

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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April 3, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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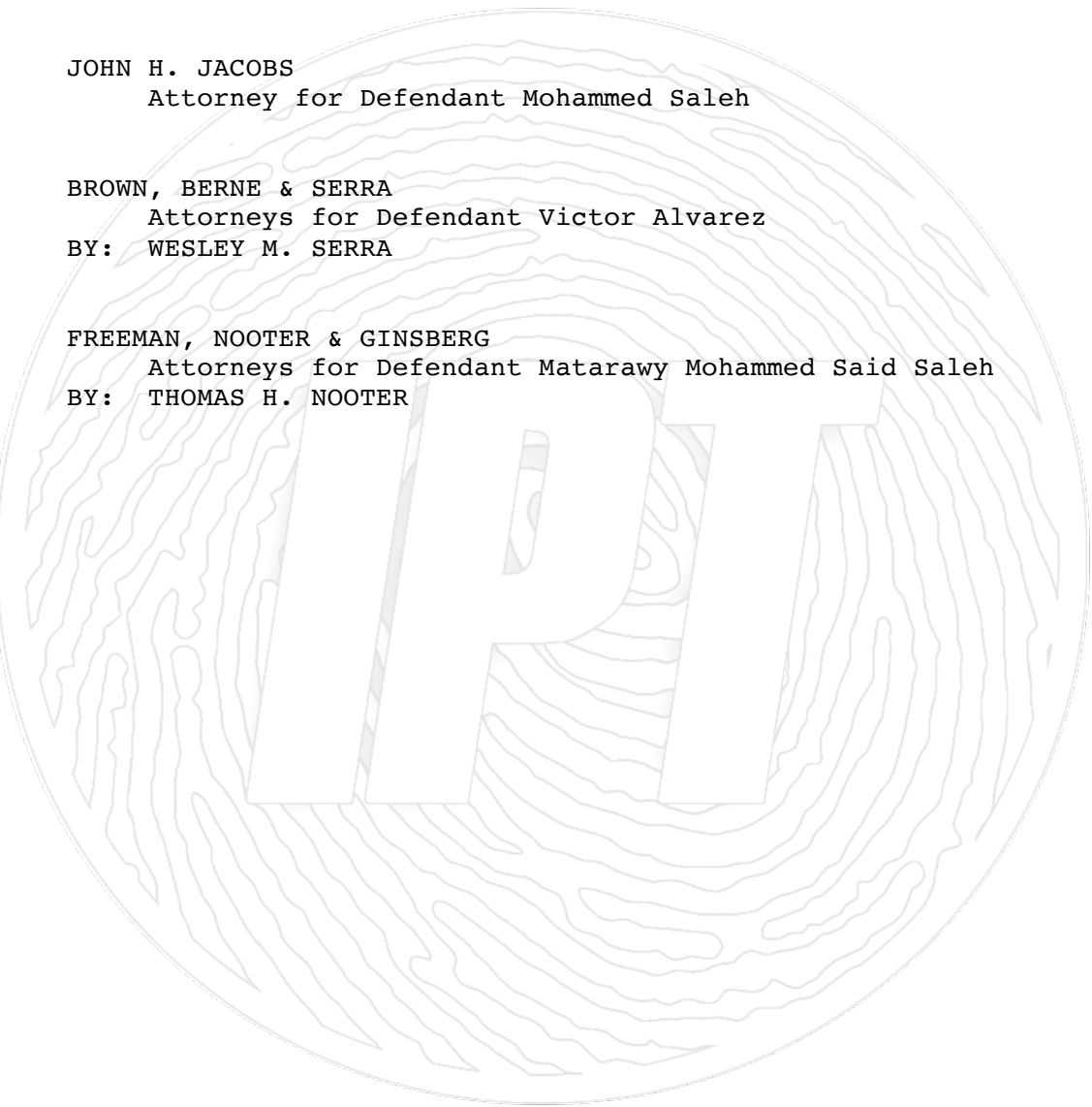
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1 (Trial reresumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Before we get the
4 jury, Mr. Stavis, we had talked early on about your
5 submitting a memo a couple days after you got done.

6 MR. STAVIS: Yes. Your Honor, I spoke to Mr.
7 Khuzami about that issue this morning. I have narrowed the
8 issues based on the information contained in the March 8
9 letter from the government that they did not learn of this
10 statement until we started trial. I was waiving my Rule 16
11 objection, and I also informed Mr. Khuzami that I would be
12 waiving any claim of physician-patient privilege, so that
13 the issue is narrowed to a Sixth Amendment issue, and I told
14 Mr. Khuzami that I am in the process of working on that.
15 But the issue has been narrowed.

16 THE COURT: Any idea when?

17 MR. STAVIS: We will attempt to get something by
18 Friday, your Honor.

19 THE COURT: Thank you.

20 MS. MACEDONIO: Good morning, your Honor. Mr.
21 Jacobs is in the Eastern District this morning. He will be
22 in at 11:30.

23 THE COURT: Mr. Saleh, is it all right with you
24 that Ms. Macedonio will be sitting in for you?

25 DEFENDANT MOHAMMED SALEH: Yes.

1 THE COURT: Thank you very much.

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 THE WITNESS: Yes, sir.

8 THE COURT: Mr. Wasserman.

9 CROSS-EXAMINATION continued

10 BY MR. WASSERMAN:

11 Q. Good morning.

12 A. Good morning, sir.

13 Q. Mr. Salem, just to pick up where, approximately,
14 we left off on Thursday, your first meeting with Dr. Rashid
15 was in June of 1992, correct?

16 A. Yes, sir.

17 Q. In a meeting was followed by a meeting in May,
18 May 30 of 1993, correct?

19 A. Yes, sir.

20 Q. After the May 30 meeting, there was another
21 meeting that you had with Dr. Rashid, correct?

22 A. Yes, sir.

23 Q. The date for that was June 16. That would be CM
24 45, I believe, correct?

25 A. Yes, sir.

1 Q. It is CM 45 or 41, depending upon how you look at
2 it. But June 16 is the date, correct?

3 A. Yes, sir.

4 Q. And the arrests in this case were conducted on
5 June 24, I believe, the early morning hours of June 24,
6 correct?

7 A. Yes, sir.

8 Q. You had a telephone call on June 23, the evening
9 of June 23. You were inquiring, even, whether the arrests
10 were about to be made, correct?

11 A. A phone call to who, sir?

12 A. To one of the agents.

13 A. Yes, sir.

14 Q. Which agent was that?

15 A. As far as I recall, it was Agent Louis Napoli,
16 sir.

17 Q. We left off, I think, about the first recorded
18 conversation that you had with -- the first officially
19 recorded conversation that you had with Siddig Ali was on
20 May 7, correct?

21 A. Yes, sir.

22 Q. At that time he asked you where to get the
23 detonators and you suggested Dr. Rashid. That's what you
24 testified to last week, correct?

25 A. Yes, sir.

1 MR. McCARTHY: Objection -- withdrawn.

2 Q. Did there come a time between -- withdrawn. On
3 or about May 24 -- that's between the first reported
4 conversation with Siddig Ali on May 7 and your meeting with
5 Dr. Rashid on May 30 -- didn't you report back to the FBI
6 that Siddig had told you that Dr. Rashid had available for
7 you to pick up two balls? Correct?

8 A. Yes, sir.

9 Q. And I believe in response to one of Mr.
10 McCarthy's questions you informed us that balls equals hand
11 grenades, correct?

12 A. Yes, that's the alias name we used for hand
13 grenades, sir.

14 Q. Do you recall which agent you reported that
15 Dr. Rashid had the two hand grenades ready to be picked up?
16 Do you recall who you reported that to?

17 A. It could be either Louis Napoli or John Anticev,
18 sir.

19 Q. But there is no question in your mind that Siddig
20 Ali told you the balls were ready, you reported that
21 information in, correct? That's what you testified to a
22 moment ago, correct?

23 A. Yes. I am trying to remember exactly, sir.

24 Q. Do you recall?

25 A. I don't recall the exact words. I remember that

1 there came a time Siddig told me that Rashid said things
2 ready, some balls is ready, and I reported that, but I don't
3 recall details about it.

4 Q. I am just going to read the words that you said
5 from the transcript -- your Honor, that's at E in your book,
6 and, Mr. McCarthy, it is at page 22.

7 MR. McCARTHY: Is this to refresh recollection?

8 THE COURT: What is the purpose of reading this?

9 MR. WASSERMAN: The purpose of reading is that --

10 THE COURT: Mr. Wasserman, if you want to refresh
11 his recollection, you can show him the page. Otherwise pose
12 a question. Don't just read it.

13 MR. WASSERMAN: If I can have a stipulation from
14 the government as to the date of CM 14, May 24?

15 THE COURT: There is no issue about the date.

16 MR. WASSERMAN: Your Honor, if I may, I think he
17 raised an issue about it.

18 MR. McCARTHY: Your Honor, I will check my
19 records. If it turns out that our records are May 24, I
20 will stipulate that is the date. I don't have it at this
21 minute.

22 THE COURT: Also, we had a conversation about it.

23 MR. McCARTHY: Can we can have another
24 conversation if it turns --

25 THE COURT: Let's just proceed and ask the

1 question.

2 Q. Didn't you tell Agent Napoli and John Anticev --

3 MR. McCARTHY: Objection.

4 MR. WASSERMAN: I haven't finished.

5 MR. McCARTHY: The last answer is a failure of
6 recollection, at best.

7 THE COURT: Do you want to show him the
8 transcript.

9 (Pause)

10 Q. Does that refresh your recollection, sir?

11 A. Yes, sir.

12 MR. WASSERMAN: And I believe the government will
13 stipulate that this conversation takes place either late the
14 24th or early on May 25th.

15 MR. McCARTHY: That is correct.

16 Q. You then proceed to have a rendezvous with
17 Dr. Rashid on May 30, correct?

18 A. Yes, sir.

19 Q. Did you pick up any hand grenades at this meeting
20 on May 30?

21 A. No, sir.

22 Q. Before you met with Dr. Rashid on May 30, did you
23 have any conversations with Siddig Ali concerning what
24 Dr. Rashid did for a living?

25 A. From what I understood, that he is doing x-ray,

1 he is a technician for x-rays, sir?

2 Q. Didn't Siddig tell you that he was a physician of
3 autopsy, bones, and a chiropractor?

4 MR. McCARTHY: Objection.

5 THE COURT: I will allow it.

6 A. My recollection, sir, that he was a technician
7 for x-rays and things in that effect. I didn't pay that
8 attention to what he is doing for a living, sir.

9 Q. The question is, didn't Siddig tell you --

10 MR. McCARTHY: Objection.

11 THE COURT: Overruled.

12 Q. -- before you met with Dr. Rashid that he was a
13 physician of autopsy, bones, and a chiropractor? That is at
14 page 25 of CM 24.

15 A. I may said that, sir, but I don't recall this
16 part.

17 Q. Had you ever heard of a doctor of autopsy, bones
18 and a chiropractor all in one?

19 A. I beg your pardon, sir.

20 Q. Had you ever heard of a doctor of autopsy, bones
21 and a chiropractor all in one?

22 A. No, sir, I did not.

23 Q. Would you subsequently find out that Dr. Rashid
24 was in fact a medical technician --

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q. You have testified that you met Dr. Rashid on
3 June 16 as well, correct?

4 A. Yes, sir.

5 Q. That meeting took place at the Farooq mosque on
6 Atlantic Avenue, correct?

7 A. Yes, sir.

8 Q. The Farooq mosque is near where Dr. Rashid
9 worked, correct?

10 A. I don't know, sir.

11 Q. Siddig Ali never told you that he worked at a
12 dialysis clinic three blocks away?

13 A. He may said it but it wasn't the focus of my
14 attention, sir.

15 Q. Isn't that basically how the meeting came about
16 because Dr. Rashid would often pray at the Farooq mosque
17 because it was so convenient to his place of employment?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q. At this meeting on May 30? Withdrawn.

21 THE COURT: Mr. Wasserman, would you please stand
22 where the microphone is. Thank you.

23 Q. Before you had this meeting on May 30, doesn't
24 Siddig tell you that Rashid doesn't know who's coming?

25 A. I am sorry, sir.

1 Q. Doesn't Siddig tell you that Rashid doesn't know
2 who's coming?

3 A. Doesn't know what, sir?

4 Q. Who is coming.

5 A. Who is coming where, sir?

6 Q. To the meeting. He doesn't know that you are
7 coming to the meeting. Doesn't he tell you?

8 A. I don't remember that, sir.

9 Q. Do you tell Siddig Ali the Ali Shinawy story, to
10 wit, do you tell Siddig that you had met with Rashid a year
11 ago and that Rashid had offered you ready-made bombs and
12 machine guns and stuff like that? Did you tell him that
13 story?

