. Do you remember that?

22 A. Yes, ma'am.

23 Q. The other was a meeting after the press
24 conference with Siddig Ali, yourself, Haggag. Could you
25 just remind us again who Haggag was at that time?

1 A. Mr. Abdel Rahman Haggag, who lives next door, the
2 door after to the sheik's apartment in New Jersey.

3 Q. Both the tape of the press conference and the
4 tape of this meeting, this mediation that the sheik
5 undertook, that was taped in his apartment in Jersey City,
6 is that right?

7 MR. McCARTHY: Objection to form.

8 THE COURT: Sustained as to form.

9 Q. The tape of the press conference and the tape of
10 the meeting that you described between Siddig Ali and
11 Haggag, yourself, a man named Khalid and Sheik Omar, those
12 were taped in his apartment in Jersey City, is that right?

13 A. Yes, ma'am.

14 Q. That was on the briefcase that they were taped?

15 A. Yes, ma'am.

16 Q. This is the occasion, the occasion of the meeting
17 that you also were wearing a body wire, is that right?

18 A. I am not sure, ma'am.

19 Q. Do you remember reviewing tapes in preparation
20 for testifying here?

21 A. Yes.

22 Q. Do you remember that there was a separate tape,
23 an unauthorized tape?

24 A. Yes, ma'am.

25 Q. That was -- I believe it is Exhibit 646. That

1 was a body tape of that conversation between yourself, the
2 sheik, Siddig Ali, and Haggag, do you remember that?

3 A. No, I don't remember, ma'am.

4 Q. The tape, 639, that is the tape at the Abu Bakr
5 mosque, that was a body wire, is that right?

6 A. The micro one?

7 Q. Yes.

8 A. Yes, ma'am.

9 Q. There was another body wire, is that right, that
10 you wore and taped Sheik Omar, referring to 640, Exhibit 640
11 in his apartment in Jersey City?

12 A. I don't know which one you are talking about,
13 ma'am.

14 (Continued on next page)

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1 Q. If you would open the book in front of you --
2 this is at tab W.

3 A. T?

4 Q. W. If you would just spot-check through that to
5 see if it refreshes your recollection, see if that refreshes
6 your recollection as to this particular conversation.

7 THE COURT: Again, if you could focus him on a
8 particular question.

9 Q. At the about tenth line down.

10 (Pause)

11 A. Yes.

12 Q. Mr. Salem, I also have a copy of this -- let me
13 show you another copy. It might be easier for you to
14 follow.

15 A. All right, ma'am.

16 MS. STEWART: Judge, if I might have one minute
17 to just confer with the government.

18 Q. Mr. Salem, just let me show you this.

19 MS. STEWART: Miss Stewart, would you just mark
20 it.

21 MS. STEWART: Sure. I think that is Q.

22 Q. Let me just establish, Mr. Salem, does this aid
23 your recollection? Is this something that would aid your
24 recollection of this particular conversation, without saying
25 what it is exactly?

1 A. I didn't read it yet, but I will read it. If it
2 will refresh my recollection, I will tell you, yes.

3 (Pause)

4 A. I recall there is conversation like this, ma'am,
5 yes.

6 Q. Do you recall the circumstances of the
7 conversation, how it came about that you were speaking with
8 Sheik Omar?

9 A. I think if I listen to the tape I will recall it,
10 ma'am.

11 Q. Reading it does not recall it for you?

12 A. No, ma'am.

13 Q. Even reading it in Arabic does not refresh your
14 recollection, is that right?

15 A. I remember we have this conversation, but I am
16 trying to recall what was the occasion. So probably if I
17 hear the tape I will imagine what was going on in that time.

18 Q. If you would turn to page 9 of either the
19 translation or the -- do you see counter number 235 on that
20 page?

21 A. No, ma'am.

22 Q. Would you just return to the English translation.
23 I think we will have to use that, since I don't read Arabic.

24 A. All right. Yes, ma'am, I read it.

25 Q. Does that refresh your recollection as to when

1 approximately this tape was made?

2 A. No, ma'am.

3 Q. You testified here about a trip you made with
4 Siddig Ali to Attica to visit Sayyid Nosair, isn't that
5 right?

6 A. Yes, ma'am.

7 Q. You told us that was in May 1993, isn't that
8 right?

9 A. I don't recall when it was.

10 Q. Do you recall when the government asked you the
11 question but you don't recall when I ask you the questions,
12 Mr. Salem?

13 A. No, ma'am. When I don't recall, I don't recall.

14 Q. Do you recall visiting Sayyid Nosair in May of
15 1993?

16 A. I recall visiting Sayyid Nosair, yes.

17 Q. In May of 1993?

18 A. I don't recall the date, ma'am.

19 Q. Not even the month?

20 A. No, ma'am.

21 Q. Was it after you started taping officially for
22 the government that you visited him at Attica?

23 A. I am not sure, ma'am.

24 Q. Do you remember when you had this conversation --
25 strike that. Do you remember where you had this

1 conversation with Sheik Omar?

2 A. No, I don't. If I hear the tape, I can recall
3 when it happened.

4 MS. STEWART: Judge, I am going to ask for a few
5 minutes to could you up the tape and bring it in here then.

6 THE COURT: Do you want a break?

7 MS. STEWART: Yes, please.

8 MR. McCARTHY: May I have a moment with Miss
9 Stewart?

10 THE COURT: Yes.

11 (Pause)

12 MS. STEWART: Judge, the government has offered
13 to stipulate as to the date, that it was May of 1993.

14 THE COURT: It being the visit to Attica?

15 MS. STEWART: The visit to Attica.

16 Q. That being so stipulated, does that refresh your
17 recollection now as to when this tape took place?

18 A. No, ma'am.

19 Q. Mr. Salem, is it a fact that on this tape it is
20 your voice saying: On Thursday I will go with Sheik Ali to
21 visit Sheik Sayyid in Attica, God willing?

22 A. Yes.

23 Q. Doesn't that mean that it must have been in May
24 1993?

25 A. No.

1 Q. No?

2 A. No.

3 Q. Why does it not mean that?

4 A. Because simply, we did not discuss Sheik Ali and
5 myself to visit Sayyid Nosair only once. We planned to go,
6 we didn't go, we planned to go, we didn't go. So it could
7 be one of these times we planned to go and we didn't go, and
8 it could be the one we went. I am not sure.

9 Q. You went on to say, did you not, in the next full
10 paragraph where you are speaking, if you would look at that,
11 the very last sentence --

12 A. Yes, ma'am.

13 Q. You had not visited since September, is that
14 right? Does that aid your recollection as to when you had
15 this conversation?

16 A. No, ma'am.

17 Q. In any event, it is a conversation, as you
18 recall, between yourself and Sheik Omar only, is that
19 correct?

20 A. I think yes, ma'am.

21 Q. As you have read through it, you have no
22 recollection of where this conversation took place, is that
23 your testimony?

24 A. It could be in his house, but I am not sure. If
25 I listen to the tape, I can tell you where.

1 MS. STEWART: Judge, I think we have to have the
2 tape. I am asking for it.

3 THE COURT: Then we will take a short break.
4 Ladies and gentlemen, please leave your notes and other
5 materials behind. Please don't discuss the case. We will
6 resume in a few minutes.

7 (Jury excused)

8 (Witness excused)

9 MR. JACOBS: Your Honor, the reason I was having
10 trouble hearing that answer, because it relates back to his
11 direct testimony concerning these dictation tapes. I would
12 ask the government to state -- he gave an answer at 4949 of
13 the record that he made dictation tapes.

14 THE COURT: Mr. Jacobs, if you have a point to
15 raise with the government, raise it with the government.
16 His direct testimony has nothing to do with what you hear or
17 do not hear.

18 MR. JACOBS: I would ask your Honor to ask the
19 government if they have these tapes --

20 THE COURT: Why don't you talk to the government
21 about it. If there is in this case to raise with me, you
22 can raise it with me.

23 (Recess)

24 (Witness resumed)

25 (Jury present)

1 THE COURT: Go ahead, Miss Stewart.

2 MS. STEWART: Thank you.

3 BY MS. STEWART:

4 Q. Mr. Salem, you had an opportunity to listen to
5 this particular tape recording, I believe it is Exhibit 641,
6 during the short break that we took?

7 MR. McCARTHY: 640.

8 MS. STEWART: Sorry.

9 Q. 640.

10 A. I check point parts of it, yes.

11 THE COURT: Could you turn the microphone around.

12 A. Yes, ma'am.

13 Q. This tape is all in Arabic, is that correct?

14 A. Yes, ma'am.

15 Q. Did it refresh your recollection as to when this
16 conversation took place?

17 A. No, ma'am.

18 Q. Did you listen to the part of the tape that said
19 that the ban had been lifted from people speaking about the
20 World Trade Center case?

21 A. Yes, ma'am.

22 Q. Do you remember when that was?

23 A. Obviously after the World Trade Center bombing.

24 Q. Did it refresh your recollection as to where this
25 conversation took place?

1 A. Yes, ma'am.

2 Q. Where did it take place?

3 A. In Sheik Omar's apartment, ma'am.

4 Q. Do you remember the circumstance that caused you
5 to be there?

6 A. I believe I cooked a meal for him, and I took it
7 to his apartment, and I made some tea with honey for him.
8 Then we sit for a while talking. Then he ask me if I did
9 pray the prayer. I said no, I went, I washed, and we did
10 pray, ma'am.

11 Q. This was a conversation you recorded on your body
12 wire, is that right?

13 A. I am not sure, ma'am.

14 Q. This was not an authorized tape for the
15 government, is that right?

16 A. I am not sure, ma'am.

17 Q. Does it have a beginning that says this is CM or
18 this is Thursday so and so? Does it have the tag beginning
19 you were told to put on the beginning?

20 A. No, it does not have.

21 Q. You know, do you not, that this tape was found in
22 your chair in your bedroom in your apartment, after the
23 arrests took place?

24 A. No, I don't know, ma'am.

25 Q. You don't know that either?

1 A. No, I don't. I don't know which tapes in my
2 apartment being taken and which tapes is -- I mean, it's a
3 lot of tapes, ma'am. There is 68 tapes here. There is like
4 40, 50 tapes there, there is another 40, 50 -- there is a
5 lot of tapes. I am being lost in it. That's why it's
6 tapes.

7 Q. So it is your testimony that you don't know
8 whether this is a tape that was taken from your apartment or
9 this was one that you officially recorded for the FBI?

10 A. No, ma'am, I don't.

11 Q. There is no way you can tell any difference, is
12 that right?

13 A. If I see the original tape itself, I will tell
14 you that's being taped on which tape, if it's Nagra tape or
15 if it's microcassette or if it's regular -- probably that
16 would refresh my recollection.

17 Q. Mr. Salem, you told us yesterday Sheik Omar was a
18 target of your investigation from the time you started in
19 October 1991. Are you telling me that you don't know when
20 this tape was made, you know where it was made but you don't
21 know what happened to it afterwards?

22 A. Ma'am, I'm not the greatest memory in the world.
23 That's why I have tapes, that's why I did some tapes to
24 refresh my memory, that's why once I made the tapes, I
25 delivered it to the agents. There is so many information

1 had been on this investigation, I did not deliver it because
2 simply I spent six, seven days with the people on the
3 investigation, I met with the agent once or twice a week.
4 So I give as much as I remember. I am not very good at
5 dates, I am not very good at sequences. I am doing my help
6 best to help you.

7 Q. Mr. Salem.

8 A. Yes, ma'am.

9 Q. You testified for the government about an
10 incident in which you stated that Sheik Omar asked for money
11 from Muhammed Salameh, who was in prison. Do you remember
12 that?

13 A. Yes, ma'am.

14 Q. Would you just tell us again who Muhammed Salameh
15 is.

16 A. The defendant for the -- one of the defendants
17 being convicted in the World Trade Center bombing, ma'am.

18 Q. And you told us that the sheik very movingly said
19 that he had no family here, that Mr. El-Gabrownny had family
20 and Mahmoud Abouhalima had family, but Mr. Muhammed Salameh
21 had no family, and you were moved to contribute money, is
22 that right?

23 A. Yes, ma'am.

24 Q. And you were told by the sheik to give the money
25 to Al Sattar, is that right?

1 A. Yes, ma'am.

2 Q. Do you remember that as part of this
3 conversation?

4 A. Yes, ma'am.

5 Q. And you agreed, did you not, that it was you who
6 brought up the subject to the sheik?

7 A. How would I bring up the subject, ma'am?

8 Q. Do you remember saying to the sheik -- this is at
9 page 2 -- thanks be to God, uh, Sheik, God willing, I want
10 to send money to Muhammed Salameh, Mohammed Amin, but I
11 don't want to go by myself. What do you think? To whom
12 should I give it?

13 The sheik answered: The brothers, I don't know
14 which one, I don't know his name.

15 And you answered: Because what, God willing, I
16 want, God, God willing, I, I mean to help me and to make,
17 but I don't want to appear in the picture right now,
18 especially with the people who are around at this moment. I
19 mean, I had in mind to visit Ibrahim and to visit Mahmoud
20 and to visit these people. I want to calm down until God
21 helps us to see clearly.

22 The sheik goes on to say: Well, the
23 circumstances.

24 You say: It's OK.

25 The sheik says: You'll see if the

1 circumstances --

2 You say: I don't mind.

3 And he says: Ah, OK.

4 Then you say: I don't mind supporting Mohammed
5 or Mahmoud. Ibrahim, Ibrahim is more than a brother. Two
6 days before his arrest Ibrahim paid me a visit in the
7 hospital.

8 And then skipping down: When you said yesterday
9 that Muhammed Salameh had nobody here, that he had no
10 relatives, it made me sad, I mean. This is over on page 4
11 now, Mr. Salem, at the very top of the page. I think that
12 every penny that goes to that man will be, I mean will be.

13 And the sheik says: Yes, a good deed.

14 Then you say, and I am skipping down to: Let's
15 see to whom I can give the money, or I'll leave it with you
16 here and you give it to anybody, the, the appropriate
17 person.

18 The sheik says: Who is the brother who was
19 collecting yesterday? Who is he?

20 And you say: Who? Ahmed?

21 The sheik says: Ah?

22 And you say: Ahmed Abdel Sattar. And you say:
23 OK fine, I will give it to Ahmed Abdel Sattar. Ahmed is
24 good. Etc.

25 So it was you who supplied the name of Ahmed Al

1 Sattar, isn't that right?

2 A. No, ma'am, that's not right.

3 (Continued on next page)

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1 Q. That isn't right?

2 A. No, that's not right.

3 Q. The sheik told you to give it to Sattar?

4 A. The day before, like you just read, ma'am, we
5 were talking about this issue of --

6 Q. Was that taped, Mr. Salem?

7 A. I am not sure. I don't know. I am not sure.
8 The day before, like you read here, I said to Sheik Omar,
9 "When you said yesterday that Mohammed Salameh does not have
10 a family, that affected me, or affected my heart."

11 Something in that effect.

12 So that indicates, ma'am, that we were talking
13 the day before about Mr. Mohammed Salameh -- Mr. Mahmud
14 Abouhalima, Mr. Ibrahim El-Gabrownny, that these guys have
15 family, but Mohammed Salameh does not have a family,
16 Mr. Ahmed Abdel Sattar collecting money, collected money the
17 day before, and I'm coming to refresh the subject the second
18 day by saying: When you said yesterday, Mohammed -- I mean,
19 so and so -- who should I give the money to? And he said to
20 the guy who was collecting the money: Sheik Omar is very
21 particular about what he is saying.

22 Q. Mr. Salem --

23 A. Yes, ma'am.

24 Q. -- you raised the subject with him, is that
25 correct?

1 A. That's correct.

2 Q. On this occasion?

3 A. Yes, ma'am.

4 Q. He didn't remember who had been collecting the
5 money, you had to supply the name, isn't that right?

6 A. I helped to him to remember, yes.

7 Q. When he raised the subject before, that was in a
8 mosque at a public meeting and everybody was asked to
9 contribute, isn't that right?

10 A. No, ma'am, that wasn't right.

11 Q. Did you ever give Mr. Sattar the money?

12 A. Yes, ma'am.

13 Q. How much did you give him?

14 A. \$50, ma'am.

15 Q. Didn't you only give him \$40, Mr. Salem?

16 A. I don't think so. I think I gave him \$50.

17 Q. Did you bill that to the FBI?

18 A. I don't recall.

19 Q. You also told us, did you not, in the course of
20 your direct testimony, that Mr. Siddig Ali was close to the
21 sheik because he was his translator and he translated
22 frequently, is that right?

23 A. That's right, ma'am.

24 Q. He was almost in daily contact with the sheik in
25 his role as a translator, do you remember saying that?

1 A. Yes, ma'am.

2 Q. If you turn to page 11 and 12.

3 A. Which part, ma'am?

4 Q. Starting the first line where you see your name
5 from the top of the page.

6 Do you remember this part of the conversation?

7 No, but for sure --

8 MR. McCARTHY: Objection.

9 MS. STEWART: Withdrawn, Judge, I'm sorry.

10 Q. Did you say this on this occasion: "No, but for
11 sure Mohammed translated it for her. She saw the pictures,
12 of course, and so on. Of a sure Mohammed El-Gabrownny
13 translated it for her. He is doing everything he can for
14 her. I mean, God bless him. (sighing, coughing). Sheik
15 Siddig didn't come by here."

16 Dr. Abdel Rahman said: "No, he called me" --

17 MR. McCARTHY: Objection to the --

18 MS. STEWART: It is just leading up to it, Judge.

19 THE COURT: All right. I will allow it.

20 She can do it. Overruled.

21 Q. "No, he called me, he called me recently."

22 You go on to say: "Yes, he told me that he would
23 come here yesterday to meet and so on. He must have gotten
24 busy. He does translations."

25 The sheik says to you: "He translates?"

1 And, then, on the next page, the sheik says to
2 you once again: "And the English? His English is good?"
3 referring to Siddig Ali.

4 And you say: "Excellent, Sheik."

5 Do you remember that part of the conversation?

6 A. Yes, I remember.

7 Q. In this conversation you also speak to the sheik
8 about visiting Nosair, is that right?

9 A. I didn't come to that part.

10 Q. Do you remember you read it earlier?

11 A. Yes.

12 Q. Do you remember earlier you read that?

13 A. Yes, on El-Gabrownny, yes.

14 Q. You talk about the fact that you couldn't get an
15 Arabic newspaper into Nosair at Attica, do you remember that
16 part?

17 A. No, ma'am.

18 Q. You also talked to him about an assassination in
19 Egypt that had recently taken place, this is at pages 13 and
20 14.

21 A. Yes, ma'am.

22 Q. Then, at page 19, about the wealth of Egypt and
23 how Mubarak is stealing all of it.

24 Do you remember that part of it?

25 A. I don't think I was referring to President

1 Mubarak, ma'am.

2 Q. You were referring to his minister of petroleum?

3 A. That's correct.

4 Q. Owning a Greek island?

5 A. That's correct, ma'am.

6 Q. Making billions of dollars?

7 A. That's correct, ma'am.

8 Q. And later, when you mentioned Mubarak's son -- do
9 you remember that? You listened to this tape not 20 minutes
10 ago, didn't you, Mr. Salem?

11 A. Ma'am, I checked certain points. It takes five
12 minutes, three minutes to listen, the whole conversation,
13 half an hour, an hour, impossible to listen for all of it,
14 ma'am.

15 Q. Did you receive a communication from the
16 government asking you to prepare this for the
17 cross-examination early on?

18 A. The marshal brought me the recorder, told me
19 check point the tapes to refresh your memory. I said, yes,
20 I did.

21 Q. The question is: Does he mention Mubarak's son
22 as being in league with the minister of petroleum making
23 millions and billions of dollars?

24 A. I may said that, yes, ma'am.

25 Q. Did you also talk about how the government of

1 Egypt is stealing two or three billion dollars. This one
2 takes a hundred million, that one takes 20 million, and the
3 poor have nothing to eat but themselves?

4 A. I may said that, yes, ma'am.

5 Q. And the sheik does not respond to any of these
6 questions, does he?

7 A. He never respond because he know that there is
8 tapes all over.

9 Q. Well, he responded earlier on CM10 when you took
10 him in the kitchen, didn't he?

11 MR. McCARTHY: Objection to form. "Earlier."

12 MS. STEWART: I'm sorry.

13 Q. On another occasion you have played a tape in
14 here and read a transcript in here where the sheik was
15 responding, wasn't he?

16 A. Only after he made sure that I gave him the
17 pledge of allegiance and I dedicated my life to him.

18 Q. Right. We are coming back to that Mr. Salem. I
19 have a few questions about your pledge, your bayah to a
20 blind man.

21 A. I'm sorry?

22 Q. We'll come back to that.

23 You threw out in this conversation every piece of
24 bait you could think of, isn't that correct?

25 A. Yes, ma'am.

1 Q. You never said to him when you were talking about
2 Mubarak, "Remember, you asked me to assassinate him?"

3 You never said this on that tape, did you?

4 A. On this tape, no, ma'am.

5 Q. You even at one point say, "so one shouldn't obey
6 the ruler."

7 Do you remember that part of this conversation?

8 A. Could you repeat it, please, ma'am?

9 Q. At page 23, the very top.

10 A. Yes, ma'am.

11 Q. Underneath where it says, "Wild dogs, see, we
12 shouldn't."

13 A. Yes, ma'am.

14 Q. Even at that point you don't mention anything
15 about assassinating Mubarak, is that right?

16 A. That's right, ma'am.

17 Q. It is fair to say that this tape was thrown on
18 your chair and forgotten about until the government
19 retrieved it sometime after June 24, is that right?

20 A. Yes, ma'am.

21 Q. This conversation was never reported to the FBI,
22 is that right?

23 A. I may report it, what happened, verbally, but I
24 did not obviously turn the tape over.

25 Q. Nothing happened, isn't that fair to say,

1 Mr. Salem?

2 A. Yes, ma'am.

3 Q. Nothing happened in this conversation?

4 A. Yes, ma'am.

5 Q. You didn't report it?

6 A. I didn't deliver the tape, yes, I did not.

7 MS. STEWART: Judge, I move this into evidence,
8 if I may, 640-1, the tape, and the transcript.

9 MR. McCARTHY: I object to the transcript.

10 The tape I have no problem with. The transcript
11 is not authenticated.

12 MS. STEWART: I will move the transcript at a
13 later date, your Honor.

14 THE COURT: All right. The tape is received.
15 640-1 is in.

16 (Abdel Rahman Exhibit 640-1 for identification
17 was received in evidence)

18 MR. McCARTHY: 640-1, your Honor.

19 THE COURT: 640-1.

20 Q. Directing your attention to Exhibit 639, which
21 was the tape that was made at Abu Bakr mosque.

22 A. Yes, ma'am.

23 Q. Siddig Ali was present and the sheik was present,
24 do you recall that?

25 A. Yes, ma'am.

1 Q. This is where you said you didn't use your
2 briefcase because Siddig beckoned you with some urgency, is
3 that right, to come over and join the conversation, you said
4 he was angry?

5 A. I did not use the briefcase, yes, ma'am.

6 Q. It was a body wire, is that right?

7 A. That's right, ma'am.

8 Q. At the end of this particular tape you did say:
9 It is 11:30. I'm in Brooklyn, Abu Bakr mosque. Today is
10 May 30, is that right?

11 A. I think, yes, ma'am.

12 Q. But this, too, was a tape that was thrown on the
13 chair, is that right, that did not get listened to until
14 after the arrests had taken place, is that correct?

15 A. Yes, ma'am.

16 Q. In this tape the sheik told you not to come to
17 him and ask what is allowed and what is not allowed, isn't
18 that correct?

19 A. Correct ma'am.

20 Q. You had heard that before, this was not the first
21 time you heard that, isn't that right?

22 A. When is that, ma'am? I don't recall.

23 Q. Well, did Siddig Ali tell you this early on, that
24 we don't go to the sheik, we don't tell him --

25 A. We don't tell him details. That's his rules.

1 Q. That's his rules.

2 We don't tell him, that's his rules?

3 A. We don't tell him details. That's what Siddig
4 Ali said. "We don't tell the sheik details. We just get
5 the fatwa about the subject and that's it. And don't talk
6 to him in his home." That's what Siddig told me.

7 That's what Siddig in another tape said: "I
8 always talk to him in the street."

9 Q. Are you sure that he said that on tape?

10 A. I am very sure that he said that, but I don't
11 recall if it is on tape or not.

12 Q. Do you remember a conversation that you had with
13 Siddig Ali that was taped and turned in to the FBI, which is
14 dated May 18, 1993, at his home? This would have been early
15 on in the investigation. You started out by saying: It's
16 Tuesday, May 18. I'm on my way to meet Siddig Ali in his
17 home. I'm driving over to his place to meet him. Then you
18 give a lot of street directions, and then he comes down and
19 joins you in the car -- I take it back. It was a
20 conversation in the car. Do you remember that?

21 A. He came to the car for so many conversations. If
22 you could try to refresh my memory, please with what was?

23 Q. If you look in the other book, under tab A.

24 A. Under A, ma'am?

25 Q. Yes. There is the first page and then on the

1 second page is what I will talk about.

2 A. Yes, ma'am, I remember.

3 Q. This is also a conversation that takes place in
4 Arabic, is that correct?

5 A. Correct, ma'am.

6 Q. You first have some discussion in the course of
7 this about counterfeit money. I think you told us about
8 that, is that correct, about selling counterfeit money, or
9 using counterfeit money for profit, is that right?

10 A. Yes, ma'am.

11 Q. Then you go on to say something about: We asked
12 about it from the Islamic laws' --

13 He says: We asked about it from the Islamic
14 law's point of view.

15 And you say: Yes.

16 A. Yes, ma'am.

17 Q. Then from there, do you not speak to him about
18 the sheik and what the sheik says?

19 A. I'm sorry?

20 Q. In this conversation did you go on to talk with
21 Siddig Ali about what Sheik Omar says, about what his rules
22 are?

23 A. I don't recall.

24 Q. If you could look at page -- it's '51, but it is
25 the second page behind --

1 A. OK.

2 MR. McCARTHY: Your Honor, I want to object to
3 this procedure.

4 THE COURT: Overruled.

5 A. Yes, ma'am.

6 Q. Do you remember in this conversation Siddig Ali
7 told you, did he not, that the sheik has only to do with the
8 headlines, is that right?

9 A. I beg your pardon?

10 Q. The headlines.

11 A. Right. The main issue, yes.

12 Q. He said, "He doesn't have anything to do with it.
13 It's not the sheik's way," is that right?

14 A. Yes, ma'am.

15 Q. Then he went on to say: "You ask him what is
16 right and what is wrong, that's his way and that's it."

17 Is that right?

18 A. Yes, ma'am.

19 Q. Then you said: "OK, what does he think about the
20 big house?"

21 A. Yes, ma'am.

22 Q. Is that right?

23 A. Yes, ma'am.

24 Q. The "big house" referred to the United Nations?

25 A. That's correct, yes, ma'am.

1 Q. And Siddig Ali answered you: "(unintelligible)
2 of course."

3 And you said: "Permitted."

4 Is that right?

5 A. I don't recall that.

6 Q. Turn to the next page, please.

7 MR. McCARTHY: Your Honor, under Rule 106 could I
8 have the bottom of page 51 incorporated, especially the
9 second attribution from the bottom that got skipped over?

10 MS. STEWART: I will read the whole thing if you
11 want.

12 THE COURT: Go ahead.

13 Q. You start off, this part of the conversation --

14 A. Page what, ma'am, please?

15 Q. The page before. It's page 51 at the bottom.

16 A. 51, OK.

17 Q. Where you say: "From the sheik."

18 Siddig Ali says: "Yes, of course, it's
19 permitted. It's certainly permitted because you take this
20 from them and hit them with it."

21 You say: "Did you tell him that I am involved in
22 this matter?"

23 Siddig Ali says: "What?"

24 You say: "Did you tell him that I'm in -- "

25 Siddig Ali says: "No, no, no, no, no, no."

1 You say: "Yes, I mean, look, of course I respect
2 the sheik very much."

3 Siddig Ali says: "No, no, no. I mean, wait,
4 wait, wait, we -- (unintelligible) a little bit. The sheik
5 doesn't know anything about this matter, about this matter."

6 You say: "Huh?"

7 He says, this is Siddig talking now: "By the
8 way, Emad, I wanted to call the sheik only with the" -- then
9 he speaks in English -- "headlines."

10 You say: "Huh?"

11 He said: "The details."

12 You said: "He doesn't have anything to do with
13 that."

14 Siddig answered you: "No, no, no. He doesn't
15 have anything to do with it. No, no. That's the sheik's
16 way."

17 You said. "Huh?"

18 He said to you: "You want tell him what you are
19 going to do. You. No, you ask him what is right and what
20 is wrong, that's his way and that's it."

21 Emad: "Huh."

22 Siddig Ali: "That's it."

23 Emad: "OK. What does he think about the big
24 house?"

25 Siddig Ali: "Of course."

1 And you said: "Permitted."

2 Is that the conversation you had with Siddig Ali
3 on this day?

4 A. I am very uncomfortable to the translation,
5 ma'am.

6 "Permitted," it's a question mark: "Permitted?"
7 And the answer -- can I read the answer, ma'am?

8 Q. Sure.

9 A. "Of course. Don't look at me like this." And I
10 will read the rest for a long time, but that was his answer.
11 So that means, "Permitted?"

12 He said, "Of course."

13 So that's clear that it is a question mark,
14 ma'am.

15 Q. Mr. Siddig Ali said: "Of course."

16 And you said: "Permitted?"

17 Is that what you're saying, that you asked him
18 the question then?

19 A. Yes, ma'am.

20 Q. Then do you want me to -- I will read the answer?

21 A. Please.

22 Q. Of course, don't look at me like this. And then,
23 believe me, your brother is very smart. Wouldn't show
24 one -- shouldn't show off with himself, but there's no step
25 that ones take before they see what. Even the media, our

1 Islamic media, a media that sold itself to Satan, for
2 example, the operation that the brothers did. He said, no,
3 the Islamic media said, those are not Muslims but who told
4 you people, who told you. This is Islamic, 100 percent.

5 Then you said: OK. It probably should be: One
6 second sheik. I have doubt in this one myself.

7 He told you: No, don't doubt. It's OK. One
8 second.

9 Then you say: The trade center? Fine.

10 This is not a continuation. These were excerpts,
11 Mr. Salem. Is it fair to say that the portion that
12 concerned the sheik had ended at that point about how and
13 why one approaches him, is that fair to say?

14 A. I'm sorry. Say it again?

15 Q. About what Siddig told you about how the sheik is
16 approached?

17 A. Yes, ma'am.

18 Q. And also in -- and this is at C, -- strike the
19 question, Judge. I would ask to withdraw the question.

20 THE COURT: All right. May I see you briefly at
21 the side?

22 MS. STEWART: Sure.

23 (Continued on next page)

24

25

1 (At the side bar)

2 THE COURT: A couple of things: First of all,
3 some of the statements that you read on the last go-round
4 were read without attribution. I don't know how much of
5 this gets heard and how much just passes over, so I am not
6 going to make a big deal out of it.

7 But one of the questions you asked him was
8 whether the point where you stopped ended the discussion of
9 what one talks to the sheik about and what one doesn't talk
10 about. I think a page or two after where you were there is
11 more about that subject. So I don't know whether you want
12 to leave it at that or not.

13 MS. STEWART: I was not going to do anymore.
14 However, I didn't put it in the book. I wasn't going to do
15 anymore. I assume the government on redirect can do what it
16 wants. The tapes are in evidence, I assume they will do
17 what they want.

18 THE COURT: Let's leave it at that.

19 MS. STEWART: OK.

20 (Continued on next page)

21

22

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25

1 (In open court)

2 Q. To go back to the unauthorized tape in the Abu
3 Bakr mosque --

4 A. Yes, ma'am.

5 Q. -- the sheik told you, did he not, that to
6 challenge the enemies, a path to God is clear, it doesn't
7 need consultation, is that right?

8 A. Yes, ma'am.

9 Q. And not to come to him anymore for consultations,
10 isn't that right?

11 A. That's right, ma'am.

12 Q. And he said that, and he told you, did he not,
13 because he wanted to be a symbol to Muslims, he did not want
14 to be involved in things that people might be planning, is
15 that right?

16 A. He want to be a front for Muslims, yes.

17 Q. You are saying the word "front." You're
18 translating the word from Arabic to be "front," is that
19 right?

20 A. Yes, ma'am.

21 Q. This word can also be translated as "symbol,"
22 can't it, Mr. --

23 A. No, ma'am.

24 Q. Can't be?

25 A. Cannot.

1 Q. Absolutely cannot be?

2 A. Positively cannot.

3 Q. Did you do the translations on these tapes, by
4 the way?

5 A. I did help, yes.

6 Q. So you reviewed all these tapes at a time prior,
7 is that right?

8 A. Yes, ma'am.

9 Q. So your lack of memory dates from that time also,
10 is that right?

11 A. Yes, ma'am.

12 MR. MCCARTHY: Objection.

13 THE COURT: Overruled.

14 Q. You then raised with the sheik at this point an
15 issue about Siddig Ali being labeled as an informant, do you
16 remember that, on 639?

17 A. I'm not sure. I raised it or Siddig raised it.
18 My recollection is that Siddig said the issue about the
19 quoting -- they quoting him as an informant.

20 Q. Siddig raised it, but this is an issue that had
21 been around for a long time, is that right?

22 A. Yes, ma'am.

23 Q. You had mentioned it to other people, is that
24 right?

25 A. Yes, ma'am.

1 Q. You had mentioned it to El Sattar in an attempt
2 to put together a group in the Brooklyn mosque to resolve
3 it, is that right?

4 A. I think, yes, ma'am.

5 Q. You had raised it also earlier that day, I
6 believe, with Siddig himself, in which Siddig had said,
7 "There is treason involved here," do you remember that?

8 A. I'm sorry. Say it again, please.

9 Q. Where Siddig indicated that there was treason
10 involved, treason against the sheik?

11 A. I'm sorry, "treason" means what? I'm sorry. I
12 don't understand that.

13 A. You said "treason"?

14 Q. Treason. T-R-E-A-S-O-N.

15 A. I don't know the word, ma'am.

16 MS. STEWART: May I ask the Arabic interpreter if
17 he can just give us that one word, Judge.

18 (Word interpreted)

19 A. OK, I got the meaning, ma'am.

20 Q. Do you remember a discussion with Siddig Ali in
21 which he talked about Mr. Haggag, and you said, "That is
22 treason"?

23 A. I don't think that I am the one who said that's
24 treason. I think that is Mr. Siddig's word, ma'am.

25 Q. But you do remember the conversation, is that

1 right?

2 A. Yes, I do.

3 Q. You said, "We must bring this to the sheik," is
4 that right?

5 A. I said that?

6 Q. Yes.

7 A. I may said it.

8 Q. Then that night in the mosque it was brought to
9 the sheik, is that correct?

10 A. Yes, ma'am.

11 Q. The sheik raises it as being something to do with
12 Mubarak, is that correct, when he speaks with you and Siddig
13 Ali in the mosque that night, it is something to do with
14 Mubarak, is that right?

15 A. I think, yes, ma'am.

16 Q. And the fact that Siddig has been named as an
17 informant to the FBI, is that right?

18 A. That's right, ma'am.

19 Q. He asks you to have a meeting to resolve this,
20 does he not?

21 A. Who's "he," ma'am?

22 Q. The sheik.

23 A. I don't recall. I think that was Siddig's
24 request as far as I recall.

25 Q. Well, Siddig could not have a meeting to resolve

1 his own problem, could he?

2 A. Yes, ma'am.

3 Q. At any rate, this tape was another one that you
4 made a report on and threw it in the chair at your home, is
5 that right?

6 A. Yes, ma'am.

7 Q. This tape never saw the light of day until after
8 the arrests took place, is that right?

9 A. Yes, ma'am.

10 Q. The subject of Siddig as the informant, it was
11 raised many times, is that right?

12 A. Yes, ma'am.

13 Q. Directing your attention to late May, early June
14 of 1993, there was a press conference in progress, is that
15 right, and you taped the entire press conference, is that
16 correct?

17 A. Not the entire press conference.

18 Q. Well, part of the press conference?

19 A. Yes, ma'am.

20 Q. And the preparation for the press conference, is
21 that right?

22 A. Yes, ma'am.

23 Q. This had to do with the execution of a number of
24 people in Egypt by Mubarak, is that correct?

25 A. That's correct, ma'am.

1 Q. After that, you raised the issue with the sheik
2 to resolve this situation with Siddig, is that right?

3 A. That's right, ma'am.

4 Q. This was a serious matter, someone reporting
5 people to the FBI, is that right, that you thought should be
6 resolved, is that correct?

7 A. I'm sorry.

8 Could you please say the question again?

9 Q. This was a serious matter that you raised, is
10 that right?

11 A. What do you mean -- which one?

12 Q. The question of Siddig being an informant.

13 A. Yes.

14 Q. Of giving names of other people to the FBI.

15 A. Yes.

16 Q. Of course, when you raised it, you were doing
17 exactly the same thing, weren't you?

18 A. To the FBI?

19 Q. Yes.

20 A. Yes, ma'am.

21 Q. You reported names, and those names later showed
22 up in a list of unindicted co-conspirators here, didn't
23 they?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. But if someone alleges that another person's
2 saying that he is an informant, this is the kind of a
3 dispute between Muslims that sheiks traditionally resolve,
4 isn't that true?

5 MR. McCARTHY: Objection.

6 Q. If you know.

7 THE COURT: I will allow it, if he knows.

8 A. The sheik always trying to find who's the
9 informant in his cell.

10 THE COURT: That was not her question.

11 Her question was --

12 THE WITNESS: I'm sorry, your Honor.

13 THE COURT: The question was whether a dispute of
14 this kind is a dispute of a kind that is normally resolved
15 by sheiks?

16 A. Yes, ma'am.

17 Q. In other words, it is a usual thing within a
18 Muslim community to take a dispute where one person is
19 accusing another person and bring it to the sheik and he
20 hears both sides and resolves it, is that right?

21 A. Yes, ma'am.

22 Q. That is what you wanted him to do on this
23 particular evening, is that right?

24 A. That's what we agreed, Siddig Ali and myself, to
25 do, ma'am.

1 Q. The underlying issue was never mentioned in the
2 entire course of this evening, that is, what had been
3 informed about, is that right?

4 A. I'm sorry, I didn't get the question.

5 Q. The issue that was informed, was told to the FBI,
6 that was never mentioned in the entire course of the
7 evening's conversation, is that right?

8 A. No, ma'am. I don't recall that it's being said
9 on the meeting.

10 Q. A fellow named Khalid was sent to bring Haggag
11 into the sheik's apartment, is that right?

12 A. Right, ma'am.

13 Q. You had the briefcase rolling at this point, is
14 that right, it was taping the entire situation there, is
15 that right?

16 A. Yes, ma'am.

17 Q. Then, when it started, the resolution, you turned
18 on your own body recorder at the same time, is that right?

19 A. I don't recall.

20 Q. This dispute became very, very heated, isn't that
21 correct?

22 A. Yes, ma'am.

23 Q. People were shouting, threatening --

24 A. Yes.

25 Q. -- and finally ended when Haggag ran out of the

1 room, is that right?

2 A. That's right, ma'am.

3 Q. Did you consider it disrespectful to the sheik at
4 the time?

5 A. From whom?

6 Q. From Haggag?

7 A. Yes. The way he talked to him, it was
8 disrespectful.

9 Q. You knew there was a personal dispute between the
10 sheik and Haggag, he talked about this on that tape, did he
11 not, or in that conversation?

12 A. Yes, ma'am.

13 Q. At a point in this conversation when the sheik
14 was mentioned as being involved Haggag said, no, the sheik
15 was not involved, isn't that correct?

16 A. I recall something like that, yes.

17 Q. The matter ended with the only resolution being
18 that Haggag ran out of the room, is that right?

19 A. That's right, ma'am.

20 Q. With regard to Haggag, did you have any reason to
21 believe that -- strike that.

22 Did you have any reason to believe that Haggag
23 himself had a connection at the Egyptian embassy?

24 A. I believe he told me -- I believe Abdel Rahman
25 Haggag himself told me that he got the itinerary of

1 President Mubarak from somebody in the consulate, that they
2 were planning to kill him.

3 Q. Did you learn that that person's name was Ahmed
4 Samiq?

5 A. No, I didn't learn his name.

6 Q. Was that name mentioned in a conversation that
7 you had with someone about getting a job for them at the
8 embassy, someone named Emad also?

9 A. This individual mentioned somebody, his name is
10 Ahmed Samiq, yes, but I don't know what is the connection
11 between that and the --

12 Q. Did you know this person at the Egyptian embassy,
13 Ahmed Samiq?

14 A. No, ma'am.

15 Q. You knew a friend of yours from your days in
16 military intelligence, Mr -- the vice consul was it?

17 A. The vice consul has nothing do with the military
18 intelligence, ma'am.

19 Q. You had a friend at the consulate also, is that
20 right?

21 A. That's right, ma'am.

22 Q. But you did not know Ahmed Samiq, is that right?

23 A. No, ma'am.

24 Q. Mr. Salem, I would like to direct your attention
25 to the making of CM10, which is Exhibit 311, which you told

1 us was made in the sheik's kitchen.

2 Do you remember that occasion?

3 A. Yes, ma'am.

4 Q. I think you indicated to us that you came to the
5 sheik's apartment at about 1 o'clock in the morning, is that
6 right?

7 A. It was very late at night, yes, ma'am.

8 Q. There were a group of fellows that were in the
9 living room with the sheik, is that right?

10 A. They came with us from the mosque in that night,
11 yes, ma'am.

12 Q. Let me just show you some pictures that have been
13 offered into evidence and are in evidence. These are all in
14 the 400 series of exhibits.

15 THE COURT: If any is picked out and discussed,
16 if you could just indicate which exhibit, please.

17 MS. STEWART: Absolutely, judge.

18 THE COURT: Thanks.

19 Q. I would ask you to just turn to page 1 or tab 1
20 there, Mr. Salem.

21 A. Yes, ma'am.

22 MS. STEWART: This is Exhibit 400F, Judge.

23 Q. Can you tell us what that is a picture of,
24 Mr. Salem.

25 A. That's a picture of the entrance of Sheik Omar's

1 apartment, ma'am.

2 Q. Do you see a pair of shoes there?

3 A. Yes, ma'am.

4 Q. Is it fair to say that when you entered Sheik
5 Omar's apartment everyone removed his shoes?

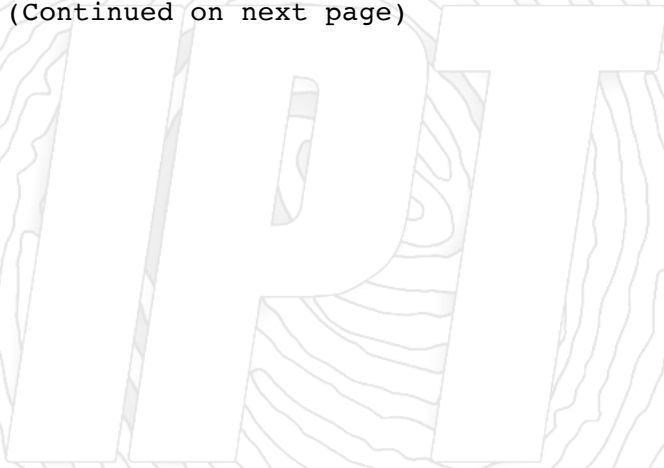
6 A. Not always, but most of the time, yes.

7 Q. Do you remember if on this occasion everybody
8 removed his shoes, I am talking about 1 o'clock in the
9 morning on May 23, 1993.

10 A. I don't recall, ma'am.

11 (Continued on next page)

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1 Q. If you would turn to picture number 6 -- this is
2 400E, Judge --

3 A. The last number?

4 Q. It is the very first picture in the book. The
5 numbering may not be right.

6 A. That is correct.

7 Q. Could you tell us what that is a picture of?

8 A. These pictures being taken from the front door
9 and straight close, all the way to the kitchen.

10 Q. Right, and where is the living room located?

11 A. Right before the kitchen, you turn left. Then
12 you are in the front room, or the living room, ma'am.

13 Q. You indicated that you entered there. Do you
14 remember whether you took your shoes off or not?

15 A. I don't recall, ma'am, no.

16 Q. And that you then entered the living room with
17 these other fellows, about six or seven of them, I think you
18 told us.

19 A. Yes, ma'am.

20 Q. And you entered carrying your briefcase, is that
21 right?

22 A. Yes, ma'am.

23 Q. And there is some discussion on the tape of them
24 and you and the sheik all of you talking about the events at
25 the mosque, is that right?

1 A. That is right, ma'am.

2 Q. There had been an election at the mosque, is that
3 right?

4 A. That is right, ma'am.

5 Q. Then at that point you get up with the sheik, do
6 you not?

7 A. Yes, ma'am.

8 Q. And you take him on your arm, because he is
9 blind, right?

10 A. That is correct, ma'am.

11 Q. And you take your briefcase with the other hand,
12 is that right?

13 A. That is correct, ma'am.

14 Q. And you walk into the kitchen, is that right?

15 A. Yes, ma'am.

16 Q. And everybody else just stays there in the living
17 room, is that right?

18 A. Most of the people in that time, they start to
19 leave, but some of them was sitting, staying there, yes.

20 Q. The people start to leave but there is no sounds
21 on this tape of people saying goodbye or the usual very long
22 greetings or salutations that Muslims give to each other, is
23 that right?

24 A. No, ma'am, I believe that there is sounds that
25 when Mr. Siddig Ali starts counting the people, three, four

1 names, and they said goodbye.

2 Q. In any event, Mr. Siddig Ali is on the phone at
3 this point, is that right, you going into the kitchen he is
4 on the phone?

5 A. I don't recall that, ma'am.

6 Q. But it is just you and the sheik in the kitchen,
7 is that right?

8 A. Yes, ma'am.

9 Q. If you turn to page AA -- I am sorry, it is
10 Exhibit 400AA, tab 4.

11 A. Yes, ma'am.

12 Q. Is that the kitchen? Is that a picture of the
13 kitchen that you are referring to?

14 A. It's part of it, yes, ma'am.

15 Q. Could you bring the book and just step down a
16 minute, Mr. Salem?

17 A. Yes.

18 MS. STEWART: I am sorry, Judge. I don't think
19 these pictures are at the jury's places.

20 THE COURT: If you are going to question the
21 witness while he is down there, if you could just get a
22 microphone.

23 MR. McCARTHY: Your Honor, may I just move my
24 vantage point for a moment?

25 THE COURT: Yes.

1 Q. This is picture 400AA, already in evidence.

2 Mr. Salem, can you tell us how big, what are the dimensions
3 of this kitchen, what was the size?

4 A. It wasn't that big. I mean, here is the, what
5 you call it, the cabinets, and I am not sure how that was.
6 I think that's the to the right-hand side, and the
7 refrigerator, I believe, would be on the left-hand side.

8 Q. Was there a table and chairs in this kitchen?

9 A. I don't recall that, ma'am, no.

10 Q. Can you show us exactly where you and the sheik
11 were standing during this conversation?

12 A. I was standing close -- we were in the middle of
13 the kitchen. The refrigerator was on our left close to the
14 sheik. The refrigerator, the sheik, and myself, and facing
15 the entrance of the kitchen.

16 Q. So that you could be observed from the doorway of
17 the kitchen, is that right?

18 A. Yes, ma'am.

19 Q. And you are holding up your briefcase, is that
20 right, to be sure not to miss a word of what is being said?

21 A. Not with this way.

22 Q. I am holding two hands in front of my chest.

23 Can you show us how you are holding the
24 briefcase.

25 A. I was holding the right hand, the briefcase, and

1 Sheik Omar on my left hand, and when I kissed his hand, I
2 kissed his hand like that, I stood again, I held his arm.
3 When he start to whisper in my left ear, I start to lift up
4 the briefcase, and I was careful not to move the handle,
5 because the handle will make squeaks and it's very sharp to
6 hear. I raised up the briefcase as much as I can and I am
7 holding the left hand. He whispered in his left ear, and I
8 picked up the conversation on the briefcase.

9 Q. You may resume your seat.

10 MS. STEWART: Indicating, for the record, raising
11 with his elbow extended in his right hand up to about the
12 level of his collar bone.

13 Q. Initially, Mr. Salem, you were, and we heard on
14 the tape here in the courtroom, you were weeping as you
15 pledged your allegiance, is that correct?

16 A. That is correct, ma'am.

17 Q. I think you told us that Siddig Ali and his wife
18 had also pledged allegiance, is that right?

19 A. Yes, ma'am.

20 Q. You called this a bayat, is that correct?

21 A. Yes, ma'am.

22 Q. You were pledging allegiance, and this is not an
23 uncommon thing in Islamic countries or Islamic places, is
24 that correct?

25 A. It was very uncommon to me, ma'am.

1 Q. Had you ever done this before?

2 A. Never, ma'am.

3 Q. It is acknowledging someone to be the leader of a
4 project, is that right?

5 A. From what I understand, ma'am, you dedicate your
6 life till death to one of the holy people.

7 Q. That person is termed an emir, is that correct?

8 A. That is correct, ma'am.

9 Q. He is in charge of a specific operation, project,
10 whatever you may want to call it, is that right?

11 A. Yes, ma'am.

12 Q. Where it is important, where the issues are
13 important and a lot of people are going to be involved, the
14 emir is usually elected from the group that is going to be
15 involved, isn't that right?

16 A. Yes, ma'am.

17 Q. You said on this tape that I am pledging, I have
18 lost my life, how can I pledge allegiance to death; is that
19 right?

20 A. Yes, ma'am.

21 Q. And you were weeping at the time, is that right?

22 A. Yes, ma'am.

23 Q. This was all an act, though, wasn't it,

24 Mr. Salem?

25 A. I beg your pardon.

1 Q. This was all an act.

2 A. Yes, ma'am.

3 Q. You really weren't pledging your life to death,
4 right?

5 A. No, of course not.

6 Q. When you were in the army, did you ever pledge
7 while you were in the army to anyone that you were involved
8 with there?

9 A. No, ma'am.

10 Q. Isn't it a fact, Mr. Salem, that Islamically an
11 emir cannot be a blind person?

12 A. I don't think that is true, ma'am.

13 Q. Do you know that in the Koran and the Sunna,
14 which are the holy books of Islam, you may never ask a blind
15 man or woman to be a leader? Is that right?

16 A. I never heard of that, ma'am.

17 Q. This is you putting the sheik in charge, isn't
18 it, Mr. Salem?

19 A. No, ma'am.

20 Q. You never heard of that. Have you been a Muslim
21 all your life?

22 A. Yes, ma'am.

23 Q. Do you consider yourself to still be a Muslim
24 today?

25 A. Absolutely, ma'am.

1 Q. Haven't the scholars in detail said that a blind
2 person cannot be an emir?

3 A. This is in the Koran or this is somebody's
4 opinion --

5 Q. The scholars who comment and read the Koran, do
6 you know if they have said that, as well as the Koran
7 itself?

8 A. I never heard that, ma'am.

9 Q. And that you cannot be a judge Islamically if you
10 are blind, a judge in the temporal sense, in the sense of
11 being a judge in a courtroom.

12 A. I am not sure of the issue of being judge, but
13 being emir, I believe it's being discussed so many times,
14 and as far as I recall, that they said there is no problem
15 as long as he have the knowledge.

16 Q. That is your understanding, is that right?

17 A. That is my understanding, yes, ma'am.

18 Q. But you do not claim to be an Islamic scholar, is
19 that right?

20 A. No, ma'am.

21 Q. And since Siddig Ali told you it was OK, you went
22 ahead and did this, is that right?

23 A. Yes, ma'am.

24 Q. After that, you asked the sheik -- first he said
25 that you had better check out Siddig with Mahmoud. Isn't

1 that the first thing he said to you?

2 A. Yes, ma'am.

3 Q. This referred again to this ongoing problem that
4 Siddig was an informant, is that right?

5 A. That's right, ma'am.

6 Q. And you sort of brushed that aside, right? You
7 said I'm involved in great work here, I trust Siddig, is
8 that right?

9 A. That is right, ma'am.

10 Q. And he didn't say no, I don't trust him, you
11 can't do it, he just listened to what you had to say from
12 that point on, is that right?

13 A. I think he had another answer.

14 Q. Tell me what his other answer was.

15 A. He said are you going to lose anything, just
16 check, ask Mohammed Abouhalima, ask Mahmoud Abouhalima, and
17 then ask Mohammed Abouhalima, ask him by God, what did your
18 brother Mahmud told you about Siddig. And he kept going to
19 trying to make me make sure that Siddig is not informant,
20 ma'am.

21 Q. Right, but once you assured him, then the subject
22 was dropped, is that right? Once you said that you were
23 involved in a great work --

24 A. Yes, ma'am.

25 Q. -- the subject was dropped, is that right?

1 A. Yes, ma'am.

2 Q. And then you asked him about the United Nations,
3 is that right?

4 A. That is right, ma'am.

5 Q. And he replied: It is not illicit. However,
6 will be bad for Muslims.

7 And you repeated: Not illicit, however will be
8 bad for Muslims. We do it or? Question mark.

9 What was your purpose? What did you understand
10 that to mean?

11 A. I mean when I asked him that bombing the United
12 Nations is permissible or prohibited, and he said it's not
13 prohibited. And then I replied, it's not prohibited, should
14 we did it or, and Sheik Omar said --

15 Q. Let me stop you one moment. Didn't he say it's
16 not illicit, however will be bad for Muslims? Isn't that
17 his complete answer?

18 A. That's right, ma'am.

19 Q. Isn't this what you did when you reported this to
20 various people in this case and not in this case, that the
21 sheik had said it is not illicit, but you left out however
22 it will be bad for Muslims?

23 A. Yes, ma'am.

24 Q. And then what did he say after that?

25 A. He said find a plan to destroy or to bomb or

1 to --

2 Q. Inflict damage, what he said?

3 A. Inflict damage to the American army.

4 Q. Didn't he say also, didn't you leave out one
5 thing, Mr. Salem? Didn't he say, after you said -- you said
6 we do it or, and he said no.

7 A. Referring to what, ma'am?

8 Q. The United Nations.

9 A. The United Nations, yes.

10 Q. He said no.

11 A. Yes, ma'am.

12 Q. And you said at that point, forget it.

13 A. No I don't recall saying that, ma'am.

14 MS. STEWART: Have I read correctly, Mr.
15 McCarthy?

16 MR. McCARTHY: That part, yes.

17 MS. STEWART: I will be happy to read the whole
18 tape but at the risk of boring everyone to death, I think I
19 will just continue.

20 Q. The sheik said: Find a plan, find a plan. Is
21 that right? And he said: To inflict damage on the American
22 army itself. Is that right?

23 A. Yes, ma'am.

24 Q. Do you remember the other conversation that was
25 read aloud here, the conversation at Mr. Saleh's house in

1 Yonkers with yourself and Siddig Ali and Mr. Saleh?

2 A. Yes, ma'am.

3 Q. Remember there that you told us about targets
4 being written down and then you ate the paper?

5 A. Yes, ma'am.

6 Q. Were any of those targets American army targets?

7 A. No, in that time it was the two tunnels and
8 the -- no, ma'am.

9 Q. The two tunnels and the, Mr. Salem?

10 A. United Nations.

11 Q. The United Nations, the United Nations which the
12 sheik had said no to, isn't that right?

13 A. That's right, ma'am.

14 Q. And you go on to say: How about 26 Federal
15 Plaza? What do you think of this one?

16 And the sheik answered: By God I mean wait for a
17 while, wait for a while, we will talk about this later.

18 Do you remember that response?

19 A. Yes, ma'am.

20 Q. And you said: OK fine.

21 Then he said to you, the sheik: I mean, we will
22 talk about it a little later.

23 And you, to get in, said: But we have prepared
24 the thing now, sheik.

25 And he said: Never mind.

1 Isn't that what he said?

2 A. I believe yes, ma'am.

3 Q. And then he was walking out at that point, is
4 that right?

5 MR. McCARTHY: Your Honor, under Rule 106 I ask
6 to continue down a few attributions before he walks out.

7 MS. STEWART: Fine.

8 THE COURT: Read it, please.

9 Q. You said: But we have prepared the thing now,
10 sheik.

11 He said: Never mind.

12 You said: We, uh, uh, uh, slow down a little
13 then?

14 He said: Slow.

15 You said: OK.

16 He said: Slow down a little bit.

17 You said: OK.

18 He said: Are you paying attention?

19 You said: OK, sheik.

20 He said: The man who, redacted and redacted, was
21 training for three years. We don't uh.

22 And you said: No, no --

23 MR. McCARTHY: I don't think that is read right.

24 We don't want.

25 MS. STEWART: Uh? I left out the uh?

1 MR. McCARTHY: The want.

2 MS. STEWART: I will read the whole line again to
3 make it clear.

4 THE COURT: Please.

5 MS. STEWART: May I, Judge?

6 THE COURT: Yes, you may.

7 Q. The man who redacted redacted, meaning the words
8 are taken out, was training for three years.

9 A. Yes, ma'am.

10 Q. We don't uh, and then you said no, no, we will do
11 a good job God willing. Is that right? Is that your
12 recollection of that conversation as well as being what is
13 on the tape?

14 MR. McCARTHY: Your Honor, I don't believe it is
15 accurately read from the exhibit that was received in
16 evidence. I don't know if Miss Stewart is reading from the
17 same draft that I have.

18 THE COURT: Which exhibit is it?

19 MR. McCARTHY: 311T.

20 MS. STEWART: May we go to the side bar, Judge?

21 THE COURT: What page?

22 There is another word in there.

23 MS. STEWART: May I look at the government's?

24 MS. STEWART: I have been up here too long. I
25 don't recall leaving out this word but I am happy to read it

1 again.

2 Q. As the sheik is walking out of the kitchen he
3 says to you, does he not: Are you paying attention?

4 You say: OK, sheik.

5 And he says: The man who redacted redacted was
6 training for three years, we don't want uh.

7 MS. STEWART: Have I read correctly, Mr.
8 McCarthy?

9 MR. McCARTHY: Yes.

10 MS. STEWART: This is the conversation you had
11 with the sheik in the kitchen that night, is that right?

12 A. Yes, ma'am.

13 Q. And it was recorded, is that right? It was
14 turned in?

15 A. Yes, ma'am.

16 Q. The following morning to John Anticev?

17 A. Yes, ma'am.

18 Q. And I think you said that you went down to
19 headquarters that very morning and listened to this tape, is
20 that right?

21 A. Yes, ma'am.

22 Q. And was that with John Anticev there?

23 A. Yes, ma'am.

24 Q. Was anyone else there at that time?

25 A. As far as I recall, Agent Steve Veyera, and I am

1 not sure, I think maybe Napoli was there as well.

2 Q. When the sheik said that bombing the UN would
3 bring harm to the Muslims, that would mean, would it not,
4 that it was Islamically prohibited to do it? Anything that
5 would bring harm to Muslims you may not do, isn't that
6 right?

7 A. No, ma'am, that is not right.

8 Q. You told us that you believed you had a fatwa
9 after this conversation, is that right?

10 A. Yes, ma'am.

11 Q. You know, do you not, Mr. Salem, that a fatwa
12 cannot be for a work in progress, isn't that right?

13 A. I want sorry. I don't understand what you mean.

14 Q. You do not ask for a fatwa after you have started
15 to do something, isn't that right?

16 A. No, that's not right, ma'am.

17 Q. That is not your understanding of it?

18 A. That's my understanding.

19 Q. In other words, the fact that you had already
20 checked on the detonators and Siddig Ali had already
21 contacted his people in the Sudanese mission, you could
22 still, after all this presentation was done you could still
23 go and ask for a fatwa, is that right?

24 A. That is right.

25 Q. That is your understanding?

1 A. That is right.

2 Q. In Islamic law, isn't it a fact that you must do
3 it before you start anything?

4 A. There is no such thing like that, ma'am, because
5 as long as they did not bomb the United Nations yet, I can
6 consult the scholar, it's bombing the United Nations
7 prohibited or not prohibited. If he told me prohibited,
8 then I must stop and I must not do. But if he told me it is
9 not prohibited, I consider this is a fatwa, and that's what
10 Islamic law, according to this mufti or according to this
11 person who give a fatwa.

12 Q. That is your understanding of it, is that right?

13 A. Yes, ma'am.

14 Q. But you only studied military things, is that
15 right? You were not an Islamic scholar, is that right?

16 A. That is right.

17 Q. It really didn't matter to you anyway, did it?

18 A. What, ma'am?

19 Q. Whether it was a fatwa or it wasn't a fatwa.

20 A. I am sorry. I don't understand what you mean
21 with your question.

22 Q. You were going on with your work for Egyptian
23 intelligence and the FBI regardless of whether it was or it
24 wasn't, weren't you?

25 A. I was not working for the Egyptian intelligence,

1 ma'am. I was working for the FBI, yes.

2 Q. We will come back to that, too. But do you
3 remember talking to Siddig Ali after this conversation in
4 the kitchen? You drove him home, did you not?

5 A. Yes, ma'am.

6 Q. And you take taped this not only with your
7 briefcase but also on your car?

8 A. That is right, ma'am.

9 Q. Recording device?

10 A. Yes, ma'am.

11 Q. And you reported to him that the sheik said not
12 to bomb the United Nations, didn't you?

13 A. Yes, ma'am.

14 Q. And he responded to you, no, I'm not going to do
15 it.

16 And you said: You're not going to do the United
17 Nations?

18 And he said: No, no, it's over, anything he, ah,
19 I mean, ah, the sheik will not approve, you said.

20 A. I said?

21 Q. You said.

22 A. I am not sure if that's correct, ma'am.

23 MS. STEWART: Will the government --

24 A. That Siddig talks, ma'am.

25 MS. STEWART: Will the government stipulate that

1 I have read correctly?

2 MR. McCARTHY: I don't know where you are reading
3 from.

4 MS. STEWART: I am sorry, page 19. As I said on
5 one other occasion, it's not as easy as it looks, Judge.

6 THE COURT: Of which exhibit?

7 MS. STEWART: Of CM 10, Judge, 311T. I will
8 start again.

9 Q. After you told Siddig Ali what had transpired in
10 the kitchen, what had happened in the kitchen, he told you
11 no, I'm not going to do it.

12 You responded: You're not going to do the United
13 Nations?

14 And he said: No, no, it's over. Anything he ah,
15 I mean ah.

16 And you said: The sheik will not approve.

17 And he said: Because he also, he has wisdom,
18 meaning the sheik. Frankly, he has things. I've seen them,
19 they are serious, meaning he will be sitting with you in a
20 place, he would see things that I can't see. He has
21 profound foresight.

22 Then you said: Yes, he said a military target,
23 so I said OK.

24 Then Siddig: Said fine.

25 And you said: Siddig Ali was saying the second

1 target, the 26 Federal Plaza one, the one with eh eh.

2 Siddig Ali says: You told him?

3 And you said: Yes. The FBI center, and he said
4 to me yes, that's good.

5 Was that a fair reporting of what had happened in
6 the kitchen, Mr. Salem?

7 A. Almost, yes.

8 Q. Almost? What was missing?

9 A. I told him that he said don't do the United
10 Nations. I told him that we talked about the Federal Plaza,
11 and Siddig told me that already he approved that, so I am
12 not giving new news to Siddig, ma'am.

13 Q. Did you say that the sheik said not now, we'll
14 talk about it later?

15 A. No, I did not.

16 Q. Then you go on to say two or three lines down:
17 Me, as for me, it will make no difference. And you repeat
18 it.

19 Siddig Ali says: No, it is the same thing for
20 you.

21 And you repeat it again: It will not make a
22 difference for me.

23 What did you mean by that?

24 A. That my job is building the bomb, it's not going
25 to make any difference to me if bombing the United Nations

1 or bombing the Federal Plaza, it doesn't make any
2 difference, I will build the bomb for you, and that's it,
3 the targets is your decisions.

4 Q. And as you sit here today, it really didn't make
5 a difference to you because you were working for the FBI,
6 isn't that right?

7 A. That's right, ma'am.

8 Q. And by the end of this conversation, by the time
9 Siddig Ali gets home you are already talking again about
10 bombing the United Nations, is that right?

11 A. I think yes.

12 Q. He is basically saying look, I have all the
13 people in place from the embassy, I think we go ahead with
14 the big house. Doesn't he say that?

15 A. Yes, ma'am.

16 Q. And the plans proceed, to do the United Nations,
17 isn't that right?

18 A. Yes, ma'am.

19 Q. And that's what you repeat on at least seven or
20 eight occasions at the home of Mr. Saleh, is that right?

21 A. Yes, ma'am.

22 Q. And the tunnels, you repeated also. You even
23 drew a picture from New York to New Jersey, isn't that
24 right?

25 A. I am sorry.

1 Q. When you were at Mr. Saleh's house?

2 A. Yes.

3 Q. And you told him the tunnels, he didn't
4 understand it at first, isn't that right?

5 MR. JACOBS: Objection, your Honor. That is not
6 the testimony.

7 MS. STEWART: Sorry. I am ad libbing.

8 MR. JACOBS: Thank you.

9 Q. Do you remember that you drew something or that
10 Mr. Siddig Ali drew something?

11 A. Mr. Siddig Ali drew two tunnels, yes, and he
12 wrote the United Nations, ma'am.

13 Q. And no one ever spoke to the sheik about any
14 tunnels, did they?

15 A. I did not spoke to Sheik Omar myself about
16 tunnels, ma'am.

17 Q. And you were lying to Mr. Saleh, is that right,
18 when you said this is Islamically approved?

19 A. No, I was not lying, ma'am, because Sheik Omar
20 said it is not prohibited.

21 Q. You just left out the no that followed it, isn't
22 that right?

23 A. Well, the no, ma'am, no, to slow me down from the
24 United Nations, but he ordered another target.

25 Q. I am talking about when you were talking about

1 targets and you said they are Islamically approved.

2 A. Yes, ma'am.

3 Q. The United Nations was not Islamically approved.

4 A. It was Islamically approved, ma'am, because he
5 said it's not prohibited. The Islamic word, ma'am, either
6 permissible or not permissible, according to the Islamic
7 rules. That's why we go to scholar, to think and say
8 approved or not approved from the Islamic point of view it
9 is approved or it's not approved, prohibited or not
10 prohibited, illicit or not illicit. The scholar have the
11 power to say that.

12 Q. Did the scholar say no?

13 A. The scholar said it is not prohibited.

14 Q. And did the scholar also say no?

15 A. The scholar said no, yes.

16 Q. Thank you, Mr. Salem.

17 A. You are welcome.

18 Q. The following day you were at the home of Adnan
19 Constantine, is that right?

20 A. Yes, ma'am.

21 Q. He was a person that you reported to the FBI as
22 being a Palestinian, did you?

23 A. I am not sure Palestinian or Iraqi. Something
24 that effect.

25 Q. Did you come to learn that he was Syrian in fact?

1 A. No, I did not.

2 Q. You engaged him in a conversation about a lot of
3 things, is that right, on that afternoon or evening, Adnan
4 Constantine, the next day?

5 A. Yes, ma'am.

6 Q. Among the things, you talked about suicide
7 missions with him, is that right?

8 A. Yes, ma'am.

9 Q. He said that he would be available for a suicide
10 mission, is that right?

11 A. Yes, ma'am.

12 Q. And you told him, did you not, that the problem
13 is, the sheik has tied our hands, we want to get ready to
14 work, and he said no. Is that right?

15 A. I may said that.

16 Q. This was the day after you had spoken to the
17 sheik in the early hours of the morning, is that right?

18 A. I don't recall the dates, but could be.

19 MS. STEWART: Mr. McCarthy, will you stipulate
20 that it was on May 23, 1993?

21 MR. MCCARTHY: Yes, stipulated.

22 MS. STEWART: And this is Exhibit 312, Judge.

23 Q. And you went on to say, and this is at page 21:
24 We have the people for suicidal operations. They are here
25 and ready. But since the sheik didn't order, we can't. He

1 said be patient, not now. I am very enthusiastic by nature
2 and I want to execute and finish in a good way.

3 Was that an accurate reporting of what the sheik
4 had told you the night before?

5 A. The sheik said slow down, not now. He didn't say
6 completely no, said just slow down. It means --

7 Q. I am sorry.

8 A. I am sorry, go ahead.

9 Q. And he had tied your hands, he had said no about
10 certain other targets, is that right?

11 A. That's right, ma'am.

12 Q. Directing your attention, Mr. Salem, to the
13 investigation as it took place during the springtime of
14 1993, that would be from the time of the World Trade Center
15 bombing until the arrests took place in June.

16 A. Yes, ma'am.

17 Q. Were you concerned that the sheik would leave the
18 country?

19 A. In a certain time, yes.

20 Q. Were you reminding the agents of keeping up with
21 him wherever he was and making sure he didn't leave the
22 country?

23 A. I think I said something like that, yes, ma'am.

24 Q. And on occasions you told the agents, did you
25 not, make sure the prince don't leave the country?

1 A. Yes, I may said that.

2 Q. He could just boom, disappear, is that right?

3 A. Yes, ma'am.

4 Q. He never did leave the country, did he?

5 A. No, ma'am.

6 Q. You also said this to Egyptian intelligence,
7 right, in your discussions with them on the phone during
8 these months?

9 A. I may said it.

10 Q. Do you remember saying to them, he could hit the
11 road and ride his bicycle toward you?

12 A. I may said it, but I don't recall.

13 Q. During the months of May and June, you believed
14 you had evidence against the sheik, is that correct, against
15 Dr. Abdel Rahman? May and June 1993? In your own mind.

16 A. In my mind? Yes, ma'am.

17 Q. And you had a tape, this CM 10 that we have been
18 discussing, Exhibit 311, is that right?

19 A. It was one of them, yes, ma'am.

20 Q. And you repeatedly asked your contacts in Egypt
21 intelligence, military intelligence, to make a choice, did
22 you not?

23 A. Not to make a choice. I was asking him question,
24 ma'am.

25 Q. Didn't you tell him to choose if they wanted to

1 take the sheik there or leave him here?

2 A. No, ma'am, I did not ask him to choose. I told
3 him, do you want him over there or here? That was my
4 question, ma'am.

5 Q. Exhibit 609, it would be source tape 913, page 31
6 behind tab R. Turning to page 32. You said to the Egyptian
7 agents: My race here is merely running.

8 Do you remember saying that to the agents?

9 A. That translation is not reminding me exactly what
10 I said, ma'am.

11 Q. Did you take part in the translation of the tapes
12 of yourself and Egyptian intelligence?

13 A. No, ma'am.

14 Q. These were also tapes that were found in the
15 chair, is that correct?

16 A. That is correct, ma'am.

17 Q. And they were made, were they not, during the two
18 months, basically -- strike that.

19 Some of the tapes were made during May and June
20 of 1993, is that right?

21 A. Yes, ma'am.

22 Q. Did you take part of the translation of these
23 tapes at all?

24 A. I don't think I did, ma'am.

25 Q. But it is your recollection that you never

1 offered Egyptian military intelligence a choice, is that
2 right?

3 A. It was not a choice, it was a question, ma'am.

4 Q. Do you remember saying, and this is at page 33:
5 Prior to the emission of the offensive smell of feces, I
6 maintained contact and was ready to let them smell it first.

7 Do you remember that conversation?

8 A. I am sorry. I am not following the translation,
9 ma'am.

10 Q. Would you check your own book behind tab R.

11 A. The English to me is not clicking what I -- I am
12 not understanding what is being feces and what that mean.
13 We used another word. I did not --

14 Q. Did the government ask you to review in
15 particular for my cross-examination the intelligence tapes?

16 A. I did review it, some of them. I check pointed
17 them, yes.

18 Q. Check pointed them?

19 A. Yes.

20 Q. You didn't listen to them?

21 A. Not all of them. I mean, it's a lot of tapes,
22 ma'am.

23 MR. McCARTHY: Miss Stewart, I will stipulate
24 that you read it accurately, as I agreed to.

25 MS. STEWART: Thank you.

1 Q. Do you remember a tape in which you said prior to
2 the emission of the offensive smell of feces? It's hard to
3 forget, Mr. Salem, is it not?

4 A. I don't know what feces mean to tell you yes, I
5 said, and I don't know what that mean.

6 MS. STEWART: May I have the interpreter --

7 (Interpreter translates)

8 Q. Does that refresh your recollection, Mr. Salem?

9 A. Yes, ma'am.

10 Q. Do you remember that, and you followed that by
11 saying I maintained contact and was ready to let them smell
12 it first? Do you remember that?

13 A. I am sorry. I got to listen to the tape, ma'am.

14 (Continued on next page)

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1 MS. STEWART: Judge, may we take an early break
2 and I will supply the tapes to Mr. Salem that I intend to
3 use in this line of examination? There are about four or
4 five of them.

5 THE COURT: We will resume at 1:45. Ladies and
6 gentlemen, please leave your notes and other materials
7 behind. Please don't discuss the case. Have a pleasant
8 lunch. We will resume at 1:45.

9 (Jury excused)

10 (Witness excused)

11 MS. STEWART: Judge, could I ask when the
12 government delivers this tape that they don't tell him to
13 spot-check them but to listen to them? I think that we just
14 will run into the same problem if they don't.

15 THE COURT: All right.

16 MS. STEWART: Thank you. I will bring them in.

17 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted: 1:50

Emad Salem, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: Ms. Stewart.

CROSS-EXAMINATION (Continued)

BY MS. STEWART:

Q. Mr. Salem, did you have an opportunity to go over those tapes over the luncheon break?

A. Yes, ma'am.

Q. Do you remember in the course of your conversations with Egyptian intelligence telling them that you had a tape in his own voice of one of the major targets?

A. Not in the tapes I heard now.

Q. Would you turn to page 86 in the -- if you need to, in the section -- I think it is the one that is R, letter R,

A. Page what, ma'am?

Q. 86. This is a source tape, 51 3, I think it's Exhibit 651. Is this one of the tapes you just reviewed, Mr. Salem?

A. No, that's not the one I reviewed now. I did not review that tape over the lunch break.

1 Q. Were you not handed five tapes and asked to
2 review them?

3 A. Yes, ma'am.

4 Q. This was one of them.

5 A. I don't think so, no, ma'am.

6 Q. I apologize, Mr. Salem, it is apparently our
7 error.

8 A. That's all right, ma'am.

9 Q. One tape was on two cassettes.

10 A. I'm sorry. That's OK.

11 Q. I thought we had the right number.

12 In any event --

13 A. Yes, ma'am.

14 Q. -- would you just look at page 86 for me a
15 moment.

16 A. Sure. Which part, ma'am, please?

17 Q. The very bottom of this page. Starting with
18 "This is one of the major targets."

19 A. Yes, ma'am.

20 Q. Do you remember having this conversation with
21 Egyptian intelligence?

22 A. Yes, ma'am.

23 Q. When you said that, "It is available, formally,
24 in a melon, I mean, in his own voice," what did you mean
25 when you said that?

1 A. I meant that finally, I have him on a tape, and
2 he's giving a fatwa, an order for --

3 Q. This was CM10 that we listened or talked about
4 this morning, is that right?

5 A. Yes, ma'am.

6 Q. Exhibit 311?

7 A. Yes, ma'am.

8 Q. When you said that you were going to send it over
9 to them, how were you going to send it to them?

10 A. Where is this, ma'am, please?

11 Q. Strike the question.

12 Let me start again.

13 You told them this was available to them, is that
14 right, this tape?

15 A. Where, ma'am, please?

16 Q. The line above: "There was no chance to ask such
17 a question but it is available."

18 MS. STEWART: Judge, may I withdraw the question
19 and start again here. I think maybe we can move it a little
20 faster.

21 THE COURT: Yes.

22 MS. STEWART: Thank you.

23 Q. Were you going to send this tape to Egypt for
24 them to listen to?

25 A. I don't think at the moment I was able to send it

1 to them.

2 Q. Why was that?

3 A. At the moment we almost closed to take the case
4 down, I was very, very nervous about my safety and my family
5 and my extended family overseas. I was almost in a paranoid
6 situation. I asked them to what should I do. I was very
7 panicky. I wasn't thinking to send tapes. I only want to
8 secure my sister overseas. I want to secure my family over
9 here.

10 Q. So you said to them that you had a tape in his
11 own voice, and this is a tape that you made for the FBI, is
12 that right?

13 A. Yes, ma'am.

14 Q. Now, this morning, when we broke, I was asking
15 you if you had ever indicated to the Egyptians that they
16 could make a choice.

17 A. Yes.

18 Q. That they could choose whether they wanted to
19 take Sheik Omar in Egypt or take him here?

20 A. Yes.

21 Q. Do you remember that?

22 A. Yes, ma'am.

23 Q. You told me that no, you never offered them a
24 choice.

25 A. Yes, ma'am.

1 Q. Is that still your testimony, Mr. Salem?

2 A. Absolutely.

3 Q. Now that you have listened to the tapes.

4 A. Yes, ma'am, I listened to the tape.

5 Q. And when you said to them -- and this is at page
6 32 -- "The race here is nearly running," what did you mean
7 when you said that? That is at the bottom of the page when
8 you said, "I believe my race in here is nearly running."

9 A. I believed that my end over here is almost coming
10 because I will be taken to unknown location, so my situation
11 here or my -- me being here, I am not going to be able to
12 get in touch with you because from what I understood --
13 well, that's it. I'm sorry.

14 Q. At 33 when you said, "Prior to the emission of
15 the offensive smell of feces" -- and this was the word that
16 was translated for you.

17 A. Yes, ma'am.

18 Q. "-- I maintained contact and was ready to let
19 them smell it first. I have, I hope that this conversation
20 is recorded on your side." What did you mean by that?

21 A. I'm not sure about word "mission" here, but, yes,
22 I recall I said that before the feces smell start to become
23 over here, I was in contact and I was ready to let you to
24 smell it first.

25 Q. What did you mean by that?

1 A. I mean, before the case is being taken down here
2 and everybody knows about it, I was in contact with you
3 guys, and I was willing to let you know about it first.

4 Q. When you said in the next line, "Before the shit
5 gets out of here" -- excuse me, Judge -- "I wish if you
6 smell it first."

7 A. That's exactly --

8 Q. To say that you were just giving them
9 information?

10 A. That's right, ma'am.

11 Q. You were not referring to a specific person when
12 you said "gets out of here," is that right?

13 A. No, before the case being taken down, and the
14 smell of the case to be all over, I would like you to know
15 about it before it happened.

16 Q. What would be the purpose of them knowing about
17 it, Mr. Salem?

18 A. The purpose is protecting the American embassy,
19 because once the case will be taken down, there is a lot of
20 people over there will run to bomb the American embassy, a
21 lot of people will run to kill my sister, which they tried
22 to kidnap her, a lot of people will do a lot of things. I
23 want them to be ready for it, ma'am.

24 Q. Let us turn to page 108, in the very middle of
25 the page, 108 --

1 A. Yes, ma'am.

2 Q. -- you said to them: "So I slaughtered him. I
3 already slaughter the calf already."

4 They said: "Yes."

5 And you said: "And I have his blood in my pocket
6 good. So are you thinking of taking him?"

7 What did that mean, Mr. Salem?

8 A. I meant that I already get Sheik Omar on tape,
9 and the tape in pocket means the tape with the authorities
10 and will you -- are you guys going to take him over, or he
11 will be left here. That was my question.

12 Q. So you offered him to them first, didn't you,
13 Mr. Salem?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q. You said, "are you thinking of taking him?" is
17 that right?

18 A. Yes, ma'am, question mark.

19 Q. Page 92 -- this is at 96.

20 A. Pardon me?

21 Q. Page 96.

22 A. Yes, ma'am, which page? Which line?

23 Q. In the middle of the page where you say: "Eh,
24 eh, eh, I do not have anything to do here except this
25 matter. The man who does not see, it's a given that I had

1 committed him."

2 They answer: "Yes."

3 You say: "It's only a matter of an investigation
4 at this time. Is he supposed to enter here or at your side
5 or let him go without entering at all and shutting their
6 eyes until he leaves?"

7 A. Yes, ma'am.

8 Q. Aren't you asking them what is their choice with
9 regard to Sheik Omar in that particular line?

10 A. No, ma'am.

11 Q. What are you asking them?

12 A. I am asking them that it is a matter of
13 investigation right now. Are they going to keep him here or
14 are they going to extradite him to Egypt or they will close
15 their eyes and let him leave. That is what I was saying.

16 Q. But you are telling them what is going on here,
17 isn't that right?

18 A. Absolutely.

19 Q. You are telling them what you have done for the
20 FBI?

21 A. I did not mention the FBI, but, yes, I'll telling
22 them what's going on over here.

23 Q. And you are telling them what the alternatives
24 are, are you not, Mr. Salem?

25 A. I'm telling them what is the situation. Things

1 under investigation, and I did not ask them their choice or
2 I did not offer them something. I explained the situation,
3 ma'am.

4 Q. At 109, page 109.

5 A. Yes, ma'am.

6 Q. Just let me interject, these were all in Arabic,
7 is that correct?

8 A. Yes.

9 Q. These conversations?

10 A. Yes, ma'am.

11 Q. These were all phone conversations, is that
12 right?

13 A. Yes, ma'am.

14 Q. You recorded them all, is that right?

15 A. Yes, ma'am.

16 Q. Were you seeking to protect yourself with the
17 Egyptian intelligence, is that why you recorded them?

18 A. Yes, ma'am.

19 Q. What did you think would be the result if you
20 didn't record them?

21 A. Well, first it was an issue about assassinating
22 the president, there is an issue about bombing the American
23 embassy. There is an issue about people going from
24 different countries to hit into Egypt and if, God forbid,
25 one of these things happened, and somehow somebody say, "You

1 never told us something like that," then I could have been
2 in a bad situation if I know about it and did not tell the
3 authorities.

4 Q. You are an American citizen, Mr. Salem?

5 A. Yes, ma'am.

6 Q. You are in such terrible fear of the Egyptian
7 authorities?

8 A. If I don't report that my -- the president of
9 Egypt it's --

10 Q. Can you answer my question, please.

11 MR. McCARTHY: Objection.

12 THE WITNESS: I'm sorry.

13 THE COURT: Sustained. You can answer it.

14 Q. Mr. Salem, the reason why you were in fear,
15 wasn't it because you were working for Egyptian military
16 intelligence as a paid agent?

17 A. Absolutely not, ma'am.

18 Q. At page 109 --

19 A. Yes, ma'am.

20 Q. -- your contact in Egypt says, this is towards
21 the bottom of the page, the first word is "Look."

22 "Look, I will see their final decision tomorrow."

23 And you say: "Look, once the shit started to
24 smell, it will be very hard for you to call me at all or I
25 call you. It will be over."

1 Then they say to you: "Of course, I will see
2 their final decision and their latest position."

3 You say: "Yes."

4 And they say: "And I will tell you."

5 Were they to make a decision and communicate that
6 decision to you?

7 A. Yes, ma'am.

8 Q. What were they making a decision about,
9 Mr. Salem?

10 A. In that time, I asked them to send me a ticket to
11 meet with them, and they -- if you read further or to listen
12 further to this tape, they said, you know, your father, his
13 hands is tied, and he's not going to be able to do this,
14 something in that effect.

15 They couldn't send me the ticket to go visit
16 them, so I can meet with them and talk face-to-face about
17 what was going to happen. So that decision was about the
18 ticket.

19 Q. I don't see that in my copy. Perhaps you can
20 point it out.

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q. Was that after this part of the conversation that
24 they said that?

25 A. I don't know, but I recall the conversation,

1 ma'am.

2 Q. This is the conversation which has to do -- you
3 asked them for a sheik to talk to, is that right?

4 A. Yes, ma'am.

5 Q. Do you remember that?

6 A. Yes, ma'am.

7 Q. Once again, in this conversation you're saying
8 that -- when you said "once the shit started to smell,"
9 you're referring only to information?

10 A. No, ma'am.

11 Q. You are talking about arrests, are you not?

12 A. I'm talking about the case being taken down, yes.

13 Q. You're saying that they're telling you about a
14 final decision about giving you an airline ticket?

15 A. There is a conversation prior to this I requested
16 airline ticket, ma'am.

17 Q. So that's what you're talking about there?

18 A. That's correct, ma'am.

19 Q. These tapes are not dated, is that right,

20 Mr. Salem?

21 A. I don't think that it is, ma'am.

22 Q. You can't tell me, for example, what date this
23 tape was recorded on, can you?

24 A. No, ma'am.

25 Q. Can you tell me what dates any of the

1 intelligence tapes are recorded on?

2 A. No, ma'am.

3 Q. But you know this was recorded after the World
4 Trade Center, is that right?

5 A. Yes, ma'am.

6 Q. Page 84, Mr. Salem. This, I'm sorry to say, is
7 the tape we neglected to give you over the luncheon break.

8 A. That's OK.

9 Q. Do you remember you said to them, starting in the
10 middle of page 85: "I have a question."

11 And your contact said: "At your service,
12 friend."

13 And you said: "This man."

14 He said: "Ah."

15 And you said: "No, I have what it takes to put
16 him in the cage."

17 And he said: "Eh."

18 And you said: "You think, do you want him to be
19 in the cage at your place or you don't want him in the cage
20 at your place? No, excuse me, in this matter you have to
21 consult your brothers."

22 Do you remember that conversation?

23 A. I think you mixed two people talking here. The
24 last portion, it wasn't me talking, it was him talking.

25 Q. Where it says: "No, excuse me, in this matter

1 you have to consult your brothers"?

2 A. That's him talking.

3 Q. But it's you talking when you say, "Now I have
4 what it takes to put him in the cage," is that right?

5 A. That's right, ma'am.

6 Q. Where you say: "Do you want him to be in the
7 cage at your place or you don't want him in the cage at your
8 place," that is your question to Egyptian intelligence, is
9 it not?

10 A. That's correct, ma'am. That's what I just said,
11 question. I did not give them choice. I was asking them.

12 Q. Let me show you a series of --

13 MS. STEWART: This is Abdel Rahman K through N,
14 Judge.

15 MR. McCARTHY: Your Honor, may we approach on
16 this?

17 THE COURT: Yes.

18 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I assume those are photographs of
3 Dr. Abdel Rahman during his Egyptian trial, is that right?

4 MS. STEWART: That's correct.

5 MR. McCARTHY: I would like to know what the
6 relevance is with respect to this witness.

7 MS. STEWART: He has said that he wants to put
8 him at the cage in your place or not put him in the cage.
9 People are tried in the cage in Egypt. That is clearly what
10 he meant. These are pictures of the sheik on trial in the
11 cage in Egypt. Obviously, if he says, "I don't know what
12 this is; I have no idea what I am looking at," I'm
13 foreclosed. If he says he recognizes them as showing the
14 way people are on trial in Egypt, and if I say, "Do you
15 recognize any of the people in those pictures?" And he
16 claims that they are fair and accurate representation, I
17 think it graphically shows what -- the government wants to
18 put this in as 404(b) evidence. I don't see what objection
19 they would have.

20 MR. McCARTHY: We want to put what he did as
21 404(b) evidence. As I understood, the court was not going
22 to permit affirmative evidence on the defense case. This is
23 clearly not impeachment of this witness.

24 THE COURT: It is not impeachment.

25 MS. STEWART: It is illustrative of what he was

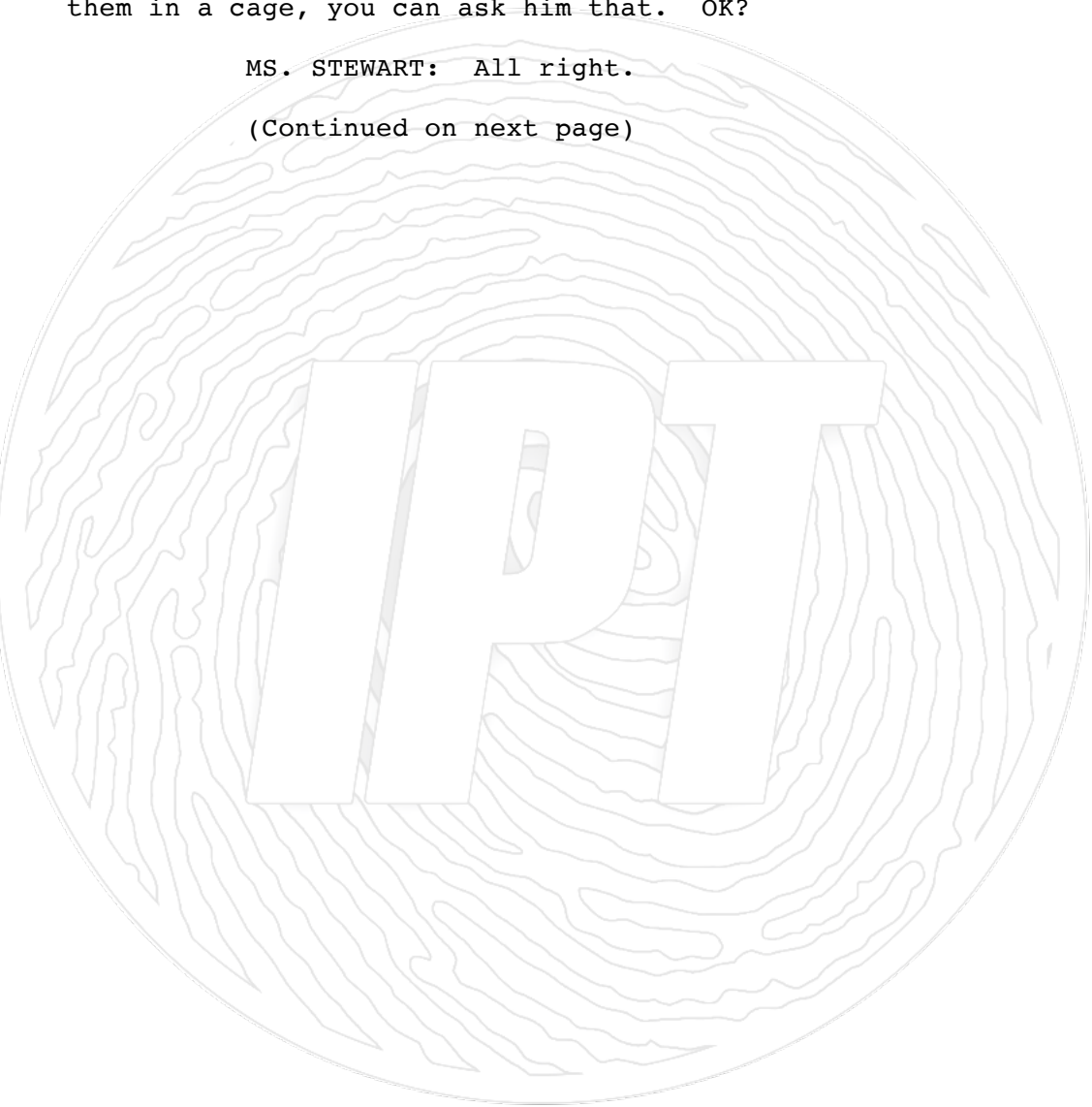
1 talking about.

2 THE COURT: If you want to put it in on your
3 case, you can put it in on your case. If you want to ask
4 him if what he meant was putting people in a cage and trying
5 them in a cage, you can ask him that. OK?

6 MS. STEWART: All right.

7 (Continued on next page)

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1 (In open court)

2 Q. Mr. Salem, you know, do you not, that people who
3 are tried before Egyptian courts, they are kept in a cage in
4 the courtroom during the trial, is that so?

5 A. Yes, ma'am.

6 Q. Did you ever attend the trial of Dr. Abdel Rahman
7 when he was on trial in Egypt in 1982?

8 A. No, ma'am.

9 Q. But after looking at the --

10 MS. STEWART: Judge, may I lay a foundation --
11 no. OK.

12 Q. When you talked about in your conversation with
13 Egyptian intelligence that you had what it takes to put him
14 in the cage --

15 A. Yes, ma'am.

16 Q. -- did you mean the kind of cage that they have
17 in the courtrooms in Egypt, is that what you were referring
18 to?

19 A. No, ma'am.

20 Q. What were you referring to?

21 A. I referred that what put him in jail over here is
22 different than what it puts him in jail over there. In
23 Egypt, if he said statements against the government, he can
24 be imprisoned for that. Over here, sometimes they say
25 freedom of speech.

1 Q. When you say "put him in the cage," isn't this an
2 expression, an Egyptian expression for going to jail?

3 A. Could be, yes, ma'am.

4 Q. And putting him in the cage means those cages
5 that are in the courtrooms where trials are had, isn't that
6 right?

7 MR. McCARTHY: Objection, asked and answered.

8 THE COURT: Sustained.

9 Q. You went on to tell them, did you not, that the
10 thing that puts him in the cage in your place does not put
11 him in the cage here, is that right?

12 A. That's exactly right.

13 Q. "So it's available." Do you remember saying that
14 to them, "so it is available."?

15 A. What's available?

16 MR. McCARTHY: Objection to form.

17 Q. Please turn to the next page.

18 A. 85?

19 Q. 86.

20 A. I'm sorry. I didn't listen to the statement.

21 Q. Do you remember saying that?

22 A. No, I don't recall exactly.

23 Q. Do you remember saying, "Do you want him by you
24 or you do not want the headache and that is it"?

25 A. I'm sorry?

1 Q. Do you remember saying to them, "So do you want
2 him by you, or you do not want the headache and that is it,"
3 do you remember saying that?

4 A. Yes, ma'am.

5 Q. But that was not offering them a choice,
6 Mr. Salem?

7 MR. McCARTHY: Objection.

8 THE COURT: Overruled.

9 A. No, ma'am. I was not offering them a choice. I
10 am asking them, do you want him, or you don't want the
11 headache? Question.

12 Q. Were you authorized by the FBI to ask them that
13 question?

14 A. No, ma'am.

15 Q. Were you authorized by the CIA to ask them that
16 question?

17 A. No, ma'am.

18 Q. By the way, did you ever have any information
19 that Abdo Rahman Haggag was a member of the intelligence
20 community --

21 MR. McCARTHY: Objection.

22 Q. -- himself?

23 THE COURT: I will allow the question.

24 A. No, ma'am, I don't know.

25 Q. You told us at the very beginning of your

1 testimony, Mr. Salem, that your contacts with Egyptian
2 intelligence were casual, is that right?

3 A. What do you mean by "casual," ma'am, I'm sorry.

4 Q. Well, that they were old friends from the
5 officers' club, that it was nothing formalized, is that
6 right?

7 A. Yes, ma'am.

8 Q. Is that still your testimony?

9 A. Yes, ma'am.

10 Q. You weren't an agent for them here?

11 A. Absolutely not.

12 Q. You did not come here with the intent of being an
13 agent?

14 A. No, ma'am.

15 Q. Do you remember talking to Special Agent Anticev,
16 this is source tape 13 2, I don't think it's included in
17 my -- this is at page 36.

18 Do you remember saying to him: "I played it
19 right, and I played it with -- and uh, ah, with the proper
20 way because it's my -- it's my way, it's my -- uh, little --
21 (unintelligible) it's my talent. But if the agent came to
22 be planted, don't expect these people to involve him in
23 their depth when they don't know his wife, when they don't
24 know his children, when they don't go to his house four,
25 five times, when they see him praying day and night with

1 them and he's, you know --

2 And he says: "Yeah."

3 And you say: "Participating. There is a lot of
4 things for these people to start to trust, to start to trust
5 you, eh, eh, a quarter percent."

6 Weren't you explaining to John Anticev what it
7 would take for an Egyptian agent to come here and be
8 trusted?

9 A. No, ma'am.

10 Q. What were you explaining there?

11 A. I was explaining to him how anybody can try to
12 implant or plant himself in Sheik Omar's group, and it takes
13 a lot of effort. Got to see your wife; they got to come to
14 your house; they've got to see you praying with them, eating
15 with them, until they give you even a quarter inch of trust.

16 Q. You said that was your little talent, is that
17 right?

18 A. Yes, ma'am, I said that.

19 Q. You weren't working for Egyptian intelligence
20 when you got that quarter inch of trust?

21 A. No, ma'am.

22 Q. And you weren't paid by them?

23 A. No, ma'am.

24 Q. Even when you asked for the airline ticket, you
25 weren't paid by them?

1 A. I never get a penny from them, ma'am.

2 Q. You did send them information, is that right?

3 A. Yes, ma'am.

4 Q. You even offered to them the one tape of Sheik
5 Omar that you felt would put him in the cage, is that right?

6 A. I don't recall, but probably.

7 Q. Even after the FBI way back in January 1992 when
8 you met with Mohammed Nasser told you not to communicate
9 with any Egyptian intelligence agency, you persisted, is
10 that right?

11 A. My understanding, ma'am, was the general
12 intelligence, not the military intelligence, ma'am.

13 Q. Did you ask them that?

14 A. No, I did not.

15 Q. So you did this without authority, is that right?

16 A. They know about it until every day I called from
17 my home. I did not hide it. I did not hide it at all.
18 Everybody knows about it until the last moment.

19 Q. Were you sent here to get Dr. Abdel Rahman?

20 A. Ma'am, I came over here 1987. Dr. Abdel Rahman
21 was not --

22 Q. When you returned in 1990, were you here to get
23 Dr. Abdel Rahman?

24 A. No, ma'am.

25 Q. Even though you told Louis Napoli or Louis Napoli

1 said to you he's your number one man?

2 A. I'm sorry, I don't understand what you mean.

3 Q. I'll go on.

4 A. OK.

5 Q. Were you sent to make a case that would stand up
6 in an Egyptian military court?

7 A. No, ma'am.

8 Q. They don't have trials in regular criminal courts
9 anymore, is that right, they're all military courts over
10 there now?

11 A. No. That's not right, ma'am.

12 Q. Under Mubarak's military law, you heard the sheik
13 say at the news conference they wouldn't last ten minutes if
14 the military law was lifted.

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q. You told the FBI about Egypt, all the phones are
18 bugged, is that right?

19 A. Yes.

20 Q. People are arrested just for having tapes of
21 Dr. Abdel Rahman?

22 A. Yes.

23 Q. That entire neighborhoods, such as your own old
24 neighborhood of Imbaba, are surrounded by troops and
25 everybody in them rounded up and questioned, searched and

1 arrested, is that right?

2 A. That's right, ma'am.

3 Q. People with beards are under suspicion, is that
4 right?

5 A. Yes, ma'am.

6 Q. When they're taken to jail, they are more often
7 than not tortured, is that right?

8 A. I don't recall saying that.

9 Q. You just told us that you had fears for your
10 sister, but you also had fears -- when you gave her tapes to
11 bring back, you asked Egyptian intelligence to meet her at
12 the airport so she wouldn't be harassed, isn't that correct?

13 A. I'm sorry. I'm lost here. Could you please just
14 repeat the question.

15 MR. McCARTHY: I object to the form of the
16 question.

17 THE COURT: Sustained as to the form of the
18 question.

19 Q. When you were speaking with Egyptian
20 intelligence --

21 A. Yes.

22 Q. -- you asked them, did you not, to meet your
23 sister at the airport and to take from her the watermelons
24 and grapes she was carrying so she wouldn't have to be
25 harassed at the airport by reason of having those tapes,

1 isn't that correct?

2 A. That's correct, ma'am.

3 Q. Those were tapes that you made for the FBI,
4 weren't they?

5 A. No, ma'am.

6 Q. What were they, then?

7 A. It was -- one tape was given to me by Sheik Ali
8 Shinawy, and another tape was given to me -- I bought it for
9 like \$2.50 or \$4.00, something to that effect, from the next
10 door neighbor for Sheik Omar Abdel Rahman in New Jersey,
11 ma'am.

12 Q. What were those tapes?

13 A. One of them when he said Mubarak deserved to be
14 killed on TV. One of them when he said Sadat deserved to be
15 killed on TV. It was parts of TV interviews, and Sheik Ali
16 Shinawy, like documentary things, he taped them, and he was
17 selling them to the community. So I got a copy from the
18 video. The audio one, it was a tape for Sheik Omar giving a
19 lecture about jihad and things like that.

20 Q. You knew if your sister just tried to enter the
21 country without being met by intelligence they would give
22 her a very hard time, is that right?

23 A. If the military intelligence will escort her and
24 take the tapes from her then there is no problems. But if
25 there is another law enforcement who don't know that I am

1 sending something with my sister and they find her carrying
2 some tapes like that, she will be in trouble.

3 Q. As an American citizen, this is the country you
4 decided to help, is that right, Egypt?

5 A. I'm sorry. I didn't understand the question.

6 Q. I said, as an American citizen, Egypt as you have
7 just described it, or as you have described it to the FBI,
8 this is the country you decided to help?

9 A. I'm still lost, ma'am. I'm sorry.

10 Q. Were you giving them information about my client,
11 Dr. Abdel Rahman, Egyptian military intelligence?

12 A. Yes, ma'am.

13 Q. Did they work for a country that bugs all the
14 people's phones, that arrests people for having tapes, is
15 that the country you were working for?

16 A. Yes, ma'am.

17 Q. You made a decision to do that, isn't that right?

18 A. Yes, ma'am.

19 Q. Because you were an American citizen at that
20 time, you didn't have to do anything for Egypt, isn't that
21 right?

22 A. I have obligation to protect my mother home
23 country as much as I have obligation to protect United
24 States of America, ma'am.

25 Q. You took an oath in this country, right?

1 A. Yes, ma'am.

2 Q. Didn't say anything about protecting Egypt, did
3 it?

4 A. No, ma'am.

5 Q. You kept them apprised by phone, is that right?

6 A. I'm sorry?

7 Q. You kept Egypt up to date by telephone?

8 A. Yes, ma'am.

9 Q. And you also met face-to-face with people here in
10 New York, is that right, your contact in the consulate, your
11 old friend?

12 A. That is not an intelligence officer, ma'am.

13 Q. You refused to give the FBI details about the
14 people that you had contacts about, isn't that right?

15 A. I'm sorry, could you repeat the question, please.

16 Q. Did the FBI ever ask you to tell them the last
17 names or the names of the people you had contact with?

18 A. I think once they asked me, and I said the first
19 name only. I didn't say the last name or the occupation.

20 Q. You refused to give them the names, isn't that
21 right?

22 A. I refused to give the last name, yes, ma'am.

23 Q. You were concerned about your position with the
24 FBI if they should find out about your ties to military
25 intelligence, isn't that right?

1 A. Ma'am, they know about it. I called from my home
2 phone. Nothing being hidden.

3 Q. Were they tapping your home phone, Mr. Salem?

4 A. No, but anybody can run my tolls can find that
5 this phone to overseas to this number when they dial the
6 number they hear operations. They know what it is. And I
7 told them, and, if I may remind you, that in a certain time
8 some agent asked me to contact my friends over there to
9 check somebody, somebody's luggage because it's not
10 allowable according to the law over here. So it was not a
11 secret to the FBI that I am --

12 Q. Mr. Salem, that happened, did it not --

13 MR. McCARTHY: Objection to cutting the witness's
14 answer.

15 MS. STEWART: I'm sorry. I thought he was done.

16 THE COURT: You can finish your answer.

17 Q. Finish.

18 A. So it was not a secret for the entire people who
19 worked with me that I am in touch with Egyptian
20 intelligence, ma'am.

21 Q. That incident where they asked you to call
22 happened in December of 1991, did it not?

23 A. I don't recall the date, ma'am.

24 Q. It had to do with Mr. El Zayyat, is that right?

25 A. That's right.

1 Q. It happened at the time that Mr. Nosair was on
2 trial, did it not?

3 A. Yes, ma'am.

4 Q. You contacted your friends in Egyptian
5 intelligence, is that right?

6 A. Yes, ma'am.

7 Q. And about a month later a man from general
8 intelligence contacted you, is that correct?

9 A. I don't recall the dates, but, yes, there is a
10 man who told me that he is from the general intelligence.

11 Q. It was on that occasion that Nancy Floyd, special
12 agent of the FBI, told you not to give any more information
13 to them without clearing it through the FBI, didn't she?

14 MR. McCARTHY: Objection to form. "Them."

15 THE COURT: Identify the "them."

16 Q. Not to give Egyptian intelligence any foreign
17 intelligence, any information --

18 A. No, that's not what she said, ma'am.

19 Q. At page 95, Mr. Salem, this was about a week's
20 time before the arrests took place, do you recall that?

21 A. Yes, ma'am.

22 Q. Do you remember saying to your contact: "All I
23 fear is one thing."

24 And he said: "Go ahead, my dear."

25 "OK, fine. This is nice. Let us take advantage

1 of it and send them a paper so that we can warn them and
2 then what we appear intelligent, are you with me?"

3 And he said: Yes.

4 And you said: "So the ones here will tell me,
5 'You son of a dog, you told them behind our backs.' So I
6 lose my relationship with them, and here I have no one but
7 them after our God at this time."

8 Do you remember saying that to your contact?

9 A. Yes, ma'am.

10 Q. Wasn't the "them" in that instance the FBI?

11 A. Yes, ma'am.

12 Q. Weren't you afraid that they were going to find
13 out that you had given to Egyptian military intelligence
14 information?

15 A. The FBI does know all of my contact with the
16 Egyptian intelligence. The Egyptian intelligence know
17 nothing that I am cooperating with the FBI. What I am
18 saying here I am afraid that you are going to write a report
19 and send it to the American government to make yourself
20 smart. And then, they will turn to think that I am
21 reporting to you behind them back, then I lose them and I
22 have nobody else here, after God, but them. I hope I am
23 clear.

24 Q. I think it's clear, Mr. Salem.

25 A. All right.

1 Q. You also on one occasion, and this is at page 45,
2 you told the Egyptian intelligence about a United States
3 agent, did you not?

4 A. I don't recall that, ma'am.

5 Q. Do you remember sending a fax to them with the
6 picture of a man with a beard?

7 A. Yes.

8 Q. Do you remember calling them shortly thereafter?

9 A. Yes.

10 Q. And telling them the man with the beard in the
11 picture is working in Alexandria?

12 A. Yes.

13 Q. And you knew this because you knew him from
14 operations in this country?

15 A. No, ma'am.

16 Q. They told you he was a CIA agent, didn't they?

17 A. That's what they suspected.

18 Q. They told you that they worked with the agency
19 here and they knew about him, didn't they?

20 A. They told me they know about him, yes.

21 Q. They told you he works with the company there,
22 meaning the CIA or the FBI, didn't they?

23 A. Yes, ma'am.

24 Q. When you told them, did you know that this was a
25 person who was working for the CIA or the FBI?

1 A. That was an article in a newspaper, ma'am. And
2 this person, or this individual, it was saying that he used
3 to work for the FBI and when -- and they turned bad guys and
4 after the conviction they screwed him up. And the
5 payment -- so I send them the fax, they said, "Oh, yeah, we
6 know about him. We know that he used to work with a company
7 over there."

8 Q. They didn't say he "used to," they said he works
9 with a company there?

10 A. That's what they said. They know that he used to
11 work with the people here.

12 Q. Is it your testimony that you didn't just send
13 him this name knowing that this was an agent of the United
14 States government?

15 A. That's -- no, ma'am. He's not an agent for the
16 United States government. He's an Egyptian citizen who
17 cooperated with the FBI in a certain time on a certain case,
18 and somehow he did a mistake, so they kicked him to Egypt,
19 and there is an article about him came in the newspaper and
20 that is what I faxed to them, ma'am.

21 Q. Why would you think Egyptian intelligence would
22 be interested in that?

23 A. I needed their advice.

24 Q. About what?

25 A. Well, I have always feared that the FBI will

1 screw me up somehow, someday.

2 Q. That's why you made tapes, is that right?

3 A. Yes, ma'am.

4 Q. But you're still telling this jury that you were
5 working for the FBI and your loyalty was to the United
6 States, is that right?

7 A. Absolutely, ma'am.

8 Q. And you swore to protect and defend the
9 constitution of the United States, is that right?

10 A. Yes, ma'am.

11 Q. You are not primarily working for Egypt?

12 A. No, I am not.

13 Q. Your number one target was Dr. Abdel Rahman,
14 right?

15 A. I think, yes.

16 Q. And it was -- he was a major problem to Egypt,
17 isn't that right?

18 A. That's correct, ma'am.

19 Q. Your number one loyalty, do you remember saying
20 you are a person born in Egypt and who hoped to be buried
21 there?

22 A. Yes, ma'am.

23 Q. Doesn't this make Egypt your number one loyalty,
24 Mr. Salem?

25 A. No.

1 Q. Do you remember speaking to one of your contacts
2 in Egypt, this is at page 101: "I have only my God and you
3 to talk to"?

4 A. Yes.

5 Q. Is that what you said to him?

6 A. I may said that, yes.

7 Q. That means there was no one higher in your mind
8 except God from Egyptian intelligence?

9 A. Well, that was my friend, and it's 15, 16 years'
10 worth of friendship, and, of course, I will trust his
11 friendship and his advice more than the agent who I just met
12 a few months ago. So in that situation I was very panicky,
13 I was very nervous, and I need somebody to give me an
14 advice.

15 Q. Mr. Salem, did you ever talk to John Anticev
16 about Dr. Abdel Rahman's will?

17 A. Yes, ma'am.

18 Q. Do you remember that that was a piece of
19 literature that was distributed widely in the mosques at a
20 time when you were there, is that right?

21 A. Yes, ma'am.

22 Q. I would like to show you what's been previously
23 marked Exhibit B in evidence, Abdel Rahman B. Do you
24 recognize that, Mr. Salem?

25 A. I --

1 MR. McCARTHY: Your Honor, I don't believe that
2 item is in evidence.

3 MS. STEWART: It's marked.

4 THE DEPUTY CLERK: Just for ID. It wasn't
5 received into evidence.

6 MS. STEWART: It wasn't received, but it's
7 marked.

8 THE DEPUTY CLERK: It's marked.

9 MS. STEWART: That is what I said.

10 THE COURT: You said "in evidence."

11 MS. STEWART: I said "marked."

12 I'm sorry. Let me start again.

13 Q. Mr. Salem, did you have an opportunity to look at
14 a document marked Exhibit B but not yet in evidence?

15 A. I looked at the main Arabic title, and I remember
16 it, yes, ma'am.

17 Q. Is this something that you recall being
18 distributed in the mosques at the time that you were
19 attending there as an agent of the FBI?

20 A. I think it's being distributed, yes, ma'am.

21 MS. STEWART: Judge, I would offer it in
22 evidence.

23 MR. McCARTHY: May I just take a look at it.

24 No objection.

25 THE COURT: B is received without objection.

1 (Abdel Rahman Exhibit B for identification was
2 received in evidence)

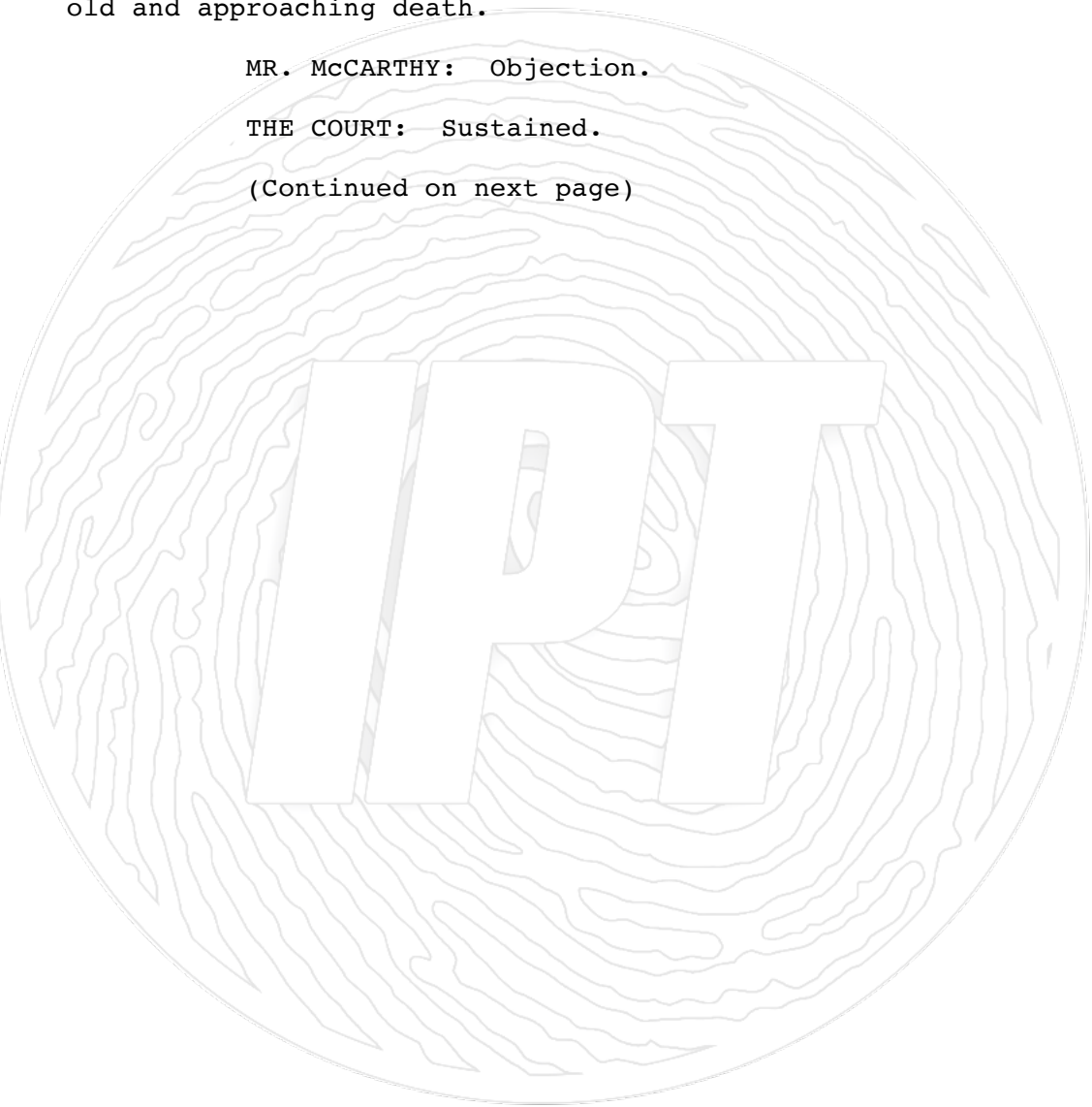
3 Q. If you know, Mr. Salem, was this something that
4 was written by Dr. Abdel Rahman because he thought he was
5 old and approaching death.

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 (Continued on next page)

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1 MS. STEWART: I will read, Judge, if I may, from
2 the item in evidence. Oh, you dignified Muslims --

3 THE COURT: Excuse me. Is this going to be the
4 predicate for a question?

5 MS. STEWART: No, because he does not recall it.
6 I asked if he remembered that this was written by Dr. Abdel
7 Rahman at the time when he felt that death was approaching.
8 There is no question.

9 THE COURT: I sustained an objection to that and
10 it is just as objectionable when you restate it. The
11 question is, is this reading going to be a predicate for the
12 next question?

13 MS. STEWART: No, Judge. I am reading it.

14 THE COURT: Then can you proceed with your
15 questioning and read it at the end of your examination.

16 MS. STEWART: This is the end of my examination.

17 THE COURT: Then you can read it.

18 MS. STEWART: Oh, you dignified Muslims of Egypt.
19 I feel the end of my life and the time to meet Allah is
20 near. It is imperative of me to leave a will. So here it
21 is to you, the most beloved people to my heart, so here it
22 is to my family, my people and those who are close to me,
23 and here it is from the depths of my heart, sincerely to
24 Allah.

25 It goes on to say: And I say with you no, no, to

1 you, Mubarak, your regime, your supporters, your hanging of
2 people, your jails, your weapons. No to the existence of
3 your oppressive regime, even for one more hour. The time
4 for an Islamic state has come, and in Allah's will it will
5 last until the day of judgment. If I am exiled, I will
6 remember that the beloved prophet Mohammed, may peace be
7 upon him, was also exiled. And if I am jailed, I will
8 remember that the honorable prophet Joseph, may peace be
9 upon him, son of Jacob, may peace be upon him, was also
10 jailed. And if I am to be slaughtered, I will remember that
11 the kind prophet John the Baptist, may peace be upon him,
12 was also slaughtered.

13 There is my message. These are my beliefs and
14 trusts to mankind which I have chosen to carry and to live
15 with, and thanks to Allah, I honor the trust. So choose for
16 yourself from now, before it is too late. This life is the
17 time of choice

18 MR. McCARTHY: Your Honor, I have an objection
19 under Rule 106.

20 THE COURT: Is this part of the document, Miss
21 Stewart?

22 MS. STEWART: I will read the whole thing, but it
23 is lengthy.

24 THE COURT: Is there another portion that you
25 want read?

1 MR. McCARTHY: Yes, your Honor.

2 THE COURT: Why don't you discuss with Miss
3 Stewart how much of the thing gets read.

4 (Pause)

5 MS. STEWART: The government's excerpt: Oh
6 precious soldiers of the earth say no. No, we will never
7 fight except in the way of Allah. Those who have believed,
8 they fight in the way of Allah. No, we will never fight in
9 the way of America and its allies and those unbelievers
10 fight in the way of everything other than Allah. No, it is
11 enough, the destruction of Iraq. No, it is enough, the
12 disgrace of the Muslims in Bosnia. No, we will never take
13 orders from the United States, the one that claims that Iran
14 and Sudan sponsor terrorism. No, we will never be an
15 instrument in the hand of the Zionist enemies who promote
16 the satanic lie that the real danger is coming from the
17 fundamentalists. So what about the vicious Zionists, and
18 what about the criminal Serbs? Are they the angels of
19 peace? Or are they the messengers of love?

20 THE COURT: Mr. Stavis?

21 MR. STAVIS: May I be heard at the side bar, your
22 Honor?

23 THE COURT: Yes.

24 (At the side bar)

25 MR. STAVIS: Your Honor, our cross-examination

1 may involve the playing of many tapes. I have a paralegal
2 seated in back ready to bring in several tapes and other
3 articles for my cross-examination. Perhaps if we can take
4 the break at this point we can set that up.

5 THE COURT: You say the break. Part of the
6 problem is that I am told part of this coincides with the
7 prayer time, which if it doesn't come during the break will
8 turn the break into an hour long break.

9 MS. STEWART: Do you want me to ask?

10 THE COURT: Could you. Off the record.

11 (Discussion off the record)

12 MS. STEWART: Your Honor is Islamically correct.
13 It cannot be before 3:30.

14 THE COURT: Can we do something productive?
15 Don't just run the clock. If you can't, we will figure
16 something out.

17 MR. PATEL: Judge, we need to just sort of strike
18 the set.

19 THE COURT: Why don't we take a short break now
20 and we will take a longer break later on.

21 (In open court)

22 THE COURT: Ladies and gentlemen, we are going to
23 take a short break now. Please leave your notes and other
24 materials behind. Please don't discuss the case. This is
25 not the major afternoon break, this is just a short one. We

1 will resume in a few minutes.

2 (Recess)

3 THE COURT: Mr. Stavis.

4 MR. STAVIS: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. STAVIS:

7 Q. Mr. Salem, as you sit there today, you are
8 receiving the amount of \$9,700 per month, is that correct?

9 A. Yes, sir.

10 Q. From the federal government?

11 A. Yes, sir.

12 Q. When do you receive this money? The first of the
13 month, middle of the month, end of the month?

14 A. There is a part come at the first of the month,
15 there is another part come in the middle close to the end of
16 the month.

17 Q. Which part comes close to the first of the month?

18 A. The Marshal Service part.

19 Q. You have been paid that amount for sometime, is
20 that correct?

21 A. Yes, sir.

22 Q. The way you expressed it, since the case was
23 taken down, correct? Since July of 1993?

24 A. Yes, sir.

25 Q. During the time that you have been paid that

1 money after the case was taken down, you have been preparing
2 for the trial in this case, is that fair to say, Mr. Salem?

3 A. Yes, sir.

4 Q. You have been reviewing consensually monitored
5 tape recordings, correct?

6 A. Yes, sir.

7 Q. And you have been reviewing transcripts of
8 consensually monitored tape recordings, is that correct?

9 A. The transcript, I am not that good at reading, so
10 I wasn't reviewing the transcript, I was reviewing mainly
11 the tapes and helping transcribing them, sir.

12 Q. You helped to transcribe them. That is one of
13 the things that you were doing. And you also reviewed the
14 personal tapes that you made, correct?

15 A. Not all of them, sir. I point checked them when
16 I came over here.

17 Q. Did you review over the last two years some of
18 the personal tapes that you made?

19 A. Some, I would say, yes, sir.

20 Q. Did you review some of the transcripts of the
21 personal tapes that you made?

22 A. No, sir, I am not that good at reading. When I
23 listen, I can get the meaning better than reading, sir.

24 Q. Like you did with the CM's, did you help to
25 prepare some of the transcripts of your personal tapes?

1 A. No, sir.

2 Q. Over the last two years, you have had an occasion
3 to watch some videos in preparation for your testimony, is
4 that correct?

5 A. Yes, sir.

6 Q. Did you help to prepare transcripts of any of
7 those videos?

8 A. Yes, sir.

9 Q. Did you have occasion over the last two years to
10 sit down with any agents of the Federal Bureau of
11 Investigation to go over information in preparing for this
12 case?

13 A. It was translators mostly. I met with some
14 agents, yes, but most of my work was with some translators.

15 Q. Did you also meet with prosecutors in preparing
16 for your testimony in this trial?

17 A. Yes, sir.

18 Q. And you spent a lot of time with the prosecutors,
19 preparing your testimony for this trial, is that fair to
20 say?

21 A. Yes.

22 Q. Would it be fair to say that you spent hundreds
23 and hundreds of hours preparing your testimony for this
24 trial?

25 A. I cannot say hundreds, but a lot of hours, yes.

1 Q. And the prosecutors went over the types of
2 questions that they were going to be asking you?

3 A. Yes, sir.

4 Q. And you went over some of the answers you were
5 going to be giving to those questions, correct?

6 A. Yes.

7 Q. And you went over some of the questions that
8 might be asked on cross-examination, is that correct?

9 A. Yes.

10 Q. And you also went over what the answers you would
11 be giving to those cross-examination questions.

12 A. I am sorry. Could you repeat this part, please.

13 Q. Did you also go over with the prosecutors the
14 kinds of answers that you would give to the questions on
15 cross-examination?

16 A. I used to give the answers. The prosecutors did
17 not give me answers.

18 Q. I am not saying that they did. I am just asking
19 if you went over it.

20 A. Yes, sir, I did give answers, yes.

21 Q. Did you go over the facts in this case?

22 A. Yes, sir.

23 Q. Did you spend a lot of time going over the facts
24 in the case?

25 A. Yes, sir.

1 Q. And the reason you went over the facts in the
2 case was so that you would be able to recall important facts
3 when you testified here at the trial, is that correct?

4 A. Yes, sir.

5 Q. And the reason that you went over important facts
6 so that you would be able to recall is that when somebody
7 asked you a question at this trial, you wouldn't have to say
8 I don't recall.

9 A. Yes, sir.

10 Q. You have testified that you first met Mr. Nosair,
11 my client, at Rikers Island. That's the first time you met
12 him.

13 A. No, sir. The first time I saw him in the court.

14 Q. Mr. Salem.

15 A. Yes, sir.

16 Q. I didn't ask you the first time you saw him, I
17 asked you the first time you met him.

18 A. I am sorry. That was in Rikers Island, yes, sir.

19 Q. And you went there with Ibrahim El-Gabrowny?

20 A. Yes, sir.

21 Q. That was your introduction to Mr. Nosair.

22 A. Yes, sir.

23 Q. And Ibrahim El-Gabrowny said, Sayyid, this is
24 Emad Salem, correct?

25 A. Yes, sir.

1 Q. This is a brother who is helping us with the
2 trial.

3 A. Yes, sir.

4 Q. And you were helping Ibrahim El-Gabrowny with the
5 trial, correct?

6 A. Yes, sir.

7 Q. That was just basically an introductory meeting?

8 A. Yes, sir.

9 Q. You had never met Mr. Nosair before that meeting
10 in Rikers Island.

11 A. No, sir, I never met him.

12 Q. You had seen him in court but you hadn't met him.

13 A. That is correct, sir.

14 Q. The reason that you met him was because you asked
15 Ibrahim El-Gabrowny if he would go with you to Rikers Island
16 and introduce you to Mr. Nosair, is that correct?

17 A. No, sir.

18 Q. Did you ask Ibrahim El-Gabrowny if you could
19 visit or if Mr. El-Gabrowny could arrange for you to visit
20 Mr. Nosair before the first time you met him? Yes or no.

21 A. No.

22 Q. Do you recall having a telephone conversation
23 with Mr. El-Gabrowny -- this is TES9 -- in late 1991, where
24 Mr. El-Gabrowny said to you, if God is willing there is a
25 visit on the weekend, and you said to him, if there is a

1 chance that I can come with you tell me, and I will go.

2 Did he ask you that question and did you give
3 that answer?

4 A. So he is the one who told me about the visit,
5 sir.

6 THE COURT: The question was simply whether he
7 asked you that question and whether you gave that answer.

8 THE WITNESS: All right.

9 A. Yes, sir, he did.

10 Q. The first time you saw Mr. Nosair is in Rikers
11 Island and that's the introductory meeting, correct?

12 A. Yes, sir.

13 Q. The next time you saw Mr. Nosair was at Attica
14 prison, upstate New York, correct?

15 A. Yes, sir.

16 Q. That was the visit that you have described in the
17 spring of 1992.

18 A. Yes, sir.

19 Q. Before you went on your summer vacation. That's
20 how you place the time.

21 A. Yes, sir.

22 Q. That was the first visit that you had had with
23 Mr. Nosair since that Attica visit, is that correct?

24 A. Yes, sir.

25 Q. That was only the second time you had ever met

1 him, is that correct?

2 A. Yes, sir.

3 Q. At the end of that year, at the end of 1992, you
4 received what you have described as a three-way telephone
5 call. Do you recall that testimony?

6 A. Yes, sir.

7 Q. In other words, El-Gabrowny called you at home --
8 Ibrahim El-Gabrowny, or Mr. El-Gabrowny called you at home
9 when he had Mr. Nosair on the line from Attica.

10 A. Yes, sir.

11 Q. So that the three of you could talk together.

12 A. Yes, sir.

13 Q. And in preparing for your testimony today, have
14 you reviewed that telephone conversation?

15 A. I believe I have, yes, I remember, yes.

16 Q. In that telephone conversation, you were
17 discussing with Mr. Nosair the harassment you had suffered
18 at the hands of the FBI, is that correct?

19 A. Yes, sir.

20 Q. And you hadn't really suffered any harassment at
21 the hands of the FBI, had you, Mr. Salem?

22 A. No, sir.

23 Q. That wasn't true, was it?

24 A. No, it wasn't true.

25 Q. FBI was good to you, weren't they?

1 A. Most of the time, yes.

2 Q. During that conversation, Mr. Nosair told you
3 that because of that harassment, you could file a lawsuit
4 against the Federal Bureau of Investigation in a federal
5 court just like this one.

6 A. Yes, sir.

7 Q. You told him, you told Mr. Nosair that the FBI
8 had offended you in their offices at 26 Federal Plaza, is
9 that correct?

10 A. Yes, sir.

11 Q. And Mr. Nosair told you, please write to me
12 everything that happened, and I, meaning Mr. Nosair, will be
13 the one who will file all these lawsuits on your behalf,
14 Allah willing. Isn't that right?

15 A. Yes, sir.

16 Q. And you then said, Allah willing. And then Mr.
17 Nosair said because there is nothing, of course. We are law
18 abiding people. At which point you agreed with him. You
19 said exactly. And then Mr. Nosair said -- you did say
20 exactly, correct?

21 A. Yes, sir.

22 Q. And then Mr. Nosair said, and they are the ones,
23 it is clear that they are till this minute, it is clear, I
24 mean, that they broke the law in a very clear way, and we
25 must show this clearly. You see? And you said all right.

1 Is that correct?

2 A. Yes, sir.

3 Q. And then Mr. Nosair said, so that we show them
4 that we are better law abiding people than them despite all
5 their allegations. At which point you said exactly right.

6 Is that correct?

7 A. Yes, sir.

8 MR. McCARTHY: Mr. Stavis, could I have an
9 exhibit number on that?

10 MR. STAVIS: Which number?

11 MR. McCARTHY: The exhibit that you just read.

12 MR. STAVIS: 12/28/92.

13 MR. McCARTHY: I know the date.

14 MR. STAVIS: Page 10 and 11 of your transcript.

15 Q. You testified before this jury that there was a
16 usual topic that Mr. Nosair used to discuss with you. Do
17 you recall that testimony?

18 A. Yes, sir.

19 Q. And the usual topic was bombing, explosives,
20 weapons, rifles, pistols, kidnapping, and murdering. Is
21 that right?

22 A. Yes, sir.

23 Q. But you didn't discuss the usual topic in that
24 one telephone conversation from Attica prison, did he,
25 Mr. Salem?

1 A. No, sir.

2 Q. And he also didn't ask you to meet him at Attica
3 during that telephone conversation, did he, Mr. Salem?

4 A. No, sir.

5 Q. You had one other visit with Mr. Nosair --
6 withdrawn. In the spring of '92, you had another visit with
7 Mr. Nosair at Attica prison, correct?

8 A. Yes, sir.

9 Q. That is the visit with Ali Shinawy.

10 A. Yes, sir.

11 Q. That was two visits in the spring of 1992,
12 correct?

13 A. Yes, sir.

14 Q. And then about a year later, you had another
15 visit with Ali El-Gabrownny and Siddig Ali.

16 A. Yes, sir.

17 Q. That was your third Attica visit, correct?

18 A. Yes, sir.

19 Q. So you had one Rikers Island visit and three
20 Attica visits.

21 A. Yes, sir.

22 Q. And that is your sole personal contact that you
23 had with my client Mr. Nosair, is that correct?

24 A. Yes, sir.

25 Q. Those visits lasted about, I think you testified,

1 three hours each?

2 A. I believe there is one of them lasted for five
3 hours, another one for five -- between five to three hours,
4 sir.

5 Q. So you think that maybe you had about ten hours
6 of personal meetings with Mr. Nosair?

7 A. Maybe little bit more, sir.

8 Q. Twelve hours?

9 A. I would say 15, 18.

10 Q. And those 15 or 18 hours are your only contacts
11 that you had with Mr. Nosair, personal contacts that you had
12 with Mr. Nosair?

13 A. Yes, sir.

14 Q. Never went to his house for dinner, did you?

15 A. No, sir.

16 Q. And if I asked you right now, you couldn't tell
17 me the names of his children, could you?

18 A. No, sir.

19 Q. And you couldn't even tell me how many children
20 he has.

21 A. No, sir.

22 Q. And you don't know him very well, do you?

23 A. I think I know him.

24 Q. That's based on your 15 to 18 hours?

25 A. Yes.

1 Q. You think you know him very, very well?

2 A. At least I know his ideas and his direction, sir.

3 Q. How about him personally? That is my question.

4 You don't know him very well personally, do you, Mr. Salem?

5 A. No, I did not involved in his personal life, sir.

6 Q. While you were preparing for this case, you

7 listened to many of these, we call them CM tapes,

8 consensually monitored tapes, right?

9 A. Yes, sir.

10 Q. And the consensually monitored tapes are the ones

11 from the Nagra, right, that you had in your briefcase,

12 right?

13 A. Yes, sir.

14 Q. Or your car?

15 A. Yes, sir.

16 Q. Also, I think, one or two were on microcassette,

17 had you testified to?

18 A. Yes, sir.

19 Q. And you reviewed these tapes in preparing for

20 your testimony here at this trial, is that correct?

21 A. Yes, sir.

22 Q. When you reviewed the testimony, Mr. Nosair's

23 name came up quite often on those consensually monitored

24 tapes, didn't it?

25 A. Yes, sir.

1 Q. And it is fair to say that you were the one who
2 was bringing up Mr. Nosair's name, isn't that right,
3 Mr. Salem?

4 A. Sometimes, yes, sir.

5 Q. Sometimes, Mr. Salem?

6 A. Yes, sometimes.

7 Q. Weren't you always the one who was bringing up
8 Mr. Nosair's name on those consensually monitored tapes?

9 A. I was trying to bring him always, but there is --

10 Q. Have you finished your answer?

11 A. No, sir.

12 Q. Go ahead, finish.

13 A. But there are some others mentioned his name
14 without me mentioning, sir.

15 Q. Was it your strategy to use Mr. Nosair's name
16 when you were talking to the other people on these
17 consensually monitored tapes?