14 A. Yes, sir.

15 Q. At this meeting on May 30, did you tell that
16 story in front of Rashid?

17 A. Dr. Rashid said that --

18 Q. Yes or no, sir, please.

19 A. No, sir.

20 Q. Thank you. You have testified previously that
21 the place that you had the meeting was a safe house,
22 correct?

23 A. That's what I --

24 Q. You testified. And you have distinguished that
25 this was a safe house in Brooklyn and it wasn't the place in

1 Queens which you and Siddig had rented to prepare a bomb,
2 correct?

3 A. Yes, sir.

4 Q. What had you been told by the FBI before the May
5 30 meeting about the facility, about the place? What had
6 you been told about the place that you would have the
7 meeting with Dr. Rashid and Siddig?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. Were you told anything by the FBI before you had
11 the meeting on May 30 with Dr. Rashid?

12 MR. McCARTHY: Yes or no, your Honor?

13 THE COURT: Was he told anything about any
14 subject at all, ever? That is not what you want, correct?

15 MR. WASSERMAN: That is correct. I will rephrase
16 the question, your Honor.

17 Q. Were you told anything about the place that you
18 would be meeting Dr. Rashid at on May 30 by the FBI?

19 A. About the place, no, sir.

20 Q. They didn't tell you anything?

21 A. About the place, no, sir.

22 Q. They didn't tell you anything about the physical
23 nature of the premises, the layout or anything?

24 A. No, sir.

25 Q. Tell you anything about who lived there?

1 A. No, sir.

2 Q. Tell you anything about who you might find to
3 occupy the premises?

4 A. No, sir.

5 Q. Did they tell you anything about Abu Ubaidah?

6 A. They didn't tell me anything about that, sir.

7 Q. You knew before from Siddig Ali that Abu Ubaidah
8 was one of the trainers in Pennsylvania, correct?

9 A. Yes.

10 Q. And that although Abu Ubaidah was a fine trainer
11 he was a wastrel with money, that he spent a lot of money,
12 yes?

13 A. Yes, sir.

14 Q. And that that in fact was one of the problems
15 with the Bosnia project --

16 MR. McCARTHY: Objection to form.

17 THE COURT: Sustained. It's a question, not an
18 essay.

19 Q. The FBI did not tell you that I might find Abu
20 Ubaidah at Rogers Avenue with Dr. Rashid?

21 A. No, they did not tell me that, sir.

22 Q. Did they tell you that they had entered the
23 premises on May 10 --

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 MR. WASSERMAN: If I may. May I have a side bar?

2 THE COURT: Because it is totally irrelevant.

3 Move on.

4 MR. WASSERMAN: Your Honor, may I have a side
5 bar?

6 THE COURT: You may not.

7 Q. You have testified that the FBI told you that you
8 should not wear a wire to this meeting, correct?

9 A. They told me do not take recording device with
10 you, or the briefcase, because they have electronic
11 equipment to frisk you, they probably will frisk you, so
12 don't take it with you.

13 Q. You are using the term they. You are referring
14 to Dr. Rashid and who else?

15 A. I am using term they, the FBI told me not to take
16 the briefcase with you, just in case that they, referring to
17 Dr. Rashid, they will frisk you or --

18 Q. So they referred to Dr. Rashid?

19 A. Yes, sir.

20 Q. This warning from the FBI, basically they were
21 telling you to be concerned for your safety, correct?

22 A. Yes, sir.

23 Q. And they were telling you in effect these guys
24 are bad, weren't they?

25 A. They didn't say they are bad, sir. They said

1 these people have electronic equipment to frisk you, they
2 will frisk you, and your safety is priority here, sir.

3 Q. Who are these people?

4 A. Dr. Rashid and his colleagues, sir.

5 Q. Who are his colleagues, sir?

6 A. I don't know in that time, sir.

7 Q. The FBI did not tell you?

8 A. No, sir.

9 Q. So they warned you but didn't give you any
10 information, is that correct?

11 A. No, sir.

12 Q. Was that your customary dealings with them, where
13 they would tell you something but not give you information
14 concerning it?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q. In fact were you frisked on May 30?

18 A. In this meeting, no, sir.

19 Q. In fact was any electronic device used upon you
20 or your briefcase?

21 A. I don't know if they did or not, sir.

22 Q. One would suspect that if they did you would have
23 known, correct?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. You debugged the place, is that correct?

2 A. I scanned the place to detect if there is bugging
3 devices or not.

4 Q. And when you did that, can you describe what you
5 did?

6 A. I have a transmission detector, and when there is
7 a transmission this detector will give you a whistle, and I
8 made the noise first to make them believe that it's working,
9 and I turned it off, and I made myself like sweeping the
10 walls. There is no response. Then I told them it's clean,
11 sir.

12 Q. Did you go through more than one room?

13 A. Yes, sir.

14 Q. Describe what you did in terms of --

15 A. I walked close to the walls in the main room we
16 were sitting at, at the edges of the doors, at the corners,
17 and I went to another, we will call it the front room,
18 small, tiny one, and I swept it, and there is another room
19 where is the fax machine on the floor. I swept it as well.
20 I tried to pick up the fax number. It wasn't written. So I
21 walked all over the place, sir.

22 Q. Was this in fact an operating piece of equipment
23 that you had?

24 A. It is functioning right, yes, sir.

25 Q. So that if in fact there was a bug you would have

1 picked it up?

2 A. No, sir.

3 Q. If this machine worked we would pick up an
4 electronic bug?

5 A. It will pick up any wireless electronic bug if
6 it's on, but it was off, sir.

7 Q. Why did you have it off, sir?

8 A. Because if there is a really bug there I don't
9 want to pick it up and then screw up the FBI.

10 Q. And you had some suspicion that there might well
11 be a bug there, did you not?

12 A. Could be, sir. I don't know.

13 Q. In your tour of the apartment did you go to the
14 bathroom?

15 A. No, I don't recall going to the bathroom, sir.

16 Q. To check it out with the bugging device you
17 didn't go to the bathroom?

18 A. No, I don't think so, sir.

19 Q. Did you ever personally use the bathroom during
20 this meeting?

21 A. I am not sure, sir.

22 Q. It was a long meeting, wasn't it?

23 A. Yes, sir.

24 Q. It lasted two and a half hours or so, would that
25 be fair to say?

1 A. Could be.

2 Q. And calling it a meeting, wouldn't it be more apt
3 to call it a bull session? You talked about a lot of
4 things, did you not?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. You talked about a lot of things, did you not?

8 A. Yes, sir.

9 Q. Can you estimate approximately how many topics
10 were covered during this meeting?

11 A. How many topics?

12 Q. Correct.

13 A. We talked about the United Nations. We talked
14 about the hand grenades. We talked about C-4. We talked
15 about that he knows people who robbed post offices and banks
16 from Atlanta, Georgia, all the way until New York, and they
17 reported to the imam. We talked that he had done previously
18 things that he left an evidence to mislead the FBI to make
19 them believe that the Jews did it, or something that effect.

20 Q. Sir, isn't it a fact that among the approximately
21 50 to 75 topics that you covered was the Malcolm X movie,
22 the march on Washington, the death hand which killed Bruce
23 Lee, countersurveillance whereby Dr. Rashid knew where FBI
24 agents that were following him lived and knew their names?

25 MR. McCARTHY: Objection.

1 Q. Weren't those among the topics you covered?

2 THE COURT: Were those the topics you covered.

3 A. I remember the topics about the surveillance,
4 that he knows their names and addresses, yes, I remember
5 that, sir.

6 Q. At the time you testified that his reaction to
7 your telling him about the United Nations, you testified
8 here, was to tell you to slow down and be very cautious,
9 correct?

10 A. He said that --

11 Q. I am just asking if that is what you testified
12 to.

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained. Do you want --

15 MR. WASSERMAN: I am sorry, Judge. I want to
16 know whether he testified to that previously.

17 THE COURT: No, there is a transcript on that.
18 You can move on to another question.

19 Q. Did you discuss getting weapons from Dr. Rashid?

20 A. I am sorry, sir.

21 Q. Did you discuss getting weapons from him.

22 A. Siddig discussed some weapons, yes.

23 Q. What did he discuss?

24 A. That he needs some of this for protection.

25 Q. What is there, sir?

1 A. This, he made a gesture like that, we need some
2 of this.

3 Q. You are making a finger like a pistol.

4 A. Yes, sir.

5 Q. What did Dr. Rashid say?

6 A. I don't recall what he said, sir.

7 Q. Did you bring up the subject of weapons at all?

8 A. I may brought it, sir.

9 Q. Did you ask him for detonators or did you ask him
10 for hand grenades?

11 A. I asked him for hand grenades. I said we need
12 three of this to take this out of it.

13 Q. You said this, meaning the detonators?

14 A. Right, sir.

15 Q. Back in 1992 when you first met Dr. Rashid a year
16 earlier, you testified, you said that you asked him for
17 detonators and he offered you ready-made bombs, correct?

18 A. Yes, sir.

19 Q. Between June of 1992 and this meeting on May 30
20 of 1993, you had not done anything about these ready-made
21 bombs, correct?

22 A. No, I did not, sir.

23 Q. Also you said back in June of '92 Dr. Rashid
24 offered to you machine guns, AK47's, Uzis for \$900 apiece,
25 correct?

1 A. That is in Abu Bakr meeting, yes, sir.

2 Q. That's what you say took place in the Abu Bakr
3 meeting, correct?

4 A. Correct, sir.

5 Q. At this meeting on May 30 do you refer him back
6 to what you say took place at Abu Bakr and do you say what
7 about those Uzis for \$900? Did you ask him that?

8 A. No, I did not, sir.

9 Q. Did you refresh his recollection about the offer
10 of ready-made bombs for the same price of \$900?

11 A. He already said --

12 Q. Did you? Yes or no, sir.

13 MR. McCARTHY: Objection.

14 THE COURT: Overruled. Did you ask him about the
15 ready-made bombs at that meeting?

16 A. No, I did not, sir.

17 Q. You testified that Dr. Rashid told you that the
18 UN was one of his projects.

19 A. Yes, sir.

20 Q. And you testified that he said that to you.

21 A. Yes, he did, sir, to both of us.

22 Q. To both of you.

23 Q. Did it occur to you at that time -- by the way,
24 you are sure that he says this to you and it is not Siddig
25 who tells you sometime later?

1 A. No, sir. Mr. Siddig Ali told him -- we were
2 talking about the project and then he told him that we are
3 planning to bomb the United Nations. And he said gee, it
4 was one of my projects. That's what his response, sir.

5 Q. I see. Let me just find -- one moment, your
6 Honor.

7 Didn't Siddig tell you a day later, on May 31, at
8 CM 29, page 31, he thought about it before, to which you
9 replied, by God, and Siddig said yes --

10 MR. McCARTHY: May I have a moment, your Honor,
11 to find what he is talking about?

12 MR. WASSERMAN: Page 31, CM 29.

13 Q. To which you replied by God, to which he said
14 yes, to which you replied ah and to which he said you don't
15 believe and he said no. Siddig says by God, I thought of a
16 that a long time ago, a long time ago.

17 MR. McCARTHY: Your Honor, could we note on the
18 transcript I thought of that a long time ago, a long time
19 ago, is in quotations?

20 THE COURT: Yes.

21 MR. WASSERMAN: Fine.

22 THE COURT: Which is to say Siddig Ali is quoting
23 somebody else.

24 MR. McCARTHY: That is correct.

25 MR. WASSERMAN: Fine.

1 Q. To which you then continue on a conversation --
2 this takes place a day after, and you talk about that if
3 Rashid has been planning this, all he ever does is
4 contemplate, he never effectuates. Do you recall that
5 conversation with Siddig?

6 A. I am sorry, sir.

7 Q. Break it into bite-size pieces, OK. After Siddig
8 tells you a day later that Rashid had thought about it
9 before, referring to the United Nations --

10 A. Yes, sir.

11 Q. -- and to which you replied by God and expressed
12 disbelief that he had thought about it before --

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q. You then continued to talk about I don't think he
16 implements. Do you recall telling that to Siddig?

17 A. I don't understand what's implements means, sir.

18 Q. Carry out.

19 A. OK, right.

20 Q. And that you then said to Siddig, they
21 contemplate and contemplate and sit and contemplate and
22 contemplate and contemplate and contemplate. Do you follow
23 me or I am wrong? Too much contemplating, I mean. I mean
24 contemplating is warranted, I am not saying it is not
25 warranted, and caution is in order, I am not saying

1 otherwise and all that, but when you sit and contemplate for
2 a week that's fine. Emad says Siddig, a month that's fine.
3 Hm, says Siddig, a year, two years, by God, three years,
4 what happened, man? Laughs. Are you following me? That's
5 not contemplated any more.

6 Do you recall telling that to Siddig?

7 A. I don't understand what's --

8 Q. Contemplating is thinking.

9 A. OK. Yes, I may said that, sir.

10 Q. Your testimony is that it was Rashid who said
11 this at the meeting rather than Siddig telling you the
12 following day, telling you what he says Rashid said,
13 correct?

14 A. I am sorry, sir.

15 Q. OK. It is your testimony that Rashid told you
16 that he had long time ago thought about the UN.

17 A. Yes, sir.

18 Q. And that when Siddig tells you about it the
19 following day, he is not telling you something new, he is
20 telling you something that you had heard the day before,
21 correct?

22 A. Yes, sir.

23 Q. Let's assume that, either way, if in fact --

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained. Let's just ask the

1 question.

2 MR. WASSERMAN: If I may, Judge.

3 THE COURT: His testimony is what it was. You
4 are now telling him to assume it was something else. You
5 may ask a question without assuming something contrary to
6 his testimony.

7 MR. WASSERMAN: May I have a side bar?

8 THE COURT: No, you may not.

9 MR. WASSERMAN: Your Honor, I must --

10 THE COURT: You are telling me that you can't
11 continue? Then take your seat.

12 MR. WASSERMAN: I didn't say that.

13 THE COURT: Ask a question.

14 Q. When Siddig Ali told you on May 31 that Rashid
15 had thought about the UN a long time ago, your reply to
16 him --

17 MR. McCARTHY: Objection. Misstates the
18 testimony.

19 MR. WASSERMAN: I am reading from CM 24, and if I
20 can have a stipulation -- what I read into the record, if I
21 may, your Honor, was from CM 29, page 31, continuing into
22 page 32. Can I have a stipulation from Mr. McCarthy that I
23 read accurately --

24 MR. McCARTHY: Absolutely.

25 MR. WASSERMAN: Thank you.

1 Q. Assuming that Dr. Rashid had this idea before and
2 you became aware of that, in fact at this meeting you said
3 that, did you say to him can you tell us what plans you have
4 made?

5 MR. McCARTHY: Objection.

6 Q. Did you ask him what plans have you made?

7 THE COURT: Overruled.

8 A. No, I did not ask him, sir.

9 Q. Did you ask him, can we join forces in this
10 project? Did you ask him that?

11 A. No, sir, I did not.

12 Q. Did you say to him, Dr. Rashid, do you have any
13 ingredients for us? Did you ask him that? Yes or no.

14 A. Yes, sir.

15 Q. And he said he would check out the hand grenades,
16 is that correct?

17 A. The hand grenades, and if it's not, the C-4's,
18 sir.

19 Q. Did he tell you that he had anything on hand for
20 you?

21 A. No, sir, because the people -- no, sir.

22 Q. You wanted to continue. I will let you continue.
23 Go ahead.

24 A. Because the people who had the C-4 in jail, and
25 it's hard to get to them now, sir.

1 Q. Did he offer you any ideas or things that might
2 help your project for the United Nations?

3 A. Yes, he did, sir.

4 Q. What did he offer, sir?

5 A. He said that you got to leave evidence to mislead
6 the FBI when they come to investigate the place of the
7 bombing or the place of the operation, to make it look like
8 either the Jews did it or somebody else.

9 Q. The somebody else, I believe, was the Ku Klux
10 Klan, was it not?

11 A. I don't remember this, sir.

12 Q. We will come back to that in a moment. Let me
13 just continue. Did he tell you anything about his plan for
14 the United Nations?

15 A. No, sir. He said only it was one of my projects,
16 sir.

17 Q. One of his projects. Did he tell you that he had
18 taken any steps towards carrying out this project?

19 A. He didn't say, sir.

20 (Continued on next page)

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25

1 Q. Did he offer to provide you with any people to
2 help you?

3 Did he offer, for example, Abu Ubaidah to help
4 you?

5 A. He offered, if I recollect right, he said, sir,
6 that he have two bomb builders just came out of jail and
7 they are waiting for him to open the door for them to come
8 on board, sir.

9 Q. So he had two bomb builders for you?

10 A. Yes.

11 Q. Correct?

12 A. That's right, sir.

13 Q. OK. Did he ever make those bomb builders
14 available to you before the arrests took place in this case?

15 A. No, sir.

16 Q. This meeting takes place on May 30, correct?

17 A. Yes, sir.

18 Q. Between May 30 and when the arrests take place,
19 over three weeks later, did he give you anything?

20 A. No, he did not, sir.

21 Q. No hand grenades?

22 A. No, sir.

23 Q. No C-4s?

24 A. No, sir.

25 Q. No bomb builders?

1 A. No, sir.

2 Q. No machine guns?

3 A. No, sir.

4 Q. No ready-made bombs for \$900, nothing, correct?

5 A. No, sir.

6 Q. No, nothing.

7 Did he offer you any marshal arts equipment to

8 help your effort?

9 A. I don't think so, sir.

10 Q. Did he offer you any knives or swords?

11 Offer you any blow guns?

12 A. No, sir.

13 Q. Any crossbows?

14 A. No, sir.

15 Q. Did he offer you any of the equipment from

16 Pennsylvania, did he offer you any Kalishnikovs?

17 A. No, sir.

18 Q. Did he offer you any cannon fuse?

19 A. No, sir.

20 Q. Did he offer you any electric matches?

21 A. No, sir.

22 Q. Any exploding targets?

23 A. No, sir.

24 Q. You know exploding targets have gun powder in

25 them, correct?

1 A. It may, sir, I don't know.

2 Q. Sir, you were in the armed forces of Egypt for a
3 long time, correct?

4 A. Yes, sir.

5 Q. You were in special forces, correct?

6 A. In a time, yes, sir.

7 Q. And you never had occasion to have any contact
8 with what's called an exploding target?

9 A. To be honest, I don't understand what does that
10 mean in my mind.

11 Q. OK. That is a target that explodes because it
12 has some gun powder in it.

13 A. Yes, sir.

14 Q. So you did have some experience with it?

15 A. Yes, sir.

16 Q. OK. Now, none of these things was offered to you
17 by Rashid, was it?

18 A. No, sir.

19 Q. In fact, cannon fuse is something that you
20 testified about that you had bought on Canal Street, and I
21 believe you testified that you showed it to Sayyid Nosair,
22 correct?

23 A. Yes, sir.

24 Q. Because in your mind cannon fuse was something
25 that could be used with a bomb, correct?

1 A. That's what Mr. Sayyid Nosair told me, sir.

2 Q. Now, cannon fuse is not detonator fuse, do you
3 know that?

4 A. Yes, sir.

5 Q. Do you know the difference?

6 A. Yes, I know the difference.

7 Q. OK. Cannon fuse is also known by the name "hobby
8 fuse," correct?

9 A. I don't know that, sir.

10 Q. When you bought it on the Canal Street, did you
11 need a license to buy it?

12 A. No, sir.

13 Q. You bought it from a store you testified,
14 correct?

15 A. Yes, sir.

16 Q. It was sold openly over the counter, correct?

17 A. Yes, sir.

18 Q. Did Rashid offer to -- withdrawn.

19 Are you aware that cannon fuse might have been
20 used to set off the Trade Center bomb?

21 A. Could be.

22 Q. Could be.

23 So Rashid offered you nothing that day, correct?

24 I mean he offered you none of these items that I
25 have said that might help you out, correct?

1 A. No, sir.

2 Q. So if you say that it could be that cannon fuse
3 could set off a Trade Center bomb, which was a big bomb, and
4 Rashid had cannon fuse, he could have helped you out by
5 offering to give it to you, correct?

6 A. I don't know, sir.

7 Q. Well, he didn't offer it, did he?

8 A. No, he did not, sir.

9 Q. OK. When you walked out of that meeting, you
10 walked out without anything in your hands, correct?

11 No grenades, correct?

12 A. No, sir.

13 Q. But Siddig Ali had told you before that meeting
14 that there were two grenades available, correct?

15 A. Yes, sir.

16 Q. Balls as it were, correct?

17 A. Yes, sir.

18 Q. Where were the balls?

19 A. I don't know, sir.

20 Q. Would that have been the first time that Siddig
21 Ali gave you some misinformation?

22 A. I don't know if it's misinformation or not, sir.

23 Q. Well --

24 A. Because --

25 Q. -- between the time that he told you and your

1 walking out of the meeting with a person who was supposed to
2 have it, did you get the balls?

3 A. No, I did not get it, sir.

4 Q. Between the time of that meeting and the time of
5 the arrests, three weeks later, did you get the balls?

6 A. He promised me --

7 Q. Sir --

8 A. OK. I'm sorry.

9 Q. I am just asking you a question. Yes or no.

10 A. No, I did not, sir.

11 Q. Would it be fair to say that when Siddig Ali told
12 you that Rashid had two balls available for you, that that
13 was misinformation? Would that be fair to say?

14 A. No, it's not fair to say, sir.

15 Q. Not fair to say, OK.

16 So that it would be fairer to say that Rashid had
17 the balls, but chose not to give them to you, would that be
18 fairer to say?

19 A. I cannot speculate for what Mr. Rashid did, sir.

20 Q. But what we can know for certain is that you
21 never received anything, correct?

22 A. No, I did not, sir.

23 Q. Correct.

24 When you entered that building that day to meet
25 with Rashid on May 30, did you notice name tags on the

1 mailboxes by any chance?

2 A. No, sir.

3 Q. You didn't notice that next to the mailbox for
4 the place that you went to was the name Hampton-El/Ubaidah?

5 A. I did not look at mailboxes, sir.

6 Q. When you went through that apartment to debug it,
7 did you notice the children's toys in one of the rooms?

8 A. No, sir.

9 Q. And did you notice the food and the dishes in the
10 kitchen?

11 A. No, sir.

12 Q. And the plants?

13 A. I'm sorry, sir?

14 Q. And the plants in the apartment?

15 A. No, sir.

16 Q. This was a safe house, though, you say?

17 A. That's what I understand, sir.

18 Q. Now, when you say "you understand," your basis
19 for your information -- since the FBI told you nothing, what
20 was the basis for your information?

21 A. Mr. Siddig Ali, sir.

22 Q. Told you that it was a safe house?

23 A. Told me that he bought this place for to conduct
24 his things and to be away, and he paid a lot of money for
25 it, sir.

1 Q. OK. When he told you that he paid a lot of money
2 for it, he was talking about that money was wasted, correct?

3 MR. McCARTHY: Objection. Your Honor, can we get
4 clarification of who the "he" is.

5 MR. WASSERMAN: Siddig.

6 MR. McCARTHY: The "he" who paid a lot of money.

7 A. I don't know what he --

8 Q. I'm sorry. If I may.

9 A. I'm sorry.

10 Q. The "he" -- the statement by Siddig would have
11 been to the effect that money was wasted by Rashid.

12 A. The statement money being wasted, it was on the
13 outfits, the military outfits they bought for the
14 Pennsylvania camp training. But he did not say -- excuse
15 me, sir -- he did not say that the money being spent for
16 purchasing this place, he did not mention to me it's wasted
17 or not, sir.

18 Q. Excuse me. I didn't hear what you said about the
19 Pennsylvania place there.

20 A. Mr. Siddig Ali, sir, complained about money being
21 wasted in Pennsylvania outfits. They bought things for X
22 amount of money; they bought boots, overalls, things like
23 that. They was complaining about that, that they shouldn't
24 spend that kind of money on these things.

25 Q. Would it be fair to say --

1 MR. McCARTHY: Your Honor I'm sorry. If I may,
2 can we go back to straighten out who the "he" was in the
3 other answer.

4 THE COURT: Who was it Siddig Ali said paid the
5 money for the Rogers Avenue location?

6 THE WITNESS: I'm sorry, sir. I didn't
7 understand.

8 THE COURT: Who did Siddig Ali say had paid the
9 money for the location on Rogers Avenue?

10 THE WITNESS: Dr. Rashid, sir.

11 Q. Did Siddig Ali tell you that Ubaidah lived at the
12 place?

13 A. No, he did not tell me that, sir.

14 Q. Did he tell you that Ubaidah and -- withdrawn.
15 After the May 30 meeting, you had another meeting
16 with Rashid on June 16, correct?

17 A. Yes, sir.

18 Q. Between that meeting on May 30 and the meeting on
19 June 16, didn't you tell Siddig Ali that you thought that
20 Rashid doesn't implement, that he won't come through?

21 A. I may said that, yes, sir.

22 Q. In response, didn't Siddig tell you -- didn't he
23 tell you how Rashid was supposed to get him into Bosnia and
24 failed?

25 A. It was a lot of talk about going to Bosnia and

1 going to Philippines and getting fake passports to go to
2 these places, sir.

3 Q. I think Siddig was telling you, was he not, that
4 because Rashid had promised to get him to Bosnia that Siddig
5 had quit his job to train to go to Bosnia, correct?