18 A. I was trying to bring the subject to let the
19 people talk and say what's going on.

20 Q. Was it your strategy that by you using Mr.
21 Nosair's name you could get other people to say things?

22 A. Yes, sir.

23 Q. That was deliberate on your part, wasn't it,
24 Mr. Salem?

25 A. Yes, sir.

1 Q. You did that as a way of gaining acceptance,
2 isn't that right, Mr. Salem?

3 A. Yes, sir.

4 Q. And you were actually trading on his name, wasn't
5 that right?

6 A. I beg your pardon, sir.

7 Q. You were trading on his name.

8 A. Trading --

9 Q. Trading, T-R-A-D-I-N-G. I will rephrase it.

10 A. I am sorry.

11 Q. You thought if you used Mr. Nosair's name, that
12 people would think very well of you.

13 A. Yes, sir.

14 Q. That was part of your role.

15 A. Yes, sir.

16 Q. And that was part of how you made yourself into
17 what you referred to as the big shot.

18 A. Yes, sir.

19 Q. Do you have any idea how many times you raised
20 Mr. Nosair's name on those consensually monitored tapes?

21 A. No, sir.

22 Q. But it was often, wasn't it, Mr. Salem?

23 A. Yes, sir.

24 THE COURT: When you come to a convenient break
25 point in the next 10 minutes.

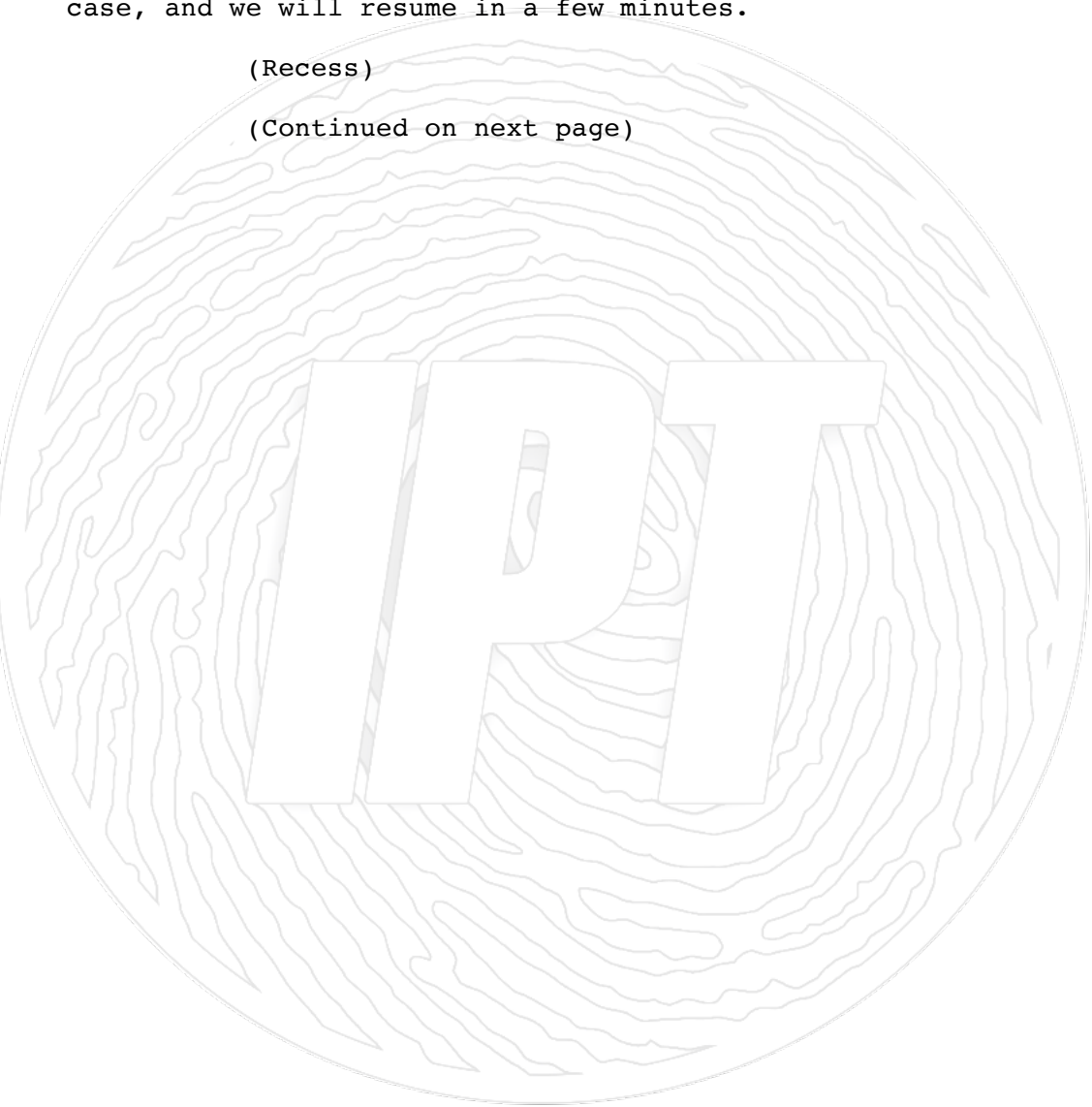
1 MR. STAVIS: This is it.

2 THE COURT: Ladies and gentlemen, we are going to
3 take the regular midafternoon break now. Please leave your
4 notes and other materials behind. Please don't discuss the
5 case, and we will resume in a few minutes.

6 (Recess)

7 (Continued on next page)

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1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Mr. Stavis.

4 MR. STAVIS: Thank you, your Honor.

5 CROSS-EXAMINATION (Continued)

6 BY MR. STAVIS:

7 Q. Mr. Salem, the other day you told Ms. Stewart
8 when she was asking you questions that you lied to become a
9 United States citizen, do you recall that testimony?

10 A. Yes, sir.

11 Q. When Ms. Stewart asked you the other day, and she
12 also asked you this morning about your oath of allegiance to
13 the United States of America, you said you weren't lying
14 when you swore an oath of allegiance to the United States of
15 America, is that correct?

16 A. Yes, sir.

17 Q. Mr. Salem, you are an American citizen, right?

18 A. Yes, sir.

19 Q. You are a patriot, is that right?

20 A. I'm sorry?

21 Q. You're a patriot, is that right?

22 A. I'm sorry. What does that mean?

23 Q. A patriot. Someone who loves his or her country.

24 A. Yes, sure, sir.

25 Q. We are talking about this country now, the United

1 States of America?

2 A. Yes, sir.

3 Q. You love this country?

4 A. Yes, I do.

5 Q. That's why you're here today?

6 A. Yes, sir.

7 Q. You are not an opportunist, are you?

8 A. No, sir.

9 Q. You had several conversations with the FBI agents
10 who were handling your case, John Anticev, Detective Louis
11 Napoli, right?

12 A. Yes, sir.

13 Q. You previously told us that you taped some of
14 those conversations, is that right?

15 A. Yes, sir.

16 Q. Those tapes are called "source tapes" or "bootleg
17 tapes," is that correct?

18 A. Yes, sir.

19 MR. STAVIS: Your Honor, I have distributed a
20 book of transcripts that is defense Exhibit LL for purposes
21 of identification.

22 THE COURT: Nosair Exhibit LL?

23 MR. STAVIS: I think the jurors have them at
24 their seats.

25 THE COURT: Are those in evidence?

1 MR. STAVIS: No, your Honor. I am going to play
2 a tape now. It is all English tapes.

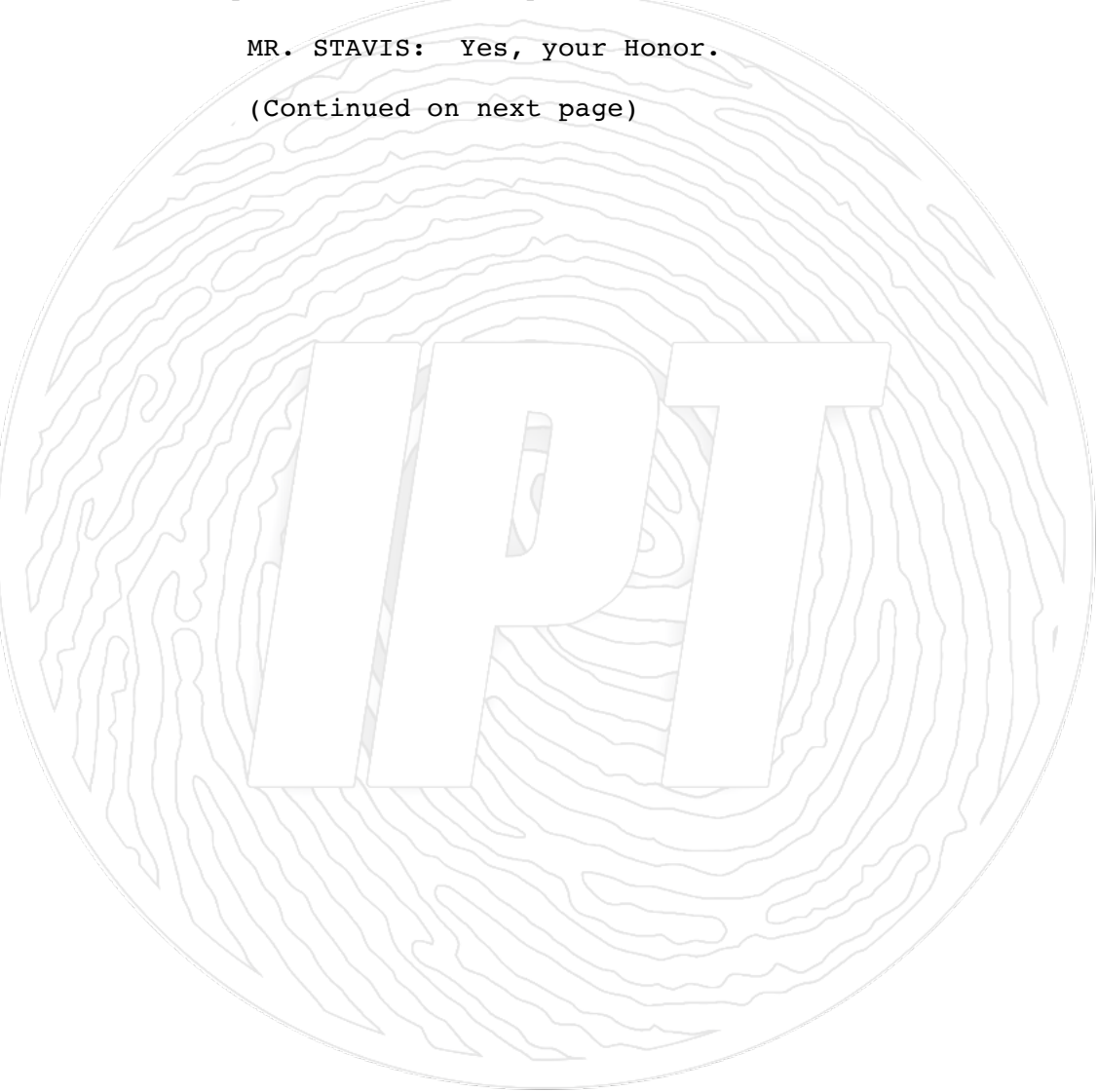
3 MR. McCARTHY: I object.

4 THE COURT: That may be, but we talked about
5 this. Do you want to come up to the side?

6 MR. STAVIS: Yes, your Honor.

7 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I thought I made it clear that you
3 could introduce tapes on your case, and you could
4 cross-examine using tapes to a limited extent and to the
5 extent necessary. There isn't going to be any wholesale
6 introduction of tapes.

7 MR. STAVIS: I understand. I understood your
8 Honor's ruling as allowing tapes to be played for
9 impeachment. I have just locked in the witness with regard
10 to certain testimony. I am now going to impeach him by
11 playing an English source, bootleg tape.

12 MR. McCARTHY: This is extrinsic evidence of a
13 prior inconsistent statement that I don't know --

14 THE COURT: If it is a statement about
15 patriotism, it is out.

16 MR. STAVIS: I don't understand, your Honor.

17 MR. McCARTHY: I would also like to have notice
18 before things --

19 THE COURT: Were these the specific tapes that
20 were listed in the letter?

21 MR. McCARTHY: Right. But I don't know --

22 THE COURT: They are the specific tapes?

23 MR. McCARTHY: Right, I think.

24 THE COURT: I assume they are.

25 MR. McCARTHY: I got another package this

1 morning. I take Mr. Stavis that what he intended was what
2 was in the letter I got a few days ago. I take it this is
3 part of the exhibit that I got this morning.

4 MR. STAVIS: Yes.

5 MR. MCCARTHY: I haven't checked those against
6 the ones I pulled out on the basis of the letter you had
7 given me last week. But I don't think that is adequate
8 notice. It is one thing to say I have notice of the
9 conversations. It is another thing to say he is just going
10 to start reading statements to the witness.

11 I don't know what he is impeaching him on,
12 whether it is proper impeachment. I need a second to at
13 least look at what is going to be played before the jury to
14 see if I have a valid objection. Under this process, that
15 is completely frustrated.

16 THE COURT: You are going to point out a place in
17 the transcript before you play it?

18 MR. STAVIS: Yes, your Honor, and I am playing
19 the tape. The transcripts are just as a guide while the
20 tape is being played. The tape is the impeachment evidence.

21 THE COURT: I understand that, but you are going
22 to point out the point in the transcript before you turn
23 anything on?

24 MR. STAVIS: Absolutely.

25 THE COURT: Good. Let's go.

1 (In open court)

2 MR. STAVIS: The transcript pages, Source Tape
3 19-1, the bottom of page 5 to the top of page 6.

4 Can the jury open their binders, your Honor?

5 THE COURT: Not yet.

6 MR. McCARTHY: Objection. Rule 613(b).

7 THE COURT: Sustained.

8 Q. Mr. Salem, is it your testimony that your a
9 patriotic United States citizen?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. Mr. Salem, is it your testimony that the reason
13 that you are testifying here today is because you are a
14 patriotic United States citizen?

15 A. One of the reasons --

16 MR. McCARTHY: Objection.

17 THE COURT: I will let him answer that.

18 MR. STAVIS: Your Honor, I would direct
19 Mr. McCarthy's attention to source tape 34-3.

20 THE COURT: I believe the answer was: "One of
21 the reasons." Go ahead. 34-3, what page?

22 MR. STAVIS: The bottom of page 14 to page 15 --
23 excuse me, the top of page 16.

24 THE COURT: The top of page 16?

25 MR. STAVIS: Yes.

1 THE COURT: The entire --

2 MR. STAVIS: Yes, your Honor.

3 It takes about a minute and a half.

4 MR. McCARTHY: Same objection, Rule 613(b).

5 THE COURT: Same ruling.

6 Q. Mr. Salem --

7 A. Yes, sir.

8 Q. -- is it still your testimony that you are a
9 patriotic United States citizen?

10 MR. McCARTHY: Objection, asked and answered.

11 THE COURT: Sustained.

12 Q. Is it also your testimony that you are testifying
13 here because you are a patriotic United States citizen?

14 MR. McCARTHY: Objection, asked and answered.

15 THE COURT: It was.

16 Q. I draw Mr. McCarthy's attention to source tape
17 No. 30-7, page 19, the middle of the page, to the very top
18 of page 20.

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q. Mr. Salem, are you loyal to the United States of
22 America or are you loyal to Egypt?

23 A. Both, sir.

24 Q. Who are you more loyal to, Mr. Salem?

25 A. Both, sir.

1 Q. You are more loyal to both?

2 A. Both of them, sir.

3 Q. Excuse me?

4 A. Both of them, sir.

5 Q. You are equally loyal to both of them?

6 A. Yes, sir.

7 Q. When the FBI asked you to give information about
8 Egypt you refused to do that, is that correct?

9 A. Yes, sir.

10 Q. When you refused to give information about Egypt,
11 were you being more loyal to Egypt or more loyal to the
12 United States of America?

13 A. Loyal to both, sir.

14 Q. When you refused to help the government of the
15 United States by giving them information concerning Egypt,
16 sir?

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained.

19 Q. When you testified yesterday, Ms. Stewart was
20 asking you a question about shipping arms to Iraq and being
21 attacked by Libyans, do you recall that question, which is
22 at page 5799 to 5800 of the trial record?

23 A. Yes, sir.

24 Q. When Ms. Stewart asked you where the attack by
25 the Libyans took place --

1 THE COURT: Sustained. I already discussed that
2 yesterday, that specific question. Would you move on to
3 something else.

4 Q. Mr. Salem, is there certain information that you
5 will not reveal in this courtroom because of your loyalty to
6 Egypt?

7 A. Yes, sir.

8 Q. Are there certain questions that you were asked
9 that you can't give the answer to because of your loyalty to
10 Egypt?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. You testified in another criminal case on
14 February 4, 1993, is that correct?

15 A. Yes, sir.

16 Q. This is Government Exhibit 3534R, page 26 to 27.
17 When you testified in that case and you were
18 asked: "What did you learn in the Green Berets?" On the
19 bottom of page 26, at line 26, your answer was: "I am not
20 allowed to talk about it."

21 When you testified previously you wouldn't talk
22 about certain things from Egypt, is that correct, sir?

23 A. Yes, sir.

24 Q. This last time that you testified that I am just
25 asking you about you have admitted to lying about your

1 background in Egypt in that trial, is that correct, sir?

2 A. Yes, sir.

3 Q. That was on February 4, 1993?

4 A. I don't recall the date, sir.

5 Q. It was in early 1993?

6 A. It could be, sir.

7 Q. It was sometime during the last couple of years?

8 A. Yes, sir.

9 Q. You lied about your background, correct?

10 A. Yes, sir.

11 Q. You lied about being Sadat's bodyguard?

12 A. Yes, sir.

13 Q. The Green Berets, all of that, correct?

14 A. No, the Green Berets, I was in the Green Berets
15 sir.

16 Q. You lied about your demolition experience?

17 A. Yes, sir.

18 Q. When the attorney in that case asked you
19 questions on cross-examination, you told him that you are
20 not allowed to talk about it?

21 MR. McCARTHY: Objection, relevance.

22 THE COURT: Sustained.

23 Q. You have an agreement in this case, is that
24 correct, with the Federal Bureau of Investigation and the
25 U.S. Attorney's Office?

1 A. With the Federal Bureau of Investigation, sir.

2 Q. You have a modification to that agreement which
3 is 3534U?

4 A. Yes, sir.

5 Q. At the bottom of page 2 of that -- by the way,
6 you read that agreement before you signed it, didn't you,
7 Mr. Salem?

8 A. My attorney read it, sir, and I did my best to
9 read it.

10 Q. At the bottom of page 2 of that agreement, that
11 requires you to give accurate and complete answers to the
12 best of your ability to all questions posed at trial by
13 defense counsel, among others, is that correct?

14 A. Yes, sir.

15 Q. But when defense counsel poses questions about
16 Egypt, Mr. Salem --

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained.

19 Q. You testified earlier in this case -- withdrawn.
20 When you went to Attica, the first time in the
21 spring of 1992, one of the people that you went with was
22 named Tarek Kattaria, is that correct?

23 A. Yes, sir.

24 Q. And Tarek Kattaria has a brother by the name of
25 Ahmed Kattaria, is that correct?

1 A. Yes, sir.

2 Q. You testified that Ahmed Kattaria was the leader
3 of a mujahideen group in Afghanistan. Do you recall that
4 testimony, Mr. Salem?

5 A. One of them, yes, sir.

6 Q. And the mujahideen groups, mujahideen were the
7 Islamic soldiers fighting against the communist Army in
8 Afghanistan, is that correct?

9 A. Yes, sir.

10 Q. In the fight against the Soviet Army in
11 Afghanistan, the United States was helping those Islamic
12 fighters, is that correct, Mr. Salem?

13 A. Not to my knowledge, sir.

14 Q. Ahmed Kattaria, the leader of this mujahideen
15 group in Afghanistan, was someone you had met while you were
16 working on this case, is that correct, sir?

17 A. No, sir.

18 Q. You didn't meet Ahmed Kattaria during my client
19 Mr. Nosair's trial in state court?

20 A. No, sir.

21 MR. STAVIS: May I approach the witness with
22 Government Exhibit 387G and 387J, your Honor?

23 THE COURT: Go ahead.

24 Q. Mr. Salem, I am putting before you Government
25 Exhibit 387J, and I'm drawing your attention to a tall man

1 in the middle of the photograph.

2 A. Yes, sir.

3 Q. Is that man Ahmed Kattaria?

4 A. I don't know, sir.

5 Q. I am now showing you Government Exhibit 387J.

6 Drawing your attention to the tall man toward the
7 center of the photograph, is that Ahmed Kattaria?

8 A. I don't know him, sir.

9 Q. All you knew about Ahmed Kattaria was that he was
10 a leader of the mujahideen group in Afghanistan, Mr. Salem?

11 A. Yes, sir.

12 Q. Did you know whether or not he was ever in this
13 country?

14 A. I think I overheard that he have residency in
15 this country, sir.

16 Q. When you were attending the mosque as part of
17 your duties when you were undercover in this case, did you
18 ever receive any literature concerning Afghanistan and the
19 fight of the mujahideen against the communists in
20 Afghanistan?

21 A. I believe, sometimes, yes, sir.

22 Q. When you got that information, you gave it to
23 Special Agent Nancy Floyd, is that correct?

24 A. I don't recall who I gave it to, but I gave it to
25 the agents, sir.

1 Q. You discussed Afghanistan and the mujahideen with
2 Mahmud Abouhalima, that was your testimony here at this
3 trial, is that correct, sir?

4 A. Yes, sir.

5 Q. And he told you he had been over to Afghanistan?

6 A. Yes, sir.

7 Q. And you also previously testified that
8 Mr. Hampton-El had spoken to you about Afghanistan, do you
9 recall that testimony?

10 A. Yes, sir.

11 Q. And that he had actually shown you his wounds
12 from Afghanistan, do you recall that?

13 A. Yes, sir.

14 Q. You testified at this trial that you made friends
15 with a lot of military people at the officers' club when you
16 were in Egypt?

17 A. Yes, sir.

18 Q. That's correct?

19 A. Yes, sir.

20 Q. You met a lot of people, and some of those people
21 eventually became military intelligence officers, is that
22 correct?

23 A. Yes, sir.

24 Q. That's sort of how you kept your contacts up,
25 that was your testimony, right?

1 A. Yes, sir.

2 Q. Did you go to the officers' clubs -- withdrawn.
3 Was there one officers' club in particular or
4 lots of different officers' clubs that you went to when you
5 were in Egypt?

6 A. Lots of them, sir.

7 Q. You met lots of people there, is that correct?

8 A. Yes, sir.

9 Q. Lots of military people?

10 A. Yes, sir.

11 Q. When you were at the officers' club in Egypt, did
12 you meet an officer by the name of Ali A. Mohammed?

13 MR. McCARTHY: Objection, 611(b). Scope.

14 THE COURT: I will see you at the side.

15 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Is this the gentleman we have talked
3 about a number of times?

4 MR. STAVIS: Yes, your Honor.

5 MR. McCARTHY: This isn't impeachment of the
6 witness. They are putting in the Nosair defense case
7 through this witness, who they have no reason to think has
8 any knowledge of this guy.

9 THE COURT: Where is this going?

10 MR. STAVIS: I intend to determine whether this
11 person, Emad Salem, knows Ali Mohammed and met him at the
12 El-Gifal office. There was testimony about the El-Gifal
13 office.

14 MR. McCARTHY: This is not impeachment of his
15 direct testimony.

16 THE COURT: It isn't. The objection is
17 sustained.

18 MR. STAVIS: May I recall the witness on my
19 direct examination?

20 THE COURT: Absolutely.

21 MR. STAVIS: OK.

22 (Continued on next page)

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1 (In open court)

2 BY MR. STAVIS:

3 Q. Mr. Salem, you have previously testified that you
4 made a lot of tape recordings in this case, is that fair to
5 say?

6 A. Yes, sir.

7 Q. You made probably hundreds and hundreds of tapes,
8 is that correct?

9 A. I don't know how much. It's a lot of tapes, yes,
10 sir.

11 Q. You had no technological problems making tapes,
12 did you?

13 A. No, sir, most of the time, no.

14 Q. You knew how to use the tape machine and
15 everything, right?

16 A. Yes, sir.

17 Q. And you had no moral problems making tapes of
18 people without telling them that you were making tapes, is
19 that correct?

20 A. Yes, sir.

21 Q. You testified, I believe, when Miss Amsterdam
22 asked you a question, that you had a lot of gadgets, is that
23 correct?

24 A. Yes.

25 Q. And you taped the FBI, correct?

1 A. Yes, sir.

2 Q. The agents that you were dealing with, you made
3 tapes of them?

4 A. Yes, sir.

5 Q. And you made those tapes without telling them you
6 were making those tapes.

7 A. Yes, sir.

8 Q. And you also taped people that the FBI told you
9 not to tape.

10 A. Yes, sir.

11 Q. Before your vacation in 1992, the FBI asked you
12 to make tape recordings, didn't they?

13 A. Yes, sir.

14 Q. And you said no.

15 A. No, sir, I did not say no.

16 Q. Did you have a meeting with Carson J. Dunbar,
17 Jr., on July 6, 1992?

18 A. I recall the meeting but I don't recall the date,
19 sir.

20 Q. It was right before you left on vacation,
21 Mr. Salem.

22 A. Yes, sir.

23 Q. Did you tell him that you were opposed to wearing
24 a monitoring device?

25 A. No, sir. I accepted to wear the monitoring

1 device on the condition of keeping the tape after I make it
2 so they won't force me to testify, sir.

3 Q. When Mr. Dunbar asked you to wear a monitoring
4 device, you said no, didn't you?

5 A. No, sir, I did not say no, sir.

6 Q. And you told Nancy Floyd also, didn't you, on
7 July 1, 1992, that you wouldn't wear a monitoring device?

8 A. On the contrary, sir. I asked her to arrange a
9 monitoring, body recorder inside Attica jail so I can tape
10 Mr. Sayyid Nosair, and she said that she will try to get a
11 permission, sir.

12 Q. Did you get the permission?

13 A. It was too late, and she did not get a
14 permission, sir.

15 Q. Around this time when you were talking to Carson
16 Dunbar and Nancy Floyd and John Crouthamel, you had a
17 confrontation with Carson Dunbar and John Crouthamel, didn't
18 you?

19 A. Yes, sir.

20 Q. You had a big argument with them, isn't that
21 correct, Mr. Salem?

22 A. Yes, sir.

23 Q. That is because they said to you that they wanted
24 you to verify the information that you had given them about
25 my client Mr. Nosair, is that correct, Mr. Salem?

1 A. No, sir. I am sorry. Can I continue to answer,
2 please?

3 Q. Yes.

4 A. It was part of it, that they wanted to verify the
5 information, but there is some other reasons, sir.

6 Q. And they asked you to wear a wire at that meeting
7 because they didn't believe you, is that correct?

8 MR. McCARTHY: Objection.

9 THE COURT: Overruled. Is that your
10 understanding?

11 A. My understanding, that they want to corroborate
12 the information, sir.

13 Q. They said to you, Mr. Salem, that they didn't
14 believe you. Didn't they say that to you?

15 A. No, sir.

16 MR. STAVIS: I draw the court's attention to
17 Exhibit 19 -- withdrawn -- to December LL19-1, ladies and
18 gentlemen 5, near the top of the page.

19 MR. McCARTHY: No objection.

20 THE COURT: Go ahead.

21 MR. STAVIS: May I ask the jury to take their
22 books out, your Honor?

23 THE COURT: Sure. Turn to tab 19-1.

24 THE CLERK: No.

25 MR. STAVIS: It is tab 19-1, page 5, toward the

1 top. I would ask that the jury put their headphones on.

2 THE COURT: Are you going to provide the witness
3 with a transcript or not?

4 (Tape played)

5 Q. Mr. Salem, when you were speaking to Special
6 Agent John Anticev of the FBI on that tape and you were
7 relating how Carson Dunbar didn't believe you, were you
8 telling the truth?

9 A. That's my -- that's what I felt, sir.

10 (Continued on next page)

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1 Q. So that when you told this jury that they never
2 said they didn't believe you, you weren't telling the truth,
3 were you, Mr. Salem?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained. May I see counsel at the
6 side with the reporter.

7 (At the side bar)

8 THE COURT: Would you read back the last
9 question.

10 (Record read)

11 THE COURT: I am simply reminding you about a
12 ruling that I made about polygraph results. Thank you very
13 much.

14 MR. STAVIS: Your Honor, may I be heard? All
15 right. I wasn't talking about the polygraph results, your
16 Honor.

17 THE COURT: OK.

18 MR. PATEL: That is not the subject.

19 MR. JACOBS: Could we see you after the jury is
20 excused on some of the legal objections that were made?

21 (In open court)

22 (Continued on next page)

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1 BY MR. STAVIS:

2 Q. Mr. Salem, in July 1992 before you went on
3 vacation, when you had this argument with Carson Dunbar and
4 John Crouthamel, it got very heated, didn't it, Mr. Salem?

5 A. Yes, sir.

6 Q. There was shouting, wasn't there?

7 A. No, sir.

8 Q. There was tempers going back and forth, wasn't
9 there?

10 A. No, sir.

11 Q. You were very angry at that time, Mr. Salem?

12 A. Yes, sir.

13 Q. And the experience wasn't a pleasant one, was it,
14 Mr. Salem?

15 A. No, sir.

16 Q. It was after this meeting that Carson Dunbar
17 dropped you as an FBI source or undercover witness, isn't
18 that correct?

19 MR. MCCARTHY: Objection.

20 THE COURT: Overruled.

21 A. No, sir. I am the one who left. I refused to
22 testify, sir.

23 Q. So it was you who left the FBI and not the FBI
24 leaving you, is that your testimony?

25 A. Yes, sir.

1 MR. STAVIS: I draw the court's attention to
2 Exhibit 19-1 in defense LL, page 4 at the bottom of the
3 page.

4 A. Sir, what's the number?

5 Q. Source tape 19-1, page 4, bottom of the page.

6 A. Would you please help me. I am sorry.

7 MR. STAVIS: May I approach the witness, your
8 Honor?

9 THE COURT: Why don't you read it.

10 MR. McCARTHY: No objection.

11 THE COURT: Go ahead.

12 MR. STAVIS: I would ask if the jury could take
13 out -- they probably still have them out -- their books, and
14 it is tab 19-1, and it is page 4, at the bottom. I ask also
15 that the jury put on the headphones to listen.

16 (Tape played)

17 Q. In that conversation, Mr. Salem, you were
18 speaking to Special Agent Anticev of the Federal Bureau of
19 Investigation, is that correct?

20 A. Yes, sir.

21 Q. And when you said to him, they dropped me, that
22 meant the FBI dropped you, isn't that correct, Mr. Salem?
23 Yes or no.

24 A. No.

25 MR. STAVIS: I draw the jury's attention to page

1 6 of that same transcript, and put the headphones on, if you
2 would be so kind.

3 MR. McCARTHY: Page 6 where?

4 MR. STAVIS: This is the second to last paragraph
5 on the bottom of page 6.

6 MR. McCARTHY: Your Honor, under Rule 106, I
7 would ask that it go over to page 7, four attributions up
8 from the bottom, through that attribution.

9 MR. STAVIS: How far would you like to go? You
10 want to go through page 7, Mr. McCarthy?

11 THE COURT: Third attribution from the bottom.

12 MR. McCARTHY: Yes.

13 MR. STAVIS: If the jurors will put their
14 headphones on, we will start the tape.

15 (Tape played)

16 Q. Mr. Salem, when you told Special Agent Anticev of
17 the FBI, you dropped me out of the case, the you that you
18 were referring to was the FBI, wasn't it, Mr. Salem? Yes or
19 no.

20 A. Yes.

21 (Continued on next page)

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1 THE COURT: Mr. Stavis, is this an appropriate
2 break point?

3 MR. STAVIS: Yes, it is, your Honor.

4 THE COURT: Ladies and gentlemen, we are going to
5 break for the day. Please leave your notes and other
6 materials behind. Please don't discuss the case or read,
7 see or hear anything about the case. Have a pleasant
8 evening, and we will resume tomorrow morning.

9 (Jury excused)

10 THE COURT: Mr. Jacobs, you wanted to see me?

11 MR. JACOBS: Yes.

12 THE COURT: Do you want to do it in the robing
13 room?

14 MR. JACOBS: That is fine. We don't need the
15 defendants.

16 (In the robing room)

17 MR. JACOBS: Your Honor, on behalf of the
18 defendants, I think we need some clarification, if possible,
19 on some of the objections that were sustained concerning his
20 refusal to either name certain people or provide certain
21 information concerning his contacts with Egypt. As your
22 Honor is aware from the cross-examination of the last few
23 days and our theory, we believe that this goes to motive and
24 bias, among other things. I am not aware of any privilege
25 that the witness can claim. While I may appreciate the fact

1 that he thinks somebody might be in danger in Egypt, be it
2 an agent or his family, this is no different than any
3 criminal trial we try here. When Mafia witnesses testify --

4 THE COURT: I understand the objection.

5 MR. JACOBS: If it was to form that your Honor
6 sustained the objection that is another matter. What I
7 don't understand, for example, is where the witness, for
8 example, said yesterday at 5800, I cannot reveal this
9 information, and again when Mr. Stavis was going back on
10 what he said in the prior criminal trial. I think we have a
11 right under motive and bias to explore what he claims in his
12 mind is some reason for not wanting to reveal certain
13 things. If somebody -- and I don't say it has happened. If
14 the government of Egypt has submitted something to your
15 Honor ex parte --

16 THE COURT: Disenthrall yourself from that.

17 MR. JACOBS: Our theory is that this guy is full
18 of baloney.

19 THE COURT: You really do stay up nights, don't
20 you?

21 MR. JACOBS: And he is making all this stuff up,
22 and all these claims of fictional people and fictional
23 dreams of why he can't reveal certain information. He did
24 it once under oath, he is doing it under oath in this case,
25 and we think we have an absolute right to push this, as well

1 as who the people are in Egypt. If somebody wants to come
2 forth and state what the grounds are for withholding names,
3 I would like to hear it. We want to explore how he knows
4 these people, who his contacts were, how many times he has
5 met them. I don't think the government can come forward and
6 say they are protecting someone in danger. I don't know
7 under what theory that is being done, and I think it is a
8 critical part of the examination that the defense counsel
9 wants to pursue, and I think we need to be heard further on
10 it.

11 THE COURT: So go ahead, be heard.

12 MR. JACOBS: We want to be able to go back
13 over --

14 MR. RICCO: Judge, can I raise a specific point?
15 In the state court proceedings Emad Salem testified that he
16 was a member of Anwar Sadat's entourage, and when he was
17 asked a question about, well, what type of training did you
18 have in connection with that, his answer was, I can't reveal
19 that information because that information is vital to my
20 country's secret service agency. What we now know is that
21 he was not a member of Sadat's entourage and that his
22 refusal to answer that question was a hoax, it was perjury.
23 It wasn't based on any secret service --

24 THE COURT: Nobody asked about that today.

25 MR. RICCO: Your Honor, that is why we came back,

1 because we want to know if your Honor's sustaining the
2 objection was to the form of the question or that particular
3 area.

4 THE COURT: I said yesterday that I would have
5 sustained, and I discussed this specific question with Mr.
6 McCarthy at the close of business, that I would have
7 sustained a relevance objection about where this Libyan
8 incident occurred, because it has nothing to do with this
9 case, and I would have sustained a relevance objection to
10 that. I have no objection to somebody determining that he
11 refused on a prior occasion to disclose information on the
12 ground that it was secret secret, hush hush, and guess what,
13 it was all bogus because he was never doing the things he
14 said he was doing.

15 However, I should also tell you that that theme
16 has to some extent been developed and that to go over and
17 over and over it is repetitive, and I am not going to let
18 everybody do it.

19 MR. RICCO: I understand.

20 THE COURT: I can, among other things, stop
21 repetitive cross-examination.

22 MR. RICCO: Miss Stewart did not go into this
23 specific area, because we had talked about it and she said
24 she wouldn't. Mr. Stavis attempted to do it but the
25 objections were sustained. So no one has really addressed

1 that particular part of his testimony.

2 THE COURT: That particular part being the fact
3 that on a prior occasion he refused to disclose information
4 on the ground that it was confidential when in point of fact
5 there was no confidentiality to be preserved when he hadn't
6 in fact had the training or known the people whose
7 identities he was refusing to disclose or the nature of
8 which he was refusing to disclose. That's fine.

9 However, there is another part of this which you
10 got into, which is to talk about the specific identities of
11 people on the tapes. As to that, I sustained an objection
12 and redacted names early on, and on the 403 balance I see no
13 need, because -- we had a conversation about this, not you
14 but I recall, I believe, Mr. Patel being a participant --
15 yes?

16 MR. PATEL: Yes, your Honor.

17 THE COURT: -- in which it was agreed that enough
18 had to be disclosed about the nature of the units that these
19 people were connected with so as to determine the nature of
20 the unit that he was dealing with. I think it was in
21 essence what we talked about before trial. This was awhile
22 before trial, when the first source tapes began to be turned
23 over. That was the deal, and I see no reason to change it.

24 MR. JACOBS: As things always change in a trial,
25 one of the things that he is basing his entire, I call it --

1 MR. PATEL: John, can I interrupt you for a
2 minute? Can I have a minute with Mr. McCarthy, your Honor?
3 I want to make sure that that deal has been fulfilled.

4 THE COURT: All right.

5 (Pause)

6 MR. PATEL: Your Honor, I just wanted to make
7 sure that my recollection of what the government had
8 provided us in advance of trial, in terms of your Honor's
9 specific ruling on these intelligence tapes -- just exactly
10 what it was. That is why I wanted to speak with Mr.
11 McCarthy.

12 THE COURT: He has already testified in essence
13 that he made up a little past for himself, involving various
14 exploits, and obviously that past has to be populated by a
15 lot of little fictional characters, and he does that too.
16 But that doesn't mean that you can go into every single name
17 and tease it out to the nth degree and go back and get
18 somebody in Egypt to say there is no such person, because at
19 some point you get to diminishing returns, and I suggest it
20 is sooner rather than later.

21 MR. JACOBS: My only point is that he seems to
22 base his whole relationship with the Egyptian military
23 intelligence on a personal relationship with a particular
24 friend of his. We have the name of that individual. But if
25 he has had relationships with other people that is not this

1 personal relationship, I think we have a right to explore
2 it. Names are names. This is a criminal trial, people face
3 the rest of their lives in jail, and I don't know under what
4 theory the government can claim that we can't explore who
5 these people are, how he knows them, how many times in Egypt
6 he met them, did he see them in uniform -- I think we have a
7 right to pursue that, and names be damned, as they say.

8 THE COURT: Where do they say that?

9 MR. JACOBS: I am saying that. I am not aware --
10 why can't we ask the person, you met so and so, is he a
11 captain, how did you meet him, what's his rank, where did
12 you meet him in Egypt? This is a criminal trial. We seem
13 to be dancing around here, and I am not sure why.

14 MR. PATEL: A moment.

15 (Pause)

16 MR. JACOBS: All I am saying is that we think
17 this is a critical area. I think things change as we hear
18 the testimony come in. It goes to motive and bias. He has
19 lied about it in the past. I don't see why we can't --
20 obviously subject to relevancy and obviously subject to
21 nonrepetitive examinations -- explore these things and
22 properly so, and if we want to ask him who the heck he spoke
23 to over there, why can't we do it?

24 MR. McCARTHY: I really don't see how the ball
25 gets advanced. If it were conceivable under the

1 circumstances that the names were being fabricated out of
2 whole cloth that would be one thing. But in addition to the
3 information, they got all the conversations. These are
4 obviously real live people that he is speaking to. No one
5 has stopped them from probing the general nature of his
6 contacts and his relationship with these people. The only
7 thing that has been withheld is the names.

8 Initially, I should point out, we filed a letter
9 which described these conversations in painful detail and
10 which in our view more than satisfied what would have been
11 required on a technical application of Brady. We then after
12 describing the conversations, describing the difference
13 between military intelligence as opposed to the other
14 intelligence services, then had to turn over all other
15 conversations, and counsel got the conversations, although
16 the names had been redacted from the transcripts, with the
17 names, because they got the tapes.

18 As a matter of fact, Mr. Ginsberg got the tapes,
19 and there are tapes out there which have been broadcast in
20 the media, with the names in them.

21 The only thing they have been precluded from
22 doing, even though I suggest that your Honor might well have
23 done more, is they have been barred from going into the
24 names. That's all. No one has stopped them from doing a
25 single other thing.

1 MR. JACOBS: Your Honor, if this fellow wants to
2 get up on the stand and say I am not going to reveal this
3 information, fine.

4 THE COURT: Mr. Jacobs, no. The only point that
5 this serves is a kind of self-creating piece of
6 cross-examination, which is to get him to refuse to name
7 names for the sake of getting him to refuse to name names.

8 MR. JACOBS: Maybe so. If we are going to have a
9 witness under oath on a serious trial who invokes his own
10 privileges, I would like to have the jury hear that.

11 THE COURT: The jury has heard it and you can
12 argue it in summation. You are not going to do it any more.

13 MR. JACOBS: The other thing, I think we are a
14 little unclear on the bootlegs and the CM's. It is a bit of
15 an unusual situation where we have this tape stuff, and we
16 thought we would get some guidance from your Honor on how
17 your Honor is thinking about how these are coming in, and
18 what is the method for doing it.

19 MS. AMSTERDAM: Perhaps -- I have a very focused
20 question -- if you could explain why you sustained the first
21 several objections to Mr. Stavis's thing about patriotism.

22 THE COURT: They were totally improper
23 impeachment. This has to do with the Rules of evidence.
24 This isn't something peculiar to bootleg tapes. Did you
25 take a look at the transcripts?

1 MS. AMSTERDAM: Your Honor, we don't have the
2 transcripts. That would help clarify for us if we knew what
3 the basis of those objections were.

4 THE COURT: You will get the transcript of
5 today's proceedings. I suggest you sit down with that
6 transcript and those books and use it as an evidence exam,
7 and then you tell me what the basis was for sustaining those
8 objections.

9 MR. SERRA: Your Honor, if I could ask, was it
10 simply because the court didn't feel that the prior
11 statements were inconsistent?

12 THE COURT: Correct, and in fact I stared beadily
13 down at him at a couple of them and he wouldn't oblige me by
14 making an objection that I could have then overruled,
15 because there were a couple of cases where he said no
16 objection, and he went ahead and impeached him. That's the
17 short answer.

18 MS. AMSTERDAM: Thank you. That helps.

19 MR. JACOBS: Rather than put some of these things
20 in our case, is there any reason we can't affirmatively use
21 them -- in other words, the witness says yes, I made that
22 statement to the FBI. Why can't we introduce the tape at
23 that point as opposed to putting it in in our case?

24 THE COURT: Because it is your case.

25 MS. AMSTERDAM: We have no more questions, your

1 Honor.

2 THE COURT: If you were talking about one
3 document I would let you do it, but we are not. We are
4 talking about a whole slew of stuff, so none of it, for
5 precisely that reason, because I can't start making
6 distinctions between his and yours and yours and so on. If
7 you want to put it in, put it in on your case.

8 MR. JACOBS: That means calling him back.

9 THE COURT: Fine. I say fine. He may not want
10 to come back but that's his problem. If he doesn't, he will
11 be here.

12 (Proceedings adjourned until 9:30 a.m.,
13 Wednesday, March 29, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.
5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,
16 SIDDIG IBRAHIM SIDDIG ALI,
17 a/k/a "Khalid,"
18 a/k/a "John Medley,"

19 CLEMENT HAMPTON-EL,
20 a/k/a "Abdul Rashid Abdullah,"
21 a/k/a "Abdel Rashid,"
22 a/k/a "Doctor Rashid,"

23 AMIR ABDELGANI,
24 a/k/a "Abu Zaid,"
25 a/k/a "Abdou Zaid,"

FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and

MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

March 29, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN M. JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

APPEARANCES CONTINUED

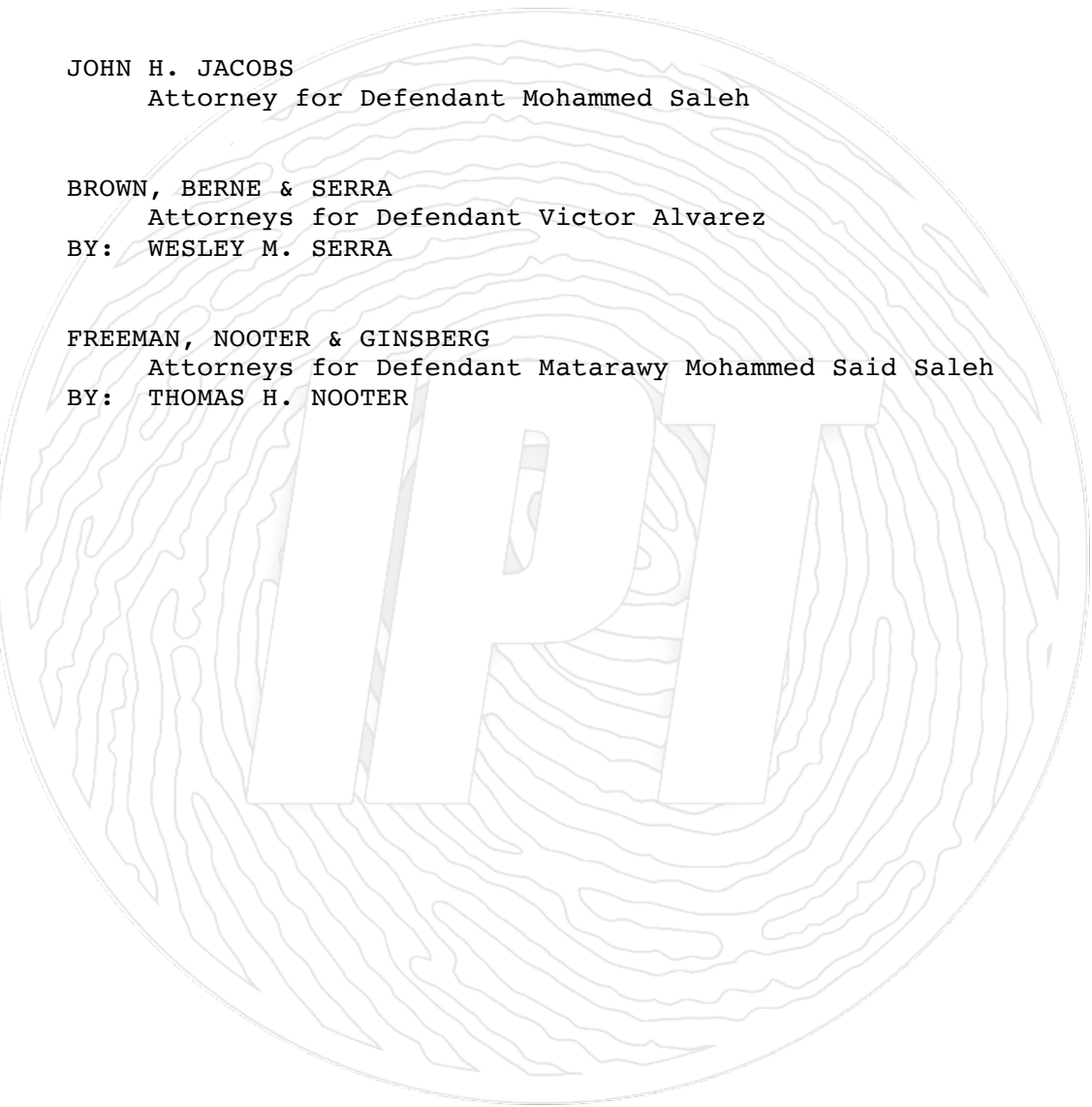
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GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court)

3 EMAD SALEM, resumed.

4 (Jury present)

5 THE COURT: Good morning, ladies and gentlemen.

6 JURORS: Good morning.

7 THE COURT: Good morning, Mr. Salem. You are
8 still under oath.

9 MR. STAVIS: May I inquire?

10 THE COURT: Mr. Stavis, yes.

11 CROSS-EXAMINATION continued

12 BY MR. STAVIS:

13 Q. Mr. Salem, after you agreed to work -- withdrawn.
14 John Anticev, special agent of the FBI, around November of
15 1991 came to you with a proposal, didn't he?

16 A. Which proposal, sir?

17 Q. He asked you to attend the trial of my client Mr.
18 Nosair, isn't that right?

19 A. Yes, sir.

20 Q. Eventually, you agreed to do that, is that
21 correct, Mr. Salem?

22 A. Yes, sir.

23 Q. You would go to the trial on most days?

24 A. Yes, sir.

25 Q. On most days that you went to the trial, you

1 would see either John Anticev, Louis Napoli or both in the
2 courtroom, is that correct?

3 A. Sometimes, yes, sir.

4 Q. So they were there at the same time as you were
5 there, is that correct?

6 A. Sometimes, yes, sir.

7 Q. You introduced yourself during the trial to
8 Ibrahim El-Gabrownny, gentleman over here, right?

9 A. Yes, sir.

10 Q. Eventually you assumed responsibilities for
11 security for the trial, is that correct?

12 A. I am sorry. I assumed responsibility means --
13 can you please --

14 Q. You were helping out with security?

15 A. Yes, sir.

16 Q. And you developed a communications system at the
17 trial, is that correct? I will withdraw it.

18 You found a way for the people who were outside
19 of the courthouse to talk to the people who were inside the
20 courthouse. That was your idea, right?

21 MR. McCARTHY: Object. Can we get when, your
22 Honor?

23 Q. Yes, when was that?

24 THE COURT: At some point during the trial?

25 Q. Yes, when was that, Mr. Salem?

1 A. I believe that happened at the sentencing of Mr.
2 Sayyid Nosair and the American Muslim mosque, the Al-Taqwah
3 Mosque. I was sent to them by Mr. Ali Shinawy, with the
4 company of his son Osama Al Shinawy --

5 THE COURT: He simply asked you whether you
6 developed a system for letting people on the outside know
7 what happened on the inside and when that was. Was it at
8 the time of the sentencing?

9 THE WITNESS: Yes, sir, at the time of the
10 sentencing.

11 THE COURT: Is it accurate to say that is what
12 you did?

13 THE WITNESS: I did not develop that system. I
14 was told that was my role in the trial, sir.

15 Q. Your role was to keep in touch with the people
16 outside, to let them know what was going on inside?

17 A. Yes, sir.

18 Q. To let them know if the lawyers were coming out?

19 A. Yes, sir.

20 Q. If there was going to be a press conference
21 outside of the courthouse?

22 A. No, sir.

23 Q. The people inside would find out if there were
24 protests going on outside, right?

25 A. No, sir. Most of the duty to let the people

1 outside to know what's going on inside the courtroom, sir.

2 Q. By the way, during this communication, were you
3 inside the courtroom or outside of the courthouse?

4 A. Inside the courtroom and in front of the
5 courtroom, sir.

6 Q. Often John Anticev or Louis Napoli were inside
7 there with you, right?

8 A. I don't recall that I saw them there in that day,
9 sir.

10 Q. You are talking about the day of the sentencing
11 now?

12 A. Yes, sir.

13 Q. John Anticev called you the night before the
14 sentencing on January 29, is that correct?

15 A. I don't recall, sir.

16 Q. Do you recall John Anticev asking you, are you
17 ready for the big day? Do you recall that, Mr. Salem?

18 A. No, sir.

19 Q. Do you recall John Anticev telling you that you
20 should stay inside the courtroom on the day of the
21 sentencing?

22 A. No, I don't recall that, sir.

23 MR. STAVIS: I am going to play just for the
24 witness a section of 2-21, source tape.

25 THE COURT: Only Mr. Salem should listen to this,

1 correct?

2 MR. STAVIS: I didn't hear you, your Honor.

3 THE COURT: Only Mr. Salem should listen to this.
4 If you would pick up your earphones and listen.

5 THE WITNESS: Yes, sir.

6 (Tape played)

7 Q. Mr. Salem, having heard that, does that refresh
8 your recollection that you spoke to Special Agent Anticev
9 about arrangements inside the courtroom on the day of the
10 sentencing?

11 A. That's not what is being said on the tape, sir.

12 Q. After you met Mr. El-Gabrowny, Ibrahim, Ibrahim
13 El-Gabrowny, he asked you to help out with fund raising for
14 the Nosair Defense Fund, is that correct?

15 A. Yes, sir.

16 Q. And he asked you to go certain places to do fund
17 raising, is that correct?

18 A. Yes, sir.

19 Q. He asked you to go to Detroit for an Islamic
20 conference, is that correct, Mr. Salem?

21 A. No, sir.

22 Q. Did Mr. El-Gabrowny ask you to go to Detroit?

23 A. I was going to Detroit already with Sheik Omar
24 Abdel Rahman and when I told Mr. El-Gabrowny that I am going
25 to Detroit, he said that's going to be a good opportunity to

1 represent the committee for Mr. Sayyid Nosair's fund
2 raising, sir.

3 Q. Mr. Salem, did you go to Detroit to do some fund
4 raising for Mr. Sayyid Nosair? Was that your purpose in
5 going to Detroit, Mr. Salem?

6 A. I am sorry.

7 Q. Was that your purpose in going to Detroit,
8 Mr. Salem?

9 A. No, sir.

10 Q. Was that one of your purposes in going to
11 Detroit, Mr. Salem?

12 A. No, sir.

13 Q. Was that something you were asked to do in
14 Detroit, Mr. Salem?

15 A. By Mr. El-Gabrownny, yes, sir.

16 Q. Did Mr. El-Gabrownny ask you to go to Chicago to
17 help with fund raising?

18 A. Yes, sir.

19 Q. The conference in Detroit was an Islamic economic
20 conference, is that correct?

21 A. Yes, sir.

22 Q. And the conference in Chicago, what kind of
23 conference was that?

24 A. I didn't go, sir.

25 Q. Do you know what kind of conference it was?

1 A. No, I don't recall, sir.

2 Q. There were other conferences where Mr.
3 El-Gabrowny asked you to go to, is that correct?

4 A. Yes, sir.

5 Q. And Mr. El-Gabrowny was publicizing Mr. Nosair's
6 trial and Mr. Nosair's -- what was happening to him, is that
7 right?

8 A. Yes, sir.

9 Q. And he was doing everything in his power to keep
10 Mr. Nosair in the public eye, is that correct, Mr. Salem?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. Were you aware of Mr. El-Gabrowny's efforts
14 to keep Mr. Nosair in the public eye?

15 A. Yes, sir.

16 Q. And you participated in some of those efforts,
17 didn't you, Mr. Salem?

18 A. Yes, sir.

19 Q. You tried to arrange news interviews, is that
20 correct?

21 A. Yes, sir.

22 Q. And whenever you could, you tried to arrange news
23 interviews.

24 A. Yes, sir.

25 Q. Tried to arrange news interviews with CNN, right,

1 Mr. Salem?

2 A. Yes, sir.

3 Q. And CBS, right?

4 A. Yes, sir.

5 Q. And New York 1, is that correct?

6 A. Yes, sir.

7 Q. You were playing a role for the FBI inside the El
8 Sayyid Nosair Defense Fund, is that correct, Mr. Salem?

9 MR. McCARTHY: Objection.

10 THE COURT: Can you rephrase that?

11 Q. There was something called the El Sayyid Nosair
12 Defense Fund. Are you aware of that, Mr. Salem?

13 A. Yes, sir.

14 Q. Were you doing work for the El Sayyid Nosair
15 Defense Fund?

16 A. I made them believe that I am, sir.

17 Q. Did you actually do some things for the El Sayyid
18 Nosair Defense Fund?

19 A. Yes, I stuffed some letters, sir.

20 Q. You stuffed envelopes with letters in them,
21 right?

22 A. Yes, sir.

23 Q. Those were fund raising letters, right?

24 A. Yes, sir.

25 Q. Those were appeals to the Muslim community, is

1 that right?

2 A. It was for everybody, everybody who will pay, it
3 will be extra money for Mr. Sayyid Nosair, sir.

4 Q. But it was focused on the Muslim community,
5 wasn't it, Mr. Salem?

6 A. Yes, sir.

7 Q. And it was focused not just on the Muslim
8 community here in the New York area, right?

9 A. Yes, sir.

10 Q. It was focused nationwide on the Muslim
11 community, right, Mr. Salem?

12 A. Yes, sir.

13 Q. And it was even focused worldwide on the Muslim
14 community, isn't that right, Mr. Salem?

15 A. Yes, sir.

16 Q. Letters went out all over the world, isn't that
17 right?

18 A. Yes, sir.

19 Q. To publicize Mr. Nosair's case, isn't it right?

20 A. Yes, sir.

21 Q. And the man behind all this publicity was this
22 gentleman over here, Ibrahim El-Gabrowny, is that right?

23 A. Yes, sir.

24 Q. Whenever there was an Islamic conference, Mr.
25 El-Gabrowny, to your knowledge, tried to have someone from

1 the Nosair Defense Fund go there, isn't that right?

2 A. Yes, sir.

3 Q. And Mr. El-Gabrowny compiled computer lists of
4 Muslim business people, is that right?

5 A. Yes, sir.

6 Q. And that was so he could do fund raising for the
7 Nosair Defense Fund, right?

8 A. Yes, sir.

9 Q. And the Nosair Defense Fund would have people
10 outside the courthouse during the trial, handing out
11 pamphlets, right?

12 MR. McCARTHY: Objection, form.

13 THE COURT: Can you rephrase it?

14 Q. Were there people outside the courthouse during
15 the trial handing out pamphlets?

16 A. No, sir.

17 Q. Were there people outside mosques handing out
18 pamphlets?

19 A. Inside mosques, sir, they used to go, and hand
20 flyers.

21 Q. And those pamphlets concerned El Sayyid Nosair,
22 right?

23 A. Yes, sir.

24 Q. And on those pamphlets was the name El Sayyid
25 Nosair Defense Fund, right?

1 A. I don't recall what was on it, but the meaning of
2 it, that to raise money for Mr. Sayyid Nosair, sir.

3 Q. Those pamphlets had the name of Ibrahim
4 El-Gabrownny.

5 A. Yes, sir.

6 Q. In the Muslim religion, men refer to each other
7 as brothers, is that correct?

8 A. Yes, sir.

9 Q. And women refer to each other as sisters,
10 correct?

11 A. Yes, sir.

12 Q. Or men are referred to as brothers and women are
13 referred to as sisters.

14 A. They both refer to each other as a brother and
15 sister, sir.

16 Q. And that is because there is a sense of community
17 that is a part of the religion.

18 A. Yes, sir.

19 Q. To your knowledge, when the El Sayyid Nosair
20 Defense Fund was doing its work, it appealed to that sense
21 of community in Muslim people, is that fair to say?

22 A. I am sorry. When you say appeal, I didn't get
23 the meaning, sir, please.

24 Q. It played on the sense of community in a Muslim
25 people have for one another.

1 A. Yes, sir.

2 Q. And it said help your brother El Sayyid Nosair.

3 A. Yes, sir.

4 Q. It said your brother El Sayyid Nosair is in
5 trouble, right?

6 A. Yes, sir.

7 Q. It said your brother El Sayyid Nosair has been
8 falsely accused of a crime. Isn't that what it said?

9 A. Yes, sir.

10 Q. Would it be fair to say that the Muslim community
11 rallied around Mr. Nosair?

12 A. Yes, sir.

13 Q. You have testified that there were demonstrations
14 outside the courthouse during Mr. Nosair's trial, correct?

15 A. Yes, sir.

16 Q. And there were demonstrations by Muslim people,
17 right?

18 A. Yes, sir.

19 Q. And there were demonstrations by Jewish people,
20 right?

21 A. Yes, sir.

22 Q. And the media covered those demonstrations?

23 A. So many times, yes, sir.

24 Q. And they would then report them on the TV news,
25 the demonstrations, right?

1 A. Yes, sir.

2 Q. Part of what you helped with for Mr. Nosair's
3 case was getting those demonstrations on to the media and on
4 to the news programs, is that right?

5 A. I am not so sure what you mean, sir.

6 Q. Did you help the media cover the demonstrations
7 outside of the courthouse during the Nosair trial?

8 A. They were there, sir. I did not help the media.
9 When they see fights or demonstration, they just cover it.
10 I did not --

11 Q. Didn't you talk to them?

12 A. Yes, I did, sir.

13 Q. And then when you would go home after a day of
14 trial, you would videotape the TV news coverage of the
15 demonstrations outside, right?

16 A. Yes, sir.

17 Q. Other than outside the courthouse, there were
18 other demonstrations for Mr. Nosair, isn't that correct?

19 A. I am sorry, sir. I don't know what you mean.

20 Q. There were demonstrations outside the courthouse
21 for Mr. Nosair, rate right?

22 A. Yes, sir.

23 Q. There were demonstrations in other locations,
24 too, isn't that correct?

25 A. Such as, sir?

1 Q. Weren't you at other demonstrations, Mr. Salem?

2 A. I recall that I was at the demonstration in front
3 of the courthouse so many times, sir.

4 Yes, I am sorry. I remember. Yes, it was, sir.

5 Q. Where were some of those other demonstrations?

6 A. I remember one of them in front of the World
7 Trade Center, sir, one of them in front of the mayor or the
8 governor's office. I remember these demonstrations, sir,
9 yes.

10 Q. The one in front of the World Trade Center, was
11 that a protest in front of Governor Cuomo's office at the
12 World Trade Center?

13 A. Yes, sir.

14 Q. And you attended that demonstration, right?

15 A. Yes, sir.

16 Q. Along with other Muslim brothers, is that right?

17 A. Yes, sir.

18 Q. That was a peaceful demonstration, wasn't it?

19 A. Yes, sir.

20 Q. And the people were carrying signs, the Muslim
21 brothers were carrying signs?

22 A. Yes, sir.

23 Q. It said give brother Nosair better jail
24 conditions, things like that, right?

25 A. Yes, sir.

1 Q. There was also a demonstration outside of Senator
2 D'Amato's office, is that correct?

3 A. Yes, sir.

4 Q. That was just a few days before the sentencing,
5 is that correct?

6 A. I want not sure about the date, sir, but I
7 remember it was one there, sir.

8 Q. And Dr. Mehdi was there? Do you remember
9 Dr. Mehdi?

10 A. Yes, sir.

11 Q. And you were there, correct?

12 A. Yes, sir.

13 Q. Ibrahim El-Gabrownny was there?

14 A. I believe, yes, sir.

15 Q. And many other Muslim brothers were there at that
16 demonstration?

17 A. Yes, sir.

18 Q. Before the demonstration, a group of Muslim
19 brothers went inside Senator D'Amato's office, is that
20 correct?

21 A. Yes, I believe two or three, yes.

22 Q. And they met with one of Senator D'Amato's aides.

23 A. Yes, sir.

24 Q. Were you one of those people?

25 A. Yes, sir.

1 Q. You and the others were telling the aide that you
2 disagreed with Senator D'Amato's positions concerning Israel
3 and the Middle East, is that correct?

4 A. That was Dr. Mehdi's statement, yes, sir.

5 Q. You were there for that statement?

6 A. I was there, yes, sir.

7 Q. And you were telling this aide -- by the way, do
8 you remember his name at all?

9 A. No, sir.

10 Q. You were telling him and Dr. Mehdi was telling
11 him to tell Senator D'Amato that if he doesn't change his
12 position a little bit, the Muslim community is not going to
13 vote for him. Do you recall that?

14 A. Yes, sir.

15 Q. There were other meetings with politicians
16 concerning Mr. Nosair and the Muslim community. Was there a
17 meeting with Mayor Dinkins?

18 A. I never met with him, sir. I don't recall.

19 Q. Did you discuss a meeting with Mayor Dinkins?

20 A. I believe, yes, sir.

21 Q. That meeting was attended by the imam Wahaj,
22 W-A-H-A-J. Do you recall that?

23 A. I remember, yes.

24 Q. And you have previously testified here at this
25 trial about Mr. or Imam Wahaj, right?

1 A. Yes, sir.

2 Q. He is the imam of the Al-Taqwah Mosque in
3 Brooklyn.

4 A. Yes, sir.

5 Q. He was meeting with Mayor Dinkins about the
6 Nosair case, is that right?

7 A. I did not attend the meeting, sir.

8 Q. You spoke to people who attended that meeting,
9 Mr. Salem?

10 A. I don't recall. I don't think so, sir.

11 Q. By the way, Mr. Salem, there was also a protest
12 out of Judge Schlesinger's -- withdrawn -- outside of the
13 judge's home who was going to sentence Mr. Nosair, is that
14 right?

15 A. Yes, sir.

16 Q. And you attended that protest also, right?

17 A. Yes, sir.

18 Q. And there were a lot of Muslim brothers and
19 sisters at that protest?

20 A. I don't recall sisters. I remember brothers,
21 sir.

22 Q. And people carrying signs?

23 A. Yes, sir.

24 Q. And the signs were saying do the right thing,
25 sort of, right?

1 A. Yes, sir.

2 Q. And that was a peaceful protest, too, right?

3 A. Yes, sir.

4 (Continued on next page)

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1 MR. McCARTHY: I am going to object to the
2 exhibit.

3 MR. STAVIS: May I have a side bar, your Honor?

4 THE COURT: Yes.

5 (At the side bar)

6 MR. STAVIS: I have a photograph of Mr. Salem in
7 his role as an informant in this case, peacefully protesting
8 outside of Senator D'Amato's office.

9 THE COURT: What is this supposed to prove?

10 MR. STAVIS: It is being offered for impeachment,
11 your Honor. The basis is that Mr. McCarthy in his case has
12 brought out that all of the people associated with this were
13 involved in terrorist activities of one sort or another --

14 THE COURT: No, it doesn't. If you want to
15 finish your sentence, go ahead. If that is the theory, that
16 everybody who was associated in the case was involved in
17 terrorist activity and this was a peaceful demonstration and
18 that is impeachment testimony, that is denied.

19 MR. STAVIS: There was testimony on the direct
20 examination concerning these protests, your Honor. I am
21 going into it on cross, I am expanding upon it and I am
22 offering this exhibit.

23 MR. McCARTHY: Expanding on what?

24 MR. STAVIS: On your testimony, which I am
25 allowed to do on cross. You should have offered this

1 picture and you didn't, and now I am.

2 THE COURT: Folks, it doesn't prove anything.

3 MR. PATEL: May I have a moment, your Honor?

4 MR. STAVIS: Mr. Patel has also reminded me of
5 certain testimony that the witness gave concerning riots.

6 This also impeaches that testimony to show peaceful
7 demonstrations as opposed to riots that were described.
8 There are no photographs of riots.

9 MR. McCARTHY: That is absolutely wrong. He used
10 the word riots and he obviously understood it wrong. I
11 cleared it up.

12 THE COURT: He made clear in his testimony that
13 he used the word riot as synonymous with demonstration. The
14 objection is sustained.

15 MR. STAVIS: May I use the picture on my direct
16 case in the defense case, your Honor?

17 THE COURT: If it is used to prove something.

18 MR. STAVIS: It proves that there were peaceful
19 demonstrations, your Honor, and that is the activity that
20 these people were engaged in.