6 A. It was part of the plan, yes, sir.

7 Q. And that Rashid kept putting him off -- "next
8 month, next month, next month, next month" -- correct?

9 A. Something to that effect, yes, sir.

10 Q. And that in fact Siddig had his wife pack up, get
11 ready, but no Bosnia, correct? Yes or no.

12 A. Yes, sir.

13 Q. If you -- OK.

14 In fact, Siddig told you that to train for Bosnia
15 he had quit his job as a translator where he was making
16 \$15,000 a month?

17 A. Not specifically for Bosnia, sir.

18 Q. Didn't he tell you that in one month he made
19 about \$15,000?

20 A. Yes, sir.

21 Q. And that was referring to translating?

22 A. Yes, sir.

23 Q. And that he quit his translating job to train for
24 Bosnia?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q. Didn't Siddig Ali tell you after he told you that
3 he made in one month about \$15,000 -- I'm reading from CM29,
4 page 33.

5 MR. McCARTHY: Can I have a moment, your Honor.

6 MR. WASSERMAN: It is on page 33.

7 Q. Didn't he tell you: Yes, by God, then,
8 (unintelligible) Abdou Rashid I had too much work --

9 MR. McCARTHY: Objection.

10 THE COURT: Which tab, Mr. Wasserman?

11 MR. WASSERMAN: Your Honor, pardon me for not
12 telling you.

13 THE COURT: You said it, I didn't hear you.

14 MR. WASSERMAN: J, your Honor. I'm sorry, your
15 Honor. Page 33, J.

16 MR. McCARTHY: My objection is under Rule 801.

17 THE COURT: That is overruled.

18 MR. McCARTHY: And also scope.

19 THE COURT: That's overruled, too.

20 MR. WASSERMAN: Thank you, your Honor.

21 Q. Did you not say -- did Siddig not say to you:
22 Yes, by God (unintelligible) Abdou Rashid I had too much
23 work. I went and I told them I will do the work until
24 November, I will quit in November 30 in 11/30 I can,
25 nothing, nothing else because of our trip.

1 You responded: Huh.

2 Siddig said: I cannot wait.

3 You said: Abdou Rashid told you that this is the
4 best suitable time.

5 Siddig says: I told him send me inside fast.

6 And it goes on.

7 Did you believe that Siddig had quit a \$15,000 a
8 month job to go to Bosnia?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q. Did Siddig, do you know whether in fact he had a
12 job which paid him \$15,000 a month as a translator?

13 A. I know what he told me, sir.

14 Q. You only know what he told you?

15 A. Yes, sir.

16 Q. Had you ever seen the inside of his apartment?

17 A. Mr. Siddig?

18 Q. Yes, sir.

19 A. Yes, sir.

20 Q. Based upon that, you saw his furnishings,
21 correct?

22 A. Yes, sir.

23 Q. His equipment, whatever he would have, correct?

24 A. Yes, sir.

25 Q. On the basis of those items, would you say that

1 those items were costly items or not costly items?

2 A. It was regular items.

3 Q. Would you say that the apartment was furnished
4 and provided with that which would relate to a \$15,000 a
5 month income?

6 A. No, sir.

7 Q. Siddig Ali -- withdrawn.

8 After the meeting on May 30, didn't you tell
9 Siddig Ali: Your Abdou Rashid has disappointed me?

10 A. Yes, sir.

11 Q. Didn't Siddig respond in kind by saying to you:
12 He turned out to be a dud?

13 A. I'm sorry, sir?

14 Q. He turned out to be a dud. D-U-D, dud.

15 A. What does that mean, sir?

16 Q. A dud is something that doesn't explode. It's a
17 shell or whatever that doesn't explode. A nothing would be
18 another way of translating it.

19 A. I'm not sure, sir.

20 Q. Didn't Siddig tell I that he failed in the
21 implementation of the task, a complete failure. This is not
22 a joke, but he is a failure when it comes to important
23 matters. Didn't he tell you that?

24 A. He may said that, yes, sir.

25 Q. At the time that he tells you this, do you not

1 have a discussion with him about getting passports from
2 Rashid?

3 A. Yes, sir.

4 Q. And does not that discussion in fact relate to a
5 discussion about passports that took place at the meeting on
6 May 30?

7 A. Yes, sir.

8 Q. And Rashid had said that he has more than one,
9 correct?

10 A. Yes, sir.

11 Q. And he knew people who could get passports,
12 correct?

13 A. Yes, sir.

14 Q. And you guys -- I'm sorry. You and Siddig
15 expressed interest in getting a passport, correct?

16 A. Yes, sir.

17 Q. And this continues in the sense when you discuss
18 with Siddig after the May 30 meeting getting a passport from
19 Rashid, correct?

20 A. Yes, sir.

21 Q. You talk amongst yourselves, and you tell him:
22 Let's get him the pictures and \$300 and we'll get passports,
23 correct?

24 A. Yes, sir.

25 Q. In fact, you tell Siddig: Make it so that we'll

1 see him at the same time, correct?

2 A. Yes, sir.

3 Q. After that conversation Siddig a few days later
4 tells you: Give me the money and the pictures and I'll go
5 to him and get the passports?

6 A. He may said that, yes, sir.

7 MR. WASSERMAN: M in the binder, your Honor. I'm
8 reading at the bottom of page 9, CM35, dated June 8. I'm
9 sorry. I will start at the middle of the page.

10 Q. Starting from the bottom: It is possible, says
11 Siddig, AMM. You also try to give me the money if you
12 wish, if you wish, I mean, and the photos.

13 You say: May God facilitate it. Correct?

14 A. Yes, sir.

15 Q. Now, that takes place on June 8, approximately a
16 week after your meeting with Rashid.

17 You then have a conversation with Siddig before
18 you meet with Rashid on June 16, and in this conversation
19 you tell him: We're going to ask him for two things at the
20 meeting on June 16, balls, passports, correct?

21 A. Yes, sir.

22 Q. This is right before you go meet with him and
23 you're saying we're going to ask him for balls and we're
24 going ask him for passports, two things, correct?

25 A. Yes, sir.

1 Q. Now, before that conversation between the May 30
2 meeting and the June 16 meeting, don't you take charge to
3 make sure that Siddig Ali stays in touch with Rashid?

4 Don't you nudge him in a sense? Call him --

5 MR. MCCARTHY: Objection to the form of the
6 question.

7 MR. WASSERMAN: The form of "nudge"? Too
8 persistent?

9 THE COURT: No --

10 MR. WASSERMAN: Withdrawn.

11 THE COURT: It's the number of questions.

12 MR. WASSERMAN: The number of questions?

13 THE COURT: Not necessarily the particular words.

14 Q. Let me try it this way: On May 30, after your
15 meeting with Rashid, you say to Siddig: Is Rashid going to
16 call you or you him? And Siddig says: He said he'll call
17 if there's anything.

18 Do you recall that?

19 A. Yes, sir.

20 Q. I believe it is the following day -- I'm sorry.
21 On June 3, in CM26, you ask him: Did Rashid call? Call
22 him. Just let him know you are persistent.

23 Do you recall saying that to Siddig?

24 A. Yes, sir.

25 Q. And on June 8 you ask Siddig: Do you expect that

1 Abu Rashid will give you something tomorrow?

2 And Siddig says: I do not know at all. I do not
3 think so.

4 Do you recall that?

5 A. Yes, sir.

6 Q. And on June 12, in CM36, you ask Siddig if there
7 is any news from Rashid, and he tells you that Rashid is
8 going to the Philippines, do you recall that?

9 A. Yes, sir.

10 Q. OK. In fact, at the time that he tells you that
11 Rashid is going to the Philippines, Siddig says: I think
12 I'm going to go there, too. Do you remember that?

13 A. Yes, sir.

14 Q. When he said that, do you remember saying to him:
15 Don't leave me here by myself?

16 A. Yes, sir.

17 Q. Now, when you were talking with Siddig during the
18 period of time between -- withdrawn.

19 You planned, did you not, for not getting the
20 detonators from Rashid? In other words, you came up with an
21 alternate plan if you could not get grenades from Rashid,
22 correct?

23 A. I --

24 Q. If you're having trouble -- go ahead. Answer the
25 question.

1 A. Sir, I asked him: If you could not get the hand
2 grenades, you could get me a block of C-4 and I will divide
3 it to --

4 Q. This takes place at your meeting on June 16,
5 correct?

6 A. Yes.

7 Q. I'm referring to the period of time between May
8 30, your second meeting with him, and June 16, which is your
9 third and last meeting, did you not plan what to do if
10 Rashid didn't give you anything, correct?

11 A. Yes, sir.

12 Q. And the alternate that you came up with that you
13 told Siddig about and the others in the safe house was
14 condensers, correct?

15 A. Yes, sir.

16 Q. Incidentally, at the time that you visit Rashid
17 in Brooklyn on May 30, at that time you have already rented
18 with Siddig the garage in Queens that is the safe house with
19 your plan to build the bomb, correct?

20 A. I --

21 Q. You've rented it?

22 A. No, sir, the FBI and Siddig. I did not pay
23 anything.

24 Q. OK. But the rent had been paid, the facility
25 taken, and it was now occupied and being used, correct?

1 A. Yes, sir.

2 Q. OK. Incidentally, among the things that Rashid
3 did not offer to you, did he ever say to you: "Listen. You
4 know, I got the safe house in Brooklyn. We got the same
5 project of bombing the UN, why not do your work here?"

6 Did he say that to you?

7 A. Who, sir?

8 Q. Rashid.

9 A. No, he did not, sir.

10 Q. And you've testified, did you not, that the room
11 that you were in was unoccupied, correct?

12 MR. McCARTHY: Which room?

13 Q. The room that you had the conversation with
14 Rashid and Siddig Ali on May 30.

15 A. I didn't see beds. I didn't see furniture, sir.

16 Q. OK. Plants and mattress don't count?

17 A. I recall there is a mattress, yes, sir.

18 Q. Curtains?

19 A. It could be, yes, sir.

20 Q. That would be not a bad room, right, to get to
21 work in, yes?

22 A. What kind of work, sir?

23 Q. Well, the work that you were involved in, which
24 was building the bomb. It was a safe house, yes? That's
25 what you've testified to, correct?

1 MR. McCARTHY: Objection. Your Honor --

2 THE COURT: Could you do one question at a time.

3 MR. WASSERMAN: Yes, your Honor.

4 THE COURT: Thank you.

5 Q. Mr. Salem --

6 A. Yes, sir.

7 Q. -- the room that you had the conversation in with
8 Rashid and Siddig, was, in your testimony, unoccupied by
9 furniture, etc., etc., correct?

10 A. Yes, sir.

11 Q. Perhaps an ideal room to build a bomb in, yes?

12 A. No, sir.

13 Q. And, sir, why not?

14 A. There is no bugging devices by the FBI, sir.

15 Q. Other than that, it was perfect?

16 A. I don't think so, sir.

17 Q. Well, let me ask you a question: The bugging
18 devices are part of the plan that you have with the FBI so
19 that whatever takes place in Queens is monitored, correct?

20 A. Yes, sir.

21 Q. So the safe house in Queens has cameras and bugs
22 galore, correct?

23 A. Yes, sir.

24 Q. You don't know whether the place that Rashid has
25 in Brooklyn has any bugs, correct?

1 A. Not to my knowledge, sir.

2 Q. Well, but you don't have your machine on so that
3 you could find out and he would then know, correct, when you
4 do your --

5 A. I did not -- I'm sorry, sir. Go ahead.

6 Q. When you do your debugging, it's off, correct?

7 A. Yes.

8 Q. That way if there are bugs planted by the FBI,
9 Rashid would not know, correct?

10 A. Yes, sir.

11 Q. Isn't the key question here Rashid did not
12 offer --

13 THE COURT: Sustained, Mr. Wasserman.

14 MR. WASSERMAN: Yes, sir?

15 THE COURT: "Wasn't the key question here" is not
16 an appropriate question. Ask it another way.

17 MR. WASSERMAN: Yes, sir.

18 Q. Did Rashid offer the use of the place that you
19 met with him at on Rogers Avenue to you for the purpose of
20 building a bomb?

21 A. No, sir.

22 Q. Now, your third and last meeting with Rashid took
23 place on June 16 at the Farooq mosque, yes?

24 A. Yes, sir.

25 Q. When you ran into Dr. Rashid, it was the time for

1 prayer or near the time for prayer, correct?

2 A. Yes, sir.

3 Q. Now, didn't he tell you from the get-go, from the
4 beginning of your conversation with him: I go, I'm tired of
5 this place. I'm going to the Philippines?

6 A. Yes, sir.

7 Q. In fact, you picked up on this and said to him:
8 Well, that sounds like a good idea. I would like to go as
9 well, correct?

10 A. Yes, sir.

11 Q. You described your background in the military in
12 Egypt, correct?

13 A. Yes, sir.

14 Q. And he showed you his wound from Afghanistan,
15 correct?

16 A. Yes, sir.

17 Q. And he told you that blood smells better than
18 musk if you have been wounded in a cause for Allah, correct?

19 A. Yes, sir.

20 Q. And he told you that if you die as a martyr, you
21 get 72 wives when you go to heaven, correct?

22 A. Yes, sir.

23 Q. And that each of these wives is more beautiful
24 than any woman on earth, correct?

25 A. Yes, sir.

1 Q. Now, after this conversation, did you and Siddig
2 not have a conversation with Rashid about obtaining the two
3 things that you had discussed with Siddig before this
4 meeting, passports and grenades?

5 A. I'm sorry, sir. I'm lost a little bit here.

6 Q. OK. After this discussion did you then with
7 Siddig discuss getting grenades and passports from him?

8 A. Yes, sir.

9 Q. And he said he would check into it and get back
10 to you, correct?

11 A. Yes, sir.

12 Q. In fact, that's what he told you after the May 30
13 meeting, he would check into it and get back to you,
14 correct?

15 A. Yes, sir.

16 Q. When you first met him in June of '92, you say he
17 said that he would check into it and get back to you, that
18 was about buying the pistol, correct?

19 A. Yes, sir. The pistol and the ready-made bombs
20 and the detonators, sir.

21 Q. OK. So from June '92 he's checking in and you're
22 making sure that you find out from him whether he has any of
23 these things, correct?

24 MR. McCARTHY: Objection.

25 A. Yes, sir.

1 Q. So far as we stand here on June 16, in Brooklyn
2 in 1993, after meeting with him for over a year --

3 MR. McCARTHY: Objection.

4 THE COURT: Whatever number of times over
5 whatever period of time. Go ahead.

6 MR. WASSERMAN: I'm sorry, Judge. I'm --

7 THE COURT: The suggestion was that he was a
8 meeting with him over a year.

9 Q. After all of that, you still have nothing in your
10 hands, correct?

11 A. Yes, sir.

12 Q. And he's still checking into it, correct?

13 A. Yes, sir.

14 Q. At the end of this meeting, you reported back to
15 the FBI about the meeting, correct?

16 A. Yes, sir.

17 Q. You described that you had asked Rashid for what
18 you've just testified to, and you described that to an
19 agent, correct?

20 A. Yes, sir.

21 Q. Didn't you tell the agent: Yup, I got his ass.

22 A. Yes, sir.

23 Q. And to you getting his ass meant that you had him
24 on tape saying that he would check into it, correct?

25 A. Not only that, sir. I got him on tape saying all

1 the previous things we talked about, the C-4, the hand
2 grenades, that he had done things before and he left
3 evidence to mislead the investigators --

4 Q. Sir, at the meeting on June 16 you tell the FBI
5 that you have had a conversation with Rashid and he's going
6 to check into getting grenades or C-4, correct?

7 A. Yes, sir.

8 Q. And you then tell them: Yup, I got his ass,
9 correct?

10 A. Yes, sir.

11 Q. OK. That is very specific to your conversation
12 with him that evening, correct?

13 A. I'm sorry, sir?

14 Q. The "Yup, I got his ass" refers to that he's
15 going to check into getting you C-4 or grenades, correct?

16 A. That I got that on tape, sir?

17 Q. Yes, sir.

18 A. Yes, sir.

19 Q. In fact, that is what you do, you get people to
20 say things on tape, and that's part of your job, correct?

21 A. Yes, sir.

22 Q. But, in fact, you had not gotten anything from
23 him other than, "I'll check into it," correct, as far as the
24 grenades and the C-4, the things you were asking him for,
25 correct?

1 A. No. He did not give me C-4 or hand grenades,
2 sir.

3 Q. Right. Did he offer you any substitutes?
4 Did he come back do you and say, "Emad, I'm so
5 sorry. I can't get you grenades, I can't get you C-4."
6 He told you that, right?

7 A. No, sir. He told me, the last thing on the
8 phone: "I will do my best. Don't tell me please. It's a
9 duty."

10 Q. Now, he tells you that on June 23, correct?

11 A. Yes, sir.

12 Q. OK. So if we take together your meeting with him
13 in 1992, your two meetings with him in '93 and this phone
14 conversation, he's still telling you the same thing?

15 MR. McCARTHY: Objection.

16 Q. He's still telling you, is he not, on June 23:
17 I'll look into it, I've got flyers out?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q. All right. Did he offer you any substitutes for
21 what he failed to get for you?

22 A. No, sir.

23 Q. Did he offer you gun powder?

24 A. No, sir.

25 Q. Did he offer you anything that might substitute

1 for the things that you were asking him for?

2 A. The only things, sir, when I asked him for
3 detonators to be taken out of the hand grenades, he said:
4 "Why should we put you in jeopardy if we can bring it
5 without going through this process?"

6 And I said: "It will be a good idea, sir."

7 Q. This conversation was on May 30, correct?

8 A. Yes, sir.

9 Q. So between May 30 and June 23 -- or June 24, when
10 the arrests went down -- did he get you detonators?

11 A. No, he did not, sir.

12 Q. So even the substitute that he suggested, which
13 would be less dangerous than grenades, you never got that?

14 A. No, I did not, sir.

15 Q. Did it not strike you as somewhat strange that
16 when you asked him, you said, for detonators in '92 and he
17 offers you ready-made bombs, that you come back a year later
18 and you ask him for grenades, which are in effect ready-made
19 bombs --

20 MR. McCARTHY: Objection.

21 Q. -- and he says to you --

22 THE COURT: Sustained.

23 MR. WASSERMAN: It was going to end very quickly.

24 THE COURT: It doesn't have to get to the end.

25 Why don't you reframe the question.

1 MR. WASSERMAN: Yes, Judge.

2 Q. In '93, when you meet him on May 30, you ask him
3 for hand grenades. Did Siddig Ali tell you that hand
4 grenades were used in Pennsylvania?

5 A. I believe, yes, sir.

6 Q. Is that the reason that you asked for hand
7 grenades?

8 A. No, sir.

9 Q. Well, in '92 you said that you asked Rashid for
10 detonators, and he told you, "Why do you need detonators
11 when I can get you ready-made bombs?" Correct?

12 A. Yes, sir.

13 Q. A year later you ask him for hand grenades and he
14 tells you, "Why hand grenades? Better detonators."
15 Correct?

16 A. I'm sorry, sir?

17 Q. He tells you, "Why hand grenades if you can get
18 detonators?" Correct?

19 A. That's not what he said, sir.

20 Q. Well, he said it was dangerous. Didn't he ask
21 you if it was dangerous, and didn't he say it could be a
22 substitute to get detonators instead of hand grenades?

23 A. Yes, sir.

24 Q. OK. But he never gave you detonators?

25 A. No, he did not, sir.

1 Q. Did he even give you a firecracker?

2 A. No, sir.

3 Q. Didn't Siddig tell you that maybe you should go
4 on Canal Street and buy the M80 firecracker?

5 A. Siddig?

6 Q. Yes.

7 A. He did not tell me that, sir.

8 Q. He never told you that?

9 A. No, he did not, sir.

10 MR. WASSERMAN: Your Honor, may I have a moment.

11 (Pause)

12 MR. WASSERMAN: I will have to come back to that,
13 your Honor.

14 Q. Didn't you say to Siddig Ali on June 13 -- or
15 rather, didn't he say to you on June 13, I'm reading from
16 CM37, it's under O in the binder, your Honor.

17 At the bottom of page 13 --

18 MR. McCARTHY: May I just have a moment.

19 MR. WASSERMAN: Your Honor, it is the third page
20 in under that tab.

21 MR. McCARTHY: I have no objection.

22 THE COURT: Go ahead.

23 Q. Didn't Siddig say to you -- I'll start from:
24 Rashid says there is something called, and things like that.
25 It's not the hand grenade. It's a different thing. You

1 know what it's called.

2 And you say: Is it the detonator?

3 Siddig says: You said 86, or I don't know what.

4 And you say: The M80.

5 And Siddig says: The M80, yes.

6 And you say: The M80, yes. The M80 is sold on

7 Canal Street. It's no problem.

8 Siddig says: Yes.

9 You say: No, it's me also that --

10 Siddig says: Is it sold on Canal Street?

11 You say: Yes.

12 Siddig says: Is it the same thing?

13 You say: Yes.

14 Siddig says: Will it work using that?

15 You say: Yes.

16 Siddig says: Can we buy it?

17 You say: It is possible.

18 Siddig says: So we do not need to go to him.

19 You say: It is possible, and it is also possible

20 to make all of them detonators. And it's possible to make

21 all of them condensers.

22 A. Yes.

23 Q. This is Siddig telling you about the M80

24 firecracker, correct?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 MR. WASSERMAN: Why? Seriously, I have no idea.

3 THE COURT: Because it's him telling Siddig about
4 the M80 firecracker, but go ahead.

5 MR. WASSERMAN: Judge, that's not what I read.
6 It's Siddig who brings it up.

7 THE COURT: Mr. Wasserman --

8 MR. WASSERMAN: Your Honor, if --

9 THE COURT: Mr. Wasserman, may I see you at the
10 side?

11 MR. WASSERMAN: Yes, sir.

12 THE COURT: Now you'll get your side bar.

13 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Your question asked whether it wasn't
3 Siddig who had told him about the M80.

4 MR. WASSERMAN: Correct.

5 THE COURT: Siddig raised the question of
6 numbers. He was the one who volunteered that the correct
7 name was M80. He was the one who then described where it
8 could be found. The only person doing the describing is the
9 witness, not Siddig.

10 MR. WASSERMAN: Judge, can I --

11 THE COURT: Also, don't argue with me in front of
12 the jury, do you understand that?

13 MR. WASSERMAN: Got it.

14 THE COURT: Go on and ask a question.

15 MR. WASSERMAN: May I just clarify for the
16 record. Before Emad names the M80, Siddig has a different
17 term for it. He calls it the 86, but he's referring to the
18 item --

19 THE COURT: Mr. Wasserman, your question was
20 misleading for the reason that I stated. Hopefully, you
21 will get the transcript of this, read it, and be able to
22 understand why it was misleading, but I would like you to
23 move on to something else.

24 MR. WASSERMAN: OK.

25 THE COURT: Thank you.

1 (In open court)

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

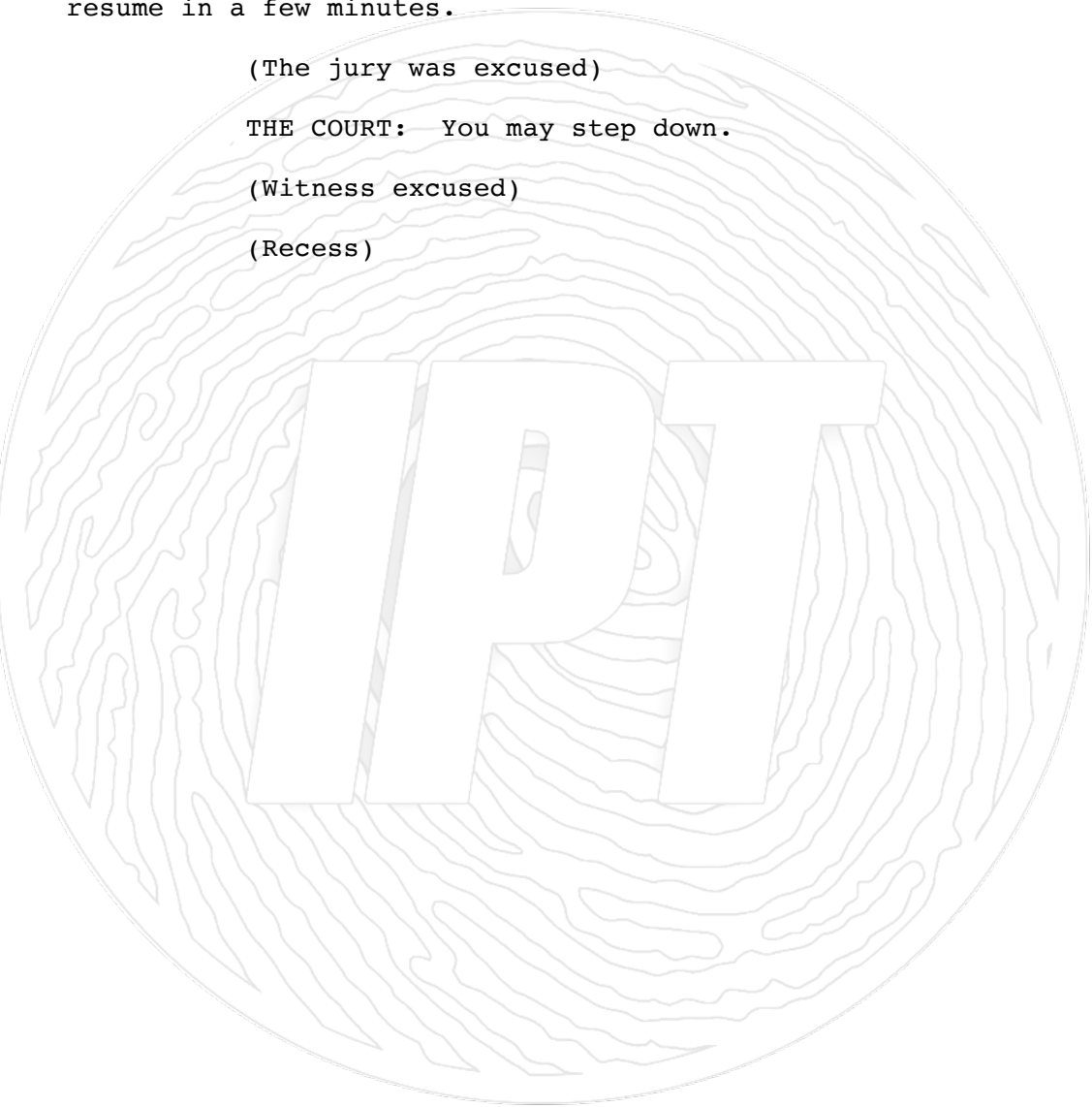
6 (The jury was excused)