21 THE COURT: I don't understand that to be in
22 dispute. Let's go.

23 (In open court)

24 MR. McCARTHY: I didn't realize until I walked
25 back that Mr. Ricco isn't here.

1 THE COURT: I knew about that, and as I
2 understand it, Mr. Patel is sitting in with Mr.
3 El-Gabrowny's consent.

4 MR. PATEL: Yes.

5 THE COURT: I don't want to stop the proceeding
6 now to establish that. I am going to establish it at the
7 first break with Mr. El-Gabrowny. It was my fault for not
8 putting it on before we started. I knew about it.

9 (In open court)

10 (Continued on next page)

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IPT

1 BY MR. STAVIS:

2 Q. Who were some of the people who attended the
3 protest outside of Senator D'Amato's office?

4 A. The one in front of the World Trade Center, sir?

5 Q. No, the one in front of Senator D'Amato's office
6 in midtown?

7 A. I remember, sir, Sheik Ali Shinawy. I remember
8 Ibrahim El-Gabrowny. I remember myself. There was so many
9 others. I remember Mr. Ahmed Al Sattar came. I don't
10 recall the rest. It was a lot of people, sir.

11 Q. Mr. Salem, I am going to show you what has
12 previously been marked as Defense Exhibit MM, and I ask you
13 to look at it for yourself and to see if that refreshes your
14 recollection as to who was present at the protest in front
15 of Senator D'Amato's office.

16 A. Yes, sir. Yes, sir.

17 Q. Who were some of the other people present at that
18 demonstration?

19 A. Mr. Tarek Khatteera, Mr. Ibrahim El-Gabrowny,
20 myself, and others I don't recall their names, sir.

21 Q. People were holding signs in and protesting,
22 right?

23 A. Yes.

24 Q. No violence at that rally, was there?

25 A. No, sir.

1 Q. After Mr. Nosair's partial acquittal and partial
2 conviction, you spoke to the FBI and you helped them --
3 withdrawn.

4 After the sentencing that you have testified
5 about, you visited Mr. Nosair -- this is in the spring of
6 1992 -- at Attica prison, is that right?

7 A. I remember I visited him. I don't recall the
8 exact date but I remember, sir, yes.

9 Q. You spoke to the FBI agents in the case
10 concerning Attica prison, is that correct?

11 A. Yes.

12 Q. And Mr. Nosair being there, right?

13 A. Yes.

14 Q. And you told the agents that they should watch
15 Mr. Nosair very closely at Attica. Didn't you tell that to
16 them?

17 A. I may said it, but I don't recall, sir.

18 Q. And you were aware, Mr. Salem, that the agents
19 did watch Mr. Nosair very closely at Attica, isn't that
20 correct?

21 MR. McCARTHY: Objection.

22 THE COURT: Did you know that of your own
23 knowledge?

24 THE WITNESS: No, sir.

25 Q. Did the FBI agents tell you that they were

1 watching Mr. Nosair very closely at Attica?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q. The first time you went to Attica, you drove up
5 there in a car, right?

6 A. Yes, sir.

7 Q. How did you get directions to Attica?

8 A. It was Mr. Tarek Khatteria, and it was his car,
9 and he was the driver.

10 Q. How did you get the directions to Attica? It's a
11 long way from here, Mr. Salem.

12 A. They know it, sir, Mr. Khatteria and Mr. Mohammed
13 El-Gabrownny. They know the way. I didn't know.

14 Q. Who is Steve Veyera?

15 A. Pardon -- he is an FBI agent, sir.

16 Q. He was helping out in the case?

17 A. Yes.

18 Q. He gave you directions to Attica prison, didn't
19 he, the first time you went there?

20 A. I don't recall, sir.

21 MR. STAVIS: Your Honor, I would like to play
22 source tape 3249 to refresh the witness's recollection.

23 THE COURT: OK.

24 (Tape played)

25 Q. Mr. Salem, having listened to that tape, does

1 that refresh your recollection as to whether or not you
2 received directions as to how to get to Attica from Special
3 Agent Steve Veyera?

4 MR. McCARTHY: Your Honor, can we find out
5 whether he is talking about?

6 Q. Yes, when did you speak to him, Mr. Salem?

7 A. I don't recall, I spoke to him so many times,
8 sir.

9 Q. And that one time in the so many times that you
10 spoke to him, you got directions as to how to get to Attica,
11 right?

12 A. Yes.

13 Q. And you wrote them down, right?

14 A. Yes, sir.

15 Q. Did Special Agent Veyera tell you that he could
16 control Mr. Nosair's contacts at Attica?

17 A. I don't recall that, sir.

18 MR. STAVIS: This is source tape 1139, page 33.
19 I am going to show it to the witness, with your Honor's
20 permission.

21 THE COURT: Go ahead.

22 (Pause)

23 Q. I didn't ask you a question.

24 A. All right, sir.

25 Q. Does that refresh your recollection, Mr. Salem,

1 as to whether or not Special Agent Veyera told you that they
2 could slow down Mr. Nosair's contacts at Attica prison?

3 A. It's being written there, sir, but I don't recall
4 it.

5 Q. To your knowledge, there was an FBI agent in
6 Buffalo who could get everything set up for your trip to
7 Attica, is that right?

8 A. In a certain time they told me that they have an
9 agent in Attica could make arrangements, yes, sir.

10 Q. He could make everything smooth so that you could
11 get right into Attica when you showed up there, right?

12 A. Yes, sir.

13 Q. And the agents that you were dealing with,
14 Special Agent Anticev and Special Agent Veyera and Louis
15 Napoli, used to get the visiting logs from Attica, is that
16 correct?

17 A. Not to my knowledge, sir.

18 MR. STAVIS: This is source tape 33-1 page 18. I
19 am going to refresh the witness's recollection, with the
20 court's permission.

21 THE COURT: Go ahead.

22 (Tape played)

23 Q. Mr. Salem, having listened to that, does that
24 refresh your recollection?

25 A. Yes, sir.

1 Q. Did Special Agent Anticev have visitor and
2 package registration logs from Attica?

3 MR. McCARTHY: Objection, unless he clarifies
4 when.

5 MR. STAVIS: I would be happy to clarify when,
6 your Honor.

7 THE COURT: Go ahead.

8 Q. When, Mr. Salem?

9 A. I don't know, sir.

10 Q. Did Special Agent Anticev have a visitor and
11 package registration log at sometime?

12 MR. McCARTHY: Objection, hearsay.

13 THE COURT: Sustained.

14 Q. To your knowledge, did Special Agent Anticev have
15 a visitor and package registration log?

16 THE COURT: Did you ever see one?

17 THE WITNESS: No, I did not.

18 Q. Did you ever talk to him about it?

19 A. He talked to me about it, sir, yes.

20 Q. You visited Attica prison three times, Mr. Salem,
21 is that correct?

22 A. Yes, sir.

23 Q. And many, many Muslim brothers, to your
24 knowledge, visited Mr. Nosair at Attica prison, is that
25 correct?

1 A. I would say not many, many, but few, yes.

2 Q. How about one many and not two manys?

3 A. It would be more reasonable, sir.

4 Q. And that was something that was discussed around
5 the mosque, right?

6 A. Yes, sir.

7 Q. And it was discussed around different mosques?

8 A. Yes, sir.

9 Q. Abu Bakr Mosque, right?

10 A. Yes, sir.

11 Q. Al Farooq Mosque, right?

12 A. Yes, sir.

13 Q. El Salaam Mosque, right?

14 A. Yes, sir.

15 Q. At the mosques, they would even make
16 announcements about visiting Mr. Salem -- you're
17 Mr. Salem -- about visiting Mr. Nosair at Attica prison,
18 right?

19 A. Yes, sir.

20 Q. At some of the mosques there would be
21 announcements that were printed up and put on the bulletin
22 board that said something to the effect of visit your
23 brother Sayyid Nosair at Attica prison, isn't that right?

24 A. Yes, sir.

25 Q. This was a topic of discussion in the mosque,

1 something you discussed in the mosque, visiting Mr. Nosair,
2 right?

3 A. Yes, sir.

4 Q. Some of the people that you discussed this with
5 didn't know Mr. Nosair very well, did they?

6 A. No, sir, it's not true.

7 Q. The first time you visited Mr. Nosair was in
8 Rikers Island, right?

9 A. Yes, sir.

10 Q. You didn't know him at all when you visited him,
11 isn't that correct, Mr. Salem?

12 A. Personally, no, sir.

13 Q. You had never met him before you visited him in
14 jail, isn't that correct, Mr. Salem?

15 A. No, sir, I did not met him before.

16 (Continued on next page)

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- 1 Q. It is important in the Muslim religion to visit
2 someone in prison, is that correct?
- 3 A. Yes, sir.
- 4 Q. When these announcements were made -- by the way,
5 were these announcements made during the Friday prayers at
6 the mosque?
- 7 A. Most of the time, yes, sir.
- 8 Q. The Friday prayers at the mosque, that is like a
9 communal prayer, and then there is a meeting after that
10 prayer, right?
- 11 A. Yes, sir.
- 12 Q. That meeting is called juma, is that right?
- 13 A. No, sir.
- 14 Q. Well, what is juma?
- 15 A. Juma is the Friday. "Juma" means Friday. And
16 Friday is the day we do our holy prayer, like Sunday in
17 Christianity.
- 18 Q. Is there usually some kind of lecture after the
19 noon prayers on Friday?
- 20 A. Yes, sir. Before and after, sir.
- 21 Q. At these times they would mention visiting Sayyid
22 Nosair, is that correct?
- 23 A. Yes, sir.
- 24 Q. Which mosques did they mention that at?
- 25 A. Most of the mosques around New Jersey, El Salaam

1 mosque, the -- I'm sorry, warren Street mosque in Manhattan,
2 Abu Bakr mosque in Brooklyn. I mean, most of the mosques in
3 New York city, sir.

4 Q. When they made those announcements, Mr. Salem,
5 they would announce that you should arrange for your visits
6 through Ibrahim El-Gabrowny, right?

7 A. Sometimes, yes, sir.

8 Q. Because Ibrahim El-Gabrowny was the guy who would
9 pair people up for this long drive up to Attica, right,
10 Mr. Salem?

11 A. I'm sorry. "Pair up" means what, sir?

12 Q. Say one person wanted to go to Attica, right?

13 A. Yes, sir.

14 Q. And another person wanted to go to Attica, right?

15 A. Yes, sir.

16 Q. But the people didn't really know each other,
17 those two people who wanted to make the trip?

18 A. Yes, sir.

19 Q. If both of them called Ibrahim El-Gabrowny, then
20 he would say, "Well, you'll go, Brother A, with Brother B
21 because brother B is going up to Attica."

22 That is a pairing them up.

23 A. Yes, sir.

24 Q. That is what he did?

25 A. Parts of his job it was, yes, sir.

- 1 Q. Your first visit to Attica was in the spring of
2 1992 you've testified, right?
- 3 A. Yes, sir.
- 4 Q. You went on vacation in July of '92, right?
- 5 A. I don't recall the date, sir.
- 6 Q. In the summer of '92 you went on vacation?
- 7 A. Yes, sir.
- 8 Q. Before you went on vacation you went to Attica?
- 9 A. Yes, sir.
- 10 Q. On this first visit you overheard two people
11 talking in Abu Bakr mosque about visiting Mr. Nosair, right?
- 12 A. It was something common. I don't recall
13 specifically two people, sir.
- 14 Q. Did you testify on March 8, Mr. Salem, on page
15 4751 of the record, that you were doing the evening prayer
16 in Abu Bakr mosque and Mr. Mohammed El-Gabrownny said, "I am
17 going to visit Sheik Sayyid in Attica," and he was talking
18 to Mr. Tarek Kattaria?
- 19 A. Yes, sir.
- 20 Q. You said at that time, "Guys include me, I will
21 pay for the gas"?
- 22 A. I suggested that, yes, sir.
- 23 Q. So you invited yourself on this trip up to
24 Attica?
- 25 A. Yes, sir.

1 Q. Two guys were going, right?

2 A. Yes, sir.

3 Q. And you said, "I'll tag along"?

4 A. Yes, sir.

5 Q. When you said that, "I'll pay for the gas," you
6 weren't going to pay for the gas, were you?

7 A. No, sir, the FBI will pay for the gas.

8 Q. Because when you would go to Attica the FBI would
9 know all about it, right?

10 A. They will know about it?

11 Q. Yes.

12 A. Yes, sir.

13 Q. You'd tell them?

14 A. Right.

15 Q. You'd tell them, "I'm going to Attica and I'm
16 going on such and such a date," right?

17 A. Yes, sir.

18 Q. And you would say, "I'm going with such and such
19 a person," right?

20 A. Yes.

21 Q. You would also give them as much information as
22 you could about the people you were going with, right?

23 A. Yes, sir.

24 Q. Do you know if the agents you told that to then
25 called Attica Prison after speaking to you?

1 A. Not to my knowledge, sir.

2 Q. On this first visit, you drove with Mohammed
3 El-Gabrowny, right?

4 A. Yes, sir.

5 Q. That is Ibrahim El-Gabrowny's brother, right?

6 A. Yes, sir.

7 Q. And you also drove with this fellow Tarek
8 Kattaria, right?

9 A. Yes, sir.

10 Q. That was a long drive?

11 A. Yes, sir.

12 Q. It took what? Nine, ten hours?

13 A. Could be, yes, sir.

14 Q. Would it be fair to say that it was a relatively
15 pleasant ride up there with the three of you?

16 A. No, sir.

17 Q. It was not a pleasant ride?

18 A. Part of it, no, sir.

19 Q. It was too long?

20 A. It was too long, and Mr. Tarek Kattaria get a
21 ticket, and then he drove again and then he get another
22 ticket, so -- and then on our way back get another ticket.
23 So it wasn't that pleasant, sir.

24 Q. It wasn't pleasant for him?

25 A. Yes, sir.

- 1 Q. But the conversation and everything on the ride
2 up there was pleasant?
- 3 A. Kind of, yes, sir.
- 4 Q. It wasn't tense, was it?
- 5 A. No, sir.
- 6 Q. You weren't tense on the ride up there, were you?
- 7 A. I'm sorry, sir?
- 8 Q. You weren't tense on the ride up to Attica, were
9 you?
- 10 A. No, sir.
- 11 Q. You were relaxed, right?
- 12 A. I was normal, sir.
- 13 Q. You weren't fearful, were you?
- 14 A. No, sir.
- 15 Q. You weren't paranoid, were you?
- 16 A. I'm always paranoid, sir, since I get involved in
17 this.
- 18 Q. Were you paranoid about this case or were you
19 paranoid about the ride in the car?
- 20 A. About this case, sir.
- 21 Q. Not the ride in the car?
- 22 A. No, sir.
- 23 Q. Do you recall being in an automobile accident a
24 month or two before you left on this car trip up to Attica?
- 25 A. I remember that I have been involved in an

1 automobile accident, but I don't recall when, sir.

2 Q. It was before your visit to Attica, wasn't it?

3 A. I'm not so sure, sir. It may be.

4 Q. You had to visit a doctor concerning your
5 injuries --

6 A. Yes.

7 Q. -- in that automobile accident, right?

8 A. Yes, sir.

9 Q. And you spoke to a -- 3534Q -- you spoke to a
10 Dr. Stephen H. Stein concerning your injuries from that
11 automobile accident, didn't you, Mr. Salem?

12 A. Yes, sir.

13 Q. You spoke to him the day before you went to
14 Attica Prison, didn't you, Mr. Salem?

15 A. I don't recall, sir.

16 Q. What day did you see him?

17 A. I have no idea, sir.

18 MR. STAVIS: Your Honor, I am approaching the
19 witness with 3534Q.

20 Q. Mr. Salem, does that refresh your recollection
21 concerning the days that you saw Dr. Stein?

22 A. Yes, sir.

23 MR. McCARTHY: Mr. Stavis, could I just know the
24 page that you referred to.

25 MR. STAVIS: It is the first page. What do you

1 have?

2 MR. McCARTHY: I've got it.

3 MR. STAVIS: You've got it?

4 MR. McCARTHY: Yes. Thank you.

5 Q. You saw Dr. Stein on April 29 of 1992, correct?

6 A. Yes, sir.

7 Q. And you saw him on May 4, 1992, correct?

8 A. Yes, sir.

9 Q. Your trip to Attica Prison was on May 5, 1992, is
10 that correct?

11 A. Could be, sir.

12 Q. The day before you went on that trip, you told
13 Dr. Stephen H. Stein that you were tense -- this is page
14 5 -- that you were tense whenever you had to drive in an
15 automobile, is that what you told him?

16 A. I may said that, yes, sir.

17 Q. You told him that you had a fear that another
18 accident could occur, right?

19 A. Yes, sir.

20 Q. You told him you are afraid of getting killed
21 when you are in a car, is that correct?

22 A. I may said, yes, sir.

23 Q. You told him that you felt that other cars were
24 too close and that everyone is crazy around you when you are
25 driving a car, is that correct?

1 A. Yes, sir.

2 Q. Were those things true?

3 A. To a certain extent, yes, sir.

4 Q. To how certain an extent were they true,

5 Mr. Salem?

6 A. To a certain extent when the car come to
7 maneuvers in -- to turn, I always grab my seat. When
8 somebody gets very close to the car, I always grab my seat.
9 I wasn't feeling that good about it because my experiences
10 in the accident was dramatic, sir.

11 Q. But you had a pleasant nine-hour drive up to
12 Attica, didn't you, Mr. Salem?

13 A. Sometimes, yes, sir.

14 Q. Weren't fearful during the nine hours, were you?

15 A. Sometimes, yes, sir.

16 Q. Sometimes you were?

17 A. Sometimes I was, sometimes I wasn't, sir.

18 Q. You weren't tense during the nine-hour trip up to
19 Attica, were you, Mr. Salem?

20 A. Not all of the trip, sir.

21 Q. Part of the trip?

22 A. In certain seconds, yes, certain moments when the
23 car coming to turn, I grab my seat, yes.

24 Q. Before I asked you about Dr. Stein --

25 A. Yes, sir.

1 Q. -- I had asked you about your trip up to Attica,
2 isn't that correct?

3 A. Yes, sir.

4 Q. You told me you weren't tense at all, isn't that
5 what you said?

6 A. I'm answering from the best of my recollection,
7 sir.

8 Q. So it is now your testimony that you weren't
9 tense?

10 A. No, sir.

11 Q. You were tense --

12 A. In a certain --

13 Q. Go ahead. Finish your answer.

14 A. In the certain seconds when the car come to make
15 a sharp turn, I have a body reflex, automatically I grab my
16 seat. But it doesn't mean that I'm sitting that ten hours'
17 trip grabbing my seat, sir.

18 Q. So that what you said to Dr. Stein was true?

19 A. Yes, sir.

20 Q. And you had to tell him the truth if you wanted
21 him to help you get over your injuries from that accident,
22 right?

23 A. Yes, sir.

24 Q. That first visit that you took to Attica Prison
25 you and Mohammed El-Gabrownny and Tarek Kattaria met in a

- 1 very large room, is that correct?
- 2 A. Where, sir?
- 3 Q. In Attica Prison.
- 4 A. Yes, sir.
- 5 Q. And there were vending machines there, right?
- 6 A. I beg your pardon?
- 7 Q. There were vending machines there?
- 8 A. Yes, sir.
- 9 Q. And there were other people visiting, right?
- 10 A. Yes, sir.
- 11 Q. There were family members, loved ones, who were
12 visiting with other people in prison, right?
- 13 A. Yes, sir.
- 14 Q. There were a lot of people visiting with other
15 people, is that correct?
- 16 A. Yes, sir.
- 17 Q. Maybe as many as 60, 70, 80 people in that big
18 room. The big room I am talking about now.
- 19 A. Could be, sir.
- 20 Q. Was that room called the main visiting room?
- 21 A. Probably, sir.
- 22 Q. Mr. Nosair was in the general population of the
23 prisoners at Attica, right?
- 24 A. Yes, sir.
- 25 Q. Do you recall during your direct examination, at

1 page 4257 of the record, Mr. McCarthy asked you to
2 demonstrate what Mr. Nosair did at Attica Prison on that
3 first visit, do you recall that?

4 A. Yes, sir.

5 Q. You stood up before the jury and you made a
6 motion with your hand like a pistol, right?

7 A. Yes, sir.

8 Q. It is your testimony that when Mr. Nosair did
9 that he did that in that visiting room, is that correct?

10 A. Correct, sir.

11 Q. With the 60, 70 or 80 other people standing
12 around watching him, isn't that correct, Mr. Salem?

13 MR. MCCARTHY: Objection.

14 THE COURT: Sustained as to form.

15 Q. It is your testimony that when he did that he did
16 that in that visiting room, is that correct, Mr. Salem?

17 A. Yes, sir.

18 Q. And in that visiting room were 60, 70 or 80 other
19 people, correct, Mr. Salem?

20 A. Correct, sir.

21 Q. When Mr. Nosair did this, this was the second
22 time that you had ever met him in your entire life, isn't
23 that right?

24 A. Yes, sir.

25 Q. So it is your testimony here before the jury that

1 this man that you hardly knew did that wild west show
2 routine --

3 MR. McCARTHY: Objection to form.

4 Q. -- in a room crowded with 60 or 70 or 80 other --

5 THE COURT: Sustained.

6 You can do that at the end of the trial, Mr.
7 Stavis. Ask a question.

8 Q. It is your testimony that Mr. Nosair made that
9 motion with a gun in front of 60, 70 or 80 other people on
10 the second time he ever met you in your life, sir?

11 A. Not the way you made -- you did it, sir, two guns
12 here, he didn't do that, sir.

13 Q. He only did one gun?

14 A. One hand on the right-hand side like this, sir.

15 Q. And when he did that, he was showing you how he
16 had killed Rabbi Meir Kahane?

17 A. It wasn't only this, sir.

18 Q. Did you say on your direct examination that
19 Mr. Nosair discussed killing Rabbi Meir Kahane with you?

20 A. Yes, sir.

21 Q. That is still your testimony, Mr. Salem?

22 A. Absolutely, yes, sir.

23 Q. Mr. Salem --

24 A. Yes, sir.

25 Q. -- in March of 1993 you gave a television

1 interview to New York One, which is a cable news channel, is
2 that correct?

3 A. Yes, sir.

4 Q. You were interviewed by a fellow by the name of
5 Karim Hajee, is that correct?

6 A. Yes, sir.

7 Q. Four rows, back end of the aisle is Karim Hajee,
8 isn't he?

9 A. Yes, sir.

10 Q. He asked you questions about Mr. Nosair, didn't
11 he?

12 A. Yes, sir.

13 Q. You told him that Mr. Nosair told you that he
14 never did it, isn't that what you told him?

15 Yes or no.

16 A. I don't recall. I may said it, I don't recall.

17 MR. STAVIS: Your Honor, I would like to play a
18 videotape to refresh the witness's recollection at this
19 point.

20 THE COURT: Do you have a transcript?

21 MR. STAVIS: Yes, I do.

22 THE COURT: Do you want to show it to him and see
23 if it refreshes his recollection.

24 MR. McCARTHY: May I see a copy of the
25 transcript?

1 A. Yes, sir.

2 THE COURT: Mr. Stavis, can you give that an
3 exhibit number or some sort of designation.

4 MR. STAVIS: I think I'm up to Defense NN.

5 THE COURT: We will call it NN-T for transcript?

6 MR. STAVIS: Yes, your Honor.

7 THE COURT: All right.

8 Q. Does that refresh your recollection, Mr. Salem?

9 A. Yes, sir.

10 Q. Did you tell the interviewer Karim Hajee for New
11 York One that Mr. Nosair told you that he never did it?

12 A. I said he's told me that he never did it, yes,
13 sir.

14 Q. Did you tell him that we have no right to point
15 our finger to him and say that he is a murderer?

16 A. Since he's acquitted, yes, sir.

17 Q. Did you tell him, "I cannot say he's guilty
18 unless something else happened, unless he will admit that he
19 did something wrong, unless they prove that he is guilty"?

20 A. And he did, sir.

21 Q. My question is --

22 A. I'm sorry.

23 THE COURT: That's stricken. Answer his
24 questions. Did you say that?

25 THE WITNESS: I'm sorry. OK. Repeat the

1 question, please, sir.

2 Q. Did you say to Mr. Karim Hajee on television, "I
3 cannot say he's guilty unless something else happen, unless
4 he will admit that he did something wrong, unless they prove
5 that he is guilty."

6 A. I may said that, yes, sir.

7 Q. When you made those statements to Mr. Karim Hajee
8 on television, those statements were true, weren't they?

9 A. No, sir, it was not true.

10 Q. They were not true?

11 A. No, it was not true, sir.

12 Q. You were lying?

13 A. Yes, sir.

14 Q. You were lying on television?

15 A. Yes, sir.

16 Q. You were lying on television before millions of
17 people?

18 A. Yes, sir.

19 Q. You were being paid by the FBI at that time,
20 weren't you?

21 A. Yes, sir.

22 Q. Was it part of your job to go on television?

23 A. Nobody told me to do that, but that was my own
24 decision, sir.

25 Q. It was your own decision, right?

1 A. Yes, sir.

2 Q. The FBI didn't say, "Hey, Mr. Salem, go on
3 television in front of millions of people and lie"? They
4 didn't say that, did they?

5 A. No, sir, they didn't.

6 Q. You took it upon yourself to go on television,
7 didn't you?

8 A. Yes, sir.

9 Q. That was your idea, wasn't it?

10 A. Yes, sir.

11 Q. Do you remember what that interview was about,
12 Mr. Salem?

13 A. I recall it -- I was asked by Mr. Hajee so many
14 questions about Mr. Mahmud Abouhalima, Mr. Sayyid Nosair,
15 Mr. -- I believe, if I'm not wrong, Sheik Omar Abdel Rahman.
16 It was so many questions, sir.

17 Q. Something happened right before that interview,
18 didn't it, Mr. Salem?

19 A. What is that, sir?

20 Q. Didn't you go to a school before you went to that
21 interview?

22 A. Yes, sir, my daughter, my daughter's school, I
23 went there, sir.

24 Q. You went to your daughter's school, right?

25 A. Yes, sir.

- 1 Q. And your daughter was about 15 years old at the
2 time?
- 3 A. Yes, sir.
- 4 Q. And you spoke to her class, didn't you?
- 5 A. The whole school, yes, sir.
- 6 Q. You spoke to the whole school, right?
- 7 A. Yes, sir.
- 8 Q. What you wanted to do was you wanted Mr. Hajee to
9 come actually into the school to take a picture of your
10 lecture to your daughter's school, right?
- 11 A. I asked him that, yes, sir.
- 12 Q. You also asked the assistant principal of your
13 15-year-old daughter's school if Mr. Hajee could bring his
14 camera crew into the school to take pictures while you were
15 lecturing to the school children?
- 16 A. Yes, sir.
- 17 Q. The assistant principal said, "No, we're not
18 going to have a TV camera in here"?
- 19 A. He said we've got to check with the parents of
20 these children because they are the guardians, sir.
- 21 Q. And the kids were 14 and 15 years old, too,
22 right?
- 23 A. Yes, sir.
- 24 Q. And you gave them a lecture, right?
- 25 A. Yes, sir.

1 Q. And you gave them a lecture because your daughter
2 was discriminated against for being a Muslim, right?

3 A. Yes, sir.

4 Q. The other kids in school made fun of her, isn't
5 that right?

6 A. Yes, sir.

7 Q. And they made fun of your son as well?

8 A. My son was in a different school, sir.

9 Q. In a different school they made fun of him as
10 well, right?

11 A. I --

12 Q. Withdrawn.

13 After the World Trade Center --

14 A. Yes, sir.

15 Q. -- your son and daughter were discriminated
16 against for being Muslim, right?

17 A. I recall my daughter, yes, sir.

18 Q. The other kids in school said, "You're a
19 terrorist," right?

20 A. Yes, sir.

21 Q. "You're a Muslim," right?

22 A. Yes, sir.

23 Q. "We don't want you here in our school," right?

24 A. I did not hear what the kids said, but that's
25 what was relayed to me through my daughter, sir.

1 Q. So you said, "I've got to get to my kid's school
2 to straighten this out," isn't that what you said?

3 A. Yes, sir.

4 Q. So you went to school and you gave a lecture,
5 Mr. Salem, right?

6 A. Yes, sir.

7 Q. To the whole school?

8 A. I beg your pardon?

9 Q. To the whole school?

10 A. Three classes, three classes, they used to start
11 them together. I will say most of it, yes, sir.

12 Q. A lot of young students, right, your daughter's
13 age?

14 A. Yes, sir.

15 Q. And your point was, "We're Muslims, we're just
16 like everybody else," right?

17 A. Yes, sir.

18 Q. "We're not terrorists," right?

19 A. Absolutely not, sir.

20 Q. And you told this to the kids and the kids asked
21 you about Sayyid Nosair, right?

22 A. No, sir.

23 Q. Are you sure about that?

24 A. I don't recall somebody told me Sayyid Nosair.

25 It was a common subject, bombing, the World Trade Center,

1 there was a Malcolm X movie as well in that time.

2 MR. STAVIS: I am approaching the witness with
3 your Honor's permission --

4 THE COURT: Go ahead.

5 MR. STAVIS: -- with Defense Exhibit NN.

6 Q. Mr. Salem, does that refresh your recollection as
7 to whether those school children and classmates of your
8 daughter asked you about Sayyid Nosair?

9 A. Yes, sir.

10 Q. When those children, those students asked you
11 about Sayyid Nosair, you told them that Sayyid Nosair told
12 you that he never did anything, isn't that right, Mr. Salem?

13 A. That's not what's in the transcript, sir.

14 THE COURT: He didn't ask you what was in the
15 transcript. He asked you what you told the children. Did
16 you tell them that he had told you that he hadn't done
17 anything?

18 THE WITNESS: No, that's not what I said, sir.

19 Q. Let's see if we can get something right: You go
20 to the school, right?

21 A. Yes, sir.

22 Q. You talk to the kids, right?

23 A. Yes, sir.

24 Q. You leave the school, right?

25 A. Yes, sir.

1 Q. You go on and you have an interview with Karim
2 Hajee, right?

3 A. Yes, sir.

4 Q. He asked you what you told the kids, right?

5 A. Yes, sir.

6 Q. You tell him on TV what you told the kids in your
7 daughter's school, right?

8 A. Yes, sir.

9 Q. They asked you about Sayyid Nosair and you said
10 he never did it, isn't that right, Mr. Salem?

11 MR. McCARTHY: Objection to form.

12 THE COURT: The question, I assume, is did he
13 tell the children that?

14 MR. STAVIS: That's correct, your Honor.

15 THE COURT: Did you tell the children that he
16 never did it?

17 THE WITNESS: I don't recall, sir.

18 MR. STAVIS: Your Honor, I would ask at this time
19 to play a portion of the videotape for the witness.

20 MR. McCARTHY: I object.

21 THE COURT: Sustained. Let's take a break,
22 ladies and gentlemen. Please leave your notes and other
23 materials behind. Please don't discuss the case and we will
24 resume in a few minutes.

25 (The jury was excused)

1 (Jury not present)

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, sir.

4 (Witness excused)

5 THE COURT: There is one thing we should have put
6 on the record earlier: Mr. Ricco is not here and hasn't
7 been since we started. That was by prearrangement with you,
8 is that right, Mr. El-Gabrownny?

9 DEFENDANT EL-GABROWNY: That's fine with me.

10 THE COURT: OK. You understand that Mr. Patel
11 was filling in for him to the extent he had to be filled in
12 for.

13 DEFENDANT EL-GABROWNY: No problem.

14 THE COURT: Thank you.

15 I should have done it earlier.

16 MR. STAVIS: Your Honor, if I may, I have been
17 asking questions based on a transcript with this witness.
18 He has said that he didn't say certain things and didn't
19 recall saying certain things. I had attempted to impeach
20 him by using a portion of a videotape. Mr. McCarthy
21 objected to that, and your Honor sustained the objection.

22 I believe that I have laid a foundation for the
23 playing of a portion of that videotape.

24 THE COURT: Do you want to be heard?

25 MR. MCCARTHY: Yes, your Honor. I think it is a

1 separate question. If he wants to ask him what he told
2 Mr. Hajee that he told the children on the basis of the
3 transcript, that's one thing, but that doesn't mean that it
4 is necessarily what he told the children. I don't think
5 it's proper cross-examination.

6 THE COURT: It's also independent impeachment on
7 a collateral matter. I haven't seen the transcript. Do you
8 have it?

9 MR. STAVIS: I have it, your Honor.

10 THE COURT: May I see it?

11 MR. STAVIS: Yes. If I may be heard for one
12 minute, whether or not my client made a confession in this
13 case to Mr. Salem I do not believe is collateral.

14 THE COURT: Give me a break. Do you really think
15 that he is going to get up and tell a bunch of school kids
16 that your client confessed, given the facts here? Are you
17 arguing that it is inherently credible that your client
18 confessed and he then went to a school and said that he
19 didn't?

20 MR. STAVIS: I am arguing, your Honor, that this
21 witness has made a statement, and the statement is not
22 collateral because it goes to whether or not my client
23 confessed to him, and I am challenging his credibility on
24 that.

25 THE COURT: I understand. I think I understand

1 your point. May I see the transcript.

2 Do you have a page?

3 MR. STAVIS: Page 10.

4 MR. McCARTHY: Your Honor, the government doesn't
5 have a transcript, so I can't follow along.

6 THE COURT: Page 10, line 14, the one in the
7 middle of the page?

8 MR. STAVIS: I believe so, your Honor.

9 THE COURT: He's telling the interviewer what he
10 claims your client said to him when he talked to him, which
11 is that he never did it. It doesn't say he told the
12 children that, although that is obviously the thrust of it.
13 But you have already brought out that he said that and that
14 he, as you said -- or argued -- lied about it in front of
15 millions of people on television. I don't see that there is
16 any more to be brought out about that point. He doesn't say
17 that he told that to the children in so many words.

18 (Continued on next page)

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1 MR. STAVIS: I believe that may start on page 9,
2 your Honor, where he says the kids asked him about El Sayyid
3 Nosair.

4 THE COURT: Right. And he says he was acquitted,
5 and since he's acquitted we should have no right to point
6 our finger. You brought that out, too.

7 MR. STAVIS: I was first attempting to refresh
8 the witness's recollection with the transcript, your
9 Honor --

10 THE COURT: Mr. Stavis, I have your point. You
11 have my ruling.

12 (Recess)

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1 (In open court; jury present)

2 (Witness resumed)

3 THE COURT: Mr. Stavis, go ahead.

4 MR. STAVIS: Thank you, your Honor.

5 BY MR. STAVIS:

6 Q. Mr. Salem, on your direct examination, Mr.
7 McCarthy asked you about somebody named Adnan Constantine.
8 Do you recall that?

9 A. Yes, sir.

10 Q. You told Mr. McCarthy that you had to see Adnan
11 Constantine before you went up to see Mr. Nosair at Attica,
12 right?

13 A. Yes, sir.

14 Q. And you told Mr. McCarthy that Adnan Constantine
15 gave you fifty bucks to put in Mr. Nosair's commissary fund
16 up there in Attica, right?

17 A. No, sir.

18 Q. When you came back from Attica, you called up
19 Mr. Adnan Constantine, didn't you, Mr. Salem?

20 A. I don't recall, sir.

21 MR. STAVIS: Your Honor, I would like to refresh
22 the witness's recollection with source tape 32-3, which is
23 in Arabic.

24 Please put your headset on, Mr. Salem.

25 (Tape played)

1 Q. Mr. Salem, having listened to that tape
2 recording, does that refresh your recollection as to whether
3 or not you spoke with Adnan Constantine on the telephone
4 after you returned from visiting Mr. Nosair at Attica?

5 A. Yes, sir.

6 Q. And when you spoke to Mr. Constantine, you told
7 him that you spent five hours with Mr. Nosair, is that
8 correct?

9 A. Yes, sir.

10 Q. You also told him that Mr. Nosair wanted to
11 relate a message. Do you recall that, Mr. Salem?

12 A. Yes, sir.

13 Q. And he wanted to relate a message that people
14 should not forget him in their prayers, is that correct?

15 A. Yes, sir.

16 Q. That's the message he related.

17 A. Yes, sir.

18 Q. And you told Adnan Constantine that my client
19 relayed that message, and also relayed that he had a lawsuit
20 against the post office and a postal police officer, is that
21 correct?

22 A. Yes, sir.

23 Q. Mr. Salem, when you spoke to Adnan Constantine,
24 you didn't relate any messages about bombing things, did
25 you, Mr. Salem?

1 A. No, sir.

2 Q. Didn't relate any messages about kidnapping
3 anybody, did you, Mr. Salem?

4 A. No, sir.

5 Q. Didn't relate any messages about killing anybody,
6 did you, Mr. Salem?

7 A. No, sir.

8 Q. Before the World Trade Center, the first time you
9 were working for the FBI --

10 A. Yes, sir.

11 Q. You taped a lot of different people on your home
12 tape recording system, didn't you?

13 A. Yes, sir.

14 Q. And a lot of those tapes are in Arabic, right?

15 A. Yes, sir.

16 Q. And a lot of those tapes were people that you
17 have testified about sitting here on the witness stand at
18 this trial, right?

19 A. Yes, sir.

20 Q. And, Mr. Salem, in none of those tapes does
21 anybody tell you anything about bombing anybody, right?

22 A. No, sir.

23 Q. In none of those tapes, Mr. Salem, does anybody
24 tell you anything about killing anybody, do they, Mr. Salem?

25 A. No, sir.

1 Q. And in none of those tapes does anybody tell you
2 anything about kidnapping anybody, isn't that right,
3 Mr. Salem?

4 A. That's right, sir.

5 Q. But you did make tapes with the FBI where you are
6 talking about bombing, killing, and kidnapping, right?

7 A. I am sorry, which tape, sir, are you talking
8 about?

9 Q. The tapes of your voice, Mr. Salem. You're the
10 one who talks to the FBI about bombing, killing and
11 kidnapping, isn't that right, Mr. Salem?

12 A. I am sorry. I don't understand your question,
13 sir.

14 Q. On tapes of your conversations with the FBI,
15 you're talking about bombing, killing, and kidnapping, isn't
16 that correct?

17 A. Could be, yes, sir.

18 Q. And you're talking about that with the FBI on
19 your own personal tapes that you had at home.

20 A. Could be, sir.

21 Q. And you're the only one who's talking about those
22 subjects on your own personal tapes, isn't that right,
23 Mr. Salem?

24 A. Yes, sir.

25 Q. During that first meeting with Mr. Nosair at

1 Attica prison, he told you how to make a beeper bomb.

2 Wasn't that your testimony here?

3 A. Yes, sir.

4 Q. And it was also your testimony that at that first
5 meeting in Attica he told you where you could buy timers on
6 Canal Street, right?

7 A. Yes, sir.

8 Q. And it was also your testimony here that at that
9 first meeting he told you that you should kill Dov Hikind
10 and kidnap the judge, right?

11 A. Yes, sir.

12 Q. When he told you those things, was your mind
13 wandering at all?

14 A. About what, sir?

15 Q. About what he was telling you about making a
16 beeper bomb, buying timers, and killing Dov Hikind.

17 A. What do you mean by mind wandering? Sorry, sir.
18 Can you just --

19 Q. Were you focused in and listening very carefully
20 when he was telling you about making beeper bombs, buying
21 timers and killing Dov Hikind?

22 A. Yes, sir.

23 Q. You didn't have a problem focusing on what he was
24 saying, did you?

25 A. I did my best to gather what he saying, sir.

1 Q. And you have no problem remembering all the
2 details of what he said, isn't that correct?

3 A. No, that's not correct, sir.

4 Q. You did have problems remembering details?

5 A. It was a five hours, it was a long four, five
6 hours, I believe, conversation. I don't think I remembered
7 every single details happening in these five hours, sir.

8 Q. But you had the highlights down pat, didn't you,
9 Mr. Salem?

10 A. Yes, sir.

11 Q. And the highlights are what you gave this jury
12 when you testified here at this trial, right?

13 A. Yes, sir.

14 Q. And you had no problem remembering the
15 highlights, right?

16 A. Yes.

17 Q. The other day -- actually it was yesterday -- at
18 page 5986 of the record, you told Miss Stewart, I'm not the
19 greatest memory in the world. Do you remember telling that
20 to her?

21 A. Yes, sir.

22 Q. You have some memory problems, don't you,
23 Mr. Salem?

24 A. Sometimes, yes, sir.

25 Q. And you told Miss Stewart that because you have

1 memory problems you need tapes, right?

2 A. Yes.

3 Q. You don't have a tape of that meeting at Attica,
4 do you, Mr. Salem?

5 A. No, sir.

6 Q. The day before you went to Attica, you remember I
7 was asking you questions earlier this morning about speaking
8 to Dr. Steven Stein. Do you recall those questions and
9 answers you gave before the break?

10 A. Yes, sir.

11 Q. He was helping to treat you for the injuries that
12 came from your car accident, you know, a month or two before
13 you went on the Attica trip, right?

14 A. Yes, sir.

15 Q. And you testified earlier this morning that what
16 you told him was the truth, right?

17 A. To the best of my ability, yes, sir.

18 Q. Because you wanted him to be able to help you.

19 A. Yes, sir.

20 Q. That's what you said this morning.

21 A. Yes.

22 MR. STAVIS: Mr. McCarthy, I am at 3534Q, page 4.

23 MR. McCARTHY: Thank you.

24 Q. The day before you went on this Attica trip, you
25 told Dr. Stein that you had some memory problems, didn't

1 you?

2 A. Yes, sir.

3 Q. You told him that your mind wanders during
4 conversations, didn't you tell him that?

5 A. I may said it, sir.

6 Q. You told him that you lose track of movies and
7 television shows, didn't you, Mr. Salem?

8 A. I may said it, yes, sir.

9 Q. You told him that you misplace objects and have a
10 hard time finding your keys or your wrist watch.

11 A. Yes, sir.

12 Q. You told him that you have problems remembering
13 details.

14 A. Yes, sir.

15 Q. You told him that when you're interrupted in the
16 middle of something, you forget where you were at.

17 A. Yes, sir.

18 Q. And you told him all of those things so that he
19 would help to treat you.

20 A. Yes, sir.

21 Q. You also told him, I can't even count change. Do
22 you recall that?

23 A. With numbers I have problems, yes, sir.

24 Q. You told him you can't focus your mind. Do you
25 recall that?

1 A. Yes, sir.

2 Q. You told him that you are unable to return to
3 work because you have concentration and memory difficulties.
4 Do you recall that?

5 A. Yes, sir.

6 MR. STAVIS: Mr. McCarthy, I am at 3534R, page
7 21.

8 Q. Mr. Salem, you testified at a criminal trial in
9 February of 1993, correct?

10 A. Yes, sir.

11 Q. That trial concerned some of these injuries that
12 you were talking to Dr. Stein about, right?

13 A. Yes, sir.

14 Q. Except it was a criminal trial, right?

15 A. Yes, sir.

16 Q. Where somebody's liberty was at stake, right?

17 A. I am sorry.

18 Q. There was a case being brought against somebody
19 who could go to jail if they lost the case, right?

20 A. Yes.

21 Q. And you were describing some of your injuries,
22 and you testified that you have the trauma in your head,
23 causing hearing loss in the left ear and little of amnesia,
24 forgetting things. That's what you testified, Mr. Salem,
25 isn't it true?

1 A. Yes, sir.

2 Q. And it was true that you had a little amnesia and
3 forgetting things, wasn't it, Mr. Salem?

4 A. I was forgetting things, yes, sir.

5 Q. This meeting that you described with the beepers
6 and the killing Dov Hikind, there is no tape recording of
7 that, right, Mr. Salem?

8 A. Right, sir.

9 Q. This jury is depending upon your memory --

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained as to form.

12 Q. Mr. Salem, without tapes, all we have is your
13 memory of what occurred at that meeting, isn't that correct,
14 Mr. Salem?

15 A. Yes, sir.

16 Q. And as you told Miss Stewart, I'm not the
17 greatest memory in the world, correct?

18 A. Yes, sir.

19 Q. And the jury is going to have to take your word
20 for it as to what happened on that day, isn't that right,
21 Mr. Salem?

22 A. It's up to them, sir.

23 Q. And all the things that you reported from that
24 first meeting with the beepers and the timers and the
25 killing Dov Hikind, you told it to Carson Dunbar, right,

1 when you came back from Attica?

2 A. Yes.

3 Q. And he didn't believe you, did he?

4 A. He didn't tell me that he didn't believe me, sir.

5 Q. He didn't tell you that he didn't believe you?

6 A. No, he didn't say that. I felt that.

7 Q. When you met with Carson Dunbar, he did something
8 to make you believe that he didn't believe you, isn't that
9 correct?

10 A. Yes, sir.

11 Q. And that was during that meeting that we were
12 talking about in your testimony yesterday. I asked you
13 questions about that meeting with Carson Dunbar before you
14 went on vacation.

15 A. Yes, sir.

16 Q. The angry meeting, right?

17 A. Yes, sir.

18 Q. You had a second meeting -- withdrawn. You had a
19 second visit up to Attica prison, right?

20 A. Yes, sir.

21 Q. You went with Ali Shinawy?

22 A. Yes, sir.

23 Q. This time you went by bus.

24 A. Yes, sir.

25 Q. Was the reason that you went by bus because you

1 have a problem being in a car and a fear of being in a car,
2 that you have described to Dr. Stein?

3 A. No, sir.

4 Q. There was a different reason for you taking a
5 bus? Yes or no.

6 A. Can you repeat the question, please.

7 Q. There was a different reason for you taking a
8 bus? Yes or no.

9 A. Yes.

10 Q. This visit was about a month after the first
11 visit, right?

12 A. I don't recall how much after, sir.

13 Q. Did you testify on page 4904 of the record that
14 it was one month later?

15 A. Could be, yes, sir.

16 Q. And it was in that same visiting room, right?

17 A. Yes, sir.

18 Q. The big visiting room?

19 A. Yes, sir.

20 Q. The one with the vending machines?

21 A. Yes, sir.

22 Q. And the one with the 60 to 70 to 80 people?

23 A. Yes.

24 Q. By the way, there were 60 to 80 people there the
25 second time you went to Attica, right?

1 A. Around that figure, sir.

2 Q. And it is your testimony that at this meeting,
3 you showed Mr. Nosair a fuse.

4 A. Yes, sir.

5 Q. In that visiting room.

6 A. Yes.

7 Q. And in the visiting room that had the 60 to 80
8 people in it.

9 A. Yes.

10 Q. You don't have a tape of that second Attica
11 meeting, do you?

12 A. No, sir.

13 Q. And the FBI before you left for the second
14 meeting, you told the FBI you were going to Attica, right?

15 A. Yes, sir.

16 Q. But there is no tape of that meeting.

17 A. No, sir.

18 Q. And were you having memory difficulties when you
19 went to Attica for the second meeting?

20 A. It was getting better, because I was getting far
21 from the time of the accident, sir.

22 Q. One month further from the time of the accident,
23 isn't that right, Mr. Salem?

24 A. Could be, sir. I don't recall how long exactly.

25 Q. Were you able to remember where you had put your

1 keys and things like that, one month later?

2 A. I believe it took some month and a half, couple
3 of months, until I start to feel much better, sir.

4 Q. Were you still suffering from a little amnesia
5 when you went on the second meeting?

6 A. It wasn't, my memory wasn't the greatest memory
7 again, sir.

8 Q. And there is no tape of that meeting, correct?

9 A. No, sir.

10 Q. And the jury is going to have to take your word
11 as to what happened at that meeting, isn't that correct,
12 Mr. Salem?

13 A. Yes.

14 Q. The third meeting was like a year later, right?

15 A. Yes, sir.

16 Q. That was in a smaller room.

17 A. Yes, sir.

18 Q. That was in a room that was, you know, everyone
19 was sort of right next to each other in that room, right?

20 A. I am sorry. Can you repeat the question, sir,
21 please.

22 Q. There weren't 60 or 70 or 80 people in the
23 room -- I am talking about your last visit to Attica.

24 A. Yes.

25 Q. This is after World Trade Center.

1 A. Yes, sir.

2 Q. That was a much smaller room.

3 A. Yes, sir.

4 Q. There was a prisoner who was visiting with about
5 three other people, right, in that room?

6 A. Yes.

7 Q. And then there was Mr. Nosair, right?

8 A. Yes, sir.

9 Q. And then there was you, Siddig Ali, and Ali
10 El-Gabrownny, Ibrahim El-Gabrownny's brother, right?

11 A. Yes, sir.

12 Q. And the other prisoner and his three visitors
13 were just a few feet away from you, right?

14 A. Yes.

15 Q. It is your testimony that Mr. Nosair started
16 talking in that small room about the usual topic, bombing,
17 explosives, weapons, rifles, pistols, killing, kidnapping
18 and murder, isn't that correct, Mr. Salem?

19 A. Yes, sir.

20 Q. And he did that with the other people just a few
21 feet away, right?

22 A. Yes, sir.

23 Q. And you even told this jury that he was doing
24 more than just talking about that kind of stuff, right?

25 A. Yes, sir.

1 Q. He was talking about it in Arabic, right?

2 A. Yes.

3 Q. He was actually going through the motions then,
4 according to your testimony before this jury, right?

5 A. According to the videotape, sir.

6 Q. That is according to your testimony in this
7 trial, isn't it, Mr. Salem?

8 A. Yes, sir.

9 Q. We have no audiotape of that meeting, do we,
10 Mr. Salem?

11 A. No, sir.

12 Q. We don't have a tape of your drive up to
13 Attica -- by the way, you drove that time, right?

14 A. Yes, sir.

15 Q. We don't have a tape of your drive up to Attica
16 with Ali El-Gabrownny and Mr. Siddig Ali, right?

17 A. I believe not, sir.

18 Q. And the FBI knew that you were going up to Attica
19 for this visit, right?

20 A. Yes, sir.

21 Q. And they rented a car for you, right?

22 A. I don't know that they rented or -- they give me
23 a car, sir.

24 Q. Wasn't your car?

25 A. It wasn't, sir.

1 Q. You didn't want to take your car, right?

2 A. No, sir.

3 Q. You didn't want the wear and tear on your car,
4 right?

5 A. Yes, sir.

6 Q. And the FBI was paying you at this time, weren't
7 they?

8 A. Yes, sir.

9 Q. And they were paying you expense money, right?

10 A. Yes, sir.

11 Q. And the rented car -- withdrawn. The car that
12 the FBI gave you, they put some wiring devices so that the
13 FBI would be able to listen to the conversations, right?

14 A. Yes, sir.

15 Q. And that didn't work out very well, right?

16 A. Yes, sir.

17 Q. Inside of Attica, there was a videotape, right?

18 A. Yes, sir.

19 Q. A camera, right?

20 A. Yes, sir.

21 Q. But no sound?

22 A. I believe, sir, that there was a sound but it was
23 not clear, sir.

24 Q. You can't hear anything?

25 A. No, sir.

1 Q. You can't hear anything about the usual topic of
2 bombings explosives, weapons, rifles, pistols, kidnapping,
3 killing and murder, can you, Mr. Salem?

4 A. No, sir.

5 Q. When it comes to your testimony about those
6 things that I just mentioned, the jury is going to have to
7 take your word for it, right?

8 A. I am sorry. Which --

9 Q. When it comes to the usual topic of bombing,
10 explosives, weapons, rifles, pistols, killing, kidnapping
11 and murdering, the jury is going to have to take your word
12 for it, isn't that right, Mr. Salem?

13 A. Yes, sir.

14 Q. Because there isn't a tape recording of that,
15 right, Mr. Salem?

16 A. Right, sir.

17 Q. They could also take the word of Tarek Khatteria,
18 couldn't they?

19 A. Yes.

20 Q. He was there, right?

21 A. Yes.

22 Q. Ali Shinawy was at one of these visits. They
23 could take his word, couldn't they?

24 A. Yes, sir.

25 Q. Ali El-Gabrownny was there at one of those visits

1 so they could take his word too, can't they?

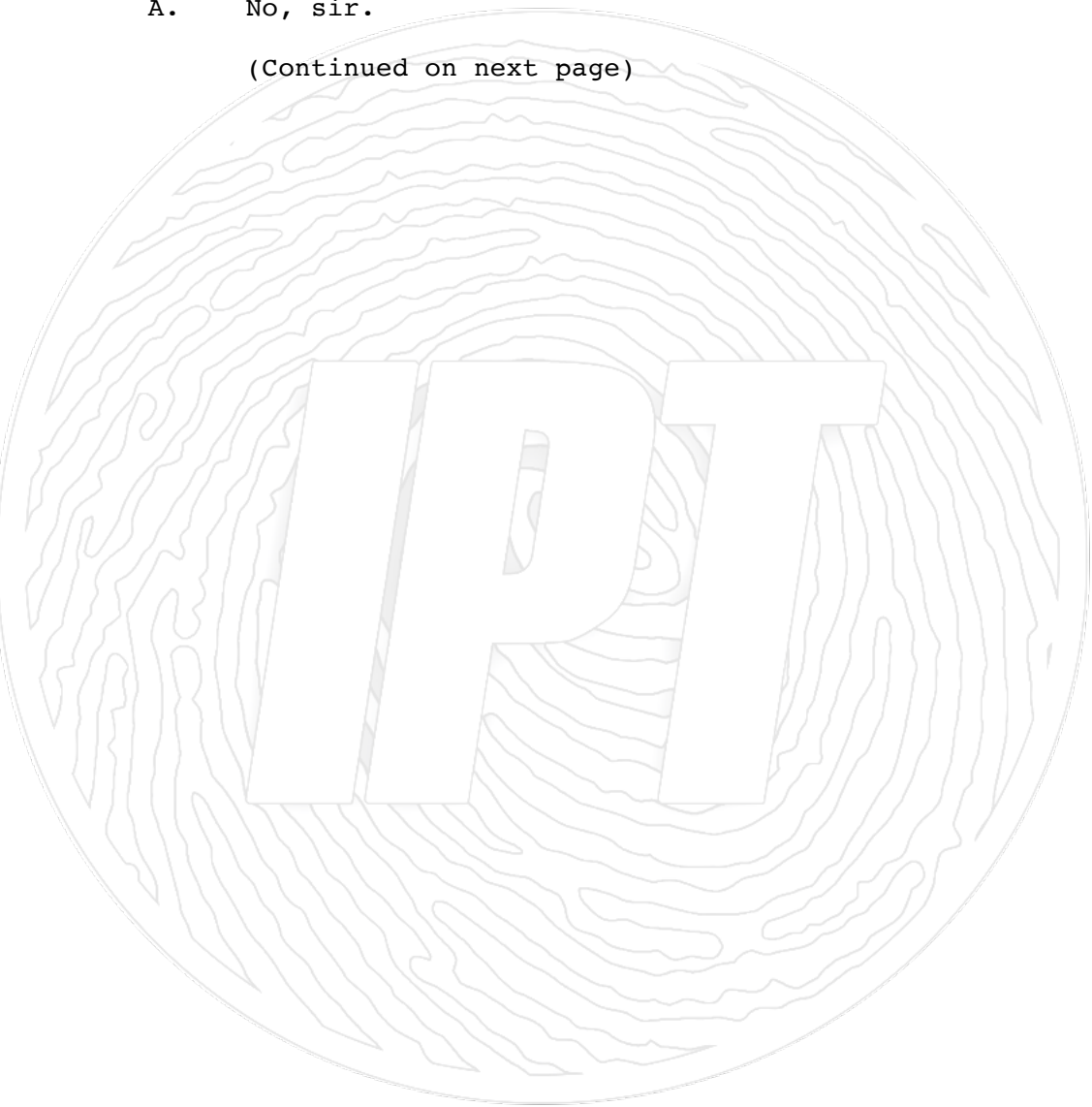
2 A. Yes, sir.

3 Q. Mr. Salem, you wouldn't lie about something as
4 important as your meeting at Attica, would you?

5 A. No, sir.

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1 Q. Would you know the truth from a lie?

2 A. Yes, sir.

3 Q. You would?

4 A. Yes, sir.

5 Q. You lied to the FBI in this case?

6 A. Yes, sir.

7 Q. Over and over and over again?

8 A. Yes, sir.

9 Q. When you were negotiating this deal with the
10 government, did you discuss whether you would be given --
11 withdrawn.

12 Did you know that it is a crime to lie to an FBI
13 agent?

14 A. Not at that time, sir.

15 Q. You know it now?

16 A. Yes, sir.

17 Q. When you cut your deal with the FBI, did they
18 excuse you from being prosecuted for lying to them?

19 A. We did not discuss that matter, sir.

20 Q. There was no agreement not to prosecute you for
21 lying to them?

22 A. No, sir.

23 Q. How about the lies that you testified you told in
24 that criminal case in state court. That you know is a
25 crime, right?

1 A. Yes, sir.

2 Q. That's perjury, right?

3 A. Yes, sir.

4 Q. When you cut your deal with the FBI, was there
5 any part of the deal that you wouldn't be prosecuted for
6 perjury?

7 A. No, sir.

8 Q. When you told this jury, Mr. Salem, that you lied
9 to Special Agent Nancy Floyd, were you telling the truth?

10 A. Yes, sir.

11 Q. Are you sure?

12 A. Yes, sir.

13 Q. You testified yesterday, at page 5963 of the
14 record, that when the case came down, you went to the
15 hospital?

16 A. Yes, sir.

17 Q. You testified that you went to the hospital for a
18 panic attack?

19 A. That's what they call it, sir.

20 Q. Is that what you'd call it?

21 A. I thought at that time it's a heart attack, sir.

22 Q. A heart attack or panic attack?

23 A. I thought it's a heart attack, but eventually
24 what I heard that it was a panic attack, sir.

25 Q. Have you gotten these panic attacks before?

1 A. No, sir.

2 Q. Was that the only time you ever got a panic
3 attack?

4 A. A couple of days or a few days before, I got hard
5 pain in my chest in one of my conversations with the FBI.

6 Q. Did you receive any medication for that?

7 A. No, sir.

8 Q. Are you under any medication today for any kind
9 of nervous condition?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. Do you suffer from any kind of nervous condition
13 today?

14 A. I am being nervous to sit here, sir.

15 Q. Are you nervous enough to have to go to see a
16 doctor about it?

17 A. No, sir.

18 Q. Did you ever see a psychic about some of the
19 rages that you experience?

20 A. Yes, sir.

21 Q. You spoke to a radio psychic, right?

22 A. Something like that, yes.

23 Q. And the point of you talking -- it was like a
24 call-in kind of radio program?

25 A. Yes, sir.

1 Q. The point of calling that psychic on the radio
2 was to help you, right?

3 A. No, sir.

4 Q. You asked the psychic in that radio conversation
5 to help you?

6 A. No, sir, I was just kidding.

7 Q. At the time that you were kidding with that radio
8 psychic, you were being paid by the FBI, correct?

9 A. I don't recall, sir.

10 Q. You asked the psychic to help get you to the
11 point where you could get out of your rages, right?

12 A. I don't recall, sir.

13 MR. STAVIS: Your Honor, it is a very short tape
14 and I would ask if I can refresh the witness's recollection
15 with the playing of this tape.

16 THE COURT: Go ahead.

17 MR. McCARTHY: Your Honor, could we have an
18 exhibit number, if there is one.

19 THE COURT: Exhibit number?

20 MR. STAVIS: Excuse me.

21 THE COURT: Exhibit number?

22 MR. STAVIS: Oh, it's 58 5. I'm sorry,
23 Mr. McCarthy.

24 (Audiotape played out of jury's hearing)

25 Q. Mr. Salem, when you spoke to that radio psychic,

1 you asked her for help so that you could get to the point
2 where you could get out of your rages, isn't that correct?

3 A. Yes, sir.

4 Q. You asked for help for her to solve your temper
5 tension, is that correct?

6 A. Yes, sir.

7 Q. And you told her that you earned that temper
8 tension through the wars, isn't that correct?

9 A. Yes, sir.

10 Q. And you told her that you were in the war twice,
11 isn't that correct?

12 A. Yes, sir.

13 Q. And you told her that you got shot so many times,
14 is that correct?

15 A. Yes, sir.

16 Q. She suggested to you that you have a tremendous
17 amount of emotional pain that was caught up in your heart
18 and almost locked away, isn't that correct?

19 A. Yes, sir.

20 Q. And she suggested to you meditations where you
21 literally are bathing your whole heart center in golden
22 light, isn't that correct?

23 A. Yes, sir.

24 Q. She suggested to you that you constantly, pink
25 rose and lavender light would come into your life, is that

1 correct?

2 A. Yes, sir.

3 Q. Is it your testimony that you were kidding
4 around?

5 Is it your testimony -- yes or no -- that you
6 were kidding around when you spoke to the radio psychic?

7 A. Yes.

8 Q. You didn't laugh at all when you spoke to the
9 radio psychic, did you?

10 A. No, sir.

11 Q. You didn't giggle at all when you spoke to the
12 radio psychic, did you?

13 A. No, sir.

14 Q. When you said to the radio psychic that you were
15 wounded in the war so many times, was that true or not true?

16 A. It was not true, sir.

17 Q. How do you expect the radio psychic to help you
18 if you lie to a radio psychic, Mr. Salem?

19 THE COURT: Sustained.

20 Q. You testified that when you were in Egypt, you
21 were -- withdrawn.

22 You testified that when you were in Egypt you
23 were a big shot, do you recall that testimony?

24 A. Yes, sir.

25 Q. When you came here, you sort of also wanted to be

1 a big shot, wasn't that one of your goals?

2 A. Yes, sir.

3 Q. You started playing a role for the FBI in
4 November of 1991, is that correct?

5 A. Yes, sir.

6 Q. One of the roles you played was the role of a big
7 shot, isn't that right, Mr. Salem?

8 A. I'm sorry, sir, I don't understand what you mean.

9 Q. One of the roles that you played when you started
10 working for the FBI in November of 1991 was the role of a
11 big shot -- I will withdraw it.

12 A. OK.

13 Q. I will withdraw it.

14 When you started working for the FBI in November
15 1991, you got to talk to the media all the time, right?

16 A. Yes, sir.

17 Q. You spoke to people from the "New York Times,"
18 right?

19 A. Yes, sir.

20 Q. You spoke to people from "Newsday," right?

21 A. Yes, sir.

22 Q. You spoke to -- he's still there -- Karim Hajee
23 from New York One?

24 A. Yes.

25 Q. You spoke to a fellow by the name of Wahid Zagbe

1 who ran a magazine, "Arab Immigrant Magazine"?

2 A. Yes, sir.

3 Q. You wrote articles for that publication, didn't
4 you?

5 A. Yes.

6 Q. You spoke to TV reporters from CBS, right?

7 A. Yes, sir.

8 Q. Channel 5?

9 A. I don't recall Channel 5, sir. Could be.

10 Q. Is it fair to say, Mr. Salem, that you were
11 playing the role of a big shot when you were working for the
12 FBI?

13 A. No, sir. It wasn't my purpose from these
14 interviews to be a big shot.

15 Q. After the World Trade Center when you were
16 talking to the FBI, were you trying to be a big shot at that
17 time?

18 A. No, sir.

19 Q. Did you tell Special Agent Anticev that you could
20 call and ask to speak to President Clinton on the telephone?

21 A. Yes, sir.

22 Q. Could you call and ask to speak to President
23 Clinton on the telephone?

24 A. Now, I don't think so.

25 Q. Did you have some sort of falling out with

1 President Clinton between then and now?

2 A. I'm sorry. What do you mean "falling out," sir?

3 Q. Did you and President Clinton have an argument
4 between then and now?

5 A. No, sir.

6 Q. So you are still on good terms with President
7 Clinton?

8 A. I never spoke to President Clinton, sir.

9 Q. But you were able to anytime you wanted, right?

10 A. I wasn't able to, sir.

11 Q. You told John Anticev you could?

12 A. I thought in that time that I could.

13 Q. Did you try at that time to talk to President
14 Clinton?

15 A. No, sir.

16 Q. After the World Trade Center when you were
17 talking to Special Agent Anticev, you said to him, "I want
18 to meet the director of the FBI," do you remember you said
19 that?

20 A. Yes, sir.

21 Q. You said that a number of times?

22 A. Yes, sir.

23 Q. You just could have picked up the phone and spoke
24 to the director of the FBI, right?

25 A. Now, I don't think so, sir.

1 Q. You had a falling out with the director of the
2 FBI also?

3 A. No, sir, I never spoke to him, sir.

4 Q. But you could speak to him, then, after the World
5 Trade Center if you wanted to?

6 A. In that time, I thought so, sir.

7 Q. You asked Special Agent Anticev to set you up in
8 a meeting with President Mubarak of Egypt, right?

9 A. I may asked, yes, sir.

10 Q. Could you pick up the phone and talk to President
11 Mubarak if you wanted to at that time?

12 A. I don't recall saying that, sir.

13 Q. I didn't ask you if you said it, I asked you if
14 you could do it at that time?

15 A. Of course not, sir.

16 Q. Can you do it now?

17 A. Of course not, sir.

18 Q. And I asked you about Wahid Zagbe just a minute
19 ago, who ran this magazine the "Arab Immigrant Magazine,"
20 and you knew him, right?

21 A. Yes, sir.

22 Q. You told him that you were a person who has
23 contacts with everybody and everything, is that correct?

24 A. Yes, sir, I may said that.

25 Q. Was it true when you told him that?

1 A. To a certain extent.

2 Q. To how large an extent?

3 A. I mean, I can have contacts with some people; I
4 cannot have contact with some other people.

5 Q. Were you playing the role of a big shot when you
6 told that to Wahid Zagbe, Mr. Salem?

7 A. Yes, sir.

8 Q. Did you enjoy playing the role of a big shot,
9 Mr. Salem?

10 A. In a certain time, yes, sir.

11 Q. Did you relish playing the role of a big shot,
12 Mr. Salem?

13 A. What does that mean, "relish"?

14 Q. It means enjoy it immensely?

15 A. In that time, yes, sir.

16 Q. At around the time of the World Trade Center you
17 got -- withdrawn.

18 Just after the World Trade Center, you got back
19 together, you started talking to the FBI again, right?

20 A. Yes, sir.

21 Q. You were having some financial difficulties at
22 that time, Mr. Salem, is that correct?

23 A. No, sir.

24 Q. You were living according to a certain standard
25 of living, isn't that correct, Mr. Salem?

1 A. I'm sorry, sir.

2 Q. You were living your life with a certain standard
3 of living, right?

4 A. I'm sorry, sir. What -- I didn't get the
5 question, sir.

6 Q. I am going to change the question.

7 A. Thank you, sir.

8 Q. You had a saying that you used to tell people
9 about hot dogs, isn't that correct?

10 A. What hot dogs, sir?

11 Q. It was your saying, I am asking you.
12 Do you recall it?

13 A. If you remind me, I will recall it, sir.

14 Q. You used to tell people, "I don't handle hot
15 dogs"?

16 A. Oh, yes, sir.

17 Q. What does that mean?

18 A. I said that I -- when I came to this country, I
19 did not work as a hot dog man. I was in a supervisory level
20 or as a chief engineer in a hotel, and that's what I said,
21 sir.

22 Q. That's because you wanted to be a big shot,
23 Mr. Salem?

24 A. Yes.

25 Q. Now, prior to the World Trade Center you had had

1 some financial problems, is that correct, Mr. Salem?

2 A. Yes, sir.

3 Q. Some of your financial problems led to the
4 breakup of your marriage to Barbara Rogers, is that correct?

5 A. No, sir. It was one of the reasons of breaking
6 up the marriage, sir.

7 Q. After you broke up with Barbara Rogers, you took
8 up with somebody else, is that correct?

9 A. Yes.

10 Q. And the other person that you took up with owned
11 her own business, is that correct?

12 A. In that time, no, sir.

13 Q. There come came a time that she owned her own
14 business?

15 A. Yes, sir.

16 Q. That is a jewelry business, right?

17 A. Yes, sir.

18 Q. You told the FBI that she earned about \$80,000 a
19 year from her jewelry business?

20 A. I don't recall -- I may said that, sir.

21 Q. But she earned a good living from her jewelry
22 business, right?

23 A. Yes, sir.

24 Q. When I say "took up," you sort of married her or
25 whatever?

1 A. Yes, sir.

2 Q. After that did you have money problems,
3 Mr. Salem?

4 A. After that when, sir?

5 Q. When did you take up with your present wife?

6 A. I don't recall the date, but in a certain time we
7 had some difficulty, yes, sir.

8 Q. You accumulated a lot of debt during that time,
9 didn't you, Mr. Salem?

10 A. Yes, sir.

11 Q. In March of 1993 when you started going back with
12 the FBI -- withdrawn.

13 In March of 1993 when you started talking again
14 to the FBI, you still had debt left over from when times
15 were bad, right?

16 A. Yes, sir.

17 Q. You told the FBI that you were trying to get back
18 on your feet, right?

19 A. Yes, sir.

20 Q. You told the FBI you were out of work for almost
21 a whole year, right?

22 A. Yes, sir.

23 Q. MasterCard was chasing you because you owed them
24 a lot of money, right?

25 A. Excuse me?

- 1 Q. Master card --
- 2 A. Yes, sir.
- 3 Q. -- was chasing you because you owed them a lot of
4 money?
- 5 A. It wasn't chasing me. They called for the debts,
6 sir.
- 7 Q. They called you a lot, Mr. Salem, didn't they?
- 8 A. Yes, sir.
- 9 Q. When they called you, you picked up the phone,
10 right?
- 11 A. Yes, sir.
- 12 Q. They asked to speak to Emad Salem, right?
- 13 A. Yes, sir.
- 14 Q. You told them that Emad Salem wasn't home, right?
- 15 A. Yes, sir.
- 16 Q. But you were home, you were on the phone, right?
- 17 A. That's right, sir.
- 18 Q. So you weren't telling them the truth, were you?
- 19 A. No, I wasn't, sir.
- 20 Q. You were lying to them?
- 21 A. That's right, sir.
- 22 Q. You were using somebody else's name on your
23 MasterCard, is that correct, Mr. Salem?
- 24 A. Yes, sir.
- 25 Q. You knew a person by the name of Mohammed Abd

1 El-Baki, is that correct, Mr. Salem?

2 A. Yes, sir.

3 Q. And he worked at the Woodward Hotel with you,
4 right?

5 A. Yes.

6 Q. There was a credit card that was issued in his
7 name, is that correct?

8 A. Yes, sir.

9 Q. Then the second card was issued in your name, is
10 that correct?

11 A. Yes, sir.

12 Q. You ran up a pretty big bill on that card,
13 correct? You had a lot of debt on that card?

14 A. I was paying it most of the time, sir.

15 Q. You were making the monthly payments, right?

16 A. Yes, sir.

17 Q. But weren't denting the principal, were you,
18 Mr. Salem?

19 A. No, sir.

20 Q. And Mr. El-Baki's card had all this debt on it,
21 right?

22 A. Yes, sir.

23 Q. There came a time that Mr. El-Baki found out
24 about all the debt on the card, isn't that right, Mr. Salem?

25 A. He found out from the first day. He's the one

1 who issued me the card, sir.

2 Q. Didn't Mr. El-Baki say that you had no
3 authorization to use his name on that credit card?

4 A. That's after the arrest of the immigration to the
5 people in the hotel, sir.

6 Q. Is the answer to my question "Yes," Mr. Salem?

7 A. I'm sorry. Could you repeat the question?

8 MR. STAVIS: Can I have the question read back,
9 please.

10 (Record read)

11 A. Yes. He said that, sir.

12 Q. You claimed you did have authorization to use his
13 name on that credit card, right?

14 A. Yes, sir.

15 Q. You know if you don't have authorization to use
16 somebody's name on a credit card, that's a fraud; you know
17 that, Mr. Salem, right?

18 A. Yes, sir.

19 Q. You didn't commit a fraud with Mr. El-Baki, is
20 that your testimony?

21 A. Absolutely not, sir.

22 Q. After the case came down, you finally got to the
23 principal that was on that credit card, right?

24 A. Yes, sir.

25 Q. The FBI helped you to pay what was left on that

1 credit card, right?

2 A. Yes, sir, not financially.

3 Q. They didn't have to financially because you got a
4 check from the Workers Compensation Board, right?

5 A. Yes, sir.

6 Q. You used to get \$485 a month from the Workers
7 Compensation Board, right?

8 A. Yes, sir.

9 Q. And you were getting \$485 a month from the
10 Workers Compensation Board all the while that you were
11 working for the FBI, right?

12 A. I don't recall how long, sir, but I was receiving
13 money from them, yes, sir.

14 Q. Your accident was just before you started working
15 for the FBI with Mr. Nosair's case, right?

16 A. Yes, sir.

17 Q. Sometime after that the checks started rolling in
18 from the Workers Compensation Board, right?

19 A. Yes, sir.

20 Q. And you were working for the FBI, right?

21 A. Yes, sir.

22 Q. They were giving you \$2,000 a month, right?

23 A. Yes, sir.

24 Q. Plus \$1,000 a month for expenses?

25 A. Yes, sir.

1 Q. So you were able to work?

2 A. Yes, sir.

3 Q. But you got the check for \$485?

4 A. Yes, sir.

5 Q. When you had to pay off your debts, you told the
6 FBI, "Use my Workers Compensation Board check," right?

7 A. Yes, sir.

8 Q. Then they paid it off?

9 A. Yes, sir.

10 Q. You were having other problems during this period
11 of time, around March of 1993, making your car payments,
12 isn't that correct, Mr. Salem?

13 A. I don't recall exactly, but it came a time I have
14 some problems to do it. Sometimes not, sir.

15 Q. You had some problems paying your phone bill
16 around that time and had to go to a payment center, is that
17 correct?

18 A. Yes, sir.

19 Q. It was during this time that you had your
20 automatic taping machine going in your apartment, right?

21 A. Yes, sir.

22 Q. So that when you were talking to the phone
23 company, you had a tape of them, right?

24 A. I think, yes, sir.

25 Q. When you were talking to the car payment people

1 you had a tape of that, right?

2 A. I believe, yes, sir.

3 Q. When you were talking about MasterCard and they
4 were asking you if you were home, right --

5 A. Yes, sir.

6 Q. -- and you told them you weren't home --

7 A. Yes, sir.

8 Q. -- you had a tape of that?

9 A. It could be, sir.

10 Q. Everything was taped?

11 A. That's right, sir.

12 Q. You told the FBI that you owed your divorce
13 lawyer \$1500 and couldn't afford to pay him, right?

14 A. Yes, sir.

15 Q. Do you have any money problems today, Mr. Salem?

16 A. No, sir.

17 Q. You first -- withdrawn.

18 After you got back with the FBI in March of 1993
19 -- withdrawn.

20 After you started talking to the FBI in March of
21 1993, you had certain negotiations with them, isn't that
22 right, Mr. Salem?

23 A. Yes, sir.

24 Q. There were certain things that you wanted in
25 order to go back and help the FBI, isn't that right,

1 Mr. Salem?

2 A. Yes, sir.

3 Q. Certain things that you had to have in order for
4 you to go back to the FBI, right?

5 A. Yes, sir.

6 Q. One of the things that you wanted was a salary,
7 right?

8 A. Yes, sir.

9 Q. You wanted X amount of dollars coming in every
10 month, right?

11 A. Yes, sir.

12 Q. The FBI said, "You can't have that," right?

13 A. Yes, sir.

14 Q. They said, "We can't pay you a salary," right?

15 A. Yes, sir.

16 Q. You told them Nancy Floyd used to pay your
17 salary, right?

18 A. The FBI, sir.

19 Q. Well, you told John Anticev after March of
20 1993 -- let me get the chronology straight.

21 You start in November of '91 with Mr. Nosair's
22 case, right?

23 A. Yes.

24 Q. You are working for the FBI, right?

25 A. Yes, sir.

1 Q. July '92 you have that meeting with the
2 supervisors, right?

3 A. Could be, yes, sir.

4 Q. You stopped working for the FBI, right?

5 A. Yes, sir.

6 Q. Now we are in the following year, March of 1993,
7 you start talking to the FBI again, right?

8 A. Yes.

9 Q. You told them you wanted a salary?

10 A. Yes, sir.

11 Q. You told them, "Nancy Floyd used to give me a
12 salary," right?

13 A. She used to pay me through the FBI, sir.

14 Q. You told them that when Nancy Floyd was the agent
15 in charge of you, you used to receive a set salary from the
16 FBI?

17 A. Yes, sir.

18 Q. They told you that they didn't want to do that,
19 John Anticev said, "We can't do that"?

20 A. Yes, sir.

21 Q. He said Nancy Floyd got in trouble for that,
22 right?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Q. They told you you can't have a contract, right?

1 A. We never discussed contracts, sir, in that time.

2 Q. You never discussed contracts at that time?

3 A. I don't recall any contract discussions in that
4 time, sir. That came at the end of the case, sir.

5 Q. Do you recall having a conversation with John
6 Anticev, which is Source Tape 30-7, page 10, where he said
7 to you --

8 MR. McCARTHY: May I have a moment, please, to
9 get it?

10 THE COURT: Yes.

11 MR. McCARTHY: May I have a moment?

12 MR. STAVIS: Oh, OK. It is in the book from
13 yesterday.

14 MR. McCARTHY: I have the conversation in front
15 of me.

16 MR. STAVIS: The bottom of page 10, top of page
17 11.

18 MR. McCARTHY: I object.

19 THE COURT: May I see it.

20 Why don't you bring it up to the side.

21 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Should I look first or listen first?

3 MR. STAVIS: I have it underlined. It will be
4 easier for the court.

5 THE COURT: Let me see.

6 MR. STAVIS: On the top of the page.

7 THE COURT: OK.

8 MR. McCARTHY: The impeachment suggests --

9 THE COURT: One second. Let me understand what
10 you are doing. You claim this is a prior inconsistent
11 statement?

12 MR. STAVIS: Yes. Mr. Salem said there was no
13 contract at the beginning of his starting to work for the
14 FBI, only at the end, and I am showing that he wanted a
15 contract from the beginning; they wouldn't give him one; he
16 insisted on it.

17 (Continued on next page)

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1 THE COURT: This is the agent saying it. This is
2 not Mr. Salem saying it.

3 MR. STAVIS: He is acknowledging the statements
4 of the agent, your Honor.

5 THE COURT: That is not his inconsistent
6 statement. Objection sustained.

7 Do you have a convenient break point in the next
8 five minutes?

9 MR. STAVIS: Yes.

10 THE COURT: Good.

11 (Continued on next page)

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1 (In open court)

2 Q. Did you eventually get a contract with the FBI,
3 Mr. Salem?

4 A. Yes, sir.

5 Q. At the beginning, in March '93, when you started
6 your negotiations with the FBI, they told you you couldn't
7 have a contract, right?

8 MR. McCARTHY: Objection to the form of the
9 question. It is two questions.

10 THE COURT: Could you break it up.

11 Q. You started negotiating with the FBI in March
12 '93, correct?

13 A. I don't recall the exact date, sir.

14 Q. You start negotiating with the FBI after the
15 World Trade Center, correct?

16 A. Yes, sir.

17 Q. You told the FBI you wanted a salary and a
18 contract at that time?

19 MR. McCARTHY: Objection.

20 A. I don't recall contract. I recall salary, sir,
21 yes.

22 MR. McCARTHY: Withdraw the objection.

23 Q. The FBI told you you can't have a contract,
24 right?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained. We are going to break for
2 lunch, ladies and gentlemen. Please leave your notes and
3 other materials behind. Please don't discuss the case, we
4 will resume at 2 o'clock.

5 (The jury was excused)

6 (Jury not present)

7 THE COURT: You may step down.

8 (Witness excused)

9 THE COURT: Mr. Jacobs, I am told that you are
10 not going to be here this afternoon.

11 MR. JACOBS: Ms. Macedonio, associate counsel,
12 will be here for the afternoon.

13 THE COURT: Is that satisfactory, Mr. Saleh?

14 DEFENDANT MOHAMMED SALEH: Yes, your Honor.

15 THE COURT: Thank you very much.

16 (Luncheon recess)

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AFTERNOON SESSION

1

2

2:00 p.m.

3

EMAD SALEM, resumed.

4

(Jury present)

5

THE COURT: Good afternoon, ladies and gentlemen.

6

JURORS: Good afternoon.

7

THE COURT: Mr. Stavis.

8

MR. STAVIS: Thank you.

9

CROSS-EXAMINATION continued

10

BY MR. STAVIS:

11

Q. Mr. Salem, before the lunch break we were talking about the negotiations after the World Trade Center that you had with the FBI, right?

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14

A. Yes, sir.

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Q. Taking you back to before that time, to July of 1992 -- that's before you went on vacation -- that's when you had that meeting with Carson Dunbar, and also you had the meeting with John Crouthamel. Was that the same meeting or different meetings?

20

A. Different, sir.

21

22

23

Q. When you testified on direct examination at page 4939 of the record, you testified that John Crouthamel asked you how much money you would want to testify, right?

24

A. Yes, sir.

25

Q. And your testimony was that you told him it's not

1 a question of money, it's a question of my family. Right?

2 A. Yes, sir.

3 Q. And you were referring to your family's safety,
4 is that correct, Mr. Salem?

5 A. Yes, sir.

6 Q. That was your primary concern, correct?

7 A. Yes.

8 Q. And then you had a separate meeting that you
9 testified about at page 4941 of the record. That's the
10 meeting with Carson Dunbar, right?

11 A. Yes, sir.

12 Q. And you previously testified that Carson Dunbar
13 told you or asked you how much money it would take for you
14 to testify, right?

15 A. I don't recall saying, sir.

16 (Continued on next page)

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1 MR. STAVIS: May I approach, your Honor, with
2 pages 4940 to 4941 of the transcript?

3 THE COURT: Yes.

4 THE COURT: While he is looking at that, may I
5 see counsel at the side.

6 (At the side bar)

7 THE COURT: At lunchtime one of the jurors
8 commented that the paralegal that was playing the tapes has
9 been making faces. When you pass by, could you tell her to
10 hold it.

11 MR. STAVIS: It has been done, your Honor.

12 MR. McCARTHY: We had a discussion about that
13 this morning.

14 MR. STAVIS: And we apologize for it.

15 THE COURT: There are some people who do it
16 uncontrollably. I don't suggest that she is doing it on
17 purpose.

18 (In open court)

19 (Continued on next page)

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25

1 BY MR. STAVIS:

2 Q. Did you testify earlier in this trial --
3 withdrawn. Has that refreshed your recollection as to your
4 prior testimony at this trial, Mr. Salem?

5 A. Yes, sir.

6 Q. Did you previously testify that you told Carson
7 Dunbar it's not an issue of money, again, it's my family?

8 A. Yes, sir.

9 Q. Your primary concern at that time in July '92 was
10 the safety of your family and not money, is that correct,
11 Mr. Salem?

12 A. Yes, sir.

13 Q. I want to take you back to after the World Trade
14 Center. During the time of your negotiations with the
15 Federal Bureau of Investigation after the World Trade
16 Center, your primary concern changed from your family's
17 safety to getting paid money, is that correct, Mr. Salem?

18 A. No, sir.

19 Q. At around that time -- Mr. McCarthy, I am at
20 source tape 8-1. At around that time, March of 1993, you
21 had a conversation with Detective Louis Napoli and the
22 subject of that conversation was money, is that correct,
23 Mr. Salem?

24 A. Yes, sir.

25 Q. And you told him on page -- Mr. McCarthy, I am

1 starting on the first page. You told him, did you not, that
2 the people promised me four or five times? Did you tell him
3 that?

4 A. I don't recall, sir.

5 Q. Do you recall Detective Napoli responding to you,
6 you never gave them a price? I can't give them that price
7 for you? Do you recall Detective Napoli saying that to you?

8 A. Yes, sir.

9 Q. And do you recall responding, well, I didn't tell
10 you give them that but they didn't ask any.

11 A. I may said that, yes, sir.

12 Q. When you spoke to Detective Napoli, you spoke
13 about the danger of you -- in that conversation that we are
14 referring to, you spoke about the danger of you getting
15 hurt. Do you recall that?

16 A. I may said that, sir.

17 Q. Do you recall telling Detective Napoli, I am
18 willing to receive any kind of hurt?

19 A. I may said that.

20 Q. Do you recall telling Detective Napoli, and
21 that's the message coming to me, you got to hurt yourself
22 little boy, OK, let us, let them to hurt me. Do you recall
23 saying that to Detective Napoli?

24 A. I am not sure that that exact words, sir.

25 Q. Do you recall saying something like that?

1 A. Something like that, yes.

2 Q. When you were referring to them in your
3 conversation with Detective Louis Napoli, you were referring
4 to his supervisors at the Federal Bureau of Investigation,
5 is that correct, Mr. Salem?

6 A. I believe, yes, sir.

7 Q. And do you recall being very angry during that
8 conversation with Detective Louis Napoli in March of 1993?

9 A. Yes, sir.

10 Q. Do you recall telling Detective Napoli that you
11 didn't want to negotiate any more? Do you recall telling
12 him that?

13 A. Yes, sir.

14 Q. Did you recall telling Detective Napoli I'm not
15 selling potatoes here, Louis?

16 A. Yes, sir.

17 Q. Do you recall Detective Napoli saying in that
18 same March '93 conversation, all right, listen, do you want
19 me to go to a million five? And you replied I'm sorry, I
20 can't hear you. Do you recall that?

21 A. Yes, sir.

22 Q. Then Detective Napoli said do you want me to go
23 to a million five? And then if there's negotiation, you can
24 bring it down to what you're happy with. Do you recall him
25 saying that?

1 A. Yes, sir.

2 Q. And do you recall answering no, there is no
3 negotiations, and there is nothing? Do you recall your
4 answering that?

5 A. Yes, sir.

6 Q. And then do you recall him saying all right, do
7 you want me to just give them a solid and tell them that
8 there is no negotiating it? Do you recall him saying that?

9 A. Yes, sir.

10 Q. And do you recall what your answer to that was?

11 A. I don't recall, sir.

12 Q. Did you answer absolutely?

13 A. I don't recall. I may said it, sir.

14 Q. You wound up negotiating --

15 MR. McCARTHY: I have an objection under Rule 106
16 if that is the end of it, your Honor.

17 MR. STAVIS: Your Honor, I would ask that the
18 entire tape be played.

19 MR. McCARTHY: No objection to the entire tape
20 coming into evidence.

21 THE COURT: You are offering, which one is it?

22 MR. STAVIS: 8-1, and I would ask -- it is in
23 those looseleaf books that were given to the jury.

24 THE COURT: OK.

25 MR. McCARTHY: I would like a brief voir dire,

1 your Honor.

2 THE COURT: Go ahead. You said no objection,
3 right?

4 MR. McCARTHY: I am withdrawing that position and
5 asking for a brief voir dire.

6 THE COURT: Do a brief voir dire.

7 VOIR-DIRE EXAMINATION

8 BY MR. McCARTHY:

9 Q. Mr. Salem, Mr. Stavis asked you or mentioned in
10 his questions a couple of times the March '93 conversation.
11 Do you know as you sit here today whether this conversation
12 took place in March of 1993?

13 A. No, sir, I don't keep track of time.

14 Q. This conversation that Mr. Stavis asked you about
15 and asked you in detail about each of these statements, that
16 is one of those tapes the defense lawyers were asking you
17 about last week that you kept in your desk, in your drawer?

18 A. Yes, sir.

19 MR. McCARTHY: I have no objection.

20 MR. STAVIS: Your Honor, if the court please, I
21 would ask that the jury button the headsets and open their
22 books to 8-1, starting on page 1.

23 THE COURT: 8-1 is received without objection.

24 (Defendant Nosair Exhibit 8-1 received in
25 evidence)

1 MR. STAVIS: I don't believe all the jurors have
2 their headphones on.

3 (Tape played)

4 BY MR. STAVIS:

5 Q. Mr. Salem, did you start negotiating the price
6 with the FBI at a million five?

7 A. No, sir.

8 Q. You gave them a price of a million and you stuck
9 to that, Mr. Salem?

10 A. Yes, sir.

11 Q. And there came a time in July of 1993 that you
12 reached a contract with the Federal Bureau of Investigation,
13 a contract, a signed written agreement, Mr. Salem, correct?

14 A. Yes, sir.

15 Q. And you read that contract before you -- the
16 written agreement, you read it before you signed it, right?

17 A. My attorney read it and I did my best to
18 understand what's in it, sir.

19 Q. You hired an attorney to read that contract, is
20 that right, Mr. Salem?

21 A. Yes, sir.

22 Q. And the attorney was paid for by the United
23 States Attorney's Office, is that correct, Mr. Salem?

24 A. No, sir.

25 Q. They didn't give him a check for his fee?

1 A. The government?

2 Q. Yes, that's right, Mr. Salem.

3 A. No, sir.

4 Q. Didn't you receive an amount of money on July 2,
5 1993, from Special Agent Steven Veyera, to be used to pay
6 the attorney who helped you read that contract, Mr. Salem?

7 A. No, sir.

8 Q. When you were working for the FBI, you had a code
9 name, is that correct?

10 A. Yes, sir.

11 Q. And your code name was Dallas, is that correct?

12 A. Yes, sir.

13 MR. STAVIS: Your Honor, I am approaching the
14 witness with 3534GG110.

15 Q. Is that your signature as Dallas at the bottom of
16 that?

17 A. Yes. I see nothing about the attorney here.

18 MR. McCARTHY: The exhibit is HH, I believe, not
19 GG.

20 MR. STAVIS: HH. I am now approaching the
21 witness with 3534HH118.

22 Q. Take a look at that, Mr. Salem.

23 (Pause)

24 THE COURT: Gentlemen, let's not have a private
25 conversation.

1 MR. STAVIS: I am refreshing --

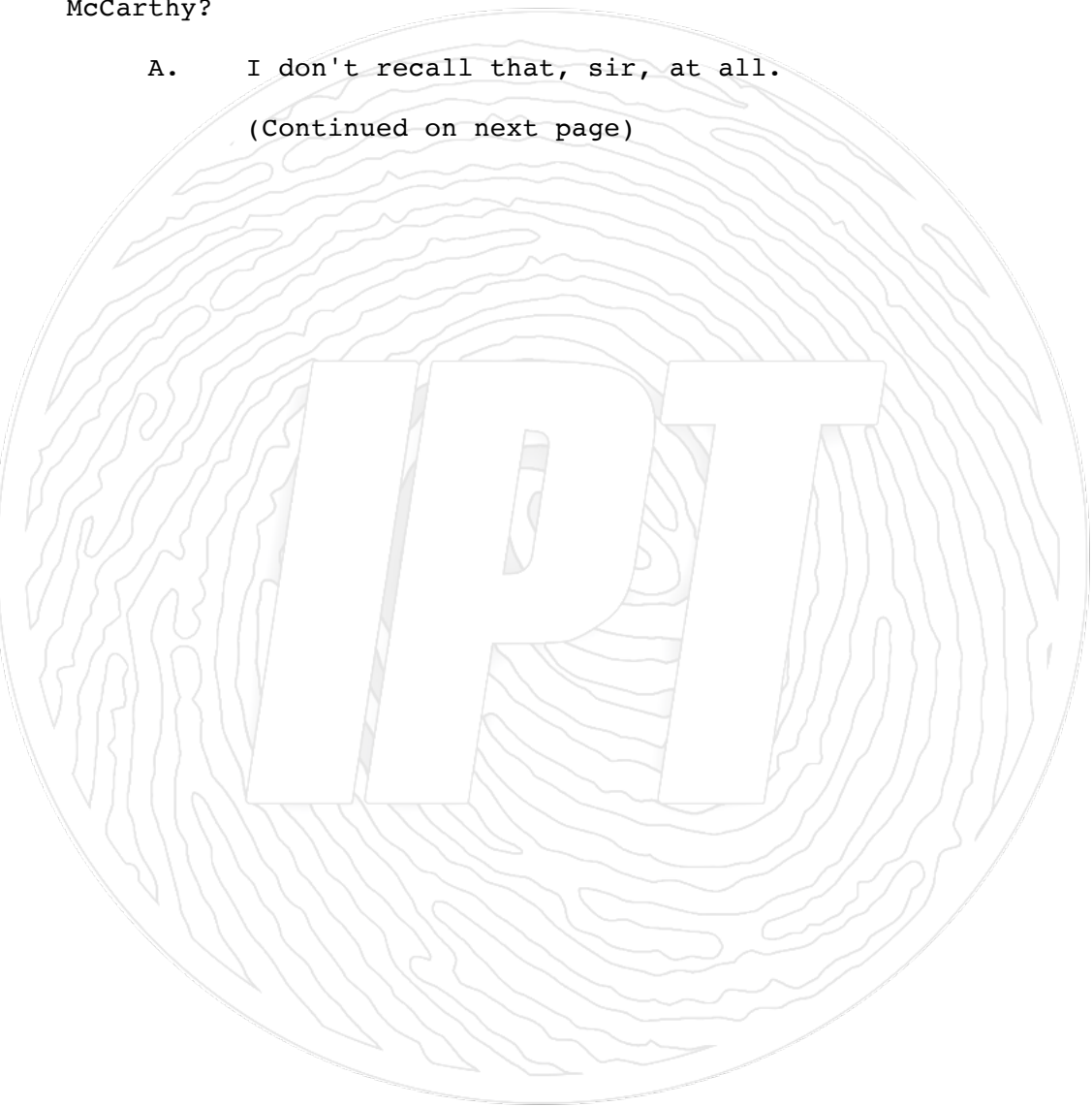
2 THE COURT: Do the refreshment --

3 Q. Did you receive a check for \$400 for payment of
4 legal expenses arranged by Assistant U.S. Attorney Andrew
5 McCarthy?

6 A. I don't recall that, sir, at all.

7 (Continued on next page)

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1 MR. STAVIS: Your Honor, at this time I would
2 offer 3534HH118 into evidence as Defense Exhibit PP.

3 THE COURT: It is going to keep the number that
4 it has, whether it is in or out.

5 MR. McCARTHY: Objection.

6 THE COURT: I will see counsel at the side.

7 (At the side bar)

8 MR. McCARTHY: I think the point of the
9 examination is to get in the information that is in writing.
10 They are not government funds, they are his funds. He was
11 in protective custody in the Witness Protection Program and
12 I did make an arrangement so that he could get his funds
13 changed into a money order that was then sent to his lawyer.
14 The point of the examination, as I understand --

15 THE COURT: -- is to show government
16 compensation. If this is not government compensation, it is
17 not coming in.

18 MR. McCARTHY: It is literally true that I
19 arranged it, but only in that sense.

20 THE COURT: It's out.

21 (Continued on next page)

22

23

24

25

1 (In open court)

2 BY MR. STAVIS:

3 Q. Under your contract with the FBI, July 1992, you
4 were to receive \$7,000 per month from the Federal Bureau of
5 Investigation, is that correct?

6 A. Correct, sir.

7 Q. That's for preparing for trial and doing all of
8 the things that you need to do for your testimony, right?

9 A. Yes, sir.

10 Q. You also said that you get \$2700 per month from
11 the Marshals Service, is that correct, from the Witness
12 Protection Program?

13 A. I'm not so sure about the number. I'm
14 receiving -- yeah. Yes. Yes, sir.

15 Q. If you need more money, you can get that, too,
16 isn't that right, Mr. Salem, under this contract?

17 A. No, sir.

18 Q. Did you have the government pay \$200 for your
19 parking tickets?

20 A. Yes, sir.

21 Q. Did you have the government pay \$2,628.82 for a
22 hospital bill that you incurred?

23 A. When is that, sir? I don't -- specific time,
24 sir?

25 Q. Did you have the government pay \$553.61 for a

1 cellular phone bill?

2 A. Yes, sir.

3 Q. When you went into the Witness Protection
4 Program, you sold certain items of your personal property to
5 the government, right?

6 A. To the government?

7 Q. Yes.

8 A. I don't know if they bought it for themselves, or
9 if they sold it.

10 Q. They bought a shotgun from you; they paid you
11 \$200 for that, right, Mr. Salem?

12 A. I don't know if they bought it themselves, sir,
13 or they sold it, but it's my shotgun. They sold it for me
14 for \$200, yes, sir.

15 Q. And they purchased your cellular phone for \$300,
16 right?

17 A. I don't recall the number, but, yes, they sold it
18 for me, sir.

19 Q. They sold your car for you, Mr. Salem?

20 A. Yes, sir, my car.

21 Q. The car sold for \$1300, is that correct?

22 A. I don't recall the exact number, sir.

23 Q. Didn't you have an arrangement with the FBI that
24 they were going to give you the book value of your car
25 regardless of what they sold your car for?

1 A. Yes, sir.

2 Q. The book value of the car was \$5,225, is that
3 correct, Mr. Salem?

4 A. I think, yes, sir.

5 Q. It was sold for \$1300, is that correct,
6 Mr. Salem?

7 A. I don't know, sir.

8 Q. You received a check for \$3,925 from the FBI for
9 your car, Mr. Salem?

10 A. Yes.

11 Q. Correct?

12 A. Yes, sir.

13 Q. Even though your car sold for \$1300?

14 A. I'm not so sure about these details, but, yes,
15 sir.

16 Q. While you are getting \$9,700 per month, you
17 needed an advance, you needed \$116,000, is that correct,
18 Mr. Salem?

19 A. Yes, sir.

20 Q. So you got an advance from the FBI for \$116,000,
21 is that correct?

22 A. Yes, sir.

23 Q. And that \$116,000 was taken from the million
24 dollars that you are supposed to get after your testimony,
25 is that correct?

1 A. Yes, sir.

2 Q. You got that before you even testified, isn't
3 that correct?

4 A. Yes, sir.

5 Q. It's just an advance, right?

6 A. Yes, sir.

7 MR. STAVIS: May I approach the witness, your
8 Honor.

9 THE COURT: Yes.

10 Q. I am showing you, Mr. Salem, what has been marked
11 as Nosair Exhibit 00 for purposes of identification, and I
12 would ask you to take a look at that.

13 A. I never saw that before, sir.

14 Q. You never saw that before?

15 A. Never, sir.

16 Q. Did you receive a check from the United States
17 government -- withdrawn.

18 Let me go back to the microphone.

19 MR. McCARTHY: I am going to object under 613(b).

20 MR. STAVIS: There is no question, your Honor.

21 MR. McCARTHY: To the line.

22 Your Honor, I will withdraw the objection.

23 THE COURT: Go ahead.

24 Q. When you got your \$116,000 advance on the \$1
25 million, you were paid by two checks, is that correct,

1 Mr. Salem?

2 A. I never received checks, sir.

3 Q. Checks were received for you by someone else?

4 A. Yes, sir. That's why I said I didn't see that
5 before.

6 Q. Do you know if this is one of your payment checks
7 for the sum representing \$116,000?

8 A. I will never know because I never saw it, sir.

9 MR. STAVIS: Your Honor, I offer Defense Exhibit
10 00 into evidence.

11 THE COURT: Based on his statement that he never
12 saw it before?

13 MR. STAVIS: I am offering it. Perhaps the
14 government will stipulate as to what it is.

15 THE COURT: The government will.

16 MR. McCARTHY: No objection.

17 THE COURT: Surprise.

18 MR. STAVIS: Thank you.

19 THE COURT: 00 is received without objection.

20 (Nosair Exhibit 00 for identification was
21 received in evidence)

22 Q. Mr. Salem, would you hold up this check. There
23 are a few questions that I want to ask you about it.

24 MR. McCARTHY: Your Honor, I wonder if the jury
25 will be able to see it well enough from there.

1 THE COURT: Do you want Mr. Salem to stand in
2 front of the jury box?

3 MR. STAVIS: Sure.

4 THE COURT: Do you want this in view during your
5 questioning?

6 MR. STAVIS: Yes, your Honor.

7 MR. McCARTHY: Perhaps I could move so I can see
8 it, too.

9 THE COURT: Right.

10 MR. McCARTHY: Thank you.

11 (The witness stepped down from the stand)

12 Q. Mr. Salem, this check is dated February 28, 1994,
13 is that correct?

14 A. Yes, sir.

15 Q. It is in the amount of \$100,000, is that correct?

16 A. Yes, sir.

17 Q. That is an even number, correct?

18 A. Yes, sir.

19 Q. Did the United States government take withholding
20 taxes and Social Security out of this check?

21 A. I have no idea, sir.

22 Q. This was money that you earned in 1994?

23 A. Yes, sir.

24 Q. Have you prepared your, or has an accountant
25 prepared your tax returns for 1994?

1 A. So far I have at least ten names. I don't know
2 which name I should file taxes under yet, sir.

3 Q. It's almost April 15, Mr. Salem.

4 A. Well, my name right now is different, sir.

5 Q. Do you know as you stand here whether or not you
6 have paid taxes on what you got in this check?

7 A. No, I did not yet, sir.

8 MR. STAVIS: OK. Thank you. Please resume your
9 seat.

10 THE WITNESS: Yes, sir.

11 (The witness resumed the stand)

12 Q. Mr. Salem, the \$9,700 that you receive every
13 month from the United States government, are there any taxes
14 or Social Security taken out of that amount?

15 A. I have no idea, sir.

16 Q. You were receiving \$9700 a month for the year of
17 1993, is that correct?

18 A. I didn't figure out how much, sir.

19 Q. You made your contract in July of 1993, correct?

20 A. Yes, sir.

21 Q. In August of 1993, you received the sum of \$9700,
22 right? \$7,000 from the FBI, \$2700 from the Marshals
23 Service?

24 A. Yes, sir.

25 Q. That's \$9700?

1 A. Yes, sir.

2 Q. You received it in August of '93, right?

3 A. I don't recall, sir.

4 Q. How about September of '93?

5 A. I don't recall dates, sir.

6 Q. After you signed your contract, isn't that the
7 amount that you get every month?

8 A. No, it was not that amount for every month. In
9 that time -- no, it was not, sir.

10 Q. The contract obligates the United States
11 government to pay you \$7,000 per month, right?

12 A. That's right, sir.

13 Q. The \$2700 is from the Witness Protection Program,
14 right?

15 A. That's correct, sir.

16 Q. Let's take the \$7,000?
17 You entered the contract in July of '93, correct?

18 A. Yes, sir.

19 Q. You received the \$7,000 in August of '93,
20 correct?

21 A. Could be, sir.

22 Q. You received \$7,000 in September of '93, correct?

23 A. Could be, sir.

24 Q. October, November, and December you were getting
25 money from the federal government, correct?

1 A. Yes, sir.

2 Q. So the following April 15, which was 1994, your
3 tax bill came due, right?

4 A. No, sir.

5 Q. You didn't pay any taxes?

6 A. No, I didn't.

7 Q. Your contract says that you're supposed to pay
8 taxes, doesn't it, Mr. Salem?

9 A. Yes, sir.

10 Q. You're not living up to your contract, Mr. Salem?

11 A. So far, I cannot pay taxes because every couple
12 of weeks, sir, I have a different name; I have a different
13 Social Security; I have a different state to live in. Until
14 I get settled -- if I will get settled, I am willing to pay
15 every single penny I owe the government, sir.

16 Q. Do you think that the government would help you
17 out with those things because it's the government that you
18 pay the taxes to, right?

19 A. I'm sorry. I don't understand the question, sir.

20 Q. The government pays you the taxes, right,
21 Mr. Salem? The government pays you the money, right,
22 Mr. Salem?

23 A. The government --

24 Q. Pays you money, right?

25 A. Yes, yes.

1 Q. And the government takes part of that money away
2 for taxes, right?

3 A. I don't --

4 Q. You pay taxes to the government, that's what
5 people pay their taxes to, right?

6 A. I'm sorry. I am confused, sir. Just step by
7 step, please.

8 Q. The United States government pays you a certain
9 amount of money every month?

10 A. Yes, sir.

11 Q. When people get money, they pay taxes on the
12 money, right?

13 A. Yes, sir.

14 Q. They pay those taxes to the government?

15 A. Yes, sir.

16 Q. The government collects taxes?

17 A. Yes, sir.

18 Q. The government is also the one that is moving you
19 around in the Witness Protection Program as you've just
20 said, right?

21 A. Yes, sir.

22 Q. And changing your name?

23 A. Yes, sir.

24 Q. What I'm asking you, Mr. Salem, is did you ask
25 the same government that's paying you, taking the taxes and

1 moving you, to work it out so that you could pay taxes on
2 the money that you're receiving?

3 A. Yes, sir.

4 Q. You did ask them.

5 What was the result of that?

6 A. By the time they start to make arrangement, then
7 there is a security breach to my existence in this area,
8 they have to move me again with my family. Then a new
9 social, new name, new area. So it's -- I believe that it's
10 not going to be settled until if I will get settled
11 eventually, sir.

12 Q. So for now -- now, being July 1993 to right now,
13 March 29, 1995 -- you haven't been paying taxes on the money
14 that you got from the government, correct?

15 A. Correct, sir.

16 Q. Now, in the past you always paid your taxes,
17 right?

18 A. Yes, sir.

19 Q. Never missed any payments, right?

20 A. No, sir.

21 Q. Never had any problems with the IRS for not
22 paying taxes, did you?

23 A. No, sir.

24 Q. During the time that you were taping on your home
25 taping system, Mr. Salem, you spoke to somebody from the

1 Internal Revenue Service, didn't you, sir?

2 A. Yes, I remember it, sir.

3 Q. You spoke to that person from the Internal
4 Revenue Service because they put a levy on your bank account
5 at the Chase Manhattan Bank, right?

6 A. Yes, sir.

7 Q. Your bank account was frozen because of the back
8 taxes that you owe, correct, Mr. Salem?

9 A. That was my ex-wife owe, not me owing, sir.

10 Q. It was your bank account --

11 A. That's correct.

12 Q. -- that was frozen Mr. Salem.

13 A. Yes, sir.

14 Q. Are you going to pay your taxes when you get your
15 million dollars, Mr. Salem?

16 A. I will do my best to pay every penny I owe, sir.

17 Q. Now, I was asking you certain questions
18 yesterday, and one of the questions that I asked on page
19 6107 of the trial record was whether or not you view
20 yourself as an opportunist, do you recall that?

21 A. Yes, sir.

22 Q. You said that you're not an opportunist, right?

23 A. Yes, sir.

24 Q. Did you look for as many ways as possible to make
25 money from this case, Mr. Salem?

1 A. I don't think so, sir.

2 Q. Did you get yourself an agent to represent you in
3 selling "My Life Story by Emad Salem"?

4 A. Yes, sir.

5 Q. You wanted that agent to make money for you,
6 right?

7 A. Yes, sir.

8 Q. You wanted that agent to go around peddling your
9 story to whoever would buy it, right, Mr. Salem?

10 A. Yes, sir.

11 Q. That agent was going to try to get you a movie
12 deal, Mr. Salem, right?

13 A. I hope so, sir.

14 Q. A book deal, Mr. Salem?

15 A. I hope so.

16 Q. A TV deal of some sort, if he could?

17 A. Could be, sir.

18 Q. Maybe you'll go on "Oprah," right, Mr. Salem?

19 A. I don't think so, sir.

20 Q. "Today Show"?

21 A. I don't think so, sir.

22 Q. Do you want to do the Channel 13 route?

23 A. Maybe, sir.

24 Q. OK. Does that agent have a preliminary proposal
25 out to publishing houses?

1 A. I'm sorry?

2 Q. Is that agent actively out there going to movie
3 studios, Mr. Salem?

4 A. I never saw him, sir.

5 Q. Did you speak to him?

6 A. Once, yes, sir.

7 Q. You signed a contract with him?

8 A. Yes, sir.

9 Q. Is he trying to do his best to get you a book or
10 a movie, Mr. Salem?

11 A. Yes, sir.

12 Q. And he's trying his best because he'll get 15
13 percent of any money that you make in the United States of
14 America, right, Mr. Salem?

15 A. Yes, sir.

16 Q. And he'll make 20 percent of any money that you
17 make outside the United States of America?

18 A. I'm not sure, 20 or 25, sir.

19 Q. If he goes and he makes a movie in Egypt, "My
20 Life Story by Emad Salem," then he's going to get that 20 or
21 25 percent, right?

22 A. Yes, sir.

23 Q. Now, when he gets you the movie or the book deal,
24 are you going to look to be telling the truth or are you
25 going to look for what sells?

1 A. I will be saying the truth, sir.

2 Q. You told Ms. Stewart yesterday at page 5721 -- I
3 think it was last week, excuse me -- on page 5721 of the
4 record that you would exaggerate when you told things to the
5 FBI, do you remember telling Ms. Stewart that?

6 A. Sometimes, yes, sir.

7 Q. Are you going to exaggerate things when you write
8 your book?

9 A. I don't think so, sir.

10 Q. Even though it would sell more books?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. Are you going to tell the truth in your book,
14 Mr. Salem?

15 A. I will be doing my best, sir.

16 Q. Are you telling the truth on the witness stand
17 here today?

18 A. Absolutely, yes, sir.

19 Q. You're telling the truth on the witness stand
20 every day that you've been here on this trial?

21 A. Absolutely, yes, sir.

22 Q. And you have to tell the truth because that's in
23 your contract, right?

24 A. No, sir, that's -- it's part of it, sir.

25 Q. Part of it, right?

1 A. Part of it.

2 Q. And at the end of the trial the prosecutors are
3 going to determine whether or not you've told the truth here
4 at this trial, is that correct, Mr. Salem, they're the ones
5 who tell, right?

6 A. I believe the jury will decide if they will
7 believe me or not, sir.

8 Q. Under your contract it's the prosecutors who are
9 responsible for giving you the money, isn't that right,
10 Mr. Salem?

11 A. I don't recall the exact contract words, sir.

12 Q. The United States government and not the jury is
13 going to give you your million bucks, right, Mr. Salem?

14 A. It's coming out of their money, sir, I believe.

15 MR. STAVIS: I have no further questions of this
16 witness, your Honor.

17 THE COURT: Go ahead.

18 Mr. Ricco, representing Mr. El-Gabrownny.

19 CROSS-EXAMINATION

20 BY MR. RICCO:

21 Q. Mr. Stavis just asked you a question and you
22 responded to the question by saying it's up to the jury to
23 decide, right?

24 A. Yes, sir.

25 Q. Now, you are familiar with how the court system

1 works, isn't that right?

2 A. Not really.

3 Q. Well, you were a witness before, weren't you?

4 A. Yes.

5 Q. You know enough about the court system to know
6 that the jury makes the decision, isn't that right?

7 A. Yes, sir.

8 Q. In fact, when you testified in the state
9 proceeding before, you gave almost the same answer, isn't
10 that right?

11 A. I am sorry. I don't understand your question,
12 sir.

13 Q. You testified in a state court case before, isn't
14 that right?

15 A. Yes, sir.

16 Q. In that case you also told the jury, "It's up to
17 the jury, I'm going -- I'm not going to get anybody
18 convicted. It's up to the jury."

19 Do you remember saying that?

20 A. Yes, sir.

21 Q. Now, when you said that to the last jury, that it
22 was up to the jury, it was up to the jury, but their
23 decision was based on your testimony that was lies in part,
24 isn't that right?

25 A. That's not right, sir.

1 Q. OK. You told that jury that you were a member of
2 Sadat's bodyguard team, isn't that right?

3 A. Yes, sir.

4 Q. That was a lie?

5 A. Yes, sir.

6 Q. The jury was left to make its decision based on
7 that lie, isn't that right?

8 A. Part of it, yes, sir.

9 Q. There was nobody around to tell that jury that
10 that was a lie, isn't that right?

11 A. That's right, sir.

12 Q. The only person capable of telling the jury that
13 was Emad Salem, isn't that right?

14 A. Yes, sir.

15 Q. And Emad Salem didn't say nothing, isn't that
16 right?

17 A. I'm sorry?

18 Q. Emad Salem didn't tell the jury he just lied to
19 them, did he?

20 A. No, I did not say that, sir.

21 Q. He sat there on the witness stand, correct?

22 A. Yes, sir.

23 Q. With his hands out in front of him, like they're
24 folded there today, correct?

25 A. Yes, sir.

1 Q. Suit and tie on, right?

2 A. Yes, sir.

3 Q. And kept his mouth shut about the lies that he
4 had told, isn't that right?

5 A. I'm sorry. Could you repeat the --

6 Q. He and kept his mouth shut --

7 A. About?

8 Q. -- about revealing the lies that he had told that
9 jury, isn't that correct?

10 A. Yes, sir.

11 Q. In that case it was your word against a defendant
12 in a courtroom, isn't that right?

13 A. It wasn't only my word, sir.

14 Q. OK. It was your word and your tape machine
15 against a person that was in the courtroom, isn't that
16 right?

17 MR. McCARTHY: Objection.

18 THE COURT: May I see counsel at the side
19 briefly.

20 MR. RICCO: Judge, I will withdraw the question.

21 I will move on to something else.

22 THE COURT: You will move on to something else?

23 MR. RICCO: Sure.

24 THE COURT: All right.

25 Q. That case involved what you claim was an assault

1 that happened in a car accident, right?

2 A. Yes, sir.

3 Q. There was a person driving a car who hit your
4 car, right?

5 A. Yes, sir.

6 Q. You were the complainant, right?

7 A. I'm sorry, sir?

8 Q. You were the person who brought the complaint?

9 A. I'm sorry, sir. I am not getting what you're
10 saying.

11 Q. OK. You were the person who claimed they were
12 injured, right?

13 A. No, the cops saw the guy and they chased him and
14 they arrested him, sir.

15 Q. But you are the person who claimed that they were
16 injured in the assault, right?

17 A. That's right, sir.

18 Q. And you brought charges against that person,
19 right?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q. There was a trial, wasn't there?

23 A. Yes, sir.

24 Q. You weren't the defendant, were you?

25 A. No, sir.

1 Q. The other guy was a defendant, right?

2 A. Yes, sir.

3 Q. And in that case you took the stand, right?

4 A. Yes, sir.

5 Q. Put your hand up in the air, right?

6 A. Yes, sir.

7 Q. Swore to tell the truth?

8 A. Yes, sir.

9 Q. And lied through your teeth, isn't that right?

10 A. That's right, sir.

11 Q. Now, there was a jury in that case, right?

12 A. Yes, sir.

13 Q. Sitting in the jury box, right?

14 A. Yes, sir.

15 Q. And that jury was listening to your testimony,
16 right?

17 A. Yes, sir.

18 Q. Paying attention to every word that you were
19 saying, right?

20 A. Yes, sir.

21 Q. That jury was relying upon you to give them
22 truthful, honest testimony, isn't that right?

23 A. I wasn't the only witness, sir.

24 Q. I'm asking about that jury relying on you.
25 They were relying on you to give them truthful,

1 honest testimony, right?

2 A. Yes, sir.

3 Q. And you let them down?

4 A. Yes, sir.

5 Q. You were asked a question about your life in
6 Egypt, right?

7 A. Yes, sir.

8 Q. You went on to tell the jury --

9 MR. RICCO: One second, your Honor.

10 Q. You told that jury that you had training in
11 planting explosives, isn't that right?

12 A. Yes, sir.

13 Q. You told this jury you have no such experience,
14 right?

15 A. Yes, sir.

16 Q. You told that jury that you had training in how
17 to blow up boats, isn't that right?

18 A. Yes, sir.

19 Q. You told this jury you had no such experience,
20 right?

21 A. Yes, sir.

22 Q. You told that jury that you were a part of the
23 president's body team in Egypt, isn't that right?

24 A. Yes, sir.

25 Q. You told that jury that you were a dedicated

1 Egyptian protecting the life of his president, isn't that
2 right?

3 A. Yes, sir.

4 Q. You told the jury that when someone attempted to
5 take his life, you stepped up and were injured yourself,
6 isn't that right?

7 A. Yes, sir.

8 Q. That was a lie, wasn't it?

9 A. It was a lie, sir.

10 Q. You were trying to impress that jury, weren't
11 you?

12 A. Yes, sir.

13 Q. You were trying to make that jury feel that when
14 Emad Salem said something, they could bank on it, isn't that
15 right?

16 A. I'm sorry, sir?

17 Q. You were trying to make that jury feel that when
18 you said something, a man who was one willing to lose his
19 life for another, that they could rely on it, isn't that
20 right?

21 A. That's right, sir.

22 Q. And you looked them in the face and you told them
23 a lie, isn't that true?

24 A. That is true, sir.

25 Q. You also told them when they asked you what type

1 of special training did you have and you answered them, "I
2 can't answer that question."

3 Do you recall saying that to that jury?

4 A. Yes, sir.

5 Q. You told the jury you couldn't answer that
6 question because it involved special things belonging to the
7 Secret Service agency in my country, and I shouldn't be
8 talking about it.

9 Do you recall saying that to a jury?

10 A. Yes, sir.

11 Q. Now, Ms. Stewart over there asked you some
12 questions just two days ago, right?

13 A. Yes, sir.

14 Q. And she asked you about two questions and you
15 responded -- withdrawn.

16 Now, when you told that jury that you couldn't
17 speak about it, right, that it was involved with something
18 sensitive to your country, right, you were lying, right?

19 A. Well, I do have sensitive things and I know what
20 I shouldn't talk about. But it was, part of it, lies, yes,
21 sir.

22 Q. It was part of --

23 A. It was, part of it, lie, yes, sir.

24 Q. Now, when Ms. Stewart asked you some questions
25 two days ago, you told this jury, "I can't reveal that

1 information," do you recall that?

2 A. Yes, sir.

3 Q. Now, when you spoke then in the state court case
4 and you talked about all the injuries you had, right, how
5 bad your back was, you remember that, right?

6 A. Yes, sir.

7 Q. You even went as far as to tell the jury in that
8 case that you were suffering from amnesia, right?

9 A. Yes, sir.

10 Q. Your motivation then was money, wasn't it?

11 A. Part of it, yes.

12 Q. So you were willing to walk into a criminal
13 court, right?

14 A. I'm sorry?

15 Q. You were willing to walk into a criminal court
16 and put your hand on a Bible, right?

17 A. Yes, sir.

18 Q. And perjure yourself for money, in part, right?

19 A. Yes, sir.

20 Q. That is something that you don't mind coming in
21 here admitting to, do you?

22 A. I'm sorry, sir?

23 Q. It's something that you don't mind coming here
24 admitting to, do you?

25 A. I am admitting it, sir, yes.

1 Q. Now, you told this jury that you had something
2 that you couldn't reveal, you do remember saying that,
3 right?

4 A. Yes, sir.

5 Q. Now, when you train -- withdrawn.

6 You were involved in a covert operation, right?

7 A. I'm sorry, sir?

8 Q. A covert operation.

9 Are you familiar with that word?

10 A. I'm sorry, sir.

11 Q. OK. When you were working for the FBI in
12 connection with this case, the people that were sitting at
13 this table, they didn't know what you were doing, did they?

14 A. No, sir.

15 Q. It was covert; it was hidden. Your true identity
16 was hidden, right?

17 A. Yes, sir.

18 Q. And you told everybody in here something that was
19 either false or a lie to hide your identity, right?

20 A. Everybody in this courtroom?

21 Q. These defendants in this courtroom.

22 A. Oh, yes, sir. Yes.

23 Q. When you told them that, I guess you were trying
24 to get to see if they were going to commit a crime with you,
25 isn't that right?

1 A. If they will commit a crime with me?

2 Q. With you, right.

3 A. If they would reveal what they are doing, sir.

4 Q. That was your goal, right?

5 A. Yes, sir.

6 Q. That was your purpose, to hide and to sneak,

7 right?

8 A. Yes, sir.

9 Q. Now, when you went to the FBI --

10 A. I'm sorry?

11 Q. When you went to the FBI --

12 A. Yes.

13 Q. -- and you sat down with the FBI, and you started
14 telling the FBI all them lies about your past and your
15 background, the purpose of telling those lies was to trick
16 the FBI into hiring you, right?

17 A. No, sir.

18 Q. What was the purpose of telling those lies to the
19 FBI?

20 A. I was trying to impress them, sir.

21 (Continued on next page)

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1 Q. So that they would hire you and use you, right?

2 A. No, sir.

3 Q. You was telling them those lies for what? To
4 impress them to do what?

5 A. Well, if you -- if we -- if you understand, sir,
6 the Middle Eastern look at the Americans as something very
7 high. FBI to us like James Bond. I tried to impress these
8 FBI people by saying that I'm an intelligence officer, I am
9 so, I am so, I am so. That's it, sir.

10 Q. Were you playing a role with the FBI?

11 A. I am sorry, I don't understand the question, sir.

12 Q. Do you know what a role is?

13 A. Yes, I know that.

14 Q. Were you playing a role when you were talking to
15 the FBI?

16 A. No, sir.

17 Q. When you talked to the defendants in this case,
18 you were trying to trick them, right? That's your
19 testimony?

20 A. Trick them?

21 Q. Yes.

22 A. I was trying to let them talk to me about what
23 they are doing.

24 Q. You were trying to gain their confidence, right?

25 A. That's right, sir.

1 Q. And when you spoke to the FBI, you were trying to
2 gain their confidence but for different reasons, isn't that
3 right?

4 A. No, sir.

5 Q. OK. You didn't want them to think that you had
6 all that military background, Secret Service and all the
7 rest of that, right?

8 A. I tried to impress them with that, yes, sir.

9 Q. You tried to impress them with that, right?

10 A. Yes, sir.

11 Q. So that they were relying on you, sir.

12 A. It wasn't that reason, sir.

13 Q. It wasn't that easy, was it?

14 A. It wasn't that reason, sir.

15 Q. It wasn't that reason, OK.

16 When you told the state court jury those lies, a
17 person's liberty was at stake, isn't that right?

18 A. Yes, sir.

19 Q. Do you have any remorse in your mind --

20 A. I am sorry.

21 Q. Do you have any remorse in your mind that your
22 perjured testimony resulted in the conviction of a man in a
23 court in this state?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. Do you have any remorse, Mr. Salem, about what
2 your testimony was in the state court proceedings?

3 A. Sir, I lied about myself. I am not proud that I
4 did it. I am sorry that I did it, I am admitting that I did
5 it. I wouldn't do it any more.

6 Q. Can you take back what you did to the person in
7 that courtroom?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. If the purpose of hiding your true self from the
11 defendants was to gain their confidence, what was your
12 purpose of lying to a jury under oath?

13 A. Again, sir, I said that I did it, I am not proud
14 that I did it, I am sorry that I did it, sir.

15 Q. What was the purpose, Mr. Salem, of doing it?

16 A. The purpose, sir, was the same reason, that it's
17 a lie I started since I came to the United States and it's
18 became like a snowball. Every time it's just getting bigger
19 and bigger, and I maintained it a certain time, sir.

20 Q. Haven't you also told your own children?

21 A. About what, sir?

22 Q. About this background that you made up here?

23 A. My children saw me always in the uniform, sir.

24 Q. Haven't you told your own children that you were
25 part of the Anwar Sadat team?

1 A. No, it didn't come chance to talk about these
2 things with the kids.

3 Q. You didn't tell that to the FBI, did you?

4 A. To the FBI?

5 Q. Yes.

6 A. Yes, sir, I told the FBI.

7 Q. You told the FBI that you had discussed your
8 military past and your training and your experience with
9 your children. Didn't you tell the FBI that?

10 A. I don't recall, sir.

11 Q. You don't recall?

12 A. No, I don't, sir.

13 Q. Can you tell us who Jenna is?

14 A. Mr. Ibrahim El-Gabrownny's daughter.

15 Q. To you, to her, you were Uncle Emad, isn't that
16 right?

17 A. I am sorry, sir.

18 Q. She calls you Amo, Uncle Emad, doesn't she?

19 A. Yes, could be, sir.

20 Q. Could be or does?

21 A. I don't recall she can speak at all.

22 Q. Haven't you had qualification conversations with
23 her over the telephone?

24 A. Yes, sir.

25 Q. Was she speaking to you on the telephone?

1 A. Yes, sir.

2 THE COURT: Would you come to a convenient break
3 point in the next five minutes.

4 MR. RICCO: Just a couple questions.

5 Q. Now that you recall that she talked to you over
6 the telephone, she called you ammo, Uncle Emad?

7 A. Yes, sir.

8 Q. When we going to get together, have cookies, do
9 you remember that?

10 A. I believe that's Mr. Ibrahim El-Gabrownny's words,
11 sir.

12 (Continued on next page)

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1 Q. You believe that is Mr. Ibrahim El-Gabrownny's
2 words.

3 MR. RICCO: Your Honor, this would be a
4 convenient place to take a break.

5 THE COURT: Ladies and gentlemen, we are going to
6 take a short break. Please leave your notes and other
7 materials behind and discuss discuss the case. We will
8 resume in a few minutes.

9 (Jury excused)

10 (Witness excused)

11 MR. RICCO: Your Honor, can we have Mr. Salem
12 listen to two very short tapes during the break? They are
13 very short, less than a minute.

14 THE COURT: Is this about cookies?

15 MR. RICCO: Of course not, Judge. Of course not.

16 THE COURT: Good. Fine. Speak to the
17 government.

18 MR. RICCO: It's about another subject down the
19 line.

20 (Continued on next page)

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1 (Pages 6292 through 6294 sealed)

2 (Recess)

3 (Jury not present)

4 THE COURT: May I see Mr. Ricco and Mr. McCarthy
5 at the side.

6 (At the side bar)

7 THE COURT: I don't want to have to stop anything
8 once we get started, but I told Mr. Stavis about looking at
9 the jury --

10 MR. RICCO: I know you did, your Honor. I am
11 being very conscious. If you tap, I will stop. I don't
12 want the court to think that I am doing it intentionally but
13 I have to concentrate on not doing it. I am willing not to
14 do it.

15 THE COURT: What do you want the secret sign to
16 be?

17 MR. RICCO: A tap will do.

18 THE COURT: If I start clicking on and off, you
19 will know.

20 MR. RICCO: Fine.

21 (Continued on next page)

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1 (In open court)

2 THE DEPUTY CLERK: How long is the second tape?

3 MR. RICCO: We don't have to do that. Your
4 Honor, if we could have done it for the break, fine, but I
5 don't want to keep the jury waiting. I wanted him to listen
6 to it because there were questions that I had planned to get
7 to after he reviewed it. If he did not get a chance to
8 review it, we can pick it up tomorrow, that part.

9 EMAD SALEM, resumed.

10 (Continued on next page)

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1 (Jury present)

2 THE COURT: Go ahead.

3 MR. RICCO: Your Honor, if I could indulge the
4 court with two more questions going back to the state court
5 proceeding, and then I will be through with that topic
6 forever.

7 CROSS-EXAMINATION (Continued)

8 BY MR. RICCO:

9 Q. Earlier in this case, Mr. Salem, you were asked
10 questions about whether or not when you came to this country
11 you were moving here or if you were coming here on a
12 vacation, do you remember those questions?

13 A. Yes, sir.

14 Q. I think you told the jury that you were just
15 coming over here for a vacation and you happened to meet
16 Barbara Rogers at the airport and that changed your plans,
17 correct?

18 A. That's not what I said, sir.

19 Q. OK. When you came to this country, did you come
20 here to move here and reside here, yes or no?

21 A. No, sir.

22 Q. When you testified in the state court
23 proceedings, did you tell the jury in those proceedings, "I
24 got injured on the assassination of my president, I decided
25 to reside and to move to the States."

1 Did you tell that jury that?

2 A. I may said that, yes, sir.

3 Q. When you told that jury that, that was a lie?

4 A. Yes, sir.

5 Q. What was the purpose of it?

6 A. It was just the rest of the -- the lie, I lied
7 that after my injury for President Sadat, I moved to the
8 States.

9 Q. You also told the jury that you worked as a
10 marketing manager for one of the jewelry companies.

11 Is that jewelry company your second wife's
12 business?

13 A. Yes, sir.

14 Q. Is that the marketing manager position that you
15 held?

16 A. Well, I called it marketing manager to boost my
17 image, as I did before, sir.

18 Q. When we broke, I was asking you questions about
19 Jenna.

20 A. Yes, sir.

21 Q. And Jenna is a little girl, isn't she?

22 A. Yes, sir.

23 Q. And you have been to Mr. El-Gabrownny's house,
24 haven't you?

25 A. Yes.

1 Q. And he has children all over the place, isn't
2 that right?

3 A. Yes, sir.

4 Q. About five of them, isn't that correct?

5 A. I believe, yes, sir.

6 Q. And they are all little babies, right?

7 A. Yes, sir.

8 Q. They loved you, didn't they?

9 A. I guess, yes, sir.

10 Q. And they would climb on you and sit in your lap?

11 A. Yes, sir.

12 Q. Call you "uncle"?

13 A. Yes, sir.

14 Q. And you looked down at them and you looked into
15 their faces, and they would look up at you and they would
16 look into big old Emad's face, isn't that right?

17 A. That's right.

18 Q. They would smile from ear to ear?

19 A. Pardon me.

20 Q. And they would smile from ear to ear, right?

21 A. Yes, sir.

22 Q. Because daddy had invited you into the house,
23 right?

24 A. Yes, sir.

25 Q. Made the children feel safe in your presence,

1 right?

2 A. Yes, sir.

3 Q. And they reciprocated that with their love and
4 their affection, isn't that right?

5 A. I'm sorry --

6 Q. I will rephrase the question.

7 A. OK.

8 Q. The children loved you?

9 A. Yes, sir, I think so.

10 Q. Mr. El-Gabrowny invited you into his house, you
11 ate food at his table?

12 A. Yes, sir.

13 Q. You had his famous fish?

14 A. Yes, sir.

15 Q. And it was good, wasn't it?

16 A. Yes, sir.

17 Q. You talked about it all the time, isn't that
18 right?

19 A. Yes, sir.

20 Q. In fact, Mr. El-Gabrowny is quite a handy cook,
21 isn't he?

22 A. Yes, sir.

23 Q. And he helps out, does work in the house, right?

24 A. Yes, sir.

25 Q. Unlike a lot of other Muslim men that we know,

1 right?

2 A. I'm sorry, sir. Repeat --

3 Q. Unlike a lot of other Muslim men, isn't that
4 right?

5 A. I'm sorry.

6 Q. I will rephrase the question for you.

7 A. I'm sorry. "Unlike" means --

8 Q. I will rephrase the question for you, sir.

9 A. Thank you, sir.

10 Q. A lot of Muslim men feel that that's woman's
11 work, is that right?

12 A. No, sir.

13 Q. Is that not right?

14 A. No.

15 Q. Most Muslim men that you know clean up the house?
16 Yes?

17 A. I brought up in a house my dad clean up, and I
18 clean up and I cook in my house, sir.

19 Q. I am not talking about you right now.

20 A. Yes, sir.

21 Q. I am not talking about you right now, sir.

22 MR. McCARTHY: Objection to relevance, if he is
23 not talking about --

24 THE COURT: Sustained.

25 Q. You have been to Mr. El-Gabrowny's house, right?

1 A. Yes, sir.

2 Q. You sat at his table?

3 A. Yes, sir.

4 Q. Ate food off his table?

5 A. Yes, sir.

6 Q. Been around his children and his wife --

7 THE COURT: That's been asked and answered.

8 Move on.

9 MR. RICCO: I am moving on, Judge.

10 Q. Sat around with his wife and his children, right?

11 A. No, sir, his wife always in the back room. I was
12 with the children, yes, sir.

13 Q. But you developed a relationship with his wife,
14 isn't that correct?

15 A. Developed a relation -- I don't know what you
16 mean with that, sir.

17 Q. OK. There came a time, months, maybe years after
18 you first met Mr. El-Gabrownny that you went to help his
19 wife, isn't that correct?

20 A. That's correct, sir.

21 Q. And she allowed you to help her, isn't that
22 correct?

23 A. Yes, sir.

24 Q. Because she trusted you, isn't that correct?

25 A. Yes, sir.

1 Q. And she relied on you, isn't that correct?

2 A. Yes, sir.

3 Q. And you had developed a relationship with
4 Mr. El-Gabrownny of trust and reliability, isn't that right?

5 A. Yes, sir.

6 Q. That's a part of your role, isn't that right?

7 A. Yes, sir.

8 Q. To develop confidence?

9 A. Yes, sir.

10 Q. Now, are you familiar with the Arabic term
11 "Nassab," N-A-S-S-A-B?

12 A. Yes, sir.

13 Q. That means con man, doesn't it?

14 A. Yes, sir.

15 Q. And a con man is a confidence man, isn't that
16 right?

17 A. Yes, sir.

18 Q. He gains the confidence of the people that he
19 meets, right?

20 A. Yes, sir.

21 Q. In any circumstance that he's in, right?

22 A. Yes, sir.

23 Q. He uses his skill to his advantage, isn't that
24 right?

25 A. Yes, sir.

1 Q. You used your skills to your advantage in this
2 case, isn't that correct?

3 A. Yes, sir.

4 Q. You told the agents in this case that you had the
5 inside track on the Muslim community, right?

6 A. Yes, sir.

7 Q. That you knew how these people thought and lived,
8 right?

9 A. Yes, sir.

10 Q. "These people," those are your words, isn't that
11 right?

12 A. Yes, sir.

13 Q. Now, what you do as a confidence man and what you
14 did in this case is that you went to the courthouse and you
15 met and looked around and you met Muslims, isn't that
16 correct?

17 A. Yes, sir.

18 Q. Now, you said that before you went to that
19 courthouse, you had never heard of El Sayyid Nosair, do you
20 remember saying that on your direct testimony?