7 THE COURT: You may step down.

8 (Witness excused)

9 (Recess)

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1 (Jury not present)

2 THE COURT: Before we start, Mr. Jacobs, I gather
3 you have to go out, is that right?

4 MR. JACOBS: I have to go to the Court of Appeals
5 at 12:15, so I will leave here at 12:10. They wouldn't go
6 till 12:30. At any rate, Mr. Saleh will consent. Mr.
7 Bernstein will fill in.

8 THE COURT: Is that satisfactory, Mr. Saleh?

9 DEFENDANT MOHAMMED SALEH: Yes.

10 THE COURT: Thank you very much.

11 EMAD SALEM, resumed.

12 THE COURT: Go ahead, Mr. Wasserman.

13 MR. WASSERMAN: Thank you, Judge.

14 BY MR. WASSERMAN:

15 Q. Just going back for a moment to early May when
16 Siddig Ali tells you that the two hand grenades are ready
17 for you to pick up, doesn't he tell you after saying to you
18 we made available two of these things --

19 MR. SERRA: Your Honor, I am sorry.

20 THE COURT: Would you stop for a moment. There
21 is a problem with the Spanish translation.

22 MR. WASSERMAN: Mr. McCarthy, it is CM 14, page
23 11, under E.

24 THE COURT: Go ahead.

25 MR. WASSERMAN: Your Honor, it is under E in the

1 binder. It is page 11 of CM 14. It is the first page in
2 under the tab E.

3 Q. After Siddig Ali told you that we made available
4 two of these things, referring to balls, you say two balls,
5 they are called two balls, and he says yeah, balls, but they
6 told me about what they call, hm, M60. Do you recall his
7 telling you that?

8 A. Yes, sir.

9 Q. And do you recall that he tells you that it's
10 something 86, and you say 86 miles?

11 A. Yes, sir.

12 Q. And then he says to you I don't know, something
13 like this. And then he says to you, so he tells you two
14 will do the same job, not the same known balls, the round
15 one, and you say yeah. Siddig says no --

16 MR. McCARTHY: Objection. Object to the word
17 same. It's not in the transcript.

18 MR. WASSERMAN: I am sorry, Mr. McCarthy, fourth
19 line up doesn't.

20 MR. McCARTHY: You said same other type, next to
21 the last attribution. The word same is not in there.

22 THE COURT: It is only once, not twice, Mr.
23 Wasserman.

24 Q. He says to you yeah, what is inside? So he tells
25 you two will do the same job, not the same known balls, the

1 round one. You say yeah. Siddig says no, it is the other
2 type but it does the same job, and you say no, explain it to
3 me a little bit. Then Siddig says he tells you they do the
4 same job, and you say fine.

5 You understood his saying to you the M60 was a
6 firecracker, correct?

7 A. Ness.

8 Q. Isn't the M60 the same as the M80?

9 A. No, sir.

10 Q. Isn't the M80 something you bought on Canal
11 Street?

12 A. Yes, sir.

13 Q. And the M80 is a firecracker, correct?

14 A. Yes, sir.

15 Q. When Siddig Ali tells you later on about using an
16 M80 as a substitute, he is referring to a firecracker,
17 correct?

18 A. M80 firecrackers, yes, sir.

19 Q. And that is something that you bought on Canal
20 Street, correct?

21 A. Correct, sir.

22 Q. So at the same time back in early May that he is
23 telling you the two grenades are ready, he is saying to you
24 what about using firecrackers instead.

25 MR. McCARTHY: Objection.

1 Q. He is saying what about using the M80.

2 MR. McCARTHY: Objection. Where?

3 Q. He says M60 but you took that to be 80.

4 MR. McCARTHY: Objection.

5 Q. Did you take the M60 to be M80?

6 MR. McCARTHY: Objection, asked and answered.

7 THE COURT: I will let him answer it.

8 Q. Did you take the M60 that Siddig referred to to
9 be a confused reference to the M80 firecracker?

10 A. No, sir.

11 Q. What did you take him to mean?

12 A. There is two types of hand grenades, round ones
13 and oval, like an egg, ones. The oval ones are I referred
14 it 86 miles. That's how we learned it in the army. He
15 refer to the round ones, which is, he called it M60. And I
16 told him since Dr. Rashid -- he told me Dr. Rashid told him
17 that the M60 could do the same thing, and I told him fine,
18 if that's what it is, OK.

19 Q. So the M60 is an alternative hand grenade, is
20 that right? It is a form of hand grenade?

21 A. Yes, sir.

22 Q. But the M80 is a firecracker, correct?

23 A. Yes, sir.

24 Q. And it is the M80 that you have the last
25 conversation with, if you may go back to that, on CM 37,

1 page 13 -- that's in O -- where he says the M80, yes? And
2 you say the M80, yes, the M80 is sold on Canal Street, it's
3 no problem. So at that time you are talking about the
4 firecracker on Canal Street, correct?

5 A. Yes, sir.

6 Q. That is already now in the middle of June you are
7 talking about buying a firecracker on Canal Street, correct?

8 A. Yes, sir.

9 Q. Just for one moment going back to your meeting in
10 Rogers Avenue on May 30 with Rashid and Siddig, did Rashid
11 take you on a tour of the downstairs at all? Did he show
12 you the converted store front on the first floor?

13 A. No, sir.

14 Q. He never showed you any martial arts equipment or
15 anything like that?

16 A. No, sir.

17 Q. When Siddig told you that Rashid was going to the
18 Philippines, did he also tell you that Rashid had been to an
19 Islamic conference in May, in the Philippines?

20 A. I don't recall he mentioned that. He may said it
21 but I don't recall it now, sir.

22 MR. WASSERMAN: Your Honor, do you wish me to
23 refresh his recollection or just read from the transcript?

24 THE COURT: You can read it if it's there.

25 MR. WASSERMAN: Mr. McCarthy, it is under O CM

1 37. Your Honor, it is page 9, the first page in after the
2 insert of O.

3 Q. Middle of the page Siddig says hm, Abdul Rashid
4 went to the Philippines. You say yes? Siddig says while
5 Saudi Arabia was holding a very large conference there. So
6 for sure Abdul Rashid was there. That was a month, a month
7 and a half ago. So of course, since he is who he is, they
8 asked him to speak. The conference dealt with politics,
9 politicians, sheiks, you know, this and that. They didn't
10 want to ruin the relations between the Philippines and the
11 States. You say hm, and Siddig says Saudi Arabia, at whose
12 expense the Islamic revolution issued.

13 Do you recall Siddig telling you that, sir?

14 A. He may said it, yes.

15 MR. WASSERMAN: Mr. McCarthy, will you stipulate
16 that is in CM 37, in the transcript?

17 MR. McCARTHY: Your Honor, I stipulate that he
18 read it accurately.

19 THE COURT: Go ahead.

20 MR. WASSERMAN: That is fine.

21 Q. When you were talking about your last
22 conversation with Rashid on June 23, you testified that you
23 asked him again if he had the stuff for you, correct?

24 A. Yes, sir.

25 Q. By that, I take it that you meant the hand

1 grenades or C4, correct?

2 A. Yes, sir.

3 Q. Did you report that conversation to the FBI? Did
4 you tell them the substance of that conversation?

5 A. I believe, sir, by the time -- we didn't have
6 time, because they came and they made the raid and they
7 arrested everybody, sir.

8 Q. Didn't you tell the FBI that you wanted to know
9 ahead of time if they were going to take it down, correct?

10 A. Yes, sir.

11 Q. And that you had that conversation with Louie
12 Napoli on June 23 in the evening, correct?

13 A. Yes, sir.

14 Q. You told him you hated to be handcuffed, to
15 please let you know in advance, correct?

16 A. I am sorry sir.

17 Q. You told him you hated to be handcuffed, to
18 please let you know in advance, correct?

19 A. Yes, sir.

20 Q. In that conversation, didn't you tell them that
21 the doctor has his own project?

22 A. Yes, sir.

23 Q. And then they told you that you had to get the
24 doctor involved buying ammunition, buying material, and I
25 believe Mr. Napoli used the word buying shit?

1 MR. McCARTHY: Objection.

2 THE COURT: Overruled. Did he say that?

3 A. I don't recall that, sir.

4 Q. Didn't you respond that no, no, no, the doctor's
5 projects has nothing to do with us, I talked to the doctor
6 by myself three or four hours ago?

7 A. Yes, sir.

8 Q. Let me go back again.

9 MR. WASSERMAN: Your Honor, may I play the tape
10 of that segment --

11 THE COURT: To refresh the witness's
12 recollection?

13 MR. WASSERMAN: That would be fine, Judge.

14 MR. McCARTHY: Your Honor, I think he just
15 testified that he said it.

16 THE COURT: Are you talking about the earlier
17 part?

18 MR. WASSERMAN: Yes, your Honor.

19 THE COURT: You can play it.

20 (Tape played)

21 BY MR. WASSERMAN:

22 Q. Does that refresh your recollection as to what
23 the agent said?

24 A. Yes, sir.

25 Q. He did say to you, did he not, that we got to get

1 the doctor involved, correct?

2 A. I heard myself, I didn't hear the agent.

3 Q. You didn't hear the agent on the tape?

4 A. No, sir.

5 Q. When you said you know that the doctor had his
6 own project, you were responding to something that the agent
7 said, correct?

8 A. Yes, sir.

9 Q. Wasn't the agent talking about Rashid, correct?

10 A. Yes, sir.

11 Q. Wasn't he saying buying ammunition, correct?

12 A. I didn't hear that on the tape, sir.

13 Q. Let me show you what has been marked as defendant
14 Hampton-El's Exhibit A for identification, page 31, which is
15 a transcript of -- would you take a look, sir.

16 (Pause)

17 A. Yes, sir.

18 Q. Does that refresh your recollection?

19 A. Yes, sir.

20 Q. So it would be fair to say that your response
21 about the doctor having his own project was in response to
22 the agent's comment to you, correct?

23 A. Yes, sir.

24 Q. And you told the agent no, no, no, the doctor has
25 his own project, has nothing to do with us, correct?

1 A. Yes, sir.

2 Q. The project that you were referring to referred
3 to what, sir?

4 A. He has his own project, either it will be the
5 United Nations, either it will be the -- whatever it is.

6 Q. You weren't referring to the Philippines, sir?

7 A. Could be, sir. He have his own project. He
8 mentioned that he would go to Philippines, he mention that
9 he have his own project or he had the United Nations as a
10 project for him one day.

11 Q. Are you saying in effect that he is in some kind
12 of competition with your project to blow up the UN?

13 MR. McCARTHY: Objection.

14 Q. He has his own project to blow up the UN,
15 correct?

16 A. That's what he said, sir.

17 Q. And that is the project that you were referring
18 to when you were speaking to the agent, saying no, no, no,
19 has nothing to do with us?

20 A. He has his own project, yes.

21 Q. But what you were involved with, was it not, your
22 project was to blow up the UN, isn't it?

23 A. Yes, sir.

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. You meant his project to blow up the UN had
2 nothing to do with your project to blow up the UN, is that
3 what you meant, that his project had nothing to do with us?

4 MR. McCARTHY: Objection.

5 Q. If you know.

6 THE COURT: Sustained.

7 Q. Did Rashid ever buy ammunition for you?

8 A. Not for me, sir.

9 Q. He bought it for Pennsylvania, correct?

10 A. I have no idea, sir.

11 Q. But he never gave you any bullets, did he?

12 A. No,

13 Q. When you were at Rogers Avenue on May 30, did he
14 offer you any bullets?

15 A. No, sir.

16 Q. Any shotgun shells?

17 A. No, sir.

18 Q. Anything?

19 A. No, sir.

20 Q. OK. After your third meeting with him on June
21 16, didn't you remind Siddig to get in touch with Rashid and
22 find out what was happening?

23 A. Yes, sir.

24 Q. And Siddig reported back to you things looked
25 positive, correct?

1 A. Yes, sir.

2 Q. At that particular time, you use a proverb that I
3 am sure I will mangle in English but it's in Arabic, Yarub
4 un fouch fi sured. Y-A-R-U-B, Y-U-N, F-O-U-C-H, F-I,
5 S-U-R-E-D, and then Abdul Rashid. Do you recall using that
6 proverb?

7 A. Yes, sir.

8 Q. And that proverb means may God breathe life into
9 his picture, correct?

10 A. May God what?

11 Q. Breathe life into his picture, breathe life, yes.

12 Q. And it comes from the Koran, right?

13 A. Yes, it's being used in the Koran.

14 Q. Do you know, since you have read the Koran, what
15 it refers to, what that proverb refers to?

16 A. These words is being used with two different
17 meanings, sir. It could be so many things.

18 Q. May God breathe life into his picture is an
19 Egyptian proverb?

20 A. Yes.

21 Q. And the origin is in the Koran?

22 A. Yes.

23 Q. Where it comes from in the Koran is a reference
24 to Jesus breathing life into clay pigeons, correct?

25 A. Could be, yes.

1 Q. When you are saying may God breathe life into his
2 picture, into Abdul Rashid's picture, that's not the first
3 time that you have used that proverb, correct, in reference
4 to him?

5 A. No, sir.

6 Q. The first time that you used that was when you
7 were talking to Siddig about getting passports from Rashid
8 back in early June. Do you recall that?

9 A. Yes, sir.

10 Q. The next time you use it is after your last
11 meeting with Rashid on June 16, and you and Siddig discuss
12 that you have asked Rashid to get something minor, something
13 small, correct, an easy thing, a modest thing. Do you
14 recall that? In essence.

15 A. I am sorry, sir.

16 Q. Didn't you on June -- after the meeting that you
17 had with Rashid on June 16 in CM 47 on page 3 in the book --
18 it's after R, the first page -- didn't you say we are not
19 asking for something big. And Siddig says no, no. And you
20 say this is a simple thing, and then God will make it easy.
21 Then Siddig says no, no, no, it's modest. And you say
22 that's something modest. Do you recall that conversation?

23 A. What's modest mean, sir, please?

24 Q. Not big.

25 A. OK, and then just the rest of the sentence,

1 please, sir.

2 Q. Sure. Siddig says no, no, no, it's modest. You
3 say that's something modest. And that's it.

4 A. Yes, sir.

5 Q. After that statement, that discussion with
6 Siddig, and Siddig and you have another discussion -- and if
7 I may, it's under U in the binder, your Honor. It's CM 50.
8 It's the first page in. Siddig -- you ask: Is he going
9 tomorrow.

10 And Siddig says: Yes, I don't know.

11 And you say: Well, phone him at 11.

12 And Siddig says: God forbid if there is nothing.

13 You say: Yeah?

14 Siddig says: What is the solution?

15 And you say: We should look around.

16 Siddig says: Huh?

17 You say: We will do what we have in mind.

18 MR. McCARTHY: Objection.

19 MR. WASSERMAN: I am almost at the point of the
20 question.

21 MR. McCARTHY: The transcript isn't exactly as it
22 has been read. It's a disputed portion.

23 THE COURT: This is a disputed portion of the
24 transcript and you --

25 MR. WASSERMAN: Sorry, Judge.

1 THE COURT: All right, go ahead.

2 Q. The conversation continues with Siddig saying:
3 forget about him.

4 Do you recall that conversation taking place on
5 approximately June 18, CM 50?

6 A. Could you please say the question, sir.

7 Q. Sure. Did Siddig tell you forget about Rashid?

8 A. I don't think so, because the last day, sir, we
9 were talking on the phone and he promised tomorrow morning.

10 Q. He promised what tomorrow morning?

11 A. Dr. Rashid told me no, brothers, don't tell me,
12 please, something that effect, it's a duty, and he will do
13 his best.

14 Q. He didn't use the words do his best, did he?

15 A. I don't recall the verbatim words.

16 Q. What he told you was the same thing that he had
17 been telling you throughout his encounters, that he had some
18 flyers out.

19 MR. McCARTHY: Objection.

20 THE COURT: Did he say he had some flyers out?

21 A. I don't know what is flyers.

22 Q. Inquiries, feelers.

23 Do you recall his telling you that he was working
24 around the clock in this conversation that you had with him
25 on June 23?

1 A. Yes, sir.

2 Q. That his leg was swollen as a -- his foot was --
3 this leg of mine is pretty much bigger than my head right
4 now and I'm just going to stay off it. Do you remember his
5 saying that to you?

6 A. He may said that, sir.

7 MR. McCARTHY: May I have a reference, please,
8 and I object to the form of the last response by counsel.

9 THE COURT: Mr. Wasserman, why don't you do two
10 things. Number one, tell him what part of the transcript
11 you are reading from. Number two, don't respond.

12 MR. WASSERMAN: Yes, Judge.

13 Q. Rashid says to you: I have put some flyers out,
14 but to this time it's no results.

15 And you say: Yeah, all right, brother, we do
16 appreciate your help.

17 Do you recall that?

18 A. I don't recall flyers. My understanding, flyers
19 means piece of paper to be distributed. That's what I know
20 flyers. I don't recall, sir, that we talked about flyers.

21 MR. McCARTHY: Your Honor, I believe this
22 conversation is subject to the same instruction the court
23 gave last week about drafts.

24 THE COURT: Right, that is, that you may hear
25 reference to various transcripts some of which have disputed

1 translations. Is this one of them?

2 MR. WASSERMAN: No, Judge, if I may, it is not.

3 MR. McCARTHY: It is not a CM transcript, your
4 Honor.

5 MR. WASSERMAN: This is a FISA. Could we have a
6 very brief side bar, your Honor?

7 THE COURT: Come up.

8 (At the side bar)

9 THE COURT: Since you wanted to make a big deal
10 of it, could you tell me what kind of deal it is you wanted
11 to make?

12 MR. McCARTHY: This is again another instance of
13 counsel using the draft transcripts in violation of the
14 order under which they were produced without which they
15 would not have been produced in the first place.

16 THE COURT: Mr. McCarthy, he has a right to
17 cross-examine. If what you are saying is that you begrudge
18 him the right to cross-examine, that is overruled. They
19 were in my mind turned over as drafts with the idea that
20 they would not be introduced as evidence, referred to as
21 evidence, unless and until their accuracy was determined,
22 not that they couldn't be used to facilitate
23 cross-examination, when there is actually no dispute about
24 their content, if that is the case.

25 MR. McCARTHY: I have no idea if there is a

1 dispute about the contents and I have no idea whether a
2 draft is going to be plucked out of nowhere.

3 MR. WASSERMAN: I enclosed it in my packets to
4 Mr. McCarthy.

5 THE COURT: Do you want to talk me out of ruling
6 in your favor?

7 MR. WASSERMAN: No.

8 THE COURT: Good.

9 (In open court)

10 BY MR. WASSERMAN:

11 Q. You were just saying that you expected the
12 following morning to pick up the stuff from him, is that
13 correct?

14 A. Yes, sir.

15 Q. And that you just don't understand what the term
16 flyers means, is that correct?

17 A. Reply understanding, sir, flyer means paper
18 written things on it to be distributed. This is flyers, I
19 understand. But we did not talk about flyers, sir.

20 MR. WASSERMAN: Your Honor, in your tab it is Y,
21 it is CM 61. I believe the date is June 22.

22 Q. Didn't Siddig tell you that he was going to meet
23 with Rashid and that he said Abdul Rashid called me today
24 to, he asked me, and so on, so I told him I would like to
25 see you, he told me no, so I will see you tomorrow good

1 willing it is very important tomorrow I be free. You said
2 tomorrow? Siddig said yes --

3 THE COURT: Can you slow this down? You are
4 reading it like an auctioneer. She's got to take it down.

5 MR. WASSERMAN: Judge, I am sorry.

6 THE COURT: Thank you.

7 MR. WASSERMAN: I am sorry to the court reporter.

8 Q. You say: That's tomorrow?

9 And Siddig says: Yes, to see what time he can
10 meet me, I mean, because I want to meet him to get the
11 addresses from him, not for anything more.

12 And you say: So I would like to come with you.

13 And he says to you: Let's go together, let us
14 go.

15 The addresses that Siddig was referring to
16 related to the Philippines, did they not?

17 A. Could be, sir.

18 Q. After the meeting on June 16, there came a time
19 when Rashid got back to Siddig by phone, and this was on
20 approximately June 19. And he said basically that he was
21 not able to come up with anything. Do you recall that
22 conversation?

23 A. He talked to Mr. Siddig?

24 Q. Yes, sir. And in fact the conversation --

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q. I am reading from CM --

3 THE COURT: Mr. Wasserman, was this witness a
4 party to the conversation that you are about to read from?

5 MR. WASSERMAN: Yes, sir.

6 THE COURT: OK.

7 MR. WASSERMAN: I am sorry. He was a party to
8 the conversation with Siddig who relays to him --

9 THE COURT: Don't give me a narrative. Was he a
10 party to the conversation whose transcript you are about to
11 read? Yes or no.

12 MR. WASSERMAN: Yes, but the party --

13 THE COURT: He was one of the speakers?

14 MR. WASSERMAN: He is speaking with Siddig, who
15 was speaking with Rashid.

16 THE COURT: On the same telephone call?

17 MR. WASSERMAN: In the same room but he was
18 hearing --

19 THE COURT: Go ahead.

20 Q. Did you hear Siddig say on the phone --

21 MR. McCARTHY: Your Honor, may I have the
22 reference?

23 MR. WASSERMAN: CM 52, June 19, reading from page
24 6.

25 MR. McCARTHY: Is that in your book, Mr.

1 Wasserman?

2 MR. WASSERMAN: Yes, sir, under V.

3 MR. McCARTHY: I am sorry, could you give me the
4 page again.

5 MR. WASSERMAN: I believe it is the first page
6 after V.

7 Q. There is a notation, telephone rings, and you;
8 hear Siddig saying: Please God please God please God may
9 peace be on you yes, Sheik, no, hm hm hm OK, no problem,
10 yes, God willing, no, no, hm, hm, OK, sheik, God is willing,
11 if you want to go out, if you want to go outside, let me
12 know. Just make sure, OK sheik, may peace be on you in the
13 mercy of God.

14 A. And you say: No problem.

15 Q. When Siddig said as you heard his part of the
16 conversation if you want to go out, if you want to go
17 outside let me know, didn't you understand that to be Rashid
18 traveling to the Philippines?

19 A. I am sorry, sir. I don't know what you are
20 referring to.

21 Q. I am referring to a phone call that takes place
22 on June 19, that is received on your cellular phone at the
23 safe house in Queens.

24 A. Yes, sir.

25 Q. When Siddig, when you hear Siddig saying if you

1 want to go out, if you want to go outside and he is saying
2 this to Rashid, did you understand that to mean Rashid
3 traveling to the Philippines?

4 MR. McCARTHY: Objection, foundation.

5 THE COURT: Sustained.

6 Q. Did you know that Rashid planned to travel to the
7 Philippines?

8 MR. McCARTHY: Objection.

9 THE COURT: Did you know who he was talking to?

10 THE WITNESS: Mr. Siddig Ali?

11 THE COURT: Yes.

12 THE WITNESS: Yes, I understand that he is
13 talking to Dr. Rashid, sir.

14 Q. And you understood that because he had in the few
15 minutes before the phone call called Rashid, correct?

16 A. I am sorry, sir.

17 Q. You knew that he was talking to Rashid because he
18 had in fact called Rashid a few minutes before, correct?

19 A. Yes, sir.

20 Q. And when he called Rashid a few minutes before,
21 he told Rashid what's happening, call me back, and he gave
22 him a phone number to call him back on, correct?