21 A. Yes, sir.

22 Q. Now, you are an educated man, aren't you?

23 A. I'm doing my best, sir.

24 Q. Proud of your Egyptian heritage?

25 A. Yes, sir.

1 Q. Strong loyalties to Egypt, even though you're an
2 American citizen today, isn't that right?

3 A. Yes, sir.

4 Q. The Egyptian community in the United States is a
5 closed community, isn't it?

6 A. Yes, sir.

7 Q. That's what you told the FBI agents, didn't you?

8 A. Yes, sir.

9 Q. Like a lot of immigrant communities, they stay
10 together, isn't that right?

11 A. Yes, sir.

12 Q. They have their newspapers, right?

13 A. Yes, sir.

14 Q. And they talk amongst each other, not only about
15 the politics in this country, but about what's going on back
16 home in the old country, isn't that right?

17 A. That's right, sir.

18 Q. You as an Egyptian are proud of this heritage and
19 do the same thing yourself, isn't that right?

20 A. Yes, sir.

21 Q. You claim that you were in the Egyptian Army,
22 right?

23 A. Yes, sir.

24 Q. Being a member of the Egyptian Army, certainly
25 you heard of Rabbi Kahane, isn't that correct?

1 A. No, sir.

2 Q. You had never heard of Rabbi Kahane?

3 A. Only for the purpose of Mr. Sayyid Nosair's
4 trial, sir.

5 Q. Didn't you tell the FBI in this case that you
6 knew all about the Middle East and how the Muslims reacted
7 and thought in the Middle East?

8 Didn't you tell the FBI that?

9 A. I may have said that, yes, sir.

10 Q. Did you know or didn't you know?

11 A. I do know, sir.

12 Q. When you came to this country, about how old were
13 you?

14 A. 37 years old, sir.

15 Q. And you had spent 18 years, so you say, in the
16 military, right?

17 A. Yes, sir.

18 Q. Defending Egypt, right?

19 A. Yes, sir.

20 Q. You never heard of Rabbi Kahane?

21 A. No, sir.

22 Q. When you came over to this country, one day a
23 newspaper came out, and on the front page of the newspaper
24 it said, "The Man Who Shot Kahane," and it had a picture of
25 El Sayyid Nosair, you never saw that?

1 A. No, sir.

2 Q. Wasn't aware of it?

3 A. Absolutely not, sir.

4 Q. You are a member of the Egyptian community, isn't
5 that right?

6 A. In the United States?

7 Q. In the United States.

8 A. No, sir.

9 Q. You are not?

10 A. No, sir.

11 Q. Which community are you a member of?

12 A. In that time I am living in Manhattan, sir. Most
13 of the Egyptian community either in New Jersey or Brooklyn
14 or Queens. In Manhattan in the area I lived, I hardly know
15 any Egyptian Muslim or Egyptian person who is living in this
16 area, sir. I wasn't involved in the Egyptian community,
17 sir.

18 Q. In 1990 did you socialize with any Egyptians?

19 A. I don't recall dates, but until the day I start
20 to go to the trial of Mr. Sayyid Nosair, I did not socialize
21 with Egyptians, sir, except the people who used to work in
22 my hotel, sir.

23 Q. And half of those people you turned over to the
24 FBI --

25 A. No, sir.

1 Q. I am sorry. Half of those people -- withdrawn?

2 I'll come back to that.

3 A. OK, sir.

4 Q. Mr. Salem --

5 A. Yes, sir.

6 Q. -- when you came to this country, it was your
7 intention to marry an American white woman, isn't that
8 correct?

9 A. No, sir.

10 Q. You didn't tell your sister that?

11 THE COURT: May I see counsel at the side.

12 (Continued on next page)

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1 (At the side bar)

2 MR. RICCO: I'm sorry, Judge.

3 THE COURT: I saw in one of the tapes, or I saw a
4 transcript either yesterday or the day before, but there
5 were a number of comments about race. That is off limits
6 for reasons that we can discuss later.

7 MR. RICCO: Judge, a part of --

8 THE COURT: You are barred.

9 MR. RICCO: Part of what Emad Salem did in this
10 case was report on the black Muslim community. Several of
11 the unindicted co-conspirators in this case are members of
12 the black Muslim community.

13 THE COURT: Black Muslim community is one thing;
14 race is something else, and you know what I am talking about
15 I think.

16 MR. RICCO: Judge, I know very much.

17 THE COURT: OK.

18 MR. RICCO: The purpose of these questions is
19 that what Mr. Salem is portraying himself as is a person who
20 was not a part of the Egyptian community. I wouldn't ask
21 these questions but for the fact in 44-1, which was a tape
22 recording that he sent to his sister --

23 THE COURT: What I am telling you is I don't want
24 any of the comments about race inquired into.

25 MR. RICCO: How do I question him about his

1 motivations and his biases?

2 THE COURT: Don't question him about that bias
3 because that has nothing to do with truth telling.

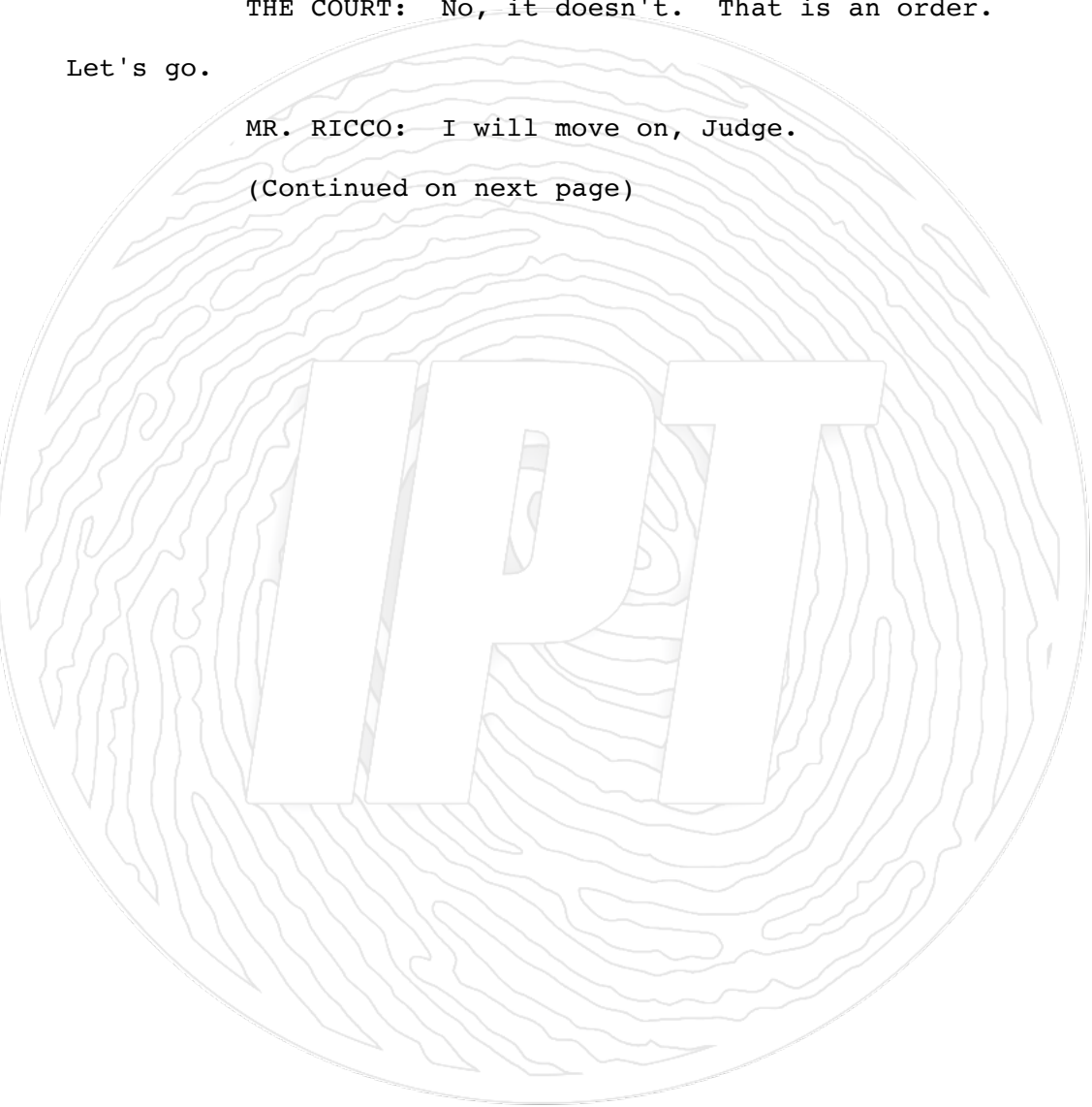
4 MR. RICCO: It does, Judge, what he --

5 THE COURT: No, it doesn't. That is an order.
6 Let's go.

7 MR. RICCO: I will move on, Judge.

8 (Continued on next page)

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1 (In open court)

2 BY MR. RICCO:

3 Q. All of your actions since you have been in this
4 country have been well thought out by you, isn't that
5 correct?

6 A. I'm sorry, sir?

7 Q. Most of your actions have been well thought out
8 by you, isn't that correct?

9 A. I'm sorry. What does that mean, sir?

10 Q. Your actions?

11 A. No, "well thought"?

12 Q. Well thought out, you know, to think.

13 Have you thought about marriage, jobs, career and
14 opportunity since you have been in this country?

15 A. Yes, sir.

16 Q. When you came here, you had some ideas as to what
17 you wanted to do and what you didn't want to do, isn't that
18 right?

19 A. Yes, sir.

20 Q. You've fulfilled most of those, haven't you?

21 A. All of my plans changed, sir.

22 Q. When you came here you got married, right?

23 A. Yes, sir.

24 Q. You got a job?

25 A. Yes, sir.

1 Q. You had a job you didn't like, right?

2 A. Yes, sir.

3 Q. You were working in a deli?

4 A. That was one day, yes, sir.

5 Q. They made you do something. They made you stay
6 up all night in the back of the store, right?

7 A. No, sir.

8 Q. Trying to keep people from breaking in?

9 A. No, sir.

10 Q. You don't remember that?

11 A. That never happened, sir.

12 Q. It never happened?

13 Did you ever tell your sister about what
14 happened?

15 A. I did not stay in the deli to prevent people from
16 breaking in. I worked as a security guard, yes, sir, but
17 not in a deli, sir.

18 Q. You never told your sister that?

19 A. That I worked in a deli?

20 Q. You never told your --

21 A. No, sir.

22 Q. -- sister that? You didn't work in a store
23 trying to keep certain people from breaking in there?

24 A. Yes, that's what I said. I worked as a security
25 guard, sir.

1 Q. You didn't want that job, did you?

2 A. Pardon me?

3 Q. You didn't want that job, did you?

4 A. I'm sorry, sir?

5 Q. I'm sorry.

6 You did not want that job, did you?

7 A. I wasn't that -- it wasn't my -- the end of my

8 ambitions, sir.

9 Q. There came a time that you met a woman named

10 Nancy Floyd, isn't that correct?

11 A. Yes, sir.

12 Q. She was also an FBI agent, right?

13 A. Yes, sir.

14 Q. You became friends with her, correct?

15 A. To a certain extent.

16 Q. You also worked with her, right?

17 A. Yes, sir.

18 Q. When you met her, she asked you to do a few

19 favors for her, right?

20 A. Yes, sir.

21 Q. You were happy to do them?

22 A. Yes, sir.

23 Q. You did them?

24 A. Yes, sir.

25 Q. No charge?

1 A. No, sir.

2 Q. She introduced you to someone who worked at the
3 INS, isn't that correct?

4 A. Yes, sir.

5 Q. A man named Mr. Hutchinson, right?

6 A. Pardon me?

7 Q. Hutchinson?

8 A. No, sir.

9 Q. What was his name?

10 A. Mr. Perry Kao, sir.

11 Q. No Hutchinson?

12 A. That was another case later on, sir.

13 Q. She introduced you to the people at the INS for
14 the purpose of assisting them in identifying people who were
15 here in this country working and living, but without proper
16 papers and documentation, correct?

17 A. Yes, sir.

18 Q. You assisted in helping them round some of them
19 people up, right?

20 A. Yes, sir.

21 Q. And sending them back to wherever it is they came
22 from, right?

23 A. I don't know what they did with them, sir.

24 Q. You don't care what they did with them, do you?

25 A. It's not I don't care. I don't know what they

1 did with them, sir.

2 Q. You provided this service free of charge?

3 A. Yes, sir.

4 Q. As a favor or for opportunity?

5 A. I believe that's my obligation to the country,
6 sir.

7 Q. Were you a citizen then?

8 A. I was permanent resident, sir.

9 Q. Pardon?

10 A. I was permanent resident, sir.

11 Q. You felt it was your civic duty to help round up
12 people and send them back where they came from, right?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 MR. RICCO: I will change the way I phrase it,
16 your Honor.

17 Q. You felt it was a part of your civic duty to
18 assist the INS in documenting and catching illegal
19 immigrants?

20 A. I felt that my duty when any law enforcement or
21 government agency ask my help, I am obligated to help them
22 as much as well as I did with the Egyptian military
23 intelligence, sir.

24 Q. When Mr. Stavis ended his cross-examination, he
25 was asking you about a tape that you listened to, and you

1 listened to the tape along with the rest of us in the
2 courtroom, right?

3 A. Yes, sir.

4 Q. There was a portion in that tape where you said:
5 "You don't understand my damn brain, my damn stupid brain.
6 You don't understand my stupid, idiot mind."

7 Do you recall saying that?

8 A. Yes, sir.

9 Q. You told Agent Napoli: "You want to play tough?"
10 That's what you said to him, right?

11 A. I said if they want to play tough, referring to
12 his bosses, sir.

13 Q. Then you were prepared to play tough, right?

14 A. Yes, sir.

15 Q. And you told him, "There's going to be
16 surprises," isn't that right?

17 A. Yes, sir.

18 Q. "You want to surprise somebody? We'll have
19 surprises." That is what you told him, right?

20 A. Yes, sir.

21 Q. And the surprise that you had for them was that
22 you had secretly taped them in compromising conversations
23 with you, isn't that correct?

24 A. Yes, sir.

25 Q. Talking about how the Bureau, how the FBI works,

1 isn't that right?

2 A. Talking about the case, sir.

3 Q. You had got them in conversations where Nancy
4 Floyd told you what to tell the Anticev and Anticev was
5 telling you what to tell to Napoli, isn't that right?

6 A. Yes, sir.

7 Q. Compromising each other, isn't that correct?

8 A. I'm not so sure of that compromising or not, sir.

9 Q. You were going to surprise them with those tapes,
10 though, weren't you?

11 A. If I felt that the FBI will try to say: "He
12 never give us information about this bombing. He is a bad
13 guy," and come to arrest me with them, yeah, I will surprise
14 them with these tapes, sir, that I was giving information.

15 Q. You were going to turn those tapes over and
16 expose the FBI, right?

17 A. In this situation, yes.

18 Q. Yes.

19 Didn't you tell Agent Anticev: "If that's what
20 you guys think, fine. But I don't think, because we already
21 started building the bomb which is went off in the World
22 Trade Center" -- you told Agent Anticev, didn't you -- "it
23 was built by the supervisor, supervision from the Bureau."

24 You told Anticev that, didn't you?

25 A. Yes.

1 Q. You told him and the DA, right?

2 A. I believe something to that effect.

3 Q. You told him, "And we was all informed about it,"
4 right?

5 A. Yes, sir.

6 Q. You told him, "And we know that the bomb start to
7 be built," and then, "By who?"

8 Do you remember that?

9 A. Yes, sir.

10 Q. And you said, "By your own confidential
11 informant. What a wonderful, great case."

12 Do you remember saying that?

13 A. Yes, sir.

14 (Continued on next page)

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1 Q. You said and then he put his head in the sand and
2 said no, no, no, that's not true. Do you remember saying
3 that?

4 A. Yes, sir.

5 Q. You said he's a son of a bitch. Do you remember
6 saying that?

7 A. Yes, sir.

8 Q. Who was the son of a bitch?

9 A. I believe I was referring to one of the
10 supervisors. I am not so sure.

11 Q. And then you said, it's built with a different
12 way in another place, and that's it.

13 A. Yes.

14 Q. Right?

15 A. Yes, sir.

16 Q. And Anticev told you don't make any rash
17 decisions, you know, I'm just trying to be as honest with
18 you as I can. Right? Do you remember that?

19 A. I am not sure if that was the immediate answer,
20 sir.

21 MR. RICCO: May I approach the witness, your
22 Honor?

23 THE COURT: Yes.

24 MR. RICCO: With defendant El-Gabrownny E 34-3,
25 top of page 27, volume 2, just for identification, your

1 Honor.

2 (Pause)

3 A. Sir, I have --

4 Q. I am going to ask you a question. Does that help
5 refresh your recollection as to whether or not that was the
6 second question asked behind you saying that?

7 A. I said a mistake here, sir.

8 Q. Mr. Salem, when you told Mr. Anticev that his own
9 confidential informant built the bomb that went off in the
10 World Trade Center --

11 MR. McCARTHY: Objection.

12 MR. RICCO: I will rephrase it.

13 THE COURT: Go ahead.

14 Q. When you told Agent Anticev, it was built by the
15 supervising, supervision from the Bureau and the D.A., and
16 we was all informed about it, and we know that the bomb
17 start to be built. By who? By your confidential informant.
18 You said the confidential informant was you, right?

19 A. Right, sir.

20 Q. When you told them that, were you pulling his leg
21 or were you blackmailing him?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q. When you told Louis Napoli there is going to be a
25 lot of surprises here, if there going to be surprises, we'll

1 see who's surprised -- do you remember telling Louis Napoli
2 that?

3 A. Yes.

4 Q. You were threatening him, weren't you?

5 A. I was trying to defend myself, sir.

6 Q. Does that mean yes, you were threatening him, or
7 no?

8 A. Probably, yes.

9 Q. What you were going to do is that you were going
10 to go public, isn't that right? You were going to go
11 public, isn't that right?

12 A. Yes, sir.

13 Q. And you were going to expose the FBI. That was
14 your intention, isn't that correct?

15 A. If they come to arrest me and claim that I did
16 not report this bomb to them, I will expose them, yes, sir.

17 Q. By telling the public that you built the bomb?

18 MR. McCARTHY: Objection.

19 A. No.

20 THE COURT: Overruled. You can answer. Is that
21 what you were going to tell the public?

22 A. No, sir.

23 THE COURT: Go ahead.

24 Q. You was going to tell the public that the FBI
25 supervised the building of the bomb?

1 A. No, sir.

2 Q. So why did you say it to Agent Anticev?

3 A. I told him that I will tell the public that the
4 FBI knows about the bomb and your confidential informant was
5 already start to build the bomb according to Mr. Sayyid
6 Nosair's instructions and the help of Mr. Ibrahim
7 El-Gabrowny, sir.

8 Q. In fact, you just mentioned Mr. El-Gabrowny's
9 name in connection with the world trade bombing, isn't that
10 correct?

11 A. Yes, sir.

12 Q. You did that for a reason, isn't that right? You
13 did it, you mentioned his name for a reason, isn't that
14 right?

15 A. I mentioned it because that was going on, that
16 was going on in that time, sir.

17 Q. You mentioned it because you want Mr. El-Gabrowny
18 to be convicted in connection with this case, isn't that
19 right?

20 A. I have no power to convict anybody, sir.

21 Q. It's the jury, right?

22 A. That's correct, sir.

23 Q. You were contacted by the FBI after the World
24 Trade bombing, right?

25 A. Yes, sir.

1 Q. And they asked you, did Mr. El-Gabrownny have
2 anything to do with this?

3 MR. McCARTHY: Objection, Rule 602.

4 THE COURT: Overruled.

5 Q. They asked you about that, right?

6 A. Yes, sir.

7 Q. Because you were supposedly involved and they
8 wanted to rely upon the information that you could provide
9 them, right?

10 A. Yes, sir.

11 Q. And you tried to tell them, didn't you, I told
12 you Mr. El-Gabrownny, he told me before he wanted to build a
13 bomb. Right? Do you remember telling them that?

14 A. Yes.

15 Q. And you said since he went to visit his cousin,
16 he must have knew it. Isn't that what you told them?

17 A. That was my idea.

18 Q. And when you said that to the agents, the agents
19 said to you uh uh, they said you told us about something
20 else about a synagogue. Do you remember that?

21 A. I am sorry. I don't recall that, sir.

22 Q. You don't recall it. I told this about Jewish
23 targets, not a synagogue, sir.

24 MR. RICCO: Your Honor, I am just checking. May
25 I approach the witness, your Honor, with El-Gabrownny's E

1 book 2, it would be transcript 43-1?

2 THE COURT: All right.

3 (Pause)

4 Q. Having read that passage, does that refresh your
5 recollection of the conversation that you had with both
6 Agent Napoli and Agent Anticev about Mr. El-Gabrowny and
7 that one bomb conversation that you had? Does it refresh
8 your recollection?

9 A. Yes.

10 Q. They had asked you, Emad, give us the benefit of
11 your insight, and you started telling them your theories of
12 the World Trade Center bombing, isn't that correct?

13 A. Yes.

14 Q. And you started trying to put pieces together,
15 isn't that right?

16 A. Yes.

17 Q. You went back through your mind and you started
18 thinking about all of them tape recorded conversations you
19 had made, right?

20 A. Yes, sir.

21 Q. You started thinking, Abouhalima, I heard that
22 name before, right?

23 A. I met him before, sir.

24 Q. But when you were talking to the agents, you told
25 the agents, he called me a couple weeks before the bombing.

1 Do you remember telling him that?

2 A. Yes, sir.

3 Q. And it started coming back to you, right?

4 A. Yes.

5 Q. And you said Muhammed Salameh, that name, I

6 remember that name, right? And you started making

7 connections, right?

8 A. Yes, sir.

9 Q. And they gave you a whole list of names -- they
10 gave you a few names, and they asked you, do you know this
11 person -- excuse me, your Honor -- or do you know that
12 person, right?

13 A. Yes, sir.

14 Q. Some of them you knew and some of them you
15 didn't, right?

16 A. Yes.

17 Q. And you started thinking about all of them months
18 you spent hanging around Mr. El-Gabrowny, right?

19 A. Yes, sir.

20 Q. And so they said to you, El-Gabrowny wouldn't do
21 anything like that, and you said no, right?

22 A. I don't recall that part.

23 Q. Don't recall that part?

24 MR. RICCO: May I have a second, your Honor?

25 THE COURT: Yes. Sometime in the next 10

1 minutes, Mr. Ricco.

2 MR. RICCO: I will come back to it.

3 Q. You started telling the FBI your theory about Mr.
4 El-Gabrowny, right?

5 A. Yes, sir.

6 Q. And you told them, remember, I told you Mr.
7 El-Gabrowny talked to me about making bombs way back in 1991
8 and '92, right?

9 A. Yes, sir.

10 Q. And they said no. They said you told us about
11 one situation, you never told us about this. Isn't that
12 what they told you?

13 A. I am sorry. I am lost here, sir.

14 Q. Yes. I will rephrase the question. You started
15 telling the FBI your theory about Mr. El-Gabrowny, right?

16 A. Yes, sir.

17 Q. And you said to them, remember, I told you he
18 wanted me to make bombs?

19 A. Yes, sir.

20 Q. And the FBI stopped you and said no, no, no, you
21 told us about one situation at one time, isn't that correct?
22 Isn't that what you just read?

23 MR. McCARTHY: Objection.

24 MR. RICCO: I will rephrase it, your Honor.

25 THE COURT: Thank you.

1 Q. Do you recall Agent Anticev telling you that?

2 A. Sir, you cutting pieces here. You are cutting
3 the conversation, no, no, you told us, but you didn't say
4 that he said throw cocktail Molotovs on --

5 Q. I am getting to that. I am getting to that.

6 MR. McCARTHY: Objection to cutting off the
7 witness.

8 MR. RICCO: I have sorry. Forgive me.

9 Q. I am coming to that part of it, Mr. Salem. I am
10 not leaving anything out.

11 A. OK, thanks.

12 Q. They stopped you and said no. You told us about
13 one situation, right?

14 A. Probably yes.

15 Q. Probably yes or yes?

16 A. I am not so sure, sir. I did not listen to the
17 tape.

18 Q. Can you put your headphones on, sir. Just
19 Mr. Salem, not the jury.

20 (Pause)

21 MR. RICCO: Your Honor, I am going to stop. The
22 tape is not in its proper place. I have just two more
23 questions and I am prepared to break, and I will try to have
24 a few in the morning.

25 Q. Mr. Salem, so we can finish the thought that you

1 wanted to complete --

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained. Ask the question.

4 Q. The one situation that Agent Anticev was talking
5 about --

6 MR. McCARTHY: Objection.

7 THE COURT: May I see counsel at the side.

8 MR. RICCO: Your Honor, I will ask the question
9 differently. I will ask the question differently.

10 Q. Were you referring to a situation where you told
11 the agents that Mr. El-Gabrowny wanted to throw a bomb in a
12 synagogue?

13 A. I was referring to situation that Mr. -- when I
14 suggested to Mr. El-Gabrowny that yes -- I told Mr.
15 El-Gabrowny yes, I can make a Molotov cocktail bombs. Mr.
16 El-Gabrowny said no, we need high power explosive bombs.
17 That's what I was referring to.

18 Q. And that's the one time that the agents were
19 talking about, right?

20 A. Yes.

21 Q. And that was something that --

22 A. I'm not sure, sir. I'm not sure.

23 Q. And that was something that you claimed Mr.
24 El-Gabrowny said, isn't that right?

25 A. Yes.

1 Q. And you didn't have that on your taped
2 conversation, did you?

3 A. No, sir.

4 Q. This conversation that we are talking about, the
5 one that you're having with Agent -- the one that you're
6 having about Detective Napoli and Agent Anticev, this
7 particular conversation you were wearing a body wire on
8 them, isn't that right?

9 A. That's right, sir.

10 Q. The two agents in that car that were asking you
11 the questions and the information that you was putting on
12 the wire, you were wearing a secretly recorded body wire,
13 right?

14 A. That's correct, sir.

15 Q. Where was it, in your pant or was it in your
16 microcassette?

17 A. It was in my collar, sir.

18 Q. And that was going to be one of the tapes, was it
19 not, that was going to surprise everybody?

20 A. Yes, sir.

21 (Continued on next page)

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1 MR. RICCO: This is a fine breaking point, your
2 Honor.

3 THE COURT: Ladies and gentlemen, we are going to
4 break for the day. Please leave your notes and other
5 materials behind. Please don't discuss, see, mere or read
6 anything about the case. Have a pleasant evening. We will
7 see you tomorrow morning. Good night.

8 (Jury excused)

9 (Witness excused)

10 THE COURT: I need to see Mr. Ricco briefly at
11 the side and Mr. Stavis and the government briefly in the
12 robing room. I don't need the reporter.

13 (Discussion off the record at the side bar)

14 (Pages 6331 through 6332 sealed)

15 (Proceedings adjourned until 9:30 a.m., Thursday,
16 March 30, 1995)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
7 a/k/a "Omar Abdel Al-Rahman,"
8 a/k/a "Sheik Rahman,"
9 a/k/a "The Sheik,"
10 a/k/a "Sheik Omar,"

11 EL SAYYID NOSAIR,
12 a/k/a "Abu Abdallah,"
13 a/k/a "El Sayyid Abdul Azziz,"
14 a/k/a "Victor Noel Jafry,"

15 IBRAHIM A. EL-GABROWNY,

16 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
17 a/k/a "Abdul Rashid Abdullah,"
18 a/k/a "Abdel Rashid,"
19 a/k/a "Doctor Rashid,"

20 AMIR ABDELGANI,
21 a/k/a "Abu Zaid,"
22 a/k/a "Abdou Zaid,"

23 FARES KHALLAFALLA,
24 a/k/a "Abu Fares,"
25 a/k/a "Abdou Fares,"

TARIG ELHASSAN,
a/k/a "Abu Aisha,"

FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"

VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

-----x
March 30, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,
District Judge

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APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
BY: ANDREW McCARTHY
PATRICK FITZGERALD
ROBERT KHUZAMI
Assistant United States Attorneys

ABDEEN JABARA
LYNNE STEWART and
RAMSEY CLARK
Attorneys for Defendant Omar Ahmad Ali Abdel Rahman

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

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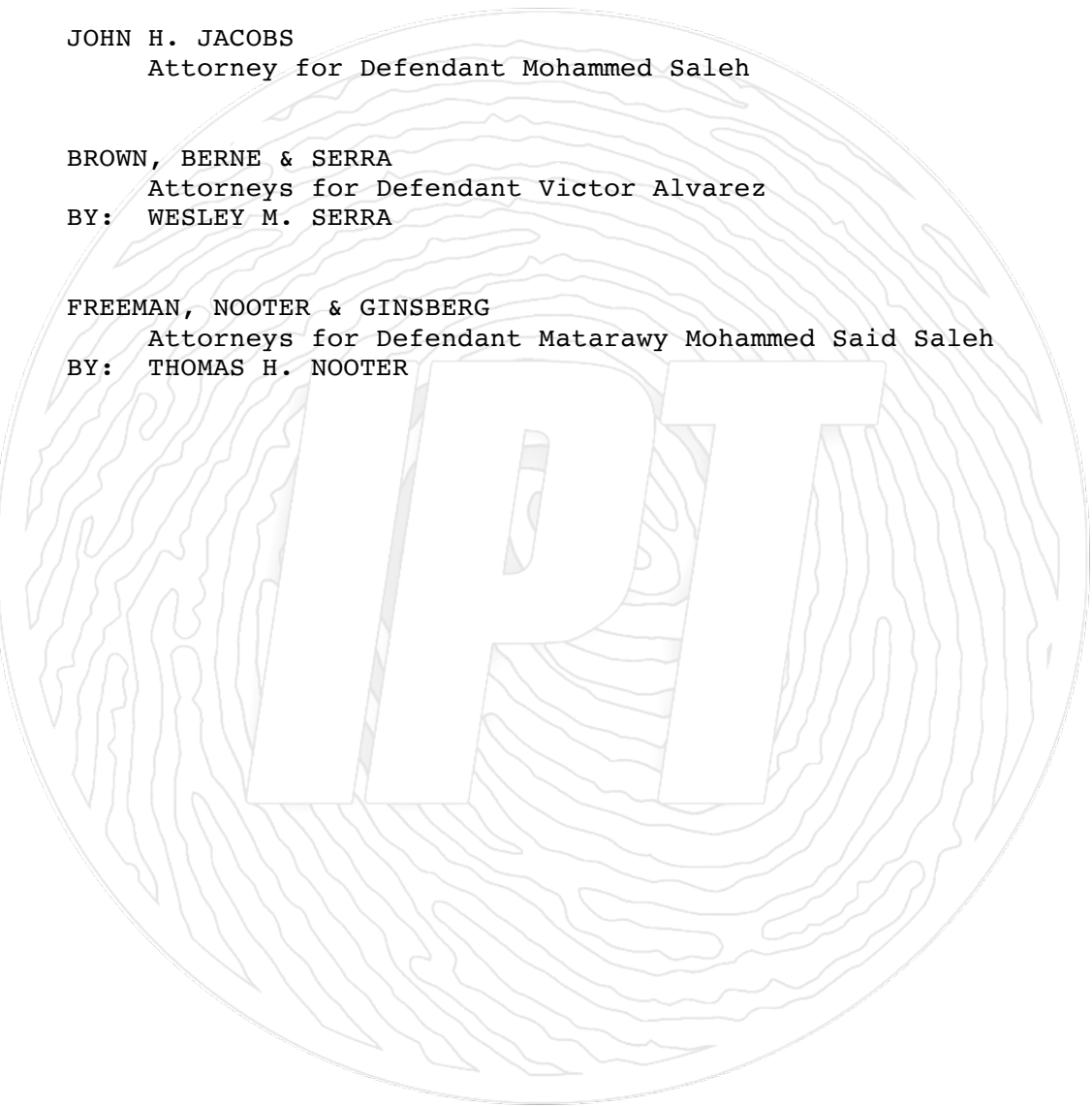
APPEARANCES CONTINUED

GROSSMAN, LAVINE & RINALDO
Attorneys for Defendant Fadil Abdelgani
BY: CHARLES D. LAVINE

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

BROWN, BERNE & SERRA
Attorneys for Defendant Victor Alvarez
BY: WESLEY M. SERRA

FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER



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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 THE JURY: Good morning.

8 THE COURT: Mr. Salem, you are still under oath.

9 MR. McCARTHY: Your Honor?

10 THE COURT: Yes, sir.

11 MR. McCARTHY: In connection with a matter that
12 came up during Mr. Stavis's cross-examination of the witness
13 yesterday, the government stipulates that on July 2, 1993,
14 \$400 in government funds was paid to Mr. Salem for
15 attorneys' fees.

16 MR. STAVIS: Your Honor, in light of that
17 concession, I wish to reoffer Defense Exhibit 3534HH 110 and
18 118, and, at a suitable time, publish it to the jury.

19 MR. McCARTHY: I object.

20 THE COURT: The objection is sustained.

21 Let's go.

22 CROSS-EXAMINATION (Continued)

23 BY MR. RICCO:

24 Q Yesterday when we broke off, we were discussing a
25 conversation that you were having inside of one of the FBI

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1 agents' cars, do you remember that?

2 A Yes, sir.

3 Q That conversation that -- withdrawn.

4 That conversation that you were having with the
5 agents, that conversation was being recorded, isn't that
6 right?

7 A Yes, sir.

8 Q The agent didn't know that that conversation was
9 being recorded, isn't that right?

10 A Yes, sir.

11 Q You are the person who knew that that
12 conversation was being recorded, isn't that correct?

13 A Yes, sir.

14 Q We were talking yesterday about a statement that
15 you were making to Agent Anticev about the confidential
16 informant -- being you -- participating in the bombing of
17 the World Trade Center. Do you remember those questions
18 that we were talking about yesterday?

19 A Yes, sir.

20 Q We were talking about, if you recall, your
21 statement that there were going to be some surprises if you
22 didn't get what you wanted, isn't that right?

23 A Not if I didn't get what I want.

24 Q But there was just going to be some surprises,
25 period, right?

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1 A No, not period, sir.

2 Q OK.

3 A There were going to be some surprises if the FBI
4 denied that I informed them that these people building
5 bombs, and they will try to say I didn't tell them and they
6 will take me with them as a bad guy, sir.

7 Q We'll come to the information which was provided.
8 What you decided to do is you were going to tape
9 the agents to make sure that you had evidence that you had
10 provided information to the FBI, right?

11 A Yes, sir.

12 Q But, Mr. Salem, inside of your house in a box,
13 according to you, there was a box full of cassettes full of
14 information that you had provided to the FBI, isn't that
15 right?

16 A Yes, sir.

17 Q You already had a box full of stuff that you
18 provided to the FBI, isn't that right?

19 A Yes, sir.

20 Q But you decided that you were going to tape the
21 FBI, right?

22 A Yes, sir.

23 Q So you got into the car, you had on your wire,
24 right?

25 A Yes, sir.

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1 Q What you were attempting to do was to get the
2 agents into a discussion about the World Trade Center,
3 right?

4 A Yes, sir.

5 Q Mahmud Abouhalima, you are familiar with the
6 name, right?

7 A Yes, sir.

8 Q Convicted, World Trade Center, right?

9 A Yes, sir.

10 Q Mohammed Salameh, you are familiar with the name,
11 right?

12 A Yes, sir.

13 Q Convicted, World Trade Center, right?

14 A Yes, sir.

15 Q And Nidal Ayyad, you are familiar with the name,
16 right?

17 A Yes, sir.

18 Q Convicted, World Trade Center, right?

19 A Yes, sir.

20 Q What you were trying to do is get the agents to
21 say that you had provided them valuable information about
22 the World Trade Center, isn't that right?

23 A I'm sorry. Could you please just repeat your
24 question, sir?

25 Q You were trying to get the agents to say on tape

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1 that you had provided them valuable information about the
2 World Trade Center, isn't that right?

3 A Yes, sir.

4 Q You were telling the jury yesterday, I believe,
5 that you didn't build the bomb in the World Trade Center,
6 isn't that right?

7 A I started to build one of the 12 bombs, but my
8 thought is that one of these 12 bombs it get bigger, and
9 it's built by somebody else and went to the World Trade
10 Center, sir.

11 Q Mr. Salem, you told Agent Anticev: "It was built
12 ah, ah, supervising, supervision from the bureau."

13 You remember telling him that?

14 A Yes, sir.

15 Q "And that it was, and we know the bomb was
16 started to be built." You told him that?

17 A Yes, sir.

18 Q "By who? By your confidential informant."

19 That's you?

20 A Yes, sir.

21 Q When you got into the car you was using a
22 technique, I think Ms. Stewart called it baiting, isn't that
23 right?

24 A I will say yes.

25 Q Because the agents didn't know that you were

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1 recording them, right?

2 A No, they don't.

3 Q You were going to ask them questions about the
4 World Trade Center, and you wanted to give them a
5 particular -- you wanted them to give you a particular
6 answer, isn't that right?

7 A I wanted them to confirm, sir, that they know
8 that we start to get the explosive, they know that we start
9 build bombs, which is being ordered by these guys, and I
10 want them to confirm that I give them this information, then
11 I can protect myself, just in case, sir.

12 Q When you tried to do that with the agents, they
13 told you, you didn't tell us that, isn't that right?

14 A They said you didn't tell us these names, certain
15 particular things. They did not deny the whole thing.
16 There is things we were confused about it, and there is
17 things facts.

18 Q Mr. Salem --

19 A Yes, sir.

20 Q -- the agents asked you, this was agent -- your
21 Honor, I'm referring to 43-1, page 13, being the second
22 volume.

23 The agents said to you: No, I mean, you know,
24 uh, uh, of doing for El-Gabrownny ain't gonna put no bombs
25 down, I mean, you know.

6343

1 And you say: What, what, what do you mean?

2 And Agent Anticev says: Gabrownny capable of
3 doing that?

4 You say: Oh, yeah. Well, Ibrahim he was the one
5 who told me that he will bring me the detonator from
6 Afghanistan.

7 He says: Right.

8 Anticev says: Right, and he also asked one time
9 in the beginning.

10 You said: He asked me how I can -- how can I, do
11 you, are you capable of build a bomb. And he start --
12 they's was checking.

13 And Anticev says: You said one time. You said
14 to him guys if you want to get back at the Jews, why don't
15 you throw a simple Molotov cocktail through the window of
16 the mosque.

17 And you say: Uh-huh.

18 And agent Anticev says: I mean a synagogue. And
19 he was responding no, I want to use my own explosives,
20 according to Anticev.

21 And you said: Right, and yes.

22 And Agent Anticev said: So he's very capable
23 of --

24 And you say: Yeah, they wasn't happy enough
25 about, uh, cocktail they want explosive, and then they ask

6344

1 me to build a bomb that was checking they wanted -- they was
2 checking me if I'm capable to do so or not. Second
3 question.

4 According to Agent Anticev you answered: Yes.

5 Question by agent Anticev: Why the World Trade
6 Center?

7 You said: Because I told you so. This is one of
8 the targets. You forgot? You have your papers. Go back to
9 it. World Trade Center, Empire State Building, Grand
10 Central, Times Square.

11 Do you recall saying that?

12 A Yes, sir, I remember.

13 Q And Agent Anticev says: I don't --

14 You cut him off: All, all of, all of this is
15 counter to me by Sayyid Nosair the day he was visiting
16 Sayyid Nosair in jail, Ali Shinawy was in the bus, and on
17 our way back we started discussing pipe bombs.

18 And Agent Anticev says: Were you, were you
19 taking these notes?

20 You say: No, I must not have. I must have
21 not -- I'm just listening. Go ahead.

22 And then you say: Uh-uh. You had these notes.
23 You guys gave it -- you guys gave to it me.

24 And Anticev says: I don't remember, I just --

25 And Agent Napoli says: I don't, that I don't

6345

1 remember.

2 Agent Anticev says: I looked, I looked over my
3 notes. I didn't see anything about a target.

4 And Agent Napoli says: I was there. I was there
5 also, and I don't remember you saying targets. I remember
6 you saying Ali Shinawy on the way home used, uh, uh, and
7 saying that that he was going to get, they were going to get
8 to the weapons and stuff like that. That's, uh, he was
9 going to contact someone.

10 And you said: For the pipe.

11 Agent Napoli says: Yeah, for five.

12 And you say: I should go and buy the, the
13 remote.

14 And agent Napoli says: Right.

15 And you say: Which I did.

16 Agent Napoli says: Right.

17 And then you say: Yeah, but he said 12 bomb and
18 he started talking -- about distributing them. The
19 assembly --

20 MR. RICCO: Excuse me, your Honor.

21 One second, your Honor. I'm sorry.

22 MR. RICCO: You said: And, uh, we said 12 bombs,
23 and he started talking about distributing them. The
24 assemble man in Brooklyn.

25 Detective Napoli says: Well, well, that's what,

6346

1 that's what you said, you said the judge and the
2 assemblyman.

3 You said: The judge, the assemble man, the World
4 Trade Center.

5 And Agent Napoli says: Nah, that's not what you
6 told us. You said Empire State Building.

7 Agent Napoli says: No, you never told us.

8 You say: Grand Central.

9 Detective Napoli says: Believe me, I mean, you
10 may have think you told us --

11 And then you say: Well, probably, probably,
12 probably, and I --

13 Detective Napoli says: You thought, maybe you
14 thought.

15 And you say: No, no.

16 And Anticev says: The reason I thought it was
17 the World Trade Center was because they had a protest in
18 front of the World Trade Center, remember?

19 And you say: No, they --

20 Detective Napoli says: That was, I would --

21 Agent Napoli says: That was, they went because
22 of Mario.

23 And you said: The governor.

24 Agent Napoli says: Ah, ah, the governor was
25 supposed to meet them, and they didn't, and that's why we

6347

1 kept -- that's why they went there. That wasn't because of,
2 uh, I keep telling you that.

3 Do you remember that?

4 A Yes.

5 Q Do you remember having that conversation?

6 A Yes, sir.

7 Q When you told the agents your story while it was
8 being recorded about Mr. El-Gabrownny, they told you they
9 don't remember you ever telling them that, do you remember
10 that conversation in the car?

11 A I remember the conversation in the car, sir.

12 Q Now, when you was in the car, you was playing a
13 role with them, wasn't you?

14 A I was trying to let them to admit that --

15 Q Excuse me.

16 MR. McCARTHY: Objection.

17 A You are interrupting me. I'm sorry.

18 THE COURT: Sustained.

19 MR. RICCO: The answer is not responsive to the
20 question.

21 THE COURT: No, it's not.

22 Q Complete your answer.

23 A Could you repeat the question, please?

24 Q When you were in the car, were you playing a
25 role?

6348

1 A I was trying to let the agents to admit that
2 Mr. El-Gabrownny told me to build high-explosive bombs when I
3 told him about Molotov cocktail bombs, and I bought the
4 timer, and he gave me the cartridges to build the small
5 bomb, and I'm trying to let them to confirm all of this
6 information which I delivered it, which they confirmed it,
7 sir.

8 Q They did?

9 A Yes.

10 Q Didn't they say: "You didn't tell us that"?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q Now, this technique that you were using, right,
14 of trying to get them to say something, right, which you had
15 tape recorded, you were using that technique, right?

16 A Yes, sir.

17 Q That is the same technique that you were using
18 when you was in the kitchen crying on the sheik's shoulder
19 with your bookbag in your hand, isn't it?

20 A That's correct, sir.

21 Q That technique is getting people to say something
22 that you want them to say, isn't that right?

23 MR. McCARTHY: Objection.

24 THE COURT: Overruled.

25 A I have no control on people's mouth. I --

6349

1 Q But would you --

2 A I --

3 MR. McCARTHY: Objection.

4 Q Finish.

5 A I have no control on people's mouth. I played my
6 role to let these people to say on tape what they have been
7 saying in the basement of the mosque, in the kitchen --

8 THE COURT: That is not the question.

9 THE WITNESS: I am sorry, sir.

10 THE COURT: The question was whether you were
11 using the same technique when were you talking to the FBI as
12 you were using when you were talking to Dr. Abdel Rahman.

13 THE WITNESS: I'm sorry, your Honor.

14 A Yes, I was using the same technique.

15 Q Thank you.

16 A You're welcome.

17 Q But what you do control is the product, that's
18 the tapes, isn't that right?

19 A I'm sorry, sir?

20 Q What you do control is the product, that is, the
21 tape?

22 MR. McCARTHY: Objection.

23 THE COURT: Overruled. Do you control it?

24 THE WITNESS: I control the switch on and off,
25 yes, sir.

6350

1 Q After the tape is made, you control who gets the
2 tape and who doesn't get the tape, isn't that right?

3 A Not in all cases, sir.

4 Q How about in the case of the agents in the car,
5 who controlled that tape?

6 A I did, sir.

7 Q Right?

8 A Yes, sir.

9 Q Who controlled the box, who controlled the box of
10 50 or 60 cassettes that you had in your bedroom?

11 A Myself, sir.

12 Q So you can't control what they say, but you can
13 control what happens to their words, isn't that right?

14 A I'm sorry, sir?

15 Q You can control what happens to their words,
16 isn't that right?

17 A I'm sorry if I understand --

18 THE COURT: You mean what happens to the tapes?

19 MR. RICCO: What happens to the tapes, yes.

20 A What happened to the tape, yeah, I kept it in the
21 box, sir.

22 Q Sometimes you were playing a role, were you not,
23 when you were talking to Agent Napoli on the tape where he
24 talked to you about getting the million dollars, isn't that
25 right?

6351

1 A No, sir.

2 Q When you told him during that conversation, Agent
3 Napoli, "Uh, don't talk over the phone, Louie. Don't talk
4 over the phone," weren't you playing a role to him?

5 A No, sir.

6 Q Who were you worried about was taping the
7 conversation?

8 A I was worried about the people who told me that
9 they have people in New York Telephone, they have people in
10 the Motor Vehicle Department, and they will check me out if
11 I'm an informant or not. They told me they know how they
12 can check me out, sir.

13 Q That's what you were worried about when you told
14 Agent Napoli, "Louie, be careful of the telephone," is that
15 what you are telling us?

16 A Yes, sir.

17 Q You weren't playing a role with him, were you?

18 A No, sir.

19 Q You wasn't trying to get him to think that
20 Egyptian intelligence might have been taping your telephone,
21 were you?

22 A Egyptian intelligence from overseas taping?

23 Q Yes.

24 A No, sir.

25 Q You weren't worried about that, were you,

6352

1 Egyptian intelligence that is?

2 A That they are --

3 Q Taping your call, right?

4 A In New York City?

5 Q Yes.

6 A No, sir.

7 Q You wasn't worried about it because you was
8 taping the call, isn't that right?

9 A That's right, sir.

10 Q And, if need be, you would have turned it over to
11 Egyptian military intelligence, isn't that right?

12 A I am sorry. Say it again, please.

13 Q And, if need be, you would have been the man who
14 turned it over to Egyptian military intelligence, isn't that
15 right?

16 A Turned what, sir?

17 Q The tape.

18 A Which tape, sir?

19 Q The one from the car.

20 A No, this tape was not for the Egyptian military
21 intelligence, sir.

22 Q Mr. Salem, --

23 A Yes, sir.

24 Q -- are you familiar with the term "playing
25 stupid"?

6353

1 A Yes, sir.

2 Q In fact, as a part of your role in this
3 investigation, you often played stupid, isn't that right?

4 A That's right, sir.

5 Q You would pretend like you didn't understand
6 words, right?

7 A Right, sir.

8 Q You would pretend like things were going to
9 happen that wasn't going to happen, right?

10 A I'm not sure what you mean, sir.

11 Q For example, you tried to get Mr. El-Gabrowny to
12 believe, you tried to get Mr. El-Gabrowny to believe that
13 Sayyid Nosair was going to be released from jail, isn't that
14 right?

15 A That's what Mr. Mohammed Saad told me, sir.

16 MR. RICCO: Your Honor, I am going to refer to
17 12-12. I'm sorry, your Honor. It would be Defendants'
18 125 -- I'm sorry. Defendants' 12-28, page 10.

19 MR. McCARTHY: Your Honor, can I just have one
20 moment with Mr. Ricco to make sure I have the right exhibit.

21 MR. RICCO: One second, your Honor, before I
22 read. I'm sorry, excuse me.

23 (Pause)

24 MR. RICCO: Excuse me, your Honor.

25 Q Do you recall talking to Agent Anticev about an

6354

1 experience you had with Mr. El-Gabrowny in the courtroom?

2 A About what, sir? I mean, so many experiences --

3 Q In the courtroom one time you went up to Agent
4 Anticev and pretended that you were offering him information
5 about you having expertise in explosives, right?

6 A Yes, sir.

7 Q You subsequently had a conversation with him
8 about that, isn't that right?

9 A Yes, sir.

10 Q When you had a conversation with him about that,
11 you told Anticev that I was purposely making myself stupid
12 and to see what their reaction will be.

13 A Yes, sir.

14 Q You did that intentionally, right?

15 A Absolutely, sir.

16 Q You also did the same thing when you were talking
17 to Sattar about Mr. Nosair being released from jail, right,
18 you told the agents that you made yourself look stupid to
19 make them think he was going to be released from jail, isn't
20 that right?

21 A I made myself stupid?

22 Q You played stupid.

23 A That's right. Sometimes I did. That's my role,
24 sir.

25 Q And you still do, right?

6355

1 A I still do that now?

2 Q Yes.

3 A No, sir.

4 Q You remember interviewing with Karim Hajee about
5 going to your children's school?

6 A Yes, sir.

7 Q Do you remember that interview?

8 A Yes, sir.

9 Q Clean shirt and tie, right?

10 A Yes, sir.

11 Q Legs crossed?

12 A I'm sorry?

13 Q Legs were crossed, comfortable at the interview?

14 A Yes, sir.

15 Q And you gave him an hour-long interview about
16 your concerns about Islamic children who were going to
17 public school, isn't that right?

18 A That's right.

19 Q And that children shouldn't be the victim of
20 discrimination, right?

21 A Yes, sir.

22 Q And you were telling him that America sometimes
23 takes very harsh views of Arabs, isn't that right?

24 A Yes, sir.

25 Q And they don't take the time to think or to know,

6356

1 isn't that right? Isn't that what you told him?

2 A No, sir. I said that the media have the duty of
3 educating the public.

4 Q You said that also.

5 A Yes, sir.

6 Q What you said is they were going to educate them
7 about is having biases, right?

8 A I'm sorry. I don't understand what you mean.

9 Q Having prejudiced thoughts?

10 A Right, sir.

11 Q In fact, you had told him that your children were
12 victims of that kind of thing at school, isn't that right?

13 A Yes, sir.

14 Q During this interview, you were on your best, is
15 that fair to say?

16 A I what?

17 Q You were on your best, isn't that fair to say?

18 A I did my best, sir.

19 Q You used the interview with Karim Hajee as a
20 means of boosting your visibility in the Islamic community,
21 isn't that right?

22 A That's right, sir.

23 Q In fact, you went into this investigation back in
24 November 1991, right?

25 A I don't recall the exact date, but --

6357

1 Q You claim it was during November 1991, don't you?

2 A Yes, sir. It may be right, sir.

3 Q Or was it really before then?

4 A I'm sorry, sir?

5 Q Or was it really before then?

6 A I don't recall the exact date, sir.

7 Q You went there, you saw Mr. El-Gabrowny in the
8 courtroom, isn't that right?

9 A That's right, sir.

10 Q And you told the jury that it was Mr. El-Gabrowny
11 that introduced you to all of the different people, isn't
12 that right?

13 A Yes, sir.

14 Q You told him that he introduced you to Ahmed
15 Abdel Sattar, isn't that right?

16 A Yes, sir.

17 Q I think you told the jury that Mr. El-Gabrowny
18 introduced him to you as "our next hero"?

19 A No, sir.

20 Q Or "our next champion"?

21 A "Our next champ," sir.

22 Q And that's what you told the jury Mr. El-Gabrowny
23 said, right?

24 A Yes, sir.

25 Q Now, as a man trying to gain people's

6358

1 confidences, you studied Mr. El-Gabrowny, isn't that right?

2 A I did my best, sir.

3 Q What you saw about him was a man that was very
4 well respected by his peers, isn't that right?

5 A Yes, sir.

6 Q You saw a man who loved being around Muslims,
7 isn't that correct?

8 A Yes, sir.

9 Q And a man who was very dedicated not only to his
10 mosque, but to the cause of his cousin, El Sayyid Nosair,
11 isn't that right?

12 A Yes, sir.

13 Q And so you moved up next to Mr. El-Gabrowny,
14 isn't that right?

15 A That's correct, sir.

16 Q And you moved up next to Mr. El-Gabrowny for the
17 purpose of trying to benefit from the respect that he had in
18 the Muslim community, isn't that right?

19 A No, that's not right, sir.

20 Q Well, you moved up next to Mr. El-Gabrowny and
21 you ended up meeting Imam Siraj Wahaj, didn't you?

22 A Yes, sir.

23 Q You ended up meeting Dr. Mohammed Mehdi, didn't
24 you?

25 A Yes.

6359

1 Q Abdel Sattar, didn't you?

2 A Yes, sir.

3 Q All of these people you met as a result of
4 getting to know Mr. El-Gabrownny, isn't that right?

5 A That's correct, sir.

6 Q What you found is that Mr. El-Gabrownny was
7 working on the committee for his cousin's case, isn't that
8 right?

9 A It wasn't the only thing he's working on, sir.

10 Q Of course, he had a job, right?

11 A No, he gave me the cartridges to build bombs,
12 sir.

13 Q Do you know if he had a job?

14 A He said that he's a contractor, sir.

15 Q OK. And you was in his house, right?

16 A I went, yes.

17 Q You saw these tools in his house, the contracting
18 tools in his house?

19 A No, sir.

20 Q You never saw them?

21 A No, sir.

22 Q How many times was you in his house again?

23 A I don't recall how many times, a few times.

24 Q Wasn't Mr. El-Gabrownny a contractor that built
25 buildings?

6360

1 A That's what he told me, sir.

2 Q You got to know Mr. El-Gabrowny, and from
3 Mr. El-Gabrowny you got to know Mr. El Sayyid Nosair, isn't
4 that right?

5 A That's right, sir.

6 Q And you were reporting the information that you
7 discovered to the agents, right?

8 A Right, sir.

9 Q From meeting Mr. El-Gabrowny you ended up trying
10 to go to New Jersey -- withdrawn.

11 You ended up going over to New Jersey to meet
12 Dr. Rahman, isn't that right?

13 A Going to Dr. Rahman was not through
14 Mr. El-Gabrowny, sir.

15 Q Didn't you meet somebody at court?

16 A Yes.

17 Q Didn't you meet somebody at the court --

18 A Yes.

19 Q -- who invited you over to the mosque?

20 A Yes, sir.

21 Q And that person wasn't introduced to you by
22 Mr. El-Gabrowny?

23 A No, sir. That is the first person I met in front
24 of the courthouse, and which is Mr. Emad Abdou. It wasn't
25 Mr. El-Gabrowny, sir.

6361

1 Q So you did that without the help of
2 Mr. El-Gabrownny?

3 A Yes, sir.

4 Q This information that you gathered, you started
5 providing this information to the government, right?

6 A Yes, sir.

7 Q This was around November of 1991, right?

8 A Yes, sir.

9 Q What you told the agents at that time was that
10 Mr. El-Gabrownny's life was being threatened by people in the
11 Jewish community, isn't that right?

12 A That's what he said, sir.

13 Q Isn't that what you told him?

14 MR. McCARTHY: Objection.

15 THE COURT: That he told Mr. El-Gabrownny?

16 MR. RICCO: Yes.

17 THE COURT: Did you tell that to Mr. El-Gabrownny?

18 A We may talked about that so many times. He said,
19 "The Jews threatening me."

20 And I told him, "You got to be careful with the
21 Jews."

22 It was a common subject to talk about it, sir.

23 Q Didn't you tell Mr. El-Gabrownny that the Jews
24 have a list of Nosair's relatives?

25 A That's right, sir.

6362

1 Q And that they were going to get his relatives?

2 A Yes, I did say that.

3 Q And you told Mr. El-Gabrowny, "Brother, protect
4 yourself"?

5 A Absolutely, sir.

6 Q And Mr. El-Gabrowny said to you at that time, "I
7 want to talk to the agents, the FBI agents about getting a
8 licensed gun to protect myself," isn't that what he told
9 you?

10 A That's right, sir.

11 Q He was afraid to go to the FBI and ask them for
12 help, isn't that right?

13 A That's right, sir.

14 Q You reported that to the agents, didn't you?

15 A That's right, sir.

16 Q What you said to him was, "You want to throw a
17 Molotov cocktail through the synagogue?"

18 A I'm sorry, sir?

19 Q You said to Mr. El-Gabrowny, "Do you want to
20 throw a Molotov cocktail through the synagogue," right?

21 MR. McCARTHY: Objection, unless we can clarify
22 when.

23 THE COURT: Yes. Did you say that in response to
24 his suggestion that he wanted to go to the FBI?

25 THE WITNESS: No, sir. It wasn't a response for

6363

1 that.

2 Q Do you know when --

3 MR. McCARTHY: Objection to cutting off the
4 witness's answer.

5 MR. RICCO: I'm sorry, your Honor. I didn't mean
6 to.

7 THE COURT: Objection sustained.

8 Q I'm sorry.

9 What is your response to that.

10 A Mr. El-Gabrownny asked me if I can build bombs. I
11 said, "Yes, I can build Molotov cocktail bombs."

12 He said because the Jews --

13 I said, "Well, if you want to get back to the
14 Jews, you can throw a Molotov cocktail bomb on the Jews."

15 He said, "No, we want high-power explosives."

16 And that's what I reported, sir.

17 Q I thought you said that Mr. El-Gabrownny said he
18 wanted explosives and not to mention it to anybody. Didn't
19 you tell the jury that on your direct?

20 A Yes, sir.

21 Q Now you are saying, "We want high explosives"?

22 A I'm sorry. I'm not --

23 Q Do you know the difference between the word "he"
24 and the word "we"?

25 MR. McCARTHY: Objection to form.

6364

1 THE COURT: Sustained.

2 Q Do you know what the word "he" means?

3 A Yes.

4 Q That's one person, right?

5 A Yes, sir.

6 Q You know what the word "we" means?

7 A Yes.

8 Q That is more than one person, right?

9 A Yes, sir.

10 Q Didn't you tell the jury on direct --

11 MR. McCARTHY: Objection to form.

12 THE COURT: Sustained.

13 Q Is it your testimony that Mr. El-Gabrowny said --
14 withdrawn.

15 This person that you just told us had this
16 conversation with you, this is the same person,
17 Mr. El-Gabrowny, who said, "I want to go to the FBI for
18 help," isn't that right?

19 A That's right, sir.

20 Q In fact, Mr. El-Gabrowny went and got a licensed
21 firearm, isn't that correct?

22 A That's correct, sir.

23 Q You helped him with the application, isn't that
24 correct?

25 A That's correct, sir.

6365

1 Q You helped him go buy the gun, isn't that
2 correct?

3 A That's correct, sir.

4 Q You helped him pick on the gun out, isn't that
5 correct?

6 A That's correct, sir.

7 Q You helped him buy the cartridges for the gun,
8 isn't that correct?

9 A Yes, sir.

10 Q And Mr. El-Gabrowny took the gun, put it in his
11 house, and you never saw it again, isn't that right?

12 A That's right, sir.

13 Q Now, when Mr. El-Gabrowny said to you, "I want to
14 get a gun," he didn't say, "I want to go see my buddy Ali
15 Shinawy," did he?

16 A No, he did not say that, sir.

17 Q He didn't say, "I want to go see Dr. Rashid and
18 get a gun," did he?

19 A He did not say that, no, sir.

20 Q These are the people that you say were supplying
21 arms, isn't that right?

22 A Yes, sir.

23 Q Mr. El-Gabrowny said, "I'm going to go to the New
24 York City Police Department and get me a license," isn't
25 that right?

6366

1 A That's correct.

2 Q He did it, didn't he?

3 A Yes, sir.

4 Q This is the same man that you said, that you
5 claimed wanted to throw a bomb through a synagogue window?

6 A Yes, sir.

7 Q Now, yesterday when we was talking about the
8 World Trade Center, I asked you -- well, withdrawn.

9 I was asking you questions about that time period
10 after the World Trade Center, and I asked you did Mahmud
11 Abouhalima call your house, you claimed a couple of weeks
12 before the World Trade Center. I think you said yes.

13 A Yes, sir.

14 Q Did you talk to Mahmud Abouhalima between that --
15 did you talk to Mahmud Abouhalima that day?

16 A No, sir, he left a message on my answering
17 machine.

18 (Continued on next page)

19

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6367

1 Q And you didn't speak to Mahmoud Abouhalima before
2 the World Trade Center bombing, did you?

3 A When before, sir?

4 Q Between that telephone call and the bombing.

5 A No, I did not, sir.

6 Q You didn't speak to Muhammed Salameh, did you,
7 any time before the World Trade Center, did you?

8 A No, sir.

9 Q How about Nidal Ayyad?

10 A No, sir.

11 Q In fact, you told the agents at one point, you
12 told the agents at one point that -- withdrawn.

13 MR. RICCO: Your Honor, I would like to go to Mr.
14 El-Gabrownny 3114. It would be in your supplemental package,
15 your Honor, page 21.

16 Q The agents after the World Trade Center came to
17 you and they were asking you a lot of questions about
18 certain people, isn't that right?

19 A That's right, sir.

20 Q And they asked you about Mohammed Hassan Abdou,
21 correct?

22 A Yes.

23 Q And they asked you about Mahmoud Abouhalima,
24 correct?

25 A Yes.

6368

1 Q And you recall the agents asking you about
2 Mahmoud and going to visit Attica. Do you remember them
3 asking you about that?

4 A Yes.

5 Q And you told them that's it, but Mahmoud
6 Abouhalima told me that when they visited, I told him did
7 you check the chairs and the tables, otherwise this stupid
8 FBI will be bugging you.

9 MR. McCARTHY: Objection.

10 Q Did you say that to him?

11 A No, sir, I did not.

12 Q Did you also say, he said no, he used to whisper
13 in their ears, so do you think whispering in their ears is
14 an expert in these things? Well, ah, let me to know about
15 it and things like that. Did you say that to the agents?

16 A I think you mixing names, sir. Mr. Mohammed
17 Abouhalima who told me that -- Mr. Mohammed Abouhalima told
18 me that when Mahmoud Abouhalima visited Mr. Sayyid Nosair in
19 jail. I warned him that there is a bugging device.
20 Mr. Mohammed Abouhalima told me no, they were whispering in
21 each other's ears.

22 (Continued on next page)

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6369

1 MR. RICCO: Mr. McCarthy, am I reading the
2 transcript accurately?

3 MR. McCARTHY: The transcript is not in evidence.
4 It is a draft, and this is not the procedure.

5 MR. RICCO: I would like a side bar.

6 (At the side bar)

7 MR. McCARTHY: I complained earlier in the week
8 about being forced into a position of objecting in front of
9 the jury on things that I don't want the jury to think we
10 want to keep from them, but this is 100 percent outside the
11 procedure that was supposed to be set up for this case. We
12 handed out draft transcripts of these conversations with the
13 understanding that they were draft transcripts, that they
14 were not to be used for any purpose other than to prepare
15 for trial. They are being used continually throughout this
16 examination and the other examinations, read to the jury as
17 if they were authentic evidence in the trial. They were not
18 to be used for any other purpose other than possibly to
19 refresh recollection, and that is not the way they are being
20 used. They are being used as if they were substantive
21 evidence.

22 MR. RICCO: Judge, that is not my understanding.
23 We had a conference about this. We were told that the
24 witnesses can be questioned on prior inconsistent
25 statements.

6370

1 THE COURT: They can be questioned on prior
2 inconsistent statements and you are stuck with the response
3 and I am going to tell them it is not evidence.

4 MR. RICCO: I am happy with the response. My
5 understanding of the procedure was no playing of the tapes
6 for the jury, no putting in evidence, but you could question
7 the witnesses about a prior inconsistent statement, and the
8 government's statement that these were drafts and they
9 weren't to be used for any other purposes wasn't my
10 understanding. My understanding was that they were final
11 drafts and they were for use at the trial, and if the
12 government has a different position, that position has never
13 been published to me or any other of the defense.

14 MR. McCARTHY: That is wrong. The CM tapes were
15 the subject of discussion, not these tapes. There is a good
16 reason for that. I haven't listened to this conversation --

17 THE COURT: Whose draft?

18 MR. RICCO: This is the government's draft, your
19 Honor.

20 MR. McCARTHY: This is a draft transcript which
21 is ancient and which we haven't offered at trial and hasn't
22 been refined the way transcripts are that are going to be
23 used in trial. If you listen to the tape, it is Mohammed,
24 not Mahmoud.

25 THE COURT: Why don't we clue the jury on what is

6371

1 going on --

2 MR. RICCO: Judge, I don't think it is necessary.

3 THE COURT: I think it is very necessary and I am
4 going to do it.

5 MR. RICCO: Certainly, your Honor, but I think
6 what the court has done at this point --

7 THE COURT: What I have done? Come on.

8 MR. RICCO: Judge, what I have attempted to do is
9 follow your instructions to the letter. You have told us
10 don't put the stuff -- Judge, can I please?

11 THE COURT: Go ahead.

12 MR. RICCO: You told us don't put the stuff in.
13 The witness on his direct said Mohammed. In a transcript
14 provided by the government he says Mahmoud. To me that is a
15 prior inconsistent statement.

16 THE COURT: It is not --

17 MR. RICCO: It is a prior inconsistent statement.

18 MS. STEWART: For the record, this is an English
19 tape and apparently Mr. Ricco is adopting the government's
20 tape.

21 MR. McCARTHY: No.

22 THE COURT: Let's not try this at the side bar.
23 There have been extensive readings. There is a difference
24 between confronting somebody with a prior inconsistent
25 statement by one or two readings and extensive readings of

6372

1 tapes. I think it would be preferable to explain to the
2 jury that these are drafts.

3 MR. RICCO: I don't think they are drafts. We
4 adopted them. I will play the tapes.

5 MR. McCARTHY: The tape is the tape. I can't do
6 anything.

7 THE COURT: Fine.

8 (In open court)

9 THE COURT: Ladies and gentlemen, I want to point
10 out a couple of things about transcripts being used in the
11 course of cross-examination, particularly when they concern
12 tapes that were made by the witness, that he testified he
13 made on his own telephone and with his own devices, and that
14 were not part of the consensually monitoring supervised by
15 the FBI. If the tape is not in evidence, the transcript
16 certainly is not in evidence, and the fact that a lawyer may
17 read from a transcript may mean that the transcript is
18 accurate or it may not be accurate. It is the witness's
19 answers that are the evidence, not the questions asked by
20 lawyers, even if they are reading from a transcript. Bear
21 that in mind. Go ahead.

22 MR. RICCO: Thank you.

23 (Continued on next page)

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6373

1 BY MR. RICCO:

2 Q You also gave the FBI other information about
3 Mahmoud Abouhalima, didn't you, after the World Trade
4 bombing?

5 A Yes, sir.

6 Q For example, you told the FBI if they go over to
7 Jersey and find a guy named Wahid, they would find some
8 information about the World Trade Center, isn't that right?

9 A That's right, sir.

10 Q And what they would find is that before the World
11 Trade Center, Mahmoud Abouhalima was trying to rent a van,
12 isn't that right?

13 A That's not what I said, sir. I said after the
14 bombing time, Mahmoud Abouhalima ran into Mr. Wahed
15 Moharam's office and throw himself on the floor and start to
16 praying, and this information, it could lead to something
17 else. That's what I said, sir.

18 Q And you never told the agents that Mahmoud
19 Abouhalima wanted to get a man named Wahed to rent a van in
20 his own name. You never told the agents that, did you?

21 A I may said it. Any information I get in that
22 time I delivered to the FBI right away, sir.

23 Q I would like to approach the witness with
24 defendant's E tape transcript 20-10, pages 12 and 13, to ask
25 him if it refreshes his recollection as to whether or not he

6374

1 told the agents that Mahmoud Abouhalima was attempting to
2 rent a van through a person named Wahed. Yes?

3 A Yes, I think I recall now --

4 MR. McCARTHY: To or from?

5 THE COURT: I think he said through.

6 MR. McCARTHY: I am sorry. I didn't hear it.

7 MR. RICCO: Yes, through.

8 Q You were getting ready to tell us something,
9 Mr. Salem?

10 A Yes, sir.

11 Q What was that?

12 A Yes. There is a time Mr. Mahmoud Abouhalima
13 tried to rent a van from Mr. Wahed Moharam, sir.

14 Q By the way, that is not Wahid Saleh, is it?

15 A No, Mr. Wahed Moharam is different, sir.

16 Q What he was trying to do was get this guy Wahed
17 to put the van in Wahed's name, is that right?

18 A I don't know what's his intention, sir.

19 Q I am going to approach the witness with -- you
20 said in a part you don't know about?

21 THE COURT: He said he didn't know what his
22 intention was.

23 Q He wanted Wahed to rent the van in Wahed's name,
24 isn't that right?

25 A I don't know what was the deal, sir.

6375

1 Q You didn't tell this to the FBI?

2 A I may said something in that reflected but that
3 was my speculation, sir.

4 Q The whole story was your speculation?

5 MR. McCARTHY: Objection.

6 THE COURT: Overruled.

7 A No, sir.

8 Q Just the part about Wahed having a van rented in
9 his name?

10 A I said, sir, again, that Mr. Mahmoud Abouhalima
11 was trying to rent a van from Mr. Wahed Moharam, sir.

12 Q And wanted Wahed to put the van in his name, is
13 that right?

14 A I may said that, probably.

15 (Continued on next page)

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6376

1 Q I would like to approach the witness, your Honor,
2 with 20-10, specifically pages 12 and 13. Read both pages,
3 please.

4 (Pause)

5 Q Can you read both pages, sir.

6 (Pause)

7 (At the side bar)

8 THE COURT: Do you have any of this cued up?

9 MR. RICCO: He could have heard, yes. I would
10 have just read it, your Honor. The paragraph is four lines.

11 THE COURT: You told him to read the entire
12 conversation.

13 MR. RICCO: I didn't want him to say you are only
14 telling me to look at one point, which is what he was
15 telling me yesterday.

16 THE COURT: That is ridiculous.

17 MR. RICCO: It is not, your Honor. I wanted him
18 to read both pages because both pages relate to the subject
19 matter. He was accusing me yesterday.

20 (In open court)

21 (Continued on next page)

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6377

1 BY MR. RICCO:

2 Q Mr. Salem, are you finished reading?

3 A Yes, sir.

4 Q By the way, the transcript that you read is a
5 transcript of a conversation that you had with Agent Napoli
6 and Anticev, isn't that correct?

7 A Yes.

8 Q And that was part of the tapes in this case that
9 was kept in your house, isn't that right?

10 A Yes.

11 Q In this case, did the agents discuss with you the
12 drafting of these transcripts? Did they talk to you about
13 what was said in these transcripts at any time?

14 A The agents?

15 Q Anybody in law enforcement.

16 A I don't recall, sir.

17 Q Did you go over these transcripts and help create
18 the transcripts?

19 A No, sir.

20 Q At no time?

21 A No, at no time.

22 Q English for Arabic?

23 A No, sir.

24 Q Didn't you tell us, Miss Stewart, when Miss
25 Stewart asked you that question you said you spent hundreds

6378

1 of hours going over --

2 MR. McCARTHY: Objection unless he clarifies
3 which transcripts.

4 THE COURT: Sustained.

5 MR. RICCO: The transcripts --

6 MR. McCARTHY: Then I object, misstates the
7 testimony.

8 Q Your testimony is that you didn't go over any of
9 the transcripts of the tapes that were taken from your
10 house?

11 A From my house, no, sir.

12 Q Having read that, do you recall whether or not
13 you had any conversation with Agent Anticev about a fellow
14 named Wahed?

15 A I am sorry. Could you repeat the question,,
16 please, sir.

17 Q Sure. Having read defendant's 20-10, does it
18 refresh your recollection as to whether or not you had a
19 conversation with Agent Anticev about a fellow named Wahed?
20 Does it refresh your recollection?

21 A Yes, sir.

22 Q And isn't it a fact that you told Agent Anticev
23 that Mr. Abouhalima tried to rent a van before the World
24 Trade Center through a man named Wahed in New Jersey? Isn't
25 that right?

6379

1 A That's right, sir.

2 Q And isn't it a fact that you told Agent Anticev
3 that the reason why there was a problem is because Mahmoud
4 Abouhalima wanted Wahed to put the van in his name? Isn't
5 that right?

6 A Yes, sir.

7 Q And Wahed said no, isn't that right?

8 A Wahed said I want it to be on your name, Mahmoud
9 Abouhalima, sir.

10 Q And there was no van rental to Mr. Wahed, is that
11 right?

12 A No, the deal did not done.

13 Q And this is information that you gave the FBI,
14 isn't that correct?

15 A Correct, sir.

16 Q And this was about the events that led up to the
17 bomb in the World Trade Center, isn't that right?

18 A That was the events after the bombing of the
19 World Trade Center -- yes, that's true, sir. I am sorry.

20 Q Led up to the bombing of the World Trade Center.

21 A You are right.

22 Q You wasn't telling Agent Anticev this based on
23 your own personal knowledge, were you?

24 A No, sir.

25 Q You had been telling him about this conversation

6380

1 that Wahed had with Mahmoud Abouhalima based on something
2 you heard?

3 A That's correct, sir.

4 Q You told us that you looked in books, and in
5 these books you found names, and these 21 names you gave to
6 the FBI. Do you remember telling us that?

7 A Yes, sir.

8 Q What you did was, you looked in the book, you
9 took the names, and you pretended like this was something
10 that you got from military Egyptian intelligence, isn't that
11 correct?

12 A I give them the names.

13 Q Did you tell them where you got them from?

14 A No, I did not.

15 Q You oftentimes in this case adopted other
16 people's information as if it was your own, isn't that
17 right?

18 A I may said that, yes.

19 Q For example, it was Agent Nancy Floyd who told
20 you that Mahmoud -- that Muhammed Salameh had visited Nosair
21 a week -- two weeks before the World Trade Center, isn't
22 that correct?

23 A She wasn't the only one, sir.

24 Q Did she tell you that?

25 A She did, yes, sir.

6381

1 Q And when she told you that, she said keep it on
2 the QT. Didn't she is that?

3 A She may said that.

4 Q Did she or didn't she?

5 A As a matter of fact, I don't know what's QT
6 means, sir.

7 Q Did you tell her you didn't know what QT meant?

8 A No, I did not.

9 Q Did she tell you to keep this conversation
10 between me and you?

11 A Something like that, yes.

12 Q And did she tell you when you speak to Anticev
13 and Detective Napoli, tell them to look into the Attica
14 book? Didn't she tell you that?

15 A I said it or probably may she said it. I am not
16 sure, sir.

17 Q She told you to tell the agents to look in their
18 Attica records. She told you to pretend like it was coming
19 from you, isn't that right?

20 A She didn't tell me pretend that it's coming from
21 you. I don't recall that, sir.

22 Q Do you recall her saying, well, you know, the
23 best thing is just to keep that under your hat and just tell
24 them exactly that, you know, tell them, say look --

25 MR. McCARTHY: May I have a page reference?

6382

1 MR. RICCO: I am sorry. It's page 7, 4-8. I am
2 starting at the last paragraph.

3 MR. McCARTHY: Your Honor, if it is going to be
4 read from, I would ask that it be read from --

5 MR. RICCO: I will start three up from, I want
6 to.

7 MR. McCARTHY: Yes.

8 Q Do you recall having this conversation,
9 Mr. Salem? You said I want to ask you one question only,
10 just to ease my mind. Did Muhammed Salameh ever on record
11 say, and say Nosair in jail and visit him before? Do you
12 recall asking Agent Floyd that?

13 A Yes.

14 Q And she said two weeks before the bombing. Do
15 you recall that?

16 A Yes.

17 Q And you said thank you, thank you very much. You
18 are great. That's exactly.

19 Do you recall saying that?

20 A That's correct, sir.

21 Q And she said that's, that's completely between
22 you and me? Do you recall her saying that?

23 A Um-hum.

24 Q And you said well, I, of course, of course, but
25 I'm telling you, thank you very much, because that's what I

6383

1 guessed. The guy just, because I get this piece of
2 information today from Hamoud Abu Abougani. He told me
3 that. Do you recall saying that?

4 A The name again, please, sir.

5 Q Hamoud Abougani.

6 A I am sorry. The pronunciation is a little
7 different, sir.

8 Q Do you recall --

9 A I recall that I get the information from somebody
10 and the same information, I confirmed it from Nancy Floyd,
11 yes, sir.

12 Q Do you recall Agent Floyd telling you this:

13 Well, you know, the best thing is, is that you just keep
14 that under your hat, but just tell, um, exactly that.

15 Now, who was she talking about when he said with
16 just tell them exactly that?

17 A I believe to Agent John Anticev, sir.

18 Q And this is the same agent that's working on the
19 case, right?

20 A Yes, sir.

21 Q And she says, you know, tell him, say look, ya,
22 you know, when I was visiting and this is what he wanted me
23 to do and, and, you know, it's my desk, I don't know, but I
24 mean I bet you twenty bucks if you look back on your records
25 you will find that he was there, you know, whatever, and --

6384

1 do you recall her saying that to you?

2 A Yes, sir.

3 Q And you said right. Do you recall her saying and
4 of course they probably won't say anything but you'll know
5 that I, uh, know. Do you recall her saying that?

6 A Yes, sir.

7 Q And you say yeah, yeah, yeah. Do you remember
8 that?

9 A Yes, sir.

10 Q And she says, on the QT, exactly. And you said
11 that's right. Do you recall having that conversation with
12 Agent Floyd?

13 A Yes, sir.

14 Q And in fact when you spoke to Agent Anticev, you
15 told Agent Anticev check your records, look back, you'll
16 find that Muhammed Salameh was there. Isn't that right?

17 A Yes, sir.

18 Q You did exactly what Agent Floyd told you to do,
19 isn't that correct?

20 A Yes, sir.

21 Q Is that why you were suspicious of the FBI? Is
22 that why you thought they were going to screw you up?

23 A I am sorry.

24 Q Is that the reason you thought they were going to
25 screw you up?

6385

1 A I am sorry. I don't understand the question.

2 Q I will rephrase the question. One agent was
3 telling you one thing, right?

4 A Yes.

5 Q Another agent was telling you something else,
6 right?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q Miss Floyd told you one thing, right?

10 A Yes, sir.

11 Q She told you when you speak to her partners,
12 pretend that you got this information from somebody else,
13 right?

14 A I did get it from somebody else as well, sir.

15 Q But she told you to pretend that you didn't get
16 it from her, right?

17 A Yes.

18 Q One of her own colleagues, right?

19 A Yes, sir.

20 Q And you did it. You did what she said, right?

21 A Yes.

22 Q You told him look back on the records and you
23 will find Muhammed Salameh was there, right?

24 A Yes.

25 Q You are telling us that you got the information

6386

1 from somebody else, right?

2 A Yes.

3 Q The conversation I just referred to, that's on
4 tape, isn't it?

5 A Yes, sir.

6 Q The conversation that you claim you got it from
7 somebody else, that ain't on tape, is it?

8 A I don't think so, sir.

9 Q That's you saying that you got it from somebody
10 else, right?

11 A Yes, sir.

12 Q You said there came a point in this investigation
13 when you were having trouble with the agents because they
14 wanted you to wear a wire, right?

15 A Yes, sir.

16 Q And that they now wanted you to record, they
17 didn't want you to record, they do want you to record. Do
18 you remember saying that?

19 A Yes, sir.

20 Q And that you said you were frustrated, right?

21 A Yes, sir.

22 Q And that was one of the reasons you said you
23 left, right?

24 A Yes, sir.

25 Q Because you were frustrated being told to record

6387

1 and not to record, right?

2 A No, that wasn't the main reason --

3 Q That is part of the reason.

4 A That is part of the reason, sir.

5 Q But the fact of the matter is, you weren't
6 listening to the instructions about recording anyway, right?

7 A I am sorry.

8 Q The fact of the matter is, you weren't listening
9 to their instructions about recording people anyway, isn't
10 that right?

11 A I still don't understand what you mean, sir.

12 Q From the beginning, from 1991 you have been
13 recording people in this case, isn't that right?

14 A Did I record people?

15 Q Yes.

16 A Yes, I did, sir.

17 Q You recorded Mr. El-Gabrowny, didn't you?

18 A Yes.

19 Q Many times, isn't that right?

20 A Yes, sir.

21 Q And you had conversations with Mr. El-Gabrowny
22 when you with were trying to bait him into having
23 conversations about bombs, isn't that right?

24 A Yes, sir.

25 Q And conversations about arms training, isn't that

6388

1 correct?

2 A Yes.

3 Q And conversations about kidnapping judges, isn't
4 that right?

5 A Yes.

6 Q And other violent acts, isn't that correct?

7 A Yes, sir.

8 Q And when you talked to Mr. El-Gabrowny about
9 these things -- withdrawn. You spoke to Mr. El-Gabrowny
10 about demonstrations, isn't that correct?

11 A We spoke about it, yes.

12 Q Mr. El-Gabrowny told you that what the Muslims
13 need to do is to get registered and vote, didn't he?

14 A It was -- yes, yes, sir.

15 Q And he had that conversation with you on more
16 than one occasion, isn't that right?

17 A Yes.

18 Q He said what the Muslims have to do --

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q You had conversations with him about this, right?

22 A Yes, sir.

23 Q And a part of those conversations was using the
24 ballot instead of the bullet, isn't that right?

25 A That's what Mr. El-Gabrowny said about the time

6389

1 being. Mr. El-Gabrownny always postponed the bombing and the
2 violence act after we see the appeal of Mr. Sayyid Nosair
3 will succeed or fail, sir.

4 THE COURT: Before you get to another transcript,
5 the other person that you said you got the information
6 from --

7 THE WITNESS: Yes, sir.

8 THE COURT: In addition to Agent Floyd, was that
9 the name that Mr. Ricco read off on the transcript which he
10 pronounced Hamoud Abougani?

11 THE WITNESS: The pronunciation is not right, so
12 I don't recall the exact name, sir.

13 THE COURT: Thank you. Was that the other
14 person?

15 THE WITNESS: I am not so sure if that's the
16 other person, sir.

17 Q Don't you say to Mr. El-Gabrownny, OK, so the
18 important, the important is that I told him that we have
19 started with D'Amato. However, didn't our plans to meet
20 with all the senators, and he said OK. If Senator, uh,
21 D'Amato insisted on refusing to meet you, what is your move?
22 What move are you going to make? What's your next move? I
23 told him that our next move is that we will never give up,
24 you know, what he is leading me to. Mr. El-Gabrownny says.
25 Uh? Do you recall saying that to him?

6390

1 A Sir, I get lost. You keep saying he said, he
2 said. You can specify it, please.

3 Q You had a conversation with Mr. Ibrahim
4 El-Gabrownny about a radio program you did with Dr. Mehdi; do
5 you remember that?

6 A It was a TV, yes, sir.

7 Q And you talked there about going into D'Amato's
8 office, is that right?

9 A Yes.

10 Q And you related to Mr. El-Gabrownny what you had
11 said on the radio, is that right, or the TV program?

12 A It wasn't on the TV program, sir. That was
13 Dr. Mehdi, sir.

14 Q And you said to Mr. El-Gabrownny you were being
15 asked what's your next move, meaning you, and I told him
16 that our next move is we will never give up, we know what he
17 is leading to -- this is you saying that. Do you recall
18 that?

19 A Yes.

20 Q Mr. El-Gabrownny says uh. And you say that we
21 will revoke, break, and other actions. Do you recall that?

22 A I may said it, yes.

23 Q And Mr. El-Gabrownny said no, no, voting. Do you
24 recall that?

25 A I am not sure, but it may be said, sir.

6391

1 Q Do you recall Mr. El-Gabrowny saying to you, do
2 you recall saying there to Mr. El-Gabrowny, I'm going to
3 talk to Dr. Mehdi so that we can send it all to the Muslim
4 communities in the United States. And he says it will be
5 more powerful when the candidates are changed and the
6 electorates, when a high percentage of Muslims get
7 registered. Do you recall him saying that to you?

8 A Yes, sir.

9 Q He says, they will look at the lists. And you
10 say you are right, you are right. Do you recall that?

11 A Yes, sir.

12 Q And you say, I will show you something when I'm
13 with you. And you say instead of nonsense. And do you
14 recall Mr. El-Gabrowny saying they themselves, once they see
15 the list of registration and find out the high percentage of
16 Muslims, he will say let's stop these, and might make a
17 difference. Do you recall him saying that?

18 A Yes, sir.

19 Q And you recall you saying yes?

20 A Yes, sir.

21 Q And he said if God is willing in the elections.
22 And you say the upcoming elections. And he says God will
23 help. And you say glory with good.

24 Do you recall having that conversation with Mr.
25 El-Gabrowny?

6392

1 A Yes, sir.

2 MR. RICCO: Can we go to 22-16.

3 Q In that conversation you had with Mr.

4 El-Gabrowny, Mr. El-Gabrowny said we going to wait until

5 after Mr. Nosair gets out of jail until we vote?

6 A In this conversation, no, sir.

7 MR. RICCO: 21-16, page 7, top first paragraph.

8 One second, your Honor.

9 Your Honor, I am going to do it from the tape.

10 THE COURT: Let's do it after the break. Ladies
11 and gentlemen, please leave your notes and other materials
12 behind. Please don't discuss the case, and we will resume
13 shortly.

14 (Recess)

15 (Continued on next page)

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6393

1 MR. RICCO: Your Honor, may I have a quick side
2 bar with the government. We don't need the reporter.

3 (Discussion at the side bar off the record)

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Mr. Ricco, you may proceed.

7 MR. RICCO: Thank you, your Honor.

8 BY MR. RICCO:

9 Q Just before the break, I was asking you questions
10 about conversations that you had with Mr. El-Gabrowny about
11 voting, do you recall those questions?

12 A Yes, sir.

13 Q I think you said that you had a few of them,
14 isn't that correct?

15 A Yes, sir.

16 Q Do you recall having a conversation with
17 Mr. El-Gabrowny where Mr. El-Gabrowny said --

18 MR. RICCO: This is at 21-16, Mr. McCarthy.

19 Mr. El-Gabrowny said: "The people must be aware
20 aware of this. They live with them and do not respect them.
21 They want to put horns on them. We told them there are
22 persons and places and public jobs, and they erect people to
23 represent them. They encourage these groups that represents
24 their institutions and their sensitivities, and they do not
25 care about what? The rest of society. These kind of people

6394

1 are one for these public positions. We are registering
2 ourselves for the elections, and next time we will weigh our
3 options a thousand times who we are going to vote for."

4 Q Do you recall Mr. Ibrahim El-Gabrowny making that
5 statement to you?

6 A He may said it, but I don't recall it, sir.

7 Q Do you know whether or not you recorded that
8 conversation with Mr. El-Gabrowny?

9 A I may.

10 Q You don't even know, do you?

11 A Everything was being recorded, sir, so many
12 conversations.

13 Q One thing we are aware of, are we not, is that
14 you are not aware of any conversation where Mr. El-Gabrowny
15 talks about throwing any bombs at anybody, isn't that right?

16 MR. McCARTHY: Objection.

17 MR. RICCO: I will re-form the question, your
18 Honor.

19 THE COURT: Thank you.

20 Q You have no recorded conversations of
21 Mr. El-Gabrowny talking about bombing anyone, is that right?

22 A No, sir.

23 Q You do have conversations with Mr. El-Gabrowny
24 about writing letters to public officials, isn't that right?

25 A Yes, sir.

6395

1 Q Mr. El-Gabrownny said to you in addition to voting
2 that the Muslims should write to the senators, isn't that
3 correct?

4 A Yes, sir.

5 Q They should write to the governor, isn't that
6 correct?

7 A Yes, sir.

8 Q He did it, isn't that right?

9 A Yes, sir.

10 Q He tried to encourage you to do the same, isn't
11 that right?

12 A He give me a letter to let people to sign it,
13 yes, sir.

14 Q And Mr. El-Gabrownny was encouraged and inspired
15 by a man named Dr. Mohammed Mehdi, isn't that correct?

16 A Yes, he used him certain times to represent the
17 Muslim community, sir.

18 Q He used him?

19 A I don't mean used him in a bad meaning, sir. He
20 used Mr. Mehdi's help to represent the Muslim community,
21 since he speaks English well and he know how we can deal
22 with the media, sir.

23 Q And Dr. Mehdi was a person who came to the trial,
24 isn't that right?

25 A He's a man --

6396

1 Q Dr. Mehdi came to the trial and sat in on the
2 trial sometimes, isn't that right?

3 A Mr. Sayyid Nosair's?

4 Q Yes, sir.

5 A Yes, sir.

6 Q And you got to meet Dr. Mehdi, isn't that
7 correct?

8 A Yes, sir.

9 Q And Dr. Mehdi also tried to inspire you to vote
10 and to let your voice be heard, isn't that right?

11 A Yes, sir.

12 Q You went to different conferences with him, isn't
13 that correct?

14 A Yes, sir.

15 Q One of them, in fact, you testified to here,
16 isn't that right, the conference that Mr. El-Gabrowny was
17 supposed to go with you to?

18 A Yes, sir.

19 Q In fact, there was two conferences that day, one
20 day there was a conference for security, and there was a
21 conference for Dr. Mehdi, isn't that right?

22 A Yes, sir.

23 Q Mr. El-Gabrowny went with Dr. Mehdi, isn't that
24 right?

25 A I recall Mr. El-Gabrowny came with me and he --

6397

1 we stood at the exit of the conference, sir, and we both
2 were --

3 Q Handing out flyers?

4 MR. McCARTHY: Objection to cutting the witness
5 off.

6 MR. RICCO: Excuse me. I'm sorry.

7 Q Finish your answer.

8 A We both were distributing flyers.

9 Q At Dr. Mehdi's conference, isn't that correct?

10 A No. That was not Dr. Mehdi's conference, sir.

11 Q Mr. El-Gabrowny also had conversations with you
12 about the judge that was to be kidnapped, isn't that
13 correct?

14 A Yes, sir.

15 Q But Mr. El-Gabrowny's conversations with you were
16 about writing letters to that judge, isn't that right?

17 A No, sir. Mr. El-Gabrowny told me that Mr. Sayyid
18 Nosair in jail, he is very hot right now. We should wait
19 until the appeal is over, and then we'll see what can we do.

20 Q Do you recall having a conversation where
21 Mr. El-Gabrowny said, "I have many" --

22 MR. RICCO: I'm sorry. Mr. McCarthy, 10-7 first
23 page.

24 Q "I have many letters, I need people to sign, uh,
25 to send to the judge, so I want to be a hundred sure of

6398

1 them."

2 Do you recall him saying that to you?

3 A That's correct, sir.

4 Q Those are letters to the judge who was going to
5 sentence him, isn't that right?

6 A Before the sentence.

7 Q Before the sentence?

8 A He will send letters, yes.

9 Q And he wanted to write letters to the judge so
10 that the judge would be lenient to Mr. Nosair, isn't that
11 correct?

12 A Before the sentence, yes, sir.

13 Q You had conversations with Mr. El-Gabrownny about
14 that, isn't that right?

15 A That's right, sir.

16 Q You also had conversations with the agents about
17 it, right?

18 A I may.

19 Q About the sentencing, I mean.

20 A Yes, sir.

21 Q In your conversations with the agents about the
22 sentencing you told the agents, "I hope they give him the
23 maximum," isn't that right?

24 A Yes, I did that.

25 Q But you told Mr. El-Gabrownny you hope they give

6399

1 him the minimum sentence, isn't that right?

2 A That's right, sir.

3 Q You had conversations with Mr. El-Gabrowny about
4 Mr. Nosair when Mr. Nosair was in Attica, isn't that right?

5 I will rephrase the question.

6 A I'm sorry, sir.

7 Q Mr. El-Gabrowny was trying to make sure that
8 Mr. Nosair had a lawyer for his appeal, isn't that right?

9 A That's correct, sir.

10 Q He went out and hired the lawyer, isn't that
11 right?

12 A Yes, sir.

13 Q He went to see that Mr. Nosair got his
14 transcripts of his trial up at Attica, isn't that right?

15 A Probably, yes, sir.

16 Q Do you know?

17 A I don't recall, sir.

18 Q Do you recall taping a conversation with him
19 about it?

20 A I did so many conversations with him, sir.

21 Q The conversation I had -- withdrawn. I'm sorry.

22 The testimony that you just gave about the voting
23 and the letters to the judge and the letters to the public
24 officials, these tapes are tapes that you never turned over
25 on the government, isn't that correct?

6400

1 A No, I did not, until they asked me, I told them
2 about it. And I am the one who told the government that I
3 have Mr. Ibrahim El-Gabrownny on tapes, I have some tapes for
4 Mr. Sayyid Nosair or -- I'm sorry, not Sayyid Nosair, some
5 of the defendants which is subjects in this investigation,
6 and the government requested this tapes. I told them where
7 to find it and how they can go and get it from my house,
8 sir.

9 Q You told the agents that after May of 1993, isn't
10 that correct?

11 A I don't recall the date, but after the arrest was
12 done, sir.

13 Q After whose arrest was done?

14 A After they took the case down.

15 Q After they took whose case down?

16 A This conspiracy case, sir.

17 Q Wasn't Mr. El-Gabrownny arrested in March of 1993,
18 if you know?

19 A I don't recall the date, but he was arrested
20 prior to that, sir.

21 Q In March of 1993, isn't that right?

22 A Could be, sir.

23 Q In fact, you called him on the phone five minutes
24 before he got arrested, didn't you?

25 A Yes, sir.

6401

1 Q You recorded that, didn't you?

2 A Yes, sir.

3 Q Did you tell the agents about the tapes that you
4 had about Mr. El-Gabrowny? Did you tell them that in March
5 of 1993, or did you tell them that sometime after that?

6 A I believe sometimes after that, sir.

7 Q Mr. El-Gabrowny did, in fact, organize a
8 demonstration in front of Governor Cuomo's office, isn't
9 that right?

10 A Yes, sir.

11 Q Mr. El-Gabrowny was kind of a nut about
12 demonstrating, isn't that right?

13 A I'm sorry, sir?

14 Q I will withdraw it. I'm sorry, Judge.
15 Mr. El-Gabrowny often wanted to demonstrate,
16 isn't that right?

17 A Yes, sir.

18 Q He even wanted to go out and demonstrate if there
19 was only going to be him and somebody else against 300
20 people, isn't that right?

21 A Yes.

22 Q And you even told him, "Ibrahim, you can't go to
23 a demonstration with the Jewish groups and be there by
24 yourself."

25 Didn't you tell him that?

6402

1 A I may said it, sir.

2 Q You also told the agents about that, they asked
3 you about the demonstration in front of the judge's house,
4 isn't that right?

5 A Yes, sir.

6 Q You went to that demonstration, isn't that right?

7 A Yes, I did, sir.

8 Q You told Mr. El-Gabrownny, "There's got to be more
9 brothers there. Don't go there by yourself," and he wanted
10 to go even if it meant he stood there alone, isn't that
11 right?

12 A Yes, sir.

13 Q This is the man that you say wanted to throw a
14 bomb at a synagogue, is that your testimony?

15 A No, I did not say he want to throw a bomb in a
16 synagogue. He want high-explosive, powerful bomb, and not
17 now, after the appeal of Mr. Sayyid Nosair, sir.

18 Q There came a time in the case when you met a man
19 named Edward Ferguson, isn't that right?

20 A Yes, sir.

21 Q And Mr. El-Gabrownny met Mr. Ferguson also, isn't
22 that correct?

23 A Yes, sir.

24 Q Mr. Ferguson, as far as you know, is a licensed
25 NRA arms instructor, isn't that correct?

6403

1 A Yes, sir.

2 Q Mr. El-Gabrownny, you took him to the classes so
3 he can get his permit for his gun, isn't that correct?

4 A Yes, sir.

5 Q When you were in the classes with
6 Mr. El-Gabrownny, didn't you have to tell Ibrahim, "Stop
7 sleeping in the class"?

8 A No, sir, I don't recall that.

9 Q Never said it?

10 A I don't recall that, sir.

11 Q You said that Mr. El-Gabrownny --

12 MR. RICCO: Withdrawn, your Honor. I'm sorry.

13 Q Mr. Ferguson is what we call a Black Muslim,
14 isn't that correct?

15 A Yes.

16 Q You met many Black Muslims as a result of going
17 to Nosair's trial, isn't that correct?

18 A Yes, sir.

19 Q I asked you to listen to two tapes last night.
20 Did you have an opportunity to listen to those tapes?

21 A Yes, sir.

22 Q One of those tapes is you talking to Ahmed
23 Sattar, isn't that right?

24 A Yes, sir.

25 Q The other one is you talking to the agents about

6404

1 your conversation with Ahmed Sattar, right?

2 A Yes, sir.

3 Q Ahmed Sattar, the conversation that you had with
4 Ahmed Sattar -- withdrawn.

5 At Nosair's trial the atmosphere was like a
6 circus, wasn't it?

7 A Yes, sir.

8 Q You had one group on one side, another group on
9 the other side, yelling back and forth at each other, right?

10 A Yes, sir.

11 Q Throwing sticks and papers back and forth, right?

12 A Yes, sir.

13 Q Many people were attracted to that trial, isn't
14 that right?

15 A Yes, sir.

16 Q The press, the media, right?

17 A Yes, sir.

18 Q And they were quick to focus in on the people
19 that were acting unruliest, isn't that correct?

20 A I'm sorry, sir.

21 Q They were quick to focus in and highlight the
22 people who were the unruliest, isn't that correct?

23 A What, sir?

24 Q That were acting the baddest, causing the most
25 trouble.

6405

1 A Yes.

2 Q But there were also many people who came to
3 Nosair's trial, both Jews, Muslims and Gentiles --

4 A What?

5 Q Jews, Christians, and Muslims, they came to the
6 trial and sat in the courtroom, just like many of these
7 people are here today, and watched the proceedings, isn't
8 that correct?

9 A I'm not sure it was Christians. It was mostly
10 Jews and Muslims, sir.

11 Q But there were people who came and sat in the
12 courtroom and listened to the proceedings, isn't that
13 correct?

14 A Yes, sir.

15 Q Without any type of outburst, right?

16 A I'm sorry?

17 Q They sat and listened without outbursts, isn't
18 that correct, many people?

19 A It happened a few times that some people outburst
20 and screamed at the courtroom, sir.

21 Q Also outside of the courtroom there were many
22 people who came, on both sides who came because they were
23 interested in the issues, isn't that correct?

24 A Yes, sir.

25 Q You believed that there were many people who were

6406

1 there because they had another agenda, isn't that correct?

2 A Yes, sir.

3 Q That's why you was there, isn't that correct?

4 A Yes, sir.

5 Q Some of those people that you met at that trial
6 were Black Muslims, isn't that correct?

7 A Yes, sir.

8 Q And Ahmed Sattar, you testified that Sattar
9 said -- withdrawn.

10 You told us that at first there wasn't a
11 coalition between the Black Muslims and the Arabic Muslims,
12 right, at first, correct?

13 A "Coalition" means what, please.

14 Q Coming together, working together.

15 A Yes, sir.

16 Q You said that Ahmed explained a problem between
17 the Black Muslims and the Arabic Muslims to you, isn't that
18 correct?

19 A That's correct, sir.

20 Q You in fact told the agents about that, isn't
21 that correct?

22 A Correct, sir.

23 Q You came and told the jury here that Ahmed told
24 you that the Black Muslims wanted to attack the Jews, and
25 when the Egyptians didn't help, the Black Muslims were

6407

1 angry, isn't that what you said?

2 A I'm not so sure that's the same words I used, but
3 it was a kind of dispute between the Black Muslims and the
4 Jews, and when the Black Muslims' mosques asked the Arab
5 Muslims' mosque to help, they didn't go. That's why the
6 Black Muslims' mosque was hesitant to help the Arabic Muslim
7 people, sir.

8 Q You, in fact, had a conversation with Sattar
9 about that, didn't you?

10 A Yes, sir.

11 Q But you made up the story about the conflict
12 between the Black Muslims and the Jews, that was your part,
13 isn't that right?

14 A No, sir, that's not my part.

15 Q Didn't Sattar tell you that the Black Muslims
16 were having a demonstration about the Gulf War?

17 Didn't you listen to the tape last night?

18 A Yes, I listened to it, sir.

19 Q In that conversation didn't Sattar say to you
20 that what happened was that the Black Muslims were concerned
21 about the Gulf War and Muslims in Bosnia?

22 A Yes, sir.

23 Q Isn't that right?

24 A Yes, sir.

25 Q That they were having a demonstration about the

6408

1 Gulf War and Muslims in Bosnia?

2 A This is the conversation on the phone, sir.

3 Q Between you and Sattar?

4 A That's not the only one, sir.

5 Q I am talking about the one that you listened to
6 last night that was taped.

7 A Yes, sir.

8 Q OK.

9 A All right.

10 Q It was about a conflict between the Gulf --
11 withdrawn.

12 It was about Bosnia and the Gulf situation, isn't
13 that right?

14 A Yes, sir.

15 Q When the Black Muslims demonstrated for the
16 Muslims in Bosnia, the Egyptian community sat on its hands,
17 and that angered people in the Black Muslim community, isn't
18 that correct?

19 A Yes, sir.

20 Q You, however, reported that conversation to the
21 FBI as saying that the blacks were mad because the Egyptians
22 didn't help them attack the Jews, isn't that what you told
23 Agent Anticev?

24 A It was one of the conversations, sir, and I
25 reported as told me by Mr. Sattar, sir.

6409

1 Q The conversation where you claim Sattar said that
2 blacks were attacking the Jews, that is not on tape, is it?

3 A I don't know if it is not or on the -- if it is
4 or if it's not, sir.

5 Q The conversation about the Gulf War, you know for
6 a fact that's on tape, don't you?

7 A Yes, sir.

8 Q Because you listened to it yourself, isn't that
9 right?

10 A Yes, sir.

11 Q You were involved in this investigation, and
12 oftentimes the agents would ask you about Mr. El-Gabrownny,
13 and you told them the story about the synagogue, right?

14 MR. McCARTHY: Objection.

15 MR. RICCO: I'm sorry. Withdrawn. Excuse me.

16 Q You told them that Mr. El-Gabrownny said he wanted
17 these high-powered explosives, right?

18 A Yes, sir.

19 Q There came a time when the agents asked you, "Has
20 Mr. El-Gabrownny said anything to you more about explosives?"
21 and you said, "No, only peaceful things, writing letters and
22 going to demonstrations."

23 Do you recall saying that?

24 A "Only peaceful things"?

25 Q Yes. Do you recall saying that?

6410

1 A I recall that I reported when Mr. El-Gabrowny
2 talked about high powerful explosives, I reported it. When
3 he talked about letters, I reported it. I did not add
4 anything out of my own mind, sir.

5 MR. RICCO: OK. One second.

6 Mr. McCarthy, this will be 10-1 page 9, at the
7 top.

8 MR. McCARTHY: May I have just a moment.

9 MR. RICCO: Take your time.

10 MR. McCARTHY: I object, your Honor. It is not
11 inconsistent.

12 Q Did you tell --

13 THE COURT: One second.

14 Q Did the agents ask you, did Mr. El-Gabrowny --

15 MR. McCARTHY: Objection.

16 Q -- mention anything more about explosives?

17 Do you recall being asked that question?

18 Do you recall being asked that question?

19 A I heard "objection." I don't know, should I
20 answer, sir?

21 THE COURT: There was not an objection to that
22 question. You can answer that one.

23 A I'm sorry. What is the question, sir?

24 Q Do you recall the agents asking you, did

25 Mr. El-Gabrowny -- withdrawn.

6411

1 Mr. El-Gabrowny never mentioned anything more
2 about explosives. Do you recall them asking you that?

3 A They may ask, yes, sir.

4 Q Did you say to them, "Not yet. They are very
5 busy now with demonstration and, uh, uh, in interviews with
6 TV and this and that, you know, peaceful things before the
7 trial but, uh, nothing about violence at all."

8 Do you recall saying that to the agents?

9 A That's what I reported what was going on, sir.

10 Q And that tape is another tape that stayed in your
11 box in your house, isn't that correct?

12 A Yes, sir.

13 Q You stayed on this case November, right, and
14 December, isn't that correct, of 1991, during Nosair's
15 trial, isn't that right?

16 A Yes, sir.

17 Q You were involved in the case in January when
18 there was a verdict, isn't that right?

19 A Yes, sir.

20 Q You stayed around in February, isn't that right?

21 A Yes, sir.

22 Q And in March, isn't that right?

23 A Yes, sir.

24 Q And in May, isn't that right?

25 A Yes, sir.

6412

1 Q And in June, isn't that right?

2 A Yes, sir.

3 Q And over those seven months you were banking
4 home, being paid \$2,000 a month plus expenses?

5 A That's right, sir.

6 Q And come June the supervisors at the FBI wanted
7 to talk to you about the information that you had been
8 providing concerning Mr. El-Gabrowny and others, isn't that
9 right?

10 A Yes, sir.

11 Q Because up until that time the only thing that
12 you brought to them for Mr. El-Gabrowny was that box of
13 carpenter nails.

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q Did you bring them the carpenter nails?

17 A I'm sorry, sir?

18 Q Did you bring the carpenter nails to the FBI?

19 A The carpenter nails?

20 Q The carpenter nails.

21 A Yes, sir.

22 Q When you brought the carpenter nails to the FBI,
23 you claimed that Mr. El-Gabrowny gave those to you, right?

24 A It wasn't nails, sir, it was a cartridges to
25 shoot the nails into the material.

6413

1 Q Aren't they called carpenter nails?

2 A My understanding to nails, it's different than
3 cartridges, sir.

4 Q Didn't you really steal those out of his house?

5 A No, sir, I did not.

6 Q Are you sure about that?

7 A Positive, sir.

8 Q You went through people's pockets when they
9 wasn't watching, didn't you?

10 A Yes, sir, I did.

11 Q You even did that inside of a mosque?

12 A It may, yes.

13 Q While people was praying, you was going through
14 their pockets, right?

15 A Yes, sir.

16 Q You didn't steal those carpenter nails out of
17 Mr. El-Gabrowny's house?

18 A No, sir.

19 Q Along with his other construction equipment?

20 A I didn't see construction equipment in
21 Mr. El-Gabrowny's house.

22 Q You gave the carpenter nails to the FBI, right?

23 A Yes, sir.

24 Q And the story about Mr. El-Gabrowny wanting to
25 cut the carpenter nails and use the powder from them for

6414

1 bombs, right?

2 A It was not a story? It was a fact, sir.

3 Q As you claim, right?

4 A As Mr. El-Gabrowny said, sir.

5 Q And the FBI looked at those carpenter nails,
6 right?

7 A Yes, sir.

8 Q They looked at the carpenter nails and they gave
9 them right back to you, didn't they?

10 A Yes, sir.

11 Q A few weeks later the supervisors, Crouthamel and
12 Dunbar, wanted to have a conversation with you about your
13 continued participation in this investigation, isn't that
14 right?

15 A That's right, sir.

16 Q When you came in there, they said, "You got to
17 verify information that you've been providing us against
18 Mr. El-Gabrowny and other people," isn't that right?

19 A That's not right, sir. What they said, sir, that
20 they want me to testify and how --

21 Q Didn't --

22 MR. RICCO: Excuse me, your Honor.

23 Q Finish your answer.

24 A And how much it will take for me to testify. And
25 I refused any kind of money, and I refused to testify, sir.

6415

1 Q Didn't Mr. McCarthy ask you himself, page 4943,
2 line 10 --

3 MR. McCARTHY: I just need a moment.

4 I object. If it goes back to 4940 it's not
5 inconsistent.

6 MR. RICCO: I didn't hear you, Mr. McCarthy.

7 MR. McCARTHY: That is the basis of the question.

8 MR. RICCO: I will re-form the question. It's
9 not --

10 Q Didn't the FBI come to you and say, "Mr. Salem,
11 we want to verify the information that you've been providing
12 us"?

13 MR. McCARTHY: Objection. Asked and answered.

14 THE COURT: Sustained.

15 Q It wasn't -- well, OK. Thank you.

16 Didn't Mr. McCarthy ask you on page 4941, line
17 21 --

18 MR. McCARTHY: If it is the same line, your
19 Honor, I have the same objection.

20 THE COURT: May I see it.

21 MR. RICCO: Yes, sir.

22 THE COURT: I will allow it. Go ahead.

23 MR. RICCO: Thank you.

24 Q Didn't Mr. McCarthy ask you: "Was there any
25 discussion about verifying the information that you had

6416

1 given the FBI?"

2 And you answered in front of this jury: "Yes,
3 sir, there was."

4 Do you recall --

5 THE COURT: Read on. Read on.

6 MR. RICCO: Certainly.

7 Q "Can you tell us what was said in that regard?"

8 "He said, 'You giving us very serious information
9 about killing a judge, killing one of the civilians, and we
10 would like to verify this information.'"

11 MR. RICCO: Thank you, your Honor.

12 Q Did you give that question and give that answer
13 to Mr. McCarthy on your direct examination?

14 MR. McCARTHY: I object. In light of the
15 question, I would like it to go back to 4940 at line 20,
16 given the line and the way the question was asked.

17 MR. RICCO: Judge, I only wanted to read the
18 question and the first answer.

19 MR. McCARTHY: I know that.

20 THE COURT: Let me see 49 --

21 MR. RICCO: I'll get to --

22 THE COURT: Let me see 4940 now.

23 You can read from 4940 over on to 4941 where you
24 began.

25 MR. RICCO: I'm sorry, your Honor. I didn't hear

6417

1 you.

2 THE COURT: Please read from 4940 over to 4941
3 where you began.

4 MR. RICCO: Certainly, your Honor.
5 Should I read the entire page?

6 THE COURT: Please.

7 MR. RICCO: OK.
8 Your Honor, I would like a side bar.

9 THE COURT: No.

10 MR. RICCO: Please.

11 THE COURT: No, sir.

12 MR. RICCO: This is the government's theory of
13 the case. This is not my direct examination.

14 THE COURT: Do you want them to read it?

15 MR. RICCO: If it is your Honor's wish.

16 THE COURT: It is my order.

17 MS. STEWART: Judge, I object.

18 THE COURT: Overruled.

19 Q Mr. Salem, you claim that you left the FBI
20 because they wanted you to testify, that's what you say,
21 right?

22 A It was part of the reasons, yes, sir.

23 Q The other part of the reason was that they wanted
24 to verify the information, and you were unable to do it,
25 isn't that correct?

6418

1 A That's correct, sir.

2 Q They came to you with a proposal and the proposal
3 had different parts, right?

4 One of the parts related to you testifying and
5 you had problems with that, right?

6 A Right.

7 (Continued on next page)

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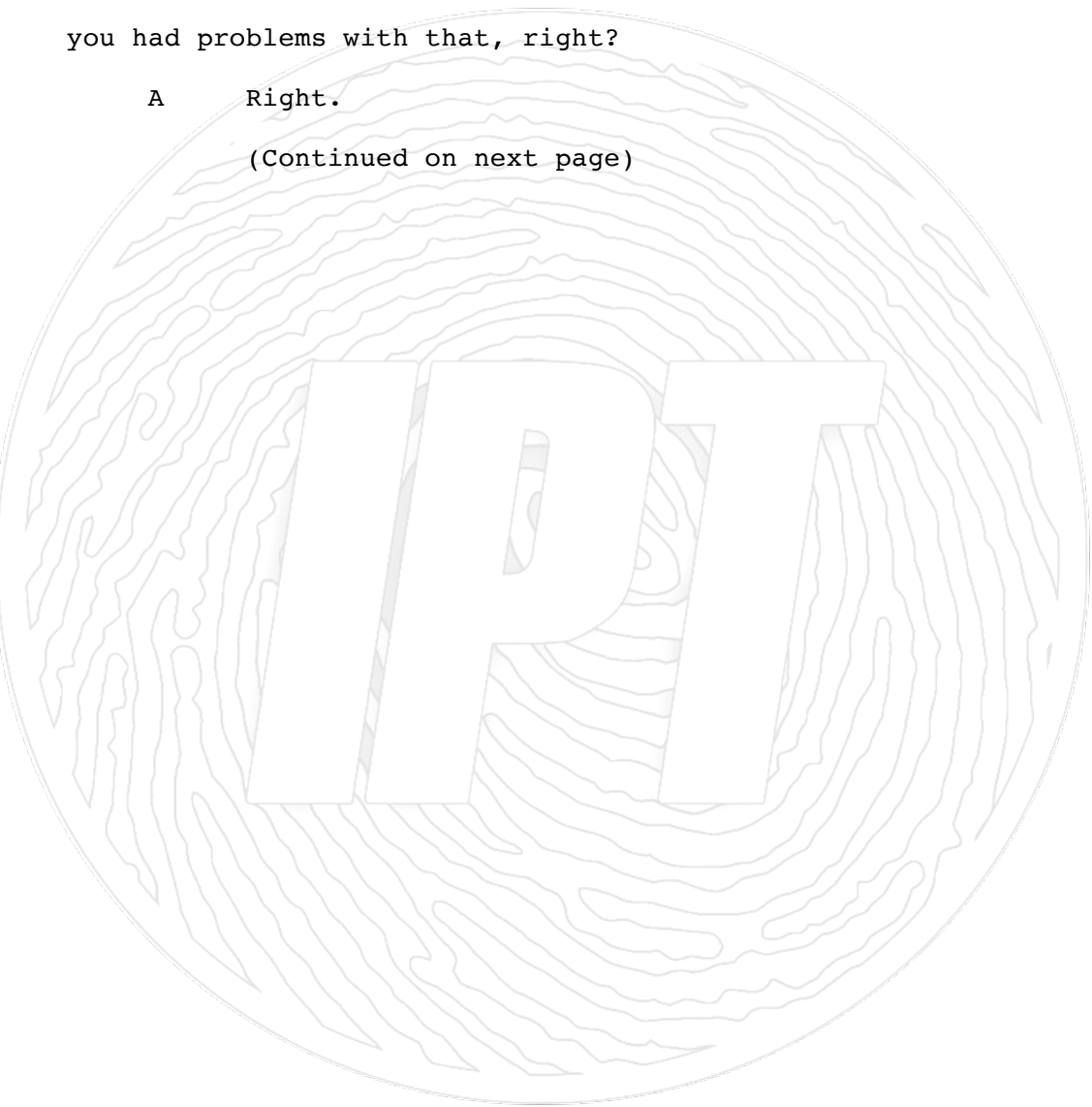
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6419

1 Q What they said to you was, you've given us
2 information about people, blowing people up, killing and
3 kidnapping judges, right?

4 A I am sorry. Could you say it again, please.

5 Q The FBI said you gave us some serious information
6 about people wanting to hurt public officials and private
7 citizens, isn't that correct? That's what was said to you.

8 A It was said that they giving us serious
9 information about killing a judge and blowing bombs, yes.

10 Q And kidnapping, right?

11 A Yes.

12 Q And they said we want to verify it, right?

13 A They suggested to wear a wire, yes, sir.

14 Q And what they said was, one of the ways was to
15 wear a wire, isn't that right?

16 A Yes, sir.

17 Q To visit Mr. Nosair, right?

18 A Yes, sir.

19 Q Because you claimed it was Mr. Nosair that was
20 providing a lot of this information, right?

21 A Yes, sir.

22 Q So they said all right, you wear a wire out to
23 your next meeting with Mr. Nosair, correct?

24 A Yes.

25 Q And you said no.

6420

1 A That's not true, sir.

2 Q And they said to you, if you wear a wire you
3 might have to testify, right?

4 A That's correct, sir.

5 Q And you said that wasn't our original deal,
6 right?

7 A Right, sir.

8 Q You said I will wear a wire?

9 A Yes.

10 Q If you let me keep the tape.

11 A That's correct, sir.

12 Q You can listen to the tape but I am going to keep
13 the tape.

14 You never offered the FBI to listen to them other
15 tapes that you had in your house, did you?

16 A No, sir.

17 Q But you wanted for some reason to keep this tape,
18 right?

19 A I want them, sir -- I accepted to wear the wire.
20 I want them to listen to what Mr. Nosair saying. They make
21 sure what he said that what I delivered to them, and then I
22 will keep the tape with me so they don't have to force me to
23 testify --

24 Q Testify, right? And the reason why you suggested
25 that, because the FBI claimed the only thing they wanted to

6421

1 do was to verify it, and so you said --

2 MR. McCARTHY: Objection to form.

3 MR. RICCO: I will rephrase it.

4 MR. McCARTHY: Among other things.

5 THE COURT: Thank you.

6 Q You wanted to keep the tape, right?

7 A Yes.

8 Q And your way of keeping the tape was to keep the
9 FBI to its word that the only thing they were interested in
10 was verification, right?

11 A No, sir. The only thing they are interested in
12 is the information and to make sure that really Sayyid
13 Nosair said that. I accepted to wear the wire for that,
14 sir.

15 Q So you would give them the tape and they would
16 listen to the tape?

17 A Yes.

18 Q And you would take the tape back?

19 A Yes.

20 Q By listening to the tape they would be able to
21 determine whether or not what you were saying was true or
22 not, isn't that right?

23 A That's correct, sir.

24 Q That never happened, did it?

25 A No, sir.

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1 Q The other option -- and the reason why it never
2 happened is because you said the FBI was going to make you
3 testify by keeping the tape, right?

4 A Yes, sir.

5 Q And you weren't going to let them keep the tape
6 because you didn't trust them, isn't that right?

7 A I don't want to be in this position, sir.

8 Q The other option was for you to take a polygraph
9 test, and to that you said I'll take it, right?

10 A Yes, sir.

11 Q And you had trained in polygraphs, right?

12 A Yes.

13 Q You knew how to determine the outcome of a
14 polygraph test, isn't that right?

15 A No, I know how can I control my body muscles and
16 I can change some of these readings. I did try to do that,
17 yes, sir.

18 Q And you were asked, you went in for your
19 polygraph, right?

20 A Yes.

21 Q And they asked you the questions before the
22 polygraph so that you would know what the questions were,
23 right?

24 A Yes.

25 Q And that you would be calm, right?

6423

1 A Yes.

2 Q The first question they asked you was did you
3 falsify any part of your story about purchasing a pistol
4 from El Shinawy, and your answer was no. Right?

5 MR. McCARTHY: Could I have a page reference?

6 MR. RICCO: I am sorry.

7 Q That was the first question they asked you,
8 right?

9 A Yes, sir.

10 Q And that was the truth, that you did not falsify
11 any part of your story about El Shinawy?

12 A No, I did not, sir.

13 Q And the second question was, did you lie about
14 your story concerning Rahman's request to have Mubarak
15 harmed? And you said no, isn't that right?

16 A Yes, sir.

17 Q Then they said, did you falsify your story
18 concerning a prison break scenario for Nosair? And you said
19 no, isn't that right?

20 A Yes, sir.

21 Q Then they said, did you make up the story that
22 Rashid, the defendant seated with the cap on, told you that
23 he could obtain weapons or explosives? And you said no.
24 They asked you that, right?

25 A Yes, sir.

6424

1 Q And you gave that answer, right?

2 A Yes.

3 Q Then they asked you, did you falsify your story
4 concerning Nosair's plans to harm members of the Jewish
5 community? And you said no, right?

6 A Yes.

7 Q And then they asked you did you lie when you
8 stated that you had attended a meeting where plans were
9 discussed to place bombs in the Jewish community? And you
10 said no, isn't that right?

11 A Yes, sir.

12 Q And then they said, have you told Egyptian
13 intelligence about Nosair's plans to harm members of the
14 Jewish community? And you said no, isn't that correct?

15 A Yes, sir.

16 Q That was the exam that you took in July of 1991,
17 right?

18 A I don't recall the exact dates, but around that
19 time.

20 Q '92, sorry. That was after you showed up with
21 the carpenter nails, right?

22 A It wasn't only the carpenter nails, cartridges,
23 sir. It was the fuse, the timer, the M80's, and the
24 carpenter cartridges, sir.

25 Q And after all of that, they were asking you did

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1 you make up the stories behind the presentation of that
2 evidence, isn't that correct?

3 A Yes, sir.

4 Q And you said no, that you hadn't made it up,
5 right?

6 A No, I did not, sir.

7 Q That was in July of 1992, right?

8 A Yes, sir.

9 Q And up until that time you had been paid in
10 December, January, February, March, April, May, and June,
11 isn't that correct?

12 A Yes.

13 Q And after July the FBI reclassified you and you
14 wasn't getting no more money, isn't that right?

15 A No, that's not right, sir. The FBI wants me to
16 testify for this information. I refused to testify under
17 any circumstances, and that was the breakup, sir.

18 MR. RICCO: I move to strike as being
19 unresponsive to the question --

20 THE COURT: The last part is stricken. The
21 question was whether you received any more money. The
22 answer, I take it, is no.

23 Q Is the answer no, you didn't --

24 THE COURT: At that time.

25 Q -- at that time, in July 1992?

6426

1 A No, I did not, sir.

2 Q You were not going to get any more money, isn't
3 that right?

4 A That's right, sir.

5 Q In September of the same year you took another
6 polygraph, isn't that correct?

7 A I don't recall the date, but I remember I took
8 another polygraph, yes, sir.

9 Q In July of 1992, when you didn't get any more
10 money, you went on vacation, right?

11 A Yes.

12 Q You came back from vacation -- you were told that
13 you could get money but it would be on the basis of what you
14 brought in, isn't that right?

15 A I am not sure that that's what happened.

16 Q I will rephrase the question. In other words,
17 before July of 1992, you were getting a straight salary,
18 2,000 a month, right?

19 A Yes.

20 Q And it didn't matter what you did or what you
21 said, you get your 2,000 a month, isn't that right?

22 A Yes, sir.

23 Q And after July of 1992, that was over, isn't that
24 right?

25 A That's right, sir.

6427

1 Q No more salary, right?

2 A No more salary, sir.

3 Q But they were willing to pay you some money,
4 however, for specific information, isn't that correct?

5 A I believe that was later after the World Trade
6 Center bombing, sir.

7 Q In September of 1992, you took another polygraph,
8 isn't that correct?

9 A Yes, sir.

10 THE COURT: Before you go into this I think I am
11 going to give the jury an instruction with regard to
12 polygraph evidence.

13 MR. RICCO: Sure.

14 THE COURT: Ladies and gentlemen, you have heard
15 some questions, and you may be hearing more, about polygraph
16 examinations, which are also referred to colloquially as lie
17 detector tests. Let me explain to you a few things about
18 such tests.

19 AS I told you at the beginning of the trial, you
20 the jurors are the only judges of the facts and it is you
21 alone who will decide the credibility of the witnesses and
22 give the testimony of each witness whatever weight you think
23 it deserves. Normally if a person has taken a polygraph
24 examination, that evidence cannot properly be presented to a
25 jury because it is for you and not for a polygraph examiner

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1 to decide whether a witness has provided truthful
2 information. Polygraph results may not be received as
3 evidence in court because they can be unreliable and because
4 a polygraph does no more than to measure a person's bodily
5 reaction to certain questions. It does not show
6 conclusively whether a person is telling the truth, and the
7 machine, obviously, cannot compare a person's answers and
8 reactions as the machine measures them with other
9 independent information and evidence that may be available.
10 In this case, however, the parties have agreed that you
11 should be aware that the witness Emad Salem was given
12 polygraph examinations on three different dates: January 8,
13 1992; July 6, 1992; and September 28, 1992. The tests had
14 mixed results. You will not be told in more detail about
15 the results because whether a particular polygraph examiner
16 or someone else who looked at the results of the test after
17 it was over found the witness to be truthful or untruthful
18 has nothing to do with your consideration of the case. You
19 do not know, for example, how the questions were asked or in
20 what order. You don't know whether everyone who analyzed
21 the results came to the same conclusion.

22 Although the results of the test are not relevant
23 to your consideration, the fact that the tests were given
24 may help you to understand other facts in the case, such as
25 why certain people including Mr. Salem took certain actions.

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1 How much weight if any you give to the fact that the tests
2 were given in deciding why people did or did not do certain
3 things is entirely up to you.

4 Go ahead.

5 MR. RICCO: Thank you.

6 BY MR. RICCO:

7 Q Before you took this July polygraph where they
8 asked you specific questions about the information that you
9 had provided, do you recall taking an earlier polygraph
10 where they asked you questions about intelligence contacts?

11 A Yes, sir.

12 Q In January 1992, you were given a polygraph,
13 isn't that correct?

14 A Yes, sir.

15 (Continued on next page)

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1 Q And that was around the time, was it not, when
2 you said that you got this visit from a person in Egyptian
3 general intelligence, isn't that correct?

4 MR. McCARTHY: Objection.

5 MR. RICCO: If he was.

6 MR. McCARTHY: Objection. Objection.

7 MR. RICCO: I will rephrase the question.

8 MR. McCARTHY: I object to the line.

9 MR. RICCO: I am sorry.

10 THE COURT: I will see counsel at the side.

11 (At the side bar)

12 MR. McCARTHY: As I think all the attorneys know
13 from the tapes, it so happens that the morning that he was
14 given the polygraph happens to be the afternoon that he was
15 contacted by the officer. I think the implication of the
16 question was that the polygraph, the reason for the
17 polygraph was the contact.

18 MR. RICCO: In the first place, that's not
19 something that I know.

20 MR. McCARTHY: It's on the tape.

21 THE COURT: Is it on the tape?

22 MR. RICCO: Not that I know, and if that is the
23 government's representation, I won't make that question. I
24 will accept Mr. McCarthy's representation, but most of the
25 tapes are undated.

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THE COURT: Let's move on.

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(In open court)

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MR. RICCO: One second, your Honor. I am sorry.

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(Continued on next page)

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1 BY MR. RICCO:

2 Q You were given a polygraph exam in January, and
3 the questions that were asked in January was that the
4 questions related to whether or not you were involved with
5 another intelligence agency, isn't that correct?

6 A I think I remember, yes, sir.

7 Q And it is your testimony that everybody at the
8 FBI knew that you were involved -- withdrawn.

9 Your testimony was that you had discussed with
10 several agents the fact that you were involved with Egyptian
11 military intelligence, isn't that correct?

12 A I am afraid word involve is not what it was. I
13 was called --

14 Q I will rephrase the question.

15 A Thanks.

16 Q That you had some contacts with military
17 intelligence. Yes, sir.

18 Q And this was something that you had talked to the
19 agents about?

20 A Yes, sir.

21 Q And this was something that the agents knew
22 about?

23 A Yes, sir.

24 Q In fact, you went to a party at Al Wheddi
25 auditorium, isn't that correct?

6433

1 A Yes, sir.

2 Q Remember the party when you was there, you ran
3 into somebody that was close to the sheik and you said this
4 guy shouldn't be here because there was dancing? Do you
5 remember that party?

6 A Yes, sir.

7 Q And you told us that showed that he wasn't that
8 fundamental?

9 A What, sir?

10 Q That he wasn't that fundamental if he was at such
11 a party?

12 A Yes.

13 Q The night that you was at that party, you was
14 wearing your body wire, weren't you?

15 A No, sir.

16 Q Didn't you tell Agent Floyd that you recorded the
17 conversation you had with that night with your friend
18 Mahsoun?

19 A There is another conversation with my friend but
20 it's not on this night, sir.

21 Q It's not at the party?

22 A It's not at the party, absolutely not.

23 Q You are sure?

24 A I am positive, sir. Page 7.

25 Q Do you recall the party where you met the

6434

1 Egyptian counsel?

2 A Yes, sir.

3 Q Was that the same party where you ran into the
4 person who you say was not so fundamental?

5 A Yes, sir.

6 Q That was the same party, wasn't it?

7 A Yes, sir.

8 Q And didn't you tell Agent Floyd about the
9 conversation that you had with Mahsoum? Isn't that right?

10 A Which conversation, sir?

11 Q The conversation that you had with him at the
12 party.

13 A I am not so sure which conversation I referred to
14 Agent Nancy Floyd. Is it the one in the party or one after
15 or before, sir?

16 Q Did you say to Agent Floyd -- you don't remember
17 whether you had a conversation with Mahsoum before, during
18 or after the party, is that your testimony?

19 A I remember that I have a conversation with
20 Mr. Mahsoum during the party. There is some conversation
21 before the party and others after, sir.

22 Q And didn't you tell Agent Floyd that you recorded
23 the conversation you had with Mahsoum?

24 A I did remember that I recorded some conversation
25 with Mr. Mahsoum, yes, sir.

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1 Q And you told Agent Floyd, oh, that sounds good,
2 and I have all of that on tape, by that, and by the way.
3 Didn't you tell her that you had that conversation on tape?

4 A Yes, I said that, sir.

5 Q The night of that party, you got your tape
6 equipment with you, right?

7 A No, sir, that's not right.

8 Q How did you tape that conversation that you had?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained. That wasn't the
11 testimony. May I see counsel at the side bar.

12 MR. RICCO: Judge, I will move to another area.

13 I am not trying to put words --

14 THE COURT: Please do.

15 Q The conversation that you said was recorded that
16 you discussed with Agent Floyd, did you record that
17 conversation?

18 A I am sorry, sir. Will you please repeat the
19 question.

20 Q Did you record the conversation with Mahsoun?

21 A I did record a conversation, yes.

22 Q Was it the conversation that you had that night
23 either before, during or after the party?

24 A I am lost again, sir.

25 THE COURT: May I see counsel at the side. Come

6436

1 up.

2 (At the side bar)

3 THE COURT: We have now really reached the point
4 of diminishing returns. Number one, he said he had
5 conversations with the man before the party, not the night
6 of the party but some point before, during the party and
7 some point after.

8 MR. RICCO: Judge --

9 THE COURT: Listen to me. You are going to
10 finish this, please.

11 MR. RICCO: Of course, Judge. I don't like the
12 fact that you always somehow think that I am trying to do
13 something wrong here.

14 THE COURT: I don't think that you are always
15 doing something wrong any more than any other lawyer is
16 always, quote, doing something wrong.

17 MR. RICCO: Judge, I am offended --

18 THE COURT: I have criticized every lawyer here.

19 MR. RICCO: But when you say that I am trying a
20 delay tactic, you are wrong.

21 THE COURT: I am not accusing you of trying a
22 delay tactic. Whether you know it or not, you have reached
23 the point of diminishing return.

24 MR. RICCO: If you had said that he said it was
25 before the party, I would have moved it along.

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1

(In open court)

2

BY MR. RICCO:

3

Q Mr. Salem, I take it sometime that evening you

4

did record a conversation with Mahsoum.

5

A Sir, this evening I did not record conversation

6

with Mr. Mahsoum.

7

Q OK.

8

A Sir.

9

Q So when you were talking to Agent Floyd about the

10

recording of a conversation with Mahsoum, you were referring

11

to something else other than the party.

12

A Another conversation, yes, sir.

13

Q Mahsoum was your friend, a person that you knew

14

from military intelligence days, isn't that right?

15

A That's not right. He is not in intelligence,

16

sir.

17

Q Was he your friend?

18

A Yes, sir.

19

Q Was he a deputy counsel to the Egyptian

20

consulate?

21

A Yes, sir.

22

Q And you were recording the conversations that you

23

had with him, isn't that right?

24

A The whole conversation on the phone was being

25

recorded, sir.

6438

1 Q And you were not recording him, were you, at the
2 request of the United States FBI, were you?

3 A No, sir.

4 Q In September you came back and you took another
5 polygraph, around September 1992, right?

6 A Yes, sir.

7 Q And you were asked three questions, if you
8 recall. You were asked, have you deliberately provided
9 false information regarding the he will jihad movement? And
10 you said no. Isn't that correct?

11 A Yes, sir.

12 Q And you said, have you been directed by anyone to
13 give false information to the FBI? You said no, isn't that
14 correct?

15 A Yes, sir.

16 Q Then you were asked, are you reporting your
17 cooperation with the FBI to any unauthorized groups or
18 individuals? You said no, isn't that correct?

19 A Yes.

20 Q And about two weeks or sometime after that, the
21 FBI released you, isn't that correct?

22 A I am sorry. What --

23 Q You were fired by the FBI about two weeks or
24 three weeks after this time period, isn't that correct?

25 A No, that's not correct, sir.

6439

1 MR. McCARTHY: Objection -- withdraw the
2 objection.

3 Q At the time of the World Trade Center bombing in
4 February of 1993, you were not working for the FBI, were
5 you?

6 A No, sir.

7 Q In January, a month before the bombing of the
8 World Trade Center, you weren't working for the FBI, were
9 you?

10 A No, sir.

11 Q In December of 1992, you weren't working for the
12 FBI, were you?

13 A No, sir.

14 Q Were you angry with the FBI because of the way
15 you were treated by Crouthamel and Dunbar?

16 A Yes, sir.

17 Q You called him a son of a bitch, didn't you?

18 A No, I was mistaken in that because I didn't read
19 the whole transcript. I said I am referring to the
20 supervisor, but the fact of the matter was not what it is,
21 because I didn't hear the tape. I was mistaken in that
22 answer, sir.

23 Q You were angry with the FBI, isn't that right?

24 A With these individuals, yes, sir.

25 Q And you were so angry that you decided that you

6440

1 were going to intentionally get them to talk on the
2 telephone about information, isn't that correct?

3 A After the bombing?

4 Q After the bombing, right?

5 A Yes, sir.

6 Q Back in July, you had given them information,
7 isn't that correct, the FBI?

8 A Yes, sir.

9 Q In December, January, February, you were not
10 giving the FBI any information, isn't that right?

11 A That's not right, sir. When Mr. Sayyid Nosair
12 called me from jail, I reported it even I wasn't working.
13 When Mr. Mahmoud Abouhalima called me I reported it, even I
14 wasn't operative at that time.

15 Q Who did you report Mahmoud Abouhalima's telephone
16 call to at the time you weren't working for the FBI?

17 A Agent John Anticev, sir.

18 Q Did you report it to him before or after the
19 bombing of the World Trade Center?

20 A After I came home and I find Mr. Mahmoud
21 Abouhalima's message on my phone machine, I picked up the
22 phone immediately, I reported to Mr. John Anticev, sir.

23 THE COURT: He wanted to know whether that was
24 before or after the World Trade Center bombing.

25 THE WITNESS: That was before the World Trade

6441

1 Center bombing, sir.

2 Q The day the World Trade Center was bombed --

3 A I am sorry.

4 Q On the day the World Trade Center was bombed, you
5 checked into a hospital, isn't that right?

6 A That's right, sir.

7 Q And you were in that hospital for about four
8 days, isn't that correct?

9 A Around that, yes, sir.

10 Q And as soon as you came out of the hospital you
11 got back in touch with Agent Nancy Floyd first, isn't that
12 right?

13 A I don't recall whether I called first, sir.

14 Q One of the questions you asked Agent Floyd during
15 your first conversation with her was, am I suspect? Didn't
16 you ask her that?

17 A I may ask her that question, yes, sir.

18 Q And when you were in the hospital during these
19 four or five days during the time of the World Trade Center,
20 you got a visitor, isn't that correct?

21 A Yes, sir.

22 Q And the visitor was Mr. Ibrahim El-Gabrownny,
23 isn't that correct?

24 A Yes, sir.

25 Q Along with his brother, isn't that correct?

6442

1 A Yes.

2 Q And Mr. El-Gabrownny brought you your favorite
3 candy, isn't that right?

4 A That's right, sir.

5 Q And you had some conversations about your health,
6 isn't that right?

7 A That's right, sir.

8 Q And at any time when Mr. El-Gabrownny was in that
9 room with you, did he go up to you and give you the thumbs
10 up sign about the World Trade Center?

11 A No, he did not, sir.

12 Q At any time did he walk up to you in the room and
13 say, in Arabic or in English, we got 'em?

14 A No, he did not, sir.

15 MR. RICCO: No further questions.

16 THE COURT: Ladies and gentlemen, we are going to
17 break for lunch. Please leave your notes and other
18 materials behind. Please don't discuss the case. And we
19 will resume at 2:00.

20 (Luncheon recess)

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A F T E R N O O N S E S S I O N

2

Time noted, 2:10

3

Emad Salem, resumed.

4

(Jury present)

5

THE COURT: Good afternoon, ladies and gentlemen.

6

THE JURY: Good afternoon.

7

THE COURT: Mr. Wasserman?

8

CROSS-EXAMINATION

9

BY MR. WASSERMAN:

10

Q Good afternoon, Mr. Salem.

11

A Good afternoon, sir.

12

Q Mr. Salem, you testified that you know how to

13

play stupid, correct?

14

A Yes, sir.

15

Q In fact, you're not stupid, correct?

16

A I'm average.

17

Q Average? OK.

18

You have testified that you know how to play the

19

hero role, correct?

20

A Yes, sir.

21

Q The bodyguard to Sadat, correct, and you did

22

that, as you have testified, with your wife, correct?

23

A Yes, sir.

24

Q Your first wife, and you did that with the FBI,

25

correct?

6444

1 A Yes, sir.

2 Q You did that with the jury before, correct?

3 A Yes, sir.

4 Q You testified that you did that all to make
5 yourself feel important?

6 A Yes, sir.

7 Q Other roles that you've played, religious?

8 A Yes, sir.

9 Q Did you have to learn how to play that role or --
10 how did you learn how to play that role?

11 A Which one, sir?

12 Q Religious.

13 A No religious. I am a Muslim by nature. I pray,
14 I know the religion's rules. I am not that religious, but I
15 know the rules, so it wasn't something new to me, sir.

16 Q So you could act religious and it would be
17 convincing?

18 A Yes, sir.

19 Q How about the role of being hurt or angry, you
20 could play that role as well, correct?

21 A Yes, sir.

22 Q For example, that was how you were feeling when
23 you spoke with Detective Napoli in that conversation we
24 heard yesterday?

25 A Yes, sir.

6445

1 Q Were you actually hurt?

2 A Yes, sir.

3 Q Or were you playing hurt?

4 A No, I was actually hurt, sir.

5 Q Were you actually angry?

6 A Yes, sir.

7 Q You had a goal in that conversation with

8 Detective Napoli --

9 THE COURT: Mr. Wasserman, would you stay by the
10 microphone, please.

11 MR. WASSERMAN: I'll try, Judge. It's sometimes
12 hard.

13 Q You had a goal in mind when you had that
14 conversation with Detective Napoli, correct?

15 A It wasn't a very specific goal. It was
16 negotiation between him and myself and I get angry in it.

17 Q Well, you were trying to get a certain fee from
18 the government, correct?

19 A It wasn't that only, sir.

20 Q What else was it, sir?

21 A The situation in this time that I asked about the
22 Witness Protection Program, I asked what's the future to my
23 family and myself going to be. I was told, by Monday we'll
24 let you know. By Tuesday, we'll let you know. And it kept
25 postponed two or three times until I get that angry. I did

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1 not tell them any money. I want to know what's going to
2 happen to my family, and the case was close to being taken
3 down, sir.

4 Q All right. And the anger and hurt that you say
5 you were feeling drew a response from Detective Napoli,
6 correct?

7 A Yes, sir.

8 Q His response was basically to placate you, to
9 placate you, to say to you in effect, "I'm trying for you,
10 I'm going to try harder for you," he swore on his mother,
11 correct?

12 A Yes, sir.

13 Q And he told you that no matter what happens after
14 this, he's going to have dinner with you and his wife,
15 correct?

16 A Yes, sir.

17 Q So the emotions brought forth a response,
18 correct?

19 A Yes, sir.

20 Q Now, in other areas where you played roles, they
21 also bring forth a response.

22 For example, if you play a religious role with
23 someone who is religious, the two combine to be two people
24 acting religiously, correct?

25 A Yes, sir.

6447

1 Q And if you play the teacher role, it's somewhat
2 natural for someone to respond as a pupil, correct?

3 A It's not always, sir. It depends on this
4 individual's personality, sir.

5 Q OK. But more often than not, if you're friendly
6 to someone, they're friendly back, correct?

7 A I'm sorry. Say it again, please?

8 Q If you're friendly to someone, they're friendly
9 back, correct?

10 A Not always, sir. I was so friendly to some
11 individuals, and they were so angry at me and they never
12 responded with a friendly way, like Mr. Hamdi Moussa, for
13 example, sir.

14 Q In the world of probabilities, it's more probable
15 that, if you're friendly, someone will react friendly back
16 than if you're hostile, correct?

17 A With the probability, yes, sir.

18 Q That's all we are talking about, sir.

19 A Yes, sir.

20 Q If you kid someone, if you bull with someone, if
21 you talk stories with someone, it's more natural they will
22 talk stories back with you, correct?

23 A Yes.

24 Q OK. When you would produce the tapes that you
25 produced in this case and when you were taping the FBI, you

6448

1 knew something that the person who you were recording did
2 not know, correct?

3 A Yes, sir.

4 Q You knew you were creating a record, correct?

5 A Yes, sir.

6 Q They didn't know that you were creating a record,
7 correct?

8 A Yes, sir.

9 Q They didn't know that they were speaking for the
10 record, correct?

11 A Yes, sir.

12 Q Isn't there a difference between speaking for the
13 record as, for example, you are doing now -- as I am -- and
14 speaking casually?

15 A Sure, sir.

16 Q And isn't there a difference around the coffee
17 table or in the yard or wherever people speak who are not
18 speaking for the record, they speak casually and unguarded,
19 correct?

20 A Yes, sir.

21 Q OK. Now, let me give you an example: People at
22 a ballgame will say, "Kill the umpire."

23 They don't mean it, do they?

24 A I'm sorry?

25 Q At a ballgame they say, "Kill the umpire."

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1 They don't mean it, do they?

2 A The umpire of which is --

3 Q I am going to withdraw that question.

4 A All right, sir.

5 THE COURT: They don't say that anymore.

6 MR. WASSERMAN: I am sorry?

7 THE COURT: They don't say that anymore.

8 Q You testified earlier that you don't control what
9 people say, correct?

10 A Yes, sir.

11 Q But is that really true based upon your responses
12 to the previous questions?

13 For example --

14 MR. McCARTHY: Objection to form.

15 MR. WASSERMAN: Withdrawn. I'll start over.

16 THE COURT: Would you.

17 Q You can control the response to some extent by
18 how you yourself act, correct?

19 A I'm not sure what you mean, sir.

20 Q Well, as you testified before, in the world of
21 probability, if you act hostile to someone, they are more
22 likely to act hostile back than friendly and converse with
23 you; but, if you act friendly, they are more likely to act
24 friendly to you, correct?

25 A Yes, sir.

6450

1 Q If you are engaged in a kidding conversation with
2 someone, a bull session, if you will, they are more likely
3 to respond in kind, correct?

4 A Yes, sir.

5 Q If you approach someone as a religious supplicant
6 and they are a religious authority, they are more apt to
7 respond in kind, correct?

8 A Yes.

9 Q That's all I am talking about.

10 So in a sense the role that you play does affect
11 what people say, correct?

12 A No, sir. It is not correct, because there is a
13 time I played stupid and the other individual did not play
14 stupid as well. On the contrary, he explained to me what
15 he's intending to do or what is on his mind, sir.

16 Q Well, again, let's just speak about the world of
17 probabilities.

18 MR. McCARTHY: Objection.

19 A Yes, sir.

20 Q Correct? We have agreed that --

21 THE COURT: Sustained.

22 Q Your actions, your words probably affect those of
23 the person that you are speaking to, correct?

24 A I'm not sure what you mean, sir, please.

25 Q If you, as you've testified, played the hero,

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1 does that not have an intention behind it on your part to
2 create an effect with other people?

3 MR. McCARTHY: Objection. Unless he specifies
4 when.

5 MR. WASSERMAN: Well, I'll specify, your Honor,
6 if I may.

7 THE COURT: Would you.

8 Q To specify, '91, when you married or divorced
9 Barbara Rogers, you told her you were a hero, correct?

10 A I'm sorry, sir.

11 Q In '91, '90, when you were married to Barbara
12 Rogers, you told here you were a hero, correct?

13 A I told her I am a hero?

14 Q Yes. Didn't you tell Barbara Rogers that you
15 were part of the bodyguard for Anwar Sadat?

16 A Yes, I did.

17 Q That's hero role, correct?

18 A Yes.

19 Q And you were wounded, correct?

20 A Yes, sir.

21 Q And you told that to the jury that you testified
22 before in 1993, correct?

23 A Yes, sir.

24 Q So you had an intention behind what you said, the
25 role that you played was designed to create an effect,

6452

1 correct?

2 A Yes.

3 Q You testified that you played the hero to make
4 yourself feel bigger?

5 A Right.

6 Q Correct?

7 A Yes.

8 Q OK. Fine.

9 When you play stupid, it's also designed with a
10 goal in mind, correct?

11 A Yes, sir.

12 Q OK. When you play religious, it has a goal in
13 mind, correct?

14 A Yes, sir.

15 Q OK. When you play hurt or angry, that also has a
16 goal in mind, correct?

17 A Yes, sir.

18 Q Now, would it be fair to say that when you play a
19 role you're acting, correct?

20 A Kind of, yes, sir.

21 Q OK. If you are playing that role at the same
22 time that you are recording people who believe that they are
23 in casual conversation, you are creating an official record
24 that they don't know about, correct?

25 A Yes, sir.

6453

1 Q And you are evoking a response based upon the
2 role that you are playing, and you're recording their
3 reaction to that response, correct?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q You testified yesterday that you perjured
7 yourself before the criminal court jury in part for money?

8 A I'm sorry, sir?

9 Q You testified yesterday that you perjured
10 yourself in 1993 before a criminal court jury in part for
11 money, correct?

12 A The perjury part, I bragged about myself, I lied
13 about myself. I never lied about what the defendant did,
14 sir.

15 Q That is not my question, sir.

16 A I'm sorry.

17 Q My question is, you testified yesterday that you
18 perjured yourself in part for money, do you recall your
19 testimony from yesterday?

20 A That's not what I meant, sir. I meant I did said
21 untruthful things about myself in my testimony, and I
22 believe the question that it was part of this case, money,
23 and you sued this guy, I said yes. That's my understanding,
24 sir.

25 Q Let me ask the question again.

6454

1 A Yes, sir.

2 Q You testified yesterday that you perjured
3 yourself for money in part --

4 MR. McCARTHY: Objection, asked and answered.

5 THE COURT: Sustained.

6 MR. WASSERMAN: If I may, Judge.

7 THE COURT: You may not. You may ask another
8 question.

9 Q What other parts were there to your reasons for
10 perjuring yourself?

11 A Like I said yesterday, sir, I tried to make
12 myself important, something -- I said it before. I
13 maintained it. I'm not proud of myself that I did it, and
14 I'm sorry that I did it.

15 Q That was your only perjury?

16 A I'm sorry, sir?

17 Q That was your only perjury?

18 A Yes, sir.

19 Q During the spring of 1992, you were pretty busy
20 working both at the Woodward Hotel and also for the FBI,
21 correct?

22 A Yes, sir.

23 Q In fact, that generally is your style, you work
24 hard at what you do, correct?

25 A Yes, sir.

6455

1 Q In preparing for your testimony here you've
2 worked very hard, correct?

3 A Yes, sir.

4 Q And when Mr. McCarthy wanted to speak with you or
5 have you review tapes or look over a transcript, you'd do
6 it, correct?

7 A I listen to tapes, but when it comes to
8 transcripts, I could have taken a few years to read it, sir.

9 Q Well, you participated in the preparation of the
10 transcripts and the translation from Arabic to English, did
11 you not?

12 A Yes, sir.

13 Q So you also worked hard in that phase of the
14 case, correct?

15 A Yes, sir.

16 Q You worked very hard during the spring of '92 for
17 the FBI, correct?

18 A Yes, sir.

19 Q Now, let me just take you back for a moment to
20 November of 1991. You were then working at the Woodward
21 Hotel, correct?

22 A Yes, sir.

23 Q And you fell off a ladder and injured yourself,
24 correct?

25 A Yes, sir.

6456

1 Q As a result of that injury you were laid off, or
2 you were out of work for three months, correct?

3 A I don't recall for how long, but I was out of
4 work for a while, sir.

5 Q Then you were back to work in early 1992,
6 correct?

7 A Could be, sir, yes.

8 Q You were fired by the Woodward Hotel in March of
9 1992, correct?

10 A I remember that I was fired, but I don't recall
11 the date, sir.

12 MR. WASSERMAN: OK. Your Honor, may I approach
13 the witness.

14 THE COURT: Yes. Indicate what you are showing
15 him.

16 MR. WASSERMAN: Yes, I'm showing him part of
17 3534DD. I will show it to Mr. McCarthy.

18 Q Would you take a look at this. Does that refresh
19 your recollection --

20 THE COURT: Could you turn the microphone toward
21 you.

22 MR. WASSERMAN: Sure.

23 Q Does that refresh your recollection as to when
24 you were fired by the Woodward Hotel?

25 A March 5, '92, sir.

6457

1 Q Good. Thank you so much.

2 A Thank you.

3 Q Do you recall why you were fired by the Woodward
4 Hotel?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q Weren't you in effect fired from the Woodward
8 Hotel for dishonesty?

9 MR. McCARTHY: Objection. I withdraw the
10 objection.

11 MR. WASSERMAN: Thank you.

12 A No, sir.

13 Q Well, instead of working at your job, weren't you
14 soliciting other business in the hotel premises?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q Instead of maintaining custody of important hotel
18 property, didn't you -- quote, unquote -- lose it?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 MR. WASSERMAN: Can I have a side bar, Judge?

22 THE COURT: No.

23 Q After you were fired by the Woodward Hotel, were
24 you also working for your wife's jewelry company, the YGL
25 Jewelry Company?

6458

1 A I wasn't working. I was helping her, sir. I
2 never get paid.

3 Q You testified that -- let me ask you a question:
4 This jewelry company, what was it, was it just your wife?

5 A She's a jewelry designer, and I was helping her
6 for distributing her jewelry, taking stuff to the casters,
7 bringing it to her back.

8 Q OK. In this role -- you say you didn't get paid?

9 A No, the money, it's coming to the home.

10 Q OK. But you were doing this, you were helping
11 out --

12 A Yes.

13 Q -- during the spring of '92, correct?

14 A Yes, sir.

15 Q And you were going to the caster and going here
16 and going there, correct?

17 A Yes, sir.

18 Q OK. And would it be fair to say that you did
19 this all of '92?

20 A I don't recall how long I have been doing that,
21 sir.

22 Q Well, you said you were doing it in the spring of
23 '92, OK? You just testified 30 seconds --

24 A Yes.

25 Q OK. And did you continue to do that for the rest

6459

1 of the year, help your wife out by picking up, going here,
2 going there?

3 A Yes, sir.

4 Q Did you make any business trips with her?

5 A Yes, sir.

6 Q Where did you go?

7 A We went to --

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q During this month of March that you were fired,
11 was there not an incident at the Hotel Woodward involving
12 you and a gun?

13 A A gun?

14 Q Yes.

15 A I don't recall that, sir.

16 Q Did the hotel not obtain an order of protection
17 against you during the month of March?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 MR. McCARTHY: Move to strike or instruct the
21 jury.

22 THE COURT: Since the question isn't evidence,
23 there will be no point in striking it. I can simply use
24 this as an the occasion to tell the jurors that questions by
25 lawyers, as you know by now, aren't evidence. It is the

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1 answers of the witness that are. Go ahead.

2 Q How about in 1992, did Barbara Rogers get another
3 order of protection against you?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained. Neither are facial
6 expressions as I've told you before. Go ahead,
7 Mr. Wasserman.

8 Q Now, in March of that year, you had the accident
9 which became the basis for the criminal prosecution that you
10 testified at, correct?

11 A I think, yes, sir.

12 Q And, in point of fact, the date was March 22. I
13 believe you testified to that the other day.

14 A It could be, sir.

15 Q OK. When you went to St. Vincent's Hospital
16 after that accident, you informed them that you had been hit
17 by a slow-moving car, correct?

18 A I'm sorry. Say the question, please, again.

19 Q You informed the emergency room at St. Vincent's
20 that you had been hit by a slow-moving car from the rear,
21 correct?

22 You had been hit by a slow-moving car, let's
23 leave it at that. Is that fair to say?

24 A No, it's not fair to say, sir.

25 Q All right. When you went to St. Vincent's

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1 Hospital, you complained to them that your knees were in
2 pain, correct?

3 A Yes, sir.

4 Q And did you not also describe to them how the
5 accident had occurred?

6 A I think the police department there described to
7 the doctor because after they did the arrest, they came to
8 the hospital, sir.

9 Q OK. When were you discharged from the hospital?

10 A I'm sorry, sir?

11 Q When were you discharged from the emergency room?

12 A After midnight, something like that, sir.

13 Q OK. Now, after that accident you went to the
14 Comprehensive Trauma Treatment -- I believe it's Company, is
15 that correct?

16 A I'm sorry, sir?

17 Q Did you not -- let me get the name, if I may.

18 The Traumatic Injury Rehab Center on 34th Street, correct?

19 A Yes, sir.

20 Q And they fixed you up with doctors for your
21 knees, correct?

22 A I don't recall the names, but I was being treated
23 there.

24 Q OK. And a chiropractor?

25 A Yes, sir.

6462

1 Q And a Dr. Stein, Stephen Stein you testified to
2 about the other day?

3 A Yes, sir.

4 Q And you went to see him for treatment of
5 neurological and psychological problems, correct?

6 A Yes, sir.

7 Q OK. And that, you testified to, was on April 28
8 and May 4 of 1992, correct?

9 A Could be, sir.

10 Q Well, you visited Sayyid Nosair at Attica on May
11 4, correct, 1992?

12 MR. McCARTHY: Objection to form.

13 MR. WASSERMAN: I would ask the government to
14 stipulate if they know the date.

15 MR. McCARTHY: I will stipulate that it was May
16 5.

17 MR. WASSERMAN: May 5, thank you.

18 Q You were tested by Dr. Stein on April 28 and May
19 4, right before you went up to see Mr. Nosair, correct?

20 A Could be, sir. I don't recall.

21 Q OK. Did you not have another rear-end accident
22 on May 30 of that year?

23 A I don't recall the date, but I recall that I have
24 a car accident, rear ended, yes.

25 Q And similar circumstances, you had stopped at a

6463

1 light and you were hit from the rear, correct?

2 A Yes.

3 Q Incidentally, during all this time you were
4 working for the FBI, correct?

5 A I'm lost with the dates and --

6 Q We are just in the spring of 1992. There's no
7 reason to be lost, sir.

8 A All right, sir. I'm sorry. I was working, yes.

9 Q And you're working for the FBI, you're reporting
10 to Nancy Floyd, correct?

11 A Yes.

12 Q In fact the day after your accident you report to
13 Nancy Floyd, on March 23, correct?

14 A Yes, could be.

15 Q And you reported to Detective Napoli, correct?

16 A I don't recall. I reported --

17 Q During the spring I'm not asking --

18 A I wasn't -- I'm sorry, sir. Go ahead, sir.

19 Q During the spring of '92, correct?

20 A I was reporting to them, but I don't recall on
21 these specific dates that I reported to them.

22 Q I'm not asking for a specific date. I'm simply
23 asking you whether during the spring of 1992 you were not
24 reporting on a frequent basis to the FBI.

25 MR. McCARTHY: Objection. That wasn't what was

6464

1 asked.

2 THE COURT: Well, I guess that's what's being
3 asked now. Were you reporting on a frequent basis during
4 that period?

5 THE WITNESS: I was reporting, sir.

6 Q And you were traveling basically from mosque to
7 mosque to talk to people, correct?

8 A I believe in this time it was so slow I wasn't
9 traveling that much, and I think it was very few reports in
10 that time, sir.

11 Q Well, you had a couple of trips to Attica,
12 correct?

13 A When, sir?

14 Q In May.

15 (Continued on next page)

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MR. WASSERMAN: It was just stipulated by the government, May 5, correct?

MR. McCARTHY: That was one trip.

MR. WASSERMAN: All right. Will the government stipulate to June 14 --

MR. McCARTHY: Yes, your Honor.

MR. WASSERMAN: -- as the other trip?
I'm sorry?

THE COURT: They will stipulate to May 5 and June 14.

Q OK. So you had those trips to Attica, correct?

A Yes, sir.

(Continued on next page)

6466

1 Q And as has been gone over, you had contacts with
2 Ibrahim El-Gabrowni during that period, correct?

3 A Yes, sir.

4 Q And Ali Shinawy during that period.

5 A Yes, sir.

6 Q And other people during that period, correct?

7 A Yes, sir.

8 Q All in all, sounds to be a fairly busy spring,
9 correct?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q Were you busy that spring?

13 MR. McCARTHY: Objection, unless he clarifies
14 with what.

15 MR. WASSERMAN: Sorry?

16 THE COURT: Do you want to clarify with what you
17 are asking he was busy? Was he busy doing other things?
18 Busy with what?

19 Q You were busy as an informant and working for the
20 YGL Jewelry Company, those two occupations.

21 A It was very slow in that time, sir.

22 Q But you were working, correct?

23 A Yes.

24 Q And the FBI was paying you 500 a week, correct?

25 A Correct.

6467

1 Q Plus expenses?

2 A Yes, correct.

3 Q And the work for YGL was bringing in money for
4 the family as you put it, correct?

5 A Yes, sir.

6 Q It wasn't wasted work?

7 A I don't think so.

8 Q In the summer you stopped working for the FBI,
9 correct?

10 A Yes.

11 Q Summer of '92.

12 What did you do for income when you stopped
13 working for the FBI?

14 A I start focus more on the jewelry business, sir.

15 Q So we can say that from July on, you were working
16 hard at the jewelry business, correct?

17 A Yes, sir.

18 Q And you continued this effort until when? When
19 did you stop?

20 A When the FBI asked me to come back to the
21 investigation, sir.

22 Q That would be in March of '93, correct?

23 A Yes, sir.

24 Q When you saw Dr. Stein in the spring of '92, he
25 gave you a battery of tests, did he not, to determine the

6468

1 damage that you had sustained, correct?

2 A Yes, sir.

3 Q You told him that you had sustained a severe head
4 injury and you wanted to be tested for your damages,
5 correct?

6 A Yes, sir.

7 Q And he tested you psychologically, correct?

8 A Yes, sir.

9 Q And he gave you many tests, correct?

10 A Yes, sir.

11 Q And among them was an IQ test, correct?

12 A Yes, sir.

13 Q And you scored 86, correct?

14 A I don't recall what I scored, sir.

15 Q OK. Among the tests that you took were tests
16 connecting dots. Do you recall?

17 A In what, sir?

18 Q Connecting dots. You took a battery of tests to
19 determine your cognitive abilities, your ability to
20 understand and relate to your environment, correct, to
21 determine whether you were damaged, correct?

22 A It was a lot of tests, sir.

23 Q And as you were taking these tests, you were
24 sitting across from Dr. Stein, correct? He was asking you
25 questions and you were taking the tests.

6469

1 A It wasn't Dr. Stein, sir.

2 Q I am sorry.

3 A It wasn't Dr. Stein, it was his examiner.

4 Q So you were sitting across from her?

5 A Yes, sir.

6 Q No problem. Did you tell Dr. Stein or the
7 examiner that you were having four naps a day of two hours
8 each?

9 A Yes, sir.

10 Q Dr. Stein or the examiner?

11 A I don't recall who.

12 Q Is it a fact that you were having four naps a day
13 of two hours each?

14 A In a certain time, yes, sir.

15 Q At that time, which was April 28 and May 4, which
16 is when you are seeing him.

17 A It came a time right after the accident and for
18 the couple of months after, I was feeling a lot of fatigue,
19 sir.

20 Q And did you tell them that you had daily vertigo,
21 that is, you were dizzy every day?

22 A Yes, sir.

23 Q And that you were having extreme difficulty
24 concentrating, correct?

25 A Yes, sir.

6470

1 Q Did they test you, for example, by asking you to
2 repeat back to them numbers? They would give you a sequence
3 of like two or three numbers and ask you to repeat them
4 back, correct?

5 A Yes, sir.

6 Q And words, correct? You would do the same thing
7 with words?

8 A Mostly numbers.

9 Q On the basis of all those tests and on the basis
10 of your statements to Dr. Stein, was it not your
11 understanding that you had intensive neuro damage, severe
12 cognitive defects, and that you needed intensive neuro
13 training? Was that not the result of all those tests?

14 MR. McCARTHY: Objection.

15 THE COURT: Were you ever given given that as a
16 diagnosis or something that sounded like it as a diagnosis?

17 A I never heard that, sir.

18 Q Did you know that Dr. Stein would report his
19 findings to the traumatic injury rehabilitation center on
20 34th Street?

21 A Yes, sir.

22 Q Is it your testimony that no one ever told you
23 what his diagnosis was?

24 A No, sir.

25 Q So that you took these tests and you remained

6471

1 totally unaware of what the results were?

2 A I used to go visit the doctor, I used to go to
3 the rehabilitation center --

4 Q I am sorry, sir. The neurology what?

5 A The rehabilitation center. But I don't know
6 what's the communications between the doctors, sir.

7 Q So no one told you the diagnosis?

8 A No, sir.

9 Q Was it not your intention to have a complete --
10 withdrawn. After the spring of '92 and being fired by the
11 FBI --

12 MR. McCARTHY: Objection.

13 Q -- terminating your relationship with the FBI,
14 you then continued on, as you testified, to work for the YGL
15 Jewelry Company until the FBI rehired you in March of '93,
16 correct?

17 A I am sorry. Can you repeat it again?

18 Q Break it up into bite-size pieces?

19 A No, just repeat it.

20 Q I will break it up.

21 A Thank you.

22 Q After you were terminated from the FBI you
23 continued working for YGL, correct?

24 A Yes, sir.

25 Q And you stopped working for YGL when the FBI

6472

1 rehired you in March '93, correct?

2 A Not completely. I was still helping my wife but
3 not as much I was before, sir.

4 Q So it would be fair to say that your employment
5 with YGL was continuous?

6 A I was not employed with YGL, sir.

7 Q You were helping your wife with bringing money
8 into the family, correct?

9 A Yes, sir.

10 Q There came a time when you were asked to testify
11 at the criminal trial based upon the accident, correct?

12 A Yes, sir.

13 Q And it has been referred to here before as an
14 assault. Is that your understanding of what that case was
15 about?

16 A Say that again, sir.

17 Q That it was an assault case, that you had been
18 assaulted?

19 A Yes.

20 Q In your testimony before that jury, you were
21 asked a number of questions about your background, correct?

22 A Yes.

23 Q And you testified here that you lied about that
24 background, correct?

25 A Yes, sir.

6473

1 Q And you have testified here that that's all you
2 lied about, correct?

3 A That's as far as I recall, yes.

4 Q What do you mean as far as you recall, if I may?
5 What does that mean, sir? Did you lie about the accident
6 itself?

7 A No, sir.

8 Q Did you lie about the damages you sustained?

9 A No, sir.

10 Q Did you lie about any losses flowing from the
11 accident or the assault?

12 A I am sorry, sir.

13 Q Did you lie about any losses that you had as a
14 result of the assault?

15 A No, sir.

16 Q So the only lies you told were being Anwar
17 Sadat's bodyguard and being wounded and you couldn't divulge
18 your secret agent training, correct? Those were the only
19 lies, correct?

20 A Lies about myself, sir.

21 Q Just lies about your background and training,
22 correct?

23 A Yes, sir.

24 Q And that's your testimony to these people, that
25 that's your only lie.

6474

1 A Yes, sir.

2 Q Didn't you testify that you lost your job as a
3 result of the assault?

4 A Yes, sir.

5 Q Was that true?

6 A Came a time I didn't continue helping my wife.

7 Q When was that time, sir?

8 A Right after the accident, sir.

9 Q Let me read you what you were asked and what you
10 answered. Mr. Salem -- this is February 4 of 1993:

11 "Q Mr. Salem, are you presently working?

12 "A. No, ma'am.

13 "Q When was the last time?

14 "A. I lost my job because for five months I
15 couldn't maintain my job, so they got to look for another
16 marketing manager."

17 Do you recall that testimony?

18 A Yes, sir.

19 Q That question referred to immediately after the
20 assault, correct, that you lost your job after the assault
21 because you couldn't work for five months, correct?

22 A That's what exactly happened.

23 Q And the marketing manager position that you are
24 referring to --

25 THE COURT: Let him finish his answer when you

6475

1 ask a question.

2 MR. WASSERMAN: Yes, sir.

3 THE COURT: Thank you very much.

4 Q The marketing manager position that you are
5 referring to is the YGL Jewelry Company, correct?

6 A Yes.

7 Q Do you recall what you told the jury as to what
8 the reason was why you lost that job?

9 A No, I don't recall, sir.

10 Q It's hard, I know. What was the reason --

11 THE COURT: Mr. Wasserman, may I see you at the
12 side.

13 MR. WASSERMAN: I understand what you are saying
14 and I accept it.

15 THE COURT: Good.

16 Q What was the reason you lost your job was the
17 question? And you responded, because I was in bed. Is that
18 correct?

19 A Yes, sir.

20 Q That means that you were in bed for five months,
21 isn't that correct?

22 A No, it's not necessarily to be in bed for five
23 months. I was in bed for awhile, yes, sir.

24 Q You were asked are you presently working and you
25 said I lost my job after five months I couldn't maintain my

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1 job, so they got to look, they got to look for another
2 marketing manager. That was your testimony.

3 A I got --

4 MR. WASSERMAN: I am sorry, Judge.

5 Q Please respond.

6 A And that's what happened, sir.

7 Q When was that five-month period, sir?

8 A I am sorry, sir.

9 Q When was the five-month period, sir?

10 A After the accident.

11 Q So the accident which occurred on March 22,
12 1993, -- '92, excuse me -- you were in bed for five months,
13 right?

14 A No, I did not say for five months I was in bed,
15 sir.

16 Q Sir, did you ever lose your job with YGL?

17 A I couldn't do what I was doing for my wife, yes,
18 sir.

19 Q For how long a period of time, sir?

20 A I don't recall for how long. It obligated us to
21 get another person to do what I was doing, sir.

22 Q Would it be fair to say that you were able to
23 report in to the FBI immediately after this accident, as you
24 testified to a little while ago? You testified you reported
25 in on March 23 to Nancy Floyd, correct?

6477

1 A Yes, sir.

2 Q And you continued to report in through March,
3 correct?

4 A I don't recall. Could be. I was so slow period
5 in that time, I believe within few months I reported two or
6 three times, four times, something like in that effect, sir.

7 Q Would it refresh your recollection that you were
8 picking up a package at the Egyptian embassy for
9 El-Gabrowny, and you reported that?

10 A I recall something in that effect, sir.

11 Q And that you went to see, you reported to
12 Detective Napoli on March 25 that you went to see Imam Latif
13 with a letter on Islam?

14 A Yes, sir.

15 Q And that in fact you enclosed with that a diagram
16 of his office, correct?

17 A I am sorry, sir.

18 Q You enclosed with that report a diagram of his
19 office.

20 A Yes.

21 Q And that you continued to report on April 1,
22 April 3, April 22 and April 24, correct?

23 A Could be, sir.

24 Q Would it be fair to say that if there are agent
25 reports with those dates on it, that would be a fairly good

6478

1 presumption, that you were reporting on those dates?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q On May 6, you returned from your trip to Attica,
5 correct?

6 A Yes, sir.

7 Q And then you went back to Attica on June 14,
8 correct?

9 A Yes, sir.

10 Q It is fair to say that however you may want to
11 treat the YGL employment, during this period of time you
12 were employed by the FBI, correct?

13 A Yes, sir.

14 Q And you were being paid \$500 a week for working
15 for them, correct?

16 A Yes, sir.

17 Q And that you were working for them, correct?

18 A I am --

19 Q You were working for them?

20 A Yes, sir.

21 Q Did you tell anybody when you testified before a
22 jury in which you were claiming that you were out of work as
23 a result of the assault, did you tell anybody that that
24 wasn't true?

25 A What wasn't true, sir?

6479

1 Q That you weren't out of work, sir?

2 A It wasn't good idea to say that I am working for
3 the FBI, sir.

4 Q So it was a better idea to lie to the jury,
5 correct?

6 A That's what happened, sir.

7 Q You say it wasn't a good idea to tell them. In
8 fact when you testified before them, you were no longer
9 employed by the FBI, correct?

10 A I am not keeping track --

11 Q I will refresh your recollection.

12 A Thank you, sir.

13 THE COURT: Just indicate what you are showing.

14 MR. WASSERMAN: I am showing Government's Exhibit
15 3534R. I am showing the cover page.

16 Just take a look here, sir.

17 (Counsel confers with witness off the record)

18 Q On February 4, 1993, you weren't working for the
19 FBI, were you?

20 A I don't recall, sir.

21 Q Haven't you testified that you resumed your
22 employment with the FBI after the World Trade Center
23 tragedy?

24 A Yes, sir.

25 Q And that occurred on February 26, 1993, correct?

6480

1 A It wasn't right away. It took few days until I
2 start to become operative again, sir.

3 Q But it occurred after the Trade Center, yes?

4 A Yes.

5 Q And we have agreed that you testified on February
6 4, which is some weeks before the Trade Center occurred,
7 correct?

8 A Yes, sir.

9 Q So at the time that you testified you were not
10 employed by the FBI, correct?

11 A Yes, sir.

12 Q And you weren't having discussions with them
13 about resuming employment, were you? Nothing had occurred,
14 correct?

15 A No, sir.

16 Q So at the time that you are testifying, what
17 reason did you have in your mind to lie to the jury that you
18 had lost your employment, you had lost your job as a result
19 of the defendants' actions?

20 A No. What I meant, that I lost being helping my
21 wife, sir, with the jewelry business, and we have to bring
22 somebody else to do what I was doing for the time couldn't
23 do it, sir.

24 MR. WASSERMAN: Your Honor, may I have a moment,
25 please?

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1 THE COURT: Yes.

2 MR. WASSERMAN: In fact, if it would be OK with
3 the court, I need to break for about five minutes, if we
4 could break for the afternoon break at this time.

5 THE COURT: May I see you at the side?

6 THE COURT: Yes.

7 MR. WASSERMAN: Yes.

8 (At the side bar)

9 THE COURT: As you may or may not be aware, the
10 prayer break can't occur until 3:30, as a result of which if
11 we break now we have to break for an hour, which I am not
12 disposed to do.

13 MR. WASSERMAN: I had let that slip, Judge. Can
14 you give me a few minutes to locate the place I need to
15 locate in the transcript?

16 THE COURT: Sure. You want a five-minute break?

17 MR. WASSERMAN: That would be perfect.

18 THE COURT: Fine, you got it.

19 (In open court)

20 THE COURT: Ladies and gentlemen, we are going to
21 take a five-minute break. This is not the official break as
22 we have come to know it, so don't get comfortable. We will
23 take the regular break at the regular time. Please leave
24 your notes and other materials behind. Please don't discuss
25 the case, and we will resume in a few minutes.

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(Recess)

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THE COURT: Go ahead, Mr. Wasserman.

3

MR. WASSERMAN: Thank you, your Honor.

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BY MR. WASSERMAN:

5

Q Mr. Salem, at that jury trial, you testified to the following. You were asked:

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"Q And when you came to the United States, what type of employment have you done since you have been here?

8

9

10

"A. I have been working in the security department in Bergdorf Goodman and moved to chief engineer in one of the hotel chains in a hotel in Manhattan.

11

12

13

"Q And after that, anything?

14

"A. Last job I was working as a marketing manager to one of the jewelry company."

15

16

Do you recall that testimony?

17

A Yes, sir.

18

Q Let's move on, sir. In the spring of '92, you testified that you met my client Clement Hampton-El, correct?

19

20

21

A Yes, sir.

22

Q And I believe you testified that this was the first time that you met him, correct?

23

24

A Yes, sir.

25

Q Were you aware at the time that you met him of

6483

1 any information from the FBI concerning him? In other
2 words, before you met with him did the FBI speak to you
3 about him?

4 A I don't recall something like that, sir.

5 Q The first time that you met with him was on June
6 19, I believe, of 1992.

7 MR. WASSERMAN: Will the government stipulate to
8 that date, please?

9 MR. McCARTHY: Your Honor, I will stipulate this
10 time. I may have an application at the break.

11 THE COURT: OK.

12 Q How long was your meeting with him?

13 A I am sorry, sir.

14 Q How long was your meeting with him?

15 A I will say around hour, hour and a half, sir.

16 Q Were you with Ali Al Shinawy during that period
17 of time?

18 A Yes, sir.

19 Q What did you tell my client who you were?

20 A As a matter of fact, I didn't tell him. Sheik
21 Ali Shinawy, he is the one who introduced both of us to each
22 other, sir.

23 Q And as part of the introductory process, did he
24 say anything about you to my client?

25 A Yes. He said brother Ahmed, he is one of our

6484

1 good brothers, something in that effect, sir.

2 Q Did you say anything to Dr. Rashid about who you
3 were after the introductions had taken place?

4 A I don't recall the exact things, but I may told
5 him that I had 18 years of experiences in the Green Berets,
6 something like that, sir.

7 Q If I may, what role were you playing when you met
8 with him?

9 A A religious mujahid, sir.

10 Q Were you wearing a tape recorder at the time?

11 A No, sir.

12 Q So that anything that took place at this meeting
13 is simply your saying it took place at this meeting,
14 correct?

15 A Yes.

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q You have no record of this meeting on tape, do
19 you?

20 A On tape, no, sir.

21 Q You have testified that in conversation with
22 Dr. Rashid that he offered to supply you with bombs and
23 Uzis, AK47's, etc.?

24 A He said that he has --

25 Q Just answer yes or no, if you can.

6485

1 MR. McCARTHY: Objection.

2 A I am sorry, sir.

3 Q Answer yes or no if you can.

4 MR. McCARTHY: Objection.

5 MR. WASSERMAN: Judge, if I was too late on that,
6 I will let him answer any way he wants at this point.

7 THE COURT: Why don't you ask another question.

8 MR. WASSERMAN: Sure.

9 Q Did he tell you that he could obtain for you
10 ready-made bombs and machine guns?

11 A Yes, sir.

12 (Continued on next page)

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1 Q Did he tell you that these cost \$900 each?

2 A Yes, sir.

3 Q Had you told him before he told you that you were
4 looking for detonators?

5 A Yes, sir.

6 Q He told you, "Why look for detonators when I can
7 get you ready-made bombs"?

8 A Yes, sir.

9 Q At that particular point what was your feeling?
10 Were you feeling happy?

11 MR. McCARTHY: Objection. Relevance.

12 THE COURT: Sustained.

13 Q Is it every day that someone offers you to get
14 you in your role as an FBI informant machine guns and
15 ready-made bombs?

16 A I'm sorry, sir?

17 Q Had anyone prior to that day offered to get you
18 machine guns and ready-made bombs?

19 A No, sir.

20 Q It must have hit you like a ton of bricks; yes?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q Based upon that information, did you not think
24 that you had contacted the Brooklyn connection?

25 MR. McCARTHY: Objection. Relevance.

6487

1 THE COURT: Sustained.

2 Q Based upon that conversation, did you not think
3 that you had contacted an arsenal supplier?

4 MR. McCARTHY: Same objection.

5 Q A supplier of bombs and machine guns?

6 A I felt that I get in touch with somebody who
7 is -- will supply bombs and machine guns, yes.

8 Q In that same conversation you've testified that
9 he told you that he had no pistols, correct?

10 A He said he doesn't have it at the time, but he
11 will do his best to see what he can do about it.

12 Q When you reported this purported conversation to
13 the FBI, is it your testimony that you told the FBI that he
14 was going to check into it for you?

15 A I don't recall what I reported. I reported what
16 happened, sir.

17 Q Is "I don't recall" a shield, behind which you --
18 withdrawn.

19 THE COURT: Good.

20 Q You have testified that you don't know where Ali
21 Shinawy got his gun from, correct?

22 A Yes.

23 Q It is only your testimony that a gun was bought
24 by you from Ali Shinawy, correct?

25 MR. McCARTHY: Objection.

6488

1 THE COURT: Sustained.

2 Q After this first meeting with Dr. Rashid, you did
3 not see him again for about another year, correct?

4 A Yes.

5 Q OK. You have also testified that you had a
6 meeting with Ibrahim El-Gabrownny and he was going to try to
7 get detonators from Afghanistan, correct?

8 A Yes, sir.

9 Q You have also testified that sometime later he
10 told you he could not get detonators from Afghanistan,
11 correct?

12 A He asked me if I will be able to manufacture it
13 because it's hard to come through the airport, sir.

14 Q Do you recall the dates that you met with him?

15 A That's the worse thing I can recall, sir.

16 Q I understand. Let me try it this way.

17 MR. WASSERMAN: Your Honor, may I approach.

18 THE COURT: Yes.

19 MR. WASSERMAN: Thank you.

20 Q I am going to show you what's marked --

21 MR. WASSERMAN: Mr. McCarthy, I have the Bates
22 number. It's 184 and 193.

23 (Counsel conferred)

24 Q 3534C, Bates Nos. 184 and 193.

25 Could you take a look, sir, at Bates page 184, at

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1 the last paragraph, last four lines, and see if that
2 refreshes your recollection as to when Ibrahim El-Gabrownny,
3 according to you, said he was going to get detonators from
4 Afghanistan.

5 Does that refresh your recollection, sir?

6 A Yes, sir.

7 Q Would it be fair to say that the meeting took
8 place on June 16, 1992?

9 A I'm sorry, sir?

10 Q June 16, 1992?

11 A Yes, sir.

12 Q You subsequently had another meeting with Ibrahim
13 El-Gabrownny where he, as you just testified to, asked you to
14 make detonators because it would be not possible to get
15 detonators from Afghanistan, correct?

16 A Yes, sir.

17 Q That meeting with Ibrahim El-Gabrownny, would it
18 be fair to say, occurred on about a week or ten days later?

19 A I don't know, sir.

20 MR. WASSERMAN: I'm sorry. I should have done
21 this at the same time, your honor. My apologies to the
22 court. This was the another document.

23 Q If you would, sir, just take a look at the first
24 three lines. I think that will help.

25 MR. MCCARTHY: Could you just clarify which?

6490

1 MR. WASSERMAN: Yes, it's 193, Mr. McCarthy.

2 MR. McCARTHY: Thank you.

3 MR. WASSERMAN: Your Honor, may I direct the
4 witness to the place on the page?

5 THE COURT: Go ahead.

6 (Pause)

7 A From here, sir?

8 Q Yes. That will be fine.

9 (Pause)

10 Q OK, sir?

11 A Yes.

12 Q Does that refresh your recollection?

13 A With what, sir.

14 Q As to the date?

15 A Yes.

16 Q You say the date when Ibrahim El-Gabrownny told
17 you that getting detonators from Afghanistan was not
18 feasible was June 28, correct?

19 A Yes, sir.

20 Q So we've established that June 16 is the date you
21 say that Mr. El-Gabrownny suggested that he would try to get
22 detonators from Afghanistan, and June 28 he told you not
23 possible, correct?

24 MR. McCARTHY: Objection. "Not possible."

25 MR. WASSERMAN: I'm sorry?

6491

1 THE COURT: Try "feasible."

2 Q Feasible.

3 A Excuse me?

4 Q OK. On June 16 you say that Mr. El-Gabrownly said
5 that he would try to get detonators from Afghanistan,
6 correct?

7 A Yes.

8 Q And on June 28 you say he reported back to you
9 that it was not possible to get detonators from Afghanistan,
10 correct?

11 A Yes, sir.

12 Q So we have established June 16 and June 28,
13 correct?

14 A Yes, sir.

15 Q We have also established that in between those
16 two dates you say you met with Dr. Rashid and he offered to
17 get you ready-made bombs, correct?

18 A Yes, sir.

19 Q In fact, you told him you needed detonators, and
20 he was going to eliminate the short solution and give you
21 the total solution and give you the whole package of
22 ready-made bombs, correct?

23 A Yes, sir.

24 Q When Ibrahim El-Gabrownly, according to you, told
25 you after your meeting with Dr. Rashid that he couldn't get

6492

1 detonators from Afghanistan, you say that Ibrahim
2 El-Gabrowny asked you to make detonators, correct?

3 A Yes, sir.

4 Q Did you think at the time of suggesting to him
5 what Dr. Rashid had suggested to you a week before and say,
6 "Mr. El-Gabrowny, why make detonators when we can buy
7 ready-made bombs for \$900 apiece from this guy I met for the
8 first time at a mosque last week?" Did you say that to him?

9 A No, sir, I did not.

10 MR. WASSERMAN: Your Honor, this is a convenient
11 break point, if I may.

12 THE COURT: Ladies and gentlemen, we are going to
13 take a break. Please leave your notes and other materials
14 behind. Please don't discuss the case. We will resume in a
15 few minutes.

16 (The jury was excused)

17 THE COURT: You may step down.

18 (Witness excused)

19 (Continued on next page)

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(Jury not present)

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MR. McCARTHY: Your Honor, I would request the court to direct counsel not to ask me for a stipulation in front of the jury.

5

THE COURT: That is --

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7

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MR. WASSERMAN: Your Honor, I won't do it without notifying Mr. McCarthy in advance. So it won't be done in front of the jury.

9

THE COURT: All right.

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(Recess)

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6494

1 THE COURT: Mr. Wasserman, can I see you and Mr.
2 McCarthy briefly.

3 (Discussion off the record at the side bar)

4 (Jury present)

5 THE COURT: OK, Mr. Wasserman.

6 MR. WASSERMAN: Thank you, your Honor.

7 BY MR. WASSERMAN:

8 Q Mr. Salem, what you described as the second phase
9 of your investigation or the investigation began, the
10 recording phase of it began in May of 1993, correct?

11 A Yes, sir.

12 Q And I believe it has been established that the
13 first recording that you made was on May 7, which would be
14 the first consensually monitored recording, CM 1 as it is
15 called, correct?

16 A Could be, sir.

17 MR. WASSERMAN: Your Honor, I think the
18 government will stipulate as to the dates of the CM's.

19 Q Prior to recording on May 7, you had recorded
20 what has been admitted into evidence as one of your tapes,
21 what is called 41-1. Do you recall that? It was read while
22 you were sitting in the witness chair.

23 A Which one, sir?

24 Q That was recorded as you testified to, a day or
25 two before you recorded CM 1.

6495

1 THE COURT: Do you want to give him the subject
2 matter?

3 MR. WASSERMAN: Yes, your Honor.

4 MR. MCCARTHY: Your Honor, it is Government's
5 Exhibit 641-1.

6 MR. WASSERMAN: Thank you.

7 Q In that, you had a long conversation with Siddig
8 Ibrahim Siddig Ali, correct?

9 A Yes, sir.

10 Q For ease of reference we will call him Siddig or
11 Siddig Ali, OK?

12 A Yes, sir.

13 Q You testified, I believe, that you recorded
14 source tape 641-1T a day or two before you recorded CM 1,
15 correct?

16 A Yes, sir.

17 Q This was your own private tape, correct?

18 A Yes, sir.

19 Q You had a long conversation with Siddig Ali
20 during this recording, correct?

21 A Yes, sir.

22 Q Prior to this recording, you had had discussions
23 with Siddig Ali for several weeks before, correct?

24 A It wasn't several weeks before, I believe, sir.

25 It was the day before or something like that.

6496

1 Q That was the first time you met him?

2 A No, sir.

3 Q Had you had conversations with him in the weeks
4 preceding the first recording of 641-1T?

5 A I had a conversation with him after we left Sheik
6 Omar Abdel Rahman's apartment, and we talked in my car, sir.

7 Q Can you describe your relationship with Siddig
8 Ali at the time that you made your first recording?

9 A It was not that strong, sir.

10 Q It was friendly?

11 In the first recorded conversation, 641-1T, among
12 the matters that Siddig Ali described was training that had
13 been conducted in Pennsylvania, correct?

14 A Yes, sir.

15 Q And that training had been done for the purpose
16 of sending people to Bosnia, according to Siddig, correct?
17 That's what he told you?

18 A I believe, sir, in different occasions he told me
19 that it was for people to be ready for action, sir.

20 Q Did he not tell you at that time, when you
21 recorded 641-1T, that the purpose of the training was for
22 Bosnia? Let me read to you from what has been introduced in
23 evidence. There is page 221 of 641-1T.

24 MR. McCARTHY: May I have a moment?

25 MR. WASSERMAN: Your Honor, if I may, it is not

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1 included in the book that your Honor has from the defendant.
2 It is an exhibit.

3 THE COURT: I know. That is what I am looking
4 for. Page?

5 MR. WASSERMAN: Page 21, your Honor.

6 MR. McCARTHY: Objection. I direct the court's
7 attention to the third attribution on the page.

8 MR. WASSERMAN: Can we do this at side bar,
9 perhaps? I don't know what the objection is.

10 THE COURT: Sustained.

11 Q Did Mr. Siddig Ali not say to you during this
12 conversation that after the people would receive their
13 training in Pennsylvania they would go to Bosnia?

14 MR. McCARTHY: Objection, same objection.

15 THE COURT: Overruled.

16 Q In this recording.

17 A He said that part of the purpose of this training
18 camp over there, that they will go to Bosnia, yes, sir.

19 Q And he described in some some detail how the camp
20 had been funded, where the money came from, correct?

21 A Yes, sir.

22 Q He said it came from some private people in Saudi
23 Arabia, correct?

24 A Yes, sir.

25 Q And that Dr. Rashid had been involved as the camp

6498

1 manager or supervisor responsible for it, correct?

2 A Yes, sir.

3 Q And that a fellow named Abu Ubaidah had been the
4 trainer, correct?

5 A Yes, sir.

6 Q And that the fellow who owned the camp worked for
7 the government and also was a trainer, correct?

8 A Yes, sir.

9 Q And by government, I think he may have described
10 it, this man was named Kelvin Smith and he worked for the
11 park service, correct?

12 A I am sorry, sir.

13 Q He worked for the park service? Did he tell you
14 that he worked for the park service?

15 A I don't recall that, sir.

16 Q At the time that you were having this
17 conversation with Siddig Ali, he told you something about
18 the training that he himself had participated in at this
19 place, correct?

20 A Yes, sir.

21 Q And he described shooting weapons, correct?

22 A Yes, sir.

23 Q And later he would tell you that he had brought
24 Kalishnikovs up to that place in Pennsylvania, correct?

25 A Yes, sir.

6499

1 Q In this particular conversation, he told you that
2 the FBI came to the owner of the place, which happened to be
3 his home, and basically said close it down. Did he describe
4 that to you?

5 A No, sir.

6 Q Didn't he tell you that Mr. Smith, the owner of
7 the facility, said tell Abdul Rashid that the FBI came to
8 me?

9 A Yes, sir.

10 Q And that on the basis of that visit he was not
11 going to allow any more training, correct?

12 A Yes, sir.

13 Q And that he said the FBI came to me and I got rid
14 of the weapons, correct?

15 A Yes, sir.

16 Q At the time that you were having this
17 conversation with Siddig Ali, part of your mission for the
18 FBI was to continue to investigate those who might be
19 involved in the World Trade Center bombing, correct?

20 A If it came to my way anything criminal, I would
21 report it, sir.

22 Q Was your mandate that general, sir?

23 A I beg your pardon.

24 Q Were you not focused on finding out others who
25 might have been involved with the people who did the World

6500

1 Trade Center bombing?

2 A I am sorry. I am not getting the question, sir.

3 MR. WASSERMAN: I would ask the reporter to read
4 it back.

5 THE COURT: Go ahead.

6 (Record read)

7 A Yes, sir.

8 Q Siddig Ali described to you that Abdul Rashid,
9 Dr. Rashid and others did not believe that the man in
10 Pennsylvania, the owner of the place, the park service
11 employee, had thrown away the weapons, correct?

12 A As far as I recall, sir, that he said that he
13 grabbed it and he hid it in the lake.

14 Q OK. And in fact Siddig said that they were
15 talking about making a raid to get the weapons back,
16 correct?

17 A Yes, sir.

18 Q But he also had told you, as we discussed a
19 moment ago, that the man in Pennsylvania said he had thrown
20 the weapons away, correct? It's just that he wasn't
21 believed, correct?

22 A Yes, sir.

23 Q Good. Now, in your questioning of Siddig Ali
24 during this conversation, Siddig Ali then went on to tell
25 you, did he not, that the plan to go and get the weapons

6501

1 back, if indeed they had not been thrown away, was aborted,
2 correct?

3 A What was --

4 Q He told you it was canceled, the plan to get the
5 weapons back if they hadn't been thrown away was canceled,
6 right?

7 A He said they didn't do it, sir.

8 Q And he told you a reason they didn't do it,
9 correct?

10 A Yes, sir.

11 Q Do you recall what reason he told to you?

12 A I believe he said that the man was frightening
13 and he did not follow the right way of communication, which
14 Dr. Rashid asked him to do, that any communication should
15 happen through Siddig over the phone and then Siddig will
16 communicate with Dr. Rashid. But the fact that the man went
17 straight to Mr. Ali Abdel Karim's car and he posted a note
18 on his windshield that the FBI came to him, sir.

19 Q Sir, isn't it a fact, if I may read from page 32,
20 that Siddig Ali told you that what happened was the thing,
21 the incident? Didn't he tell you that on page 32?

22 MR. WASSERMAN: I am sorry, if I may, your Honor,
23 give to -- give a binder to.

24 A Where, sir?

25 Q At the top.

6502

1 THE COURT: Which exhibit is it?

2 MR. WASSERMAN: The same one, 641-1T, your Honor.

3 Q The incident that Siddig Ali refers to,
4 Mr. Salem, in the fourth line is the World Trade Center
5 bombing, correct?

6 A He was referring to the World Trade Center, yes,
7 sir.

8 Q And his reaction to your saying the World Trade
9 Center had the effect of cancelling the plan to get back the
10 weapons from the place in Pennsylvania was to say by God,
11 meaning this bomb was not a part of the preparations at all.
12 Correct?

13 A Yes, sir.

14 Q And Siddig Ali said no, and you said it just
15 happened like that on the way. And Siddig replied yes, of
16 course, it has nothing to do with the matter. It is
17 unrelated. Correct?

18 A Yes, sir.

19 Q After you recorded this conversation, you then
20 embarked on the official recordings of the Nagras, and that
21 began on May 7, correct?

22 A Yes, sir.

23 Q There is a continuation of the discussion about
24 the camp in Pennsylvania, correct?

25 A Yes, sir.

6503

1 Q You have a discussion at this point on May 7 with
2 Siddig about building a bomb, correct?

3 A Yes, sir.

4 Q There is no bomb at this time, correct?

5 A No, sir.

6 Q No ingredients, correct?

7 A No, sir.

8 Q Nothing, correct?

9 A Yes.

10 Q Just you and Siddig Ali, correct?

11 A Yes, sir.

12 Q At this time?

13 A Pardon me?

14 Q At this time.

15 A Yes, sir.

16 Q You have a conversation at this time with Siddig
17 in which he asks you what else do we need, and you respond
18 the detonator, correct?

19 A Yes, sir.

20 Q And Siddig says to you, problem, where are we
21 going to find it, brother? Correct?

22 A Yes, sir.

23 Q And you say God knows, correct?

24 A Yes, sir.

25 Q And then Siddig says does Abdul Rashid know it?

6504

1 A Yes, sir.

2 Q And you say Abdul Rashid knows it, of course,
3 when you tell him detonator, he will tell you. And Siddig
4 says fine. And you continue on. You say he knows the
5 story. And Siddig says I will call him, don't talk to him,
6 don't open the subject to him. Correct?

7 A Yes, sir.

8 Q At this point in time did you tell Siddig Ali,
9 listen, you know, a year ago he had ready-made bombs, maybe
10 we are wasting our time with this detonator thing? Did you
11 say that to him?

12 A No, I did not, sir.

13 Q And Siddig told you, you know, maybe there is
14 another source, and you asked him what it was, and he told
15 you criminals. Correct?

16 A Yes, sir.

17 Q A few days later you are still meeting with
18 Siddig, correct?

19 A Yes, sir.

20 Q And you ask Siddig, have you met with Rashid,
21 correct?

22 A Yes, sir.

23 Q And he tells you no, correct?

24 A I don't recall if he said no.

25 Q If I may, no, we did not meet, I'll call him

6505

1 tomorrow if God's willing.

2 MR. McCARTHY: Your Honor, could I at least
3 know --

4 THE COURT: What are you reading? Is this a
5 question?

6 MR. WASSERMAN: It will be. I will rephrase it.
7 It is page 25, your Honor, CM 4. It is in B of the binder.

8 Q At this point Siddig told you, did he not, we
9 will go and we will receive, meaning that we will go to
10 Abdul Rashid and we will get what we want, correct?

11 A I am sorry, sir. I am just a little lost. If
12 you tell me where --

13 Q Sure. A few days after the first report you are
14 having another meeting with Siddig, correct?

15 A Yes, sir.

16 Q At this point you are meeting with him on almost
17 a daily basis, correct?

18 A Yes, sir.

19 Q You are nudging him, you are pushing him. You
20 suggest to him, contact Abdul Rashid, yes?

21 A I did not suggest to him. He the one who ask me
22 if Abdul Rashid knows about detonators, I said yes, because
23 we had talked about detonators with Abdul Rashid before,
24 sir.

25 Q I am talking about the meeting after.

6506

1 A I am sorry.

2 Q I am talking about the next meeting. Did you not
3 say to him, what's his news? Did you meet with him? Didn't
4 you ask him that?

5 A I may ask it, sir.

6 Q And didn't he respond, we haven't met but a
7 moment then we will go and receive, referring to detonators,
8 correct?

9 A I am not sure what you are referring to, sir.

10 Q Let me continue on. Did you ask him what else,
11 everything, everything handheld is ready. There is
12 handheld. And Siddig says yes, of course, what else. And
13 you said you save me some efforts like this. And Siddig
14 says yes.

15 THE COURT: Do you want to pose a question?

16 Q I am asking whether or not that is what you said
17 and he said?

18 A I recall something in that effect, yes, sir.

19 Q Thank you. About a week after this
20 conversation -- and again you are meeting with Siddig on
21 almost a daily basis, correct?

22 A Yes, sir.

23 Q You ask Siddig Ali, I want to make -- I am sorry.
24 Let me withdraw that. Siddig Ali asks you, ask him for
25 what? The detonator? Do you recall his asking you that?

6507

1 A In which conversation, sir, please?

2 Q Your Honor, I am sorry. This is CM 6, page 24.
3 The date is May 18. This is about a week -- your Honor, it
4 may help the witness if I give him a binder.

5 THE COURT: I doubt it.

6 MR. WASSERMAN: All right.

7 Q Did you not ask Siddig at this time on May 18 --
8 this is about two weeks after your first taping -- has Abdul
9 Rashid disappeared now? Do you recall asking that?

10 A I may ask -- I'm not sure. I don't recall it
11 exactly.

12 Q Did you not tell him your Ali Shinawy story about
13 that you had met with Ali Shinawy and Dr. Rashid and
14 Dr. Rashid said that bombs are available?

15 A Yes, sir.

16 Q Was not Siddig's response no, no, no, then leave
17 him alone, yes?

18 A I am sorry, sir.

19 Q I will withdraw that. I will withdraw that.

20 Did you not plan with Siddig to go visit
21 Dr. Rashid?

22 A I may suggested that, sir.

23 (Continued on next page)

24

25

6508

1 Q In the process of planning that visit Siddig
2 suggested that you check out for bugs, you know, with one of
3 your devices you check out to see if there are any bugging
4 devices?

5 A I'm the one who suggested that.

6 Q No, Siddig suggested it.

7 A Yes, sir.

8 Q OK. And you would then have a discussion at that
9 time with Dr. Rashid, correct, after going to see him and
10 debugging the place, correct?

11 A I remember, sir, that when we went to the Rogers
12 Avenue place, he sweep the place -- I checked for bugs over
13 there.

14 Q OK.

15 A Yes, sir.

16 Q Before you went, Siddig had suggested that you do
17 it and referred to you as the exterminator, correct?

18 A Yes, sir.

19 Q Before this visit ever takes place, you ask
20 Siddig, why doesn't Abdou Rashid do an Islamic jihad act.
21 Do you remember using that phrase in a question to Siddig
22 before your first visit with Dr. Rashid, "Why doesn't Abdou
23 Rashid do an Islamic jihad act"?

24 A Sir, you keep picking sentences from different
25 conversations, and I'm trying to focus in different -- I'm

6509

1 not following what you're saying. I am afraid to --

2 Q Fine. Let me try to help out.

3 You've testified that you had two
4 conversations -- actually three. That you had a
5 conversation with Dr. Rashid on May 30, that you had a
6 conversation with him on June 16, and that you had a
7 conversation with him on June 23, respectively CM's 25, 41
8 and I believe it's 63.

9 A I recall the conversations, sir. I don't recall
10 the dates, sir.

11 Q The conversation that you have with him at the
12 first meeting you testified was one in which you asked him
13 for detonators, correct?

14 A We asked -- I asked him, sir, about a pistol --
15 as a matter of fact, Sheik Ali Shinawy told him that Brother
16 Ahmed was looking for a pistol.

17 Q No, sir, wrong meeting.

18 A I'm sorry.

19 Q Referring to the meeting in '93 --

20 MR. WASSERMAN: If I may, my apologies to the
21 court for the regression.

22 Q The first conversation we've learned with Siddig
23 Ali that's officially recorded is May 7, OK?

24 A Yes, sir.

25 Q You have testified that you recorded a

6510

1 conversation on May 30 with Dr. Rashid and Siddig Ali,
2 that's known as CM 25, correct?

3 A Yes, sir.

4 Q Between May 7 and May 30 you did not meet with
5 Dr. Rashid, correct?

6 A No, sir.

7 Q May 30 was your first meeting, correct?

8 A It was the second meeting, sir.

9 Q OK. I know how you're thinking. It's the first
10 meeting in the second phase of the investigation.

11 A Yes, sir.

12 Q Now, between May 7 and May 30 you have no
13 meetings with Dr. Rashid, correct?

14 A Yes, sir.

15 Q You simply have conversations with Siddig Ali
16 about meeting with Dr. Rashid, correct?

17 A Yes, sir.

18 Q And you keep ask --

19 THE COURT: Mr. Wasserman. You may finish the
20 next question, and then we are going to take a short break.

21 MR. WASSERMAN: I'll stop here.

22 THE COURT: Ladies and gentlemen, we are going to
23 take a short break. Please leave your notes and other
24 materials behind. Don't discuss the case. We will resume
25 in a few minutes.

6511

1 (The jury was excused)

2 (Jury not present)

3 THE COURT: You may step down.

4 (Witness excused)

5 THE COURT: We will take a short break.

6 (Recess)

7 THE COURT: One of the jurors isn't feeling well
8 so we are going to break.

9 I will see Mr. Wasserman and the government in
10 the robing room.

11 MS. AMSTERDAM: Your Honor, after you see
12 Mr. Wasserman, I need to have --

13 MR. SERRA: Your Honor, I'm sorry. If we are
14 going to do anything other than break, we do not have the
15 Spanish translation going.

16 THE COURT: Well, I was making appointments to
17 see lawyers. I think I can do that safely.

18 May I ask everybody to sit down, that is, the
19 lawyers.

20 (Jury present)

21 THE COURT: Ladies and gentlemen, we are going to
22 break for the day. Please leave your notes and other
23 materials behind. Please don't discuss or see or hear or
24 read anything about the case. Don't even think about the
25 case. We will resume on Monday. Have a pleasant weekend.

6512

1

Good night.

2

(The jury was excused)

3

THE COURT: OK. I'm sorry. Ms. Amsterdam, you

4

wanted to see me about something as well?

5

MS. AMSTERDAM: Yes, your Honor, if you have one

6

moment, after the government and Mr. Wasserman.

7

THE COURT: OK.

8

(Pages 6513 through 6520 were sealed by order of

9

the Court)

10

Proceedings adjourned to April 3, 1995 at 9:30

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a.m.)

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