23 A. Yes, sir.

24 Q. Rashid calls back a few minutes later, correct?

25 A. Yes, sir.

1 Q. Then there is this conversation that I have just
2 read?

3 A. Yes, sir.

4 Q. You say: No problem.

5 Then Siddig says: He called them two days and
6 he's waiting for them. He called them three, four times.
7 Until now they told him there isn't --

8 And you say: OK, fine. Now we -- God willing,
9 we will start working on the condenser.

10 Do you recall saying that?

11 A. Yes, sir.

12 Q. OK. Now, the condenser was your alternative
13 means of exploding a bomb, correct?

14 A. Yes, sir.

15 Q. You had discussed that as far back with Siddig as
16 early June, correct, of having an alternative means,
17 correct?

18 A. Yes, sir.

19 Q. When Rashid called Siddig and you overheard that
20 part of the conversation, did you know what Rashid was
21 calling about?

22 A. He was talking to him about the things -- about
23 the stuff we asked him to bring to us.

24 Q. Now, you testified previously that you asked him
25 for two things at your last meeting with him, your last and

1 final meeting with him on June 16: You had asked him for
2 passports and you had asked him for grenades, correct?

3 A. Grenades or C-4, and I will divide it to pieces.

4 Q. You had also testified that he asked him for
5 passports, correct?

6 A. Yes, sir.

7 Q. Before Rashid gets back to Siddig on June 19 and
8 you start working on the condenser, did you know that --

9 THE COURT: Mr. Wasserman.

10 MR. WASSERMAN: Yes, Judge.

11 Q. Did you know that he had contacted Mustafa Assad?

12 A. Who is "he" sir, please.

13 Q. Did you know that Rashid had contacted Mustafa
14 Assad?

15 A. I don't know that, sir.

16 Q. You do not know?

17 A. I don't know about that.

18 Q. You did not talk to the FBI about him?

19 A. No, sir.

20 Q. They did not inform of you anything?

21 MR. McCARTHY: Objection.

22 A. Anything of what, sir?

23 Q. Did they tell you anything in connection with who
24 Rashid had made contact with before calling Siddig to tell
25 him there was nothing?

1 A. I'm sorry, sir. No, they did not tell me.

2 Q. OK. And Mustafa Assad, that is the fellow who
3 jumped up in this courtroom --

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q. Did you attend the Nosair trial?

7 A. Yes, sir.

8 Q. And Mustafa Assad attended the Nosair trial --
9 pardon me. Did he attend the Nosair trial as well?

10 A. Sometimes, yes, sir.

11 Q. Did you not witness, or did you not learn that he
12 was thrown out of that trial for standing up in court and
13 yelling out something?

14 A. I don't remember that, sir.

15 Q. You don't remember?

16 And in all your conversations and attendance at
17 the trial of Sayyid Nosair, you never heard of this
18 incident?

19 A. That Mustafa Assad screamed at the court?

20 Q. Yes.

21 A. You see, sir --

22 Q. I'm just asking if you did or didn't.

23 A. There was so many that was screaming, so I don't
24 remember these instances.

25 Q. How many people were tossed out and told not to

1 come back?

2 MR. McCARTHY: Objection, relevance.

3 Q. Sir, --

4 A. Yes, sir.

5 Q. -- you had testified that Mustafa Assad was
6 someone who Sayyid Nosair or Ali Shinawy had told you could
7 help you make bombs back in June of '92, correct?

8 A. Mr. Ali Shinawy told me so, yes, sir.

9 Q. Alley Shinawy or Sayyid Nosair?

10 A. Ali Shinawy, sir.

11 Q. Ali Shinawy.

12 I think you referenced it in terms of the
13 Egyptian proverb, "One hand alone cannot clap," correct?

14 A. Yes, sir.

15 Q. And that you were told, "Well, if you need help
16 contact Emad Abdou," correct?

17 A. No, that's not Mr. Ali Shinawy. That's
18 Mr. Sayyid Nosair, sir.

19 Q. He told you Emad Abdou?

20 A. Who "he," sir, please?

21 Q. Nosair.

22 A. Yes, sir.

23 Q. But it was Ali Shinawy who told you to contact
24 Mustafa Assad?

25 A. That's correct, sir.

1 Q. Oh, OK.

2 This was back in --

3 THE COURT: Mr. Wasserman.

4 MR. WASSERMAN: I'm sorry, your Honor.

5 Q. This was back in June of '92, correct?

6 A. Yes, sir.

7 Q. OK. So Mustafa Assad's name you said was given
8 to you as someone who could help you build bombs back in
9 June of '92, correct?

10 A. By Mr. Ali Shinawy, yes, sir.

11 Q. OK. Did you contact him back in June of '92 to
12 help you build bombs at that time?

13 A. "Him" who, sir?

14 Q. Mustafa Assad.

15 A. No, I did not, sir.

16 Q. OK. When you started out on your plan to build
17 the bomb with Siddig Ali in 1993, did you contact Mustafa
18 Assad to help you?

19 A. No, sir.

20 Q. Did you speak to Siddig Ali and say to him,
21 "Look, the name Mustafa Assad was given to me by Ali Shinawy
22 as someone who would help. Let's call him"?

23 Did you say that to him?

24 A. No, I did not, sir.

25 Q. You never told him that Ali Shinawy told you that

1 Mustafa Assad would help?

2 A. I may said it, sir.

3 Q. Didn't you tell Siddig Ali that Mustafa Assad had
4 worked with you last time?

5 A. He never worked with me, sir.

6 Q. But didn't you tell Siddig Ali that he had worked
7 with you last time?

8 A. No, sir, because I know that Siddig have the
9 access to verify that with this group, and I will never tell
10 him false information, sir.

11 Q. Did you tell him that Mustafa was supposed to
12 work with you last time?

13 A. I may said it, yes.

14 Q. And did you tell him that after the FBI had told
15 you that Rashid had contacted Mustafa Assad before telling
16 you "no can do"?

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained.

19 Q. Did you bring up the name Mustafa Assad for the
20 first time with Siddig Ali after Rashid got back to Siddig
21 at the safe house and said, in effect, "Nothing. I have
22 nothing"?

23 MR. McCARTHY: Objection to the form of the last
24 part of the question.

25 THE COURT: Sustained.

1 Q. Did you not tell Siddig Ali about Mustafa Assad
2 for the first time at the time of June 19, 1993?

3 Did you not bring up the name Mustafa Assad for
4 the first time to Siddig Ali in June of 1993, June 19?

5 A. Sir, Mustafa Assad, it's a common name used
6 between us and we attended some of his lectures in Warren
7 Street mosque. So it's not the first time I told him about
8 Mustafa Assad.

9 Q. Mustafa Assad's lectures?

10 A. Yes, sir.

11 Q. Are you referring to someone who is Hispanic or
12 not?

13 A. I'm sorry. Mustafa?

14 Q. Mustafa Assad?

15 A. I know that he's Hispanic, yes, sir.

16 Q. Did you not on June 19, in CM48 page 5, Tab T,
17 say in response to Siddig Ali, who says: Yes, there is
18 Spanish brother. This brother was not with us, I mean --

19 And you say: Mustafa Assad.

20 And he says: No. It is not Mustafa. He is a
21 good brother.

22 And you say: Yes, I knew that. That is why I
23 expected right away because Mustafa was supposed to.

24 And Siddig says: Another one.

25 And you say: Worked with me last time.

1 And you said: Exactly, good. If you like to
2 bring him -- I'm sorry. Siddig says: Exactly, good. If
3 you like to bring him.

4 And you say: No, no, I don't bring him. I mean,
5 this, this --

6 MR. McCARTHY: Your Honor, I object. It's not
7 inconsistent.

8 THE COURT: Sustained.

9 MR. WASSERMAN: Your Honor --

10 THE COURT: No.

11 Q. Was this the first time that you had raised
12 Mustafa Assad's name with Siddig?

13 A. No, sir.

14 Q. Was this the first time that you had raised
15 Mustafa Assad's working together with you to build a bomb
16 with Siddig?

17 A. I believe, yes, sir, that's the first time I
18 mentioned it.

19 Q. When he said to you, "Well, if you like to bring
20 him," you said, "No, no, I don't bring him," correct?

21 A. Yes, sir.

22 Q. Now, the question is: Having worked with Siddig
23 since May, now we are at June 19, if Mustafa Assad was
24 somebody who was to be a helper with making bombs, didn't
25 you wait an awfully long time to bring up his name with

1 Siddig Ali?

2 A. My job, sir, wasn't to bring people. My job for
3 them to bring what they have. I don't bring people to this
4 case.

5 Q. You just ask Siddig to bring people?

6 A. I ask Mr. Siddig to bring the people he referred
7 that he have a suicidal people who is well trained, so I
8 want these people for him to bring them.

9 Q. These people you understood were some of the
10 people who had trained in Pennsylvania?

11 A. Yes, sir.

12 Q. And --

13 THE COURT: Mr. Wasserman.

14 MR. WASSERMAN: Yes, Judge.

15 Q. And you're saying that Mustafa Assad was not one
16 of the people that Siddig brought, correct?

17 A. I'm sorry?

18 Q. Mustafa Assad was not one of the people that
19 Siddig brought, correct?

20 A. No, sir, he did not.

21 Q. OK. When you bring up his name on June 19, have
22 you not been told by the FBI that Mustafa Assad was the
23 person that Rashid contacted to get passports?

24 A. No, sir.

25 Q. And when you bring up the name Mustafa Assad --

1 MR. McCARTHY: Objection.

2 THE COURT: I am going to remind the jurors yet
3 again that it is the answers that are evidence, not lawyers'
4 questions.

5 Q. Let me just ask you the following question about
6 passports: You had had several discussions with Siddig Ali
7 about getting passports, correct, from Rashid?

8 A. Yes, sir.

9 Q. As part of that discussion you were going to
10 provide pictures and money, correct?

11 A. Yes, sir.

12 Q. The pictures are sometimes referred to as
13 "faces," correct?

14 A. I beg your pardon?

15 Q. "Faces" is the term that would be sometimes used
16 for pictures? Faces? It might be -- withdrawn, withdrawn.

17 When Rashid gets back to you on June 19 and in
18 effect says, "There's nothing, no can do," do you at any
19 time after that date ask him for passports again? Yes or
20 no.

21 MR. McCARTHY: Objection to the form of the
22 question.

23 THE COURT: Sustained.

24 Q. After June 19, do you ask Rashid for passports?

25 A. I don't think so, sir.

1 Q. Now, but you do ask him for what you referred to
2 earlier as the stuff, the grenades and the C-4, correct?

3 A. Yes, sir.

4 Q. Would it be fair to say that at the time that you
5 bought the condenser you were well aware that you were going
6 to get nothing from Rashid?

7 A. That's not fair to say, sir.

8 Q. Is it not so that you needed to have an
9 alternative means of detonation at the safe house in order
10 to continue to act as if you were building a bomb, correct?

11 A. That's correct, sir.

12 Q. That's why you had the condenser, correct?

13 A. That's correct, sir.

14 Q. That he is why you had the condenser there the
15 night that Rashid calls in and says there's nothing,
16 correct?

17 A. Correct, sir.

18 Q. You worked very hard to get Rashid to bring you
19 something, didn't you?

20 A. I'm sorry, sir?

21 Q. You worked very hard to get him to bring you
22 something, didn't you?

23 A. Yes, sir.

24 Q. And you had Siddig make a number of phone calls
25 to him to get him?

1 MR. McCARTHY: Objection.

2 Q. I will withdraw the question.

3 MR. WASSERMAN: Your Honor, may I just have one
4 second.

5 Your Honor, I would like to play what is in
6 evidence as CM25, a small portion of it. Mr. McCarthy has
7 it in his binder, as does your Honor.

8 MR. McCARTHY: I don't think it's in evidence.
9 But if I see what I wants to play, I may have no --

10 MR. WASSERMAN: I believe the tape is in
11 evidence.

12 THE COURT: Why don't you just tell him what tab
13 it is under, and we will see if we have a dispute.

14 MR. WASSERMAN: Judge, may I come to side bar?

15 THE COURT: No.

16 MR. WASSERMAN: CM25, your Honor, that would be
17 under G, and there is a passage at the end. It's the last
18 page in on that tab. May I play it, Judge?

19 THE COURT: Is there any objection?

20 (Counsel conferred off the record)

21 MR. McCARTHY: I have no objection.

22 THE COURT: You may play it. Is this something
23 you want everybody to listen to?

24 MR. WASSERMAN: Yes, Judge.

25 (Audiotape played)

1 Q. Mr. Salem, you were asked by Rashid if you had
2 any personal pistols, and you say, "I, I, I, I," would it be
3 fair to say that the question took you back, caught you by
4 surprise?

5 A. I'm sorry, sir?

6 Q. When Rashid asked you if you had any personal
7 pistols, your answer was "I, I, I, I, I purchased one for
8 the World Trade Center."

9 A. For the World Trade Center? I don't recall
10 saying -- I didn't buy pistol for the World Trade Center,
11 sir.

12 Q. Well, you didn't say "I, I, I, I purchased, when
13 I bought one a while ago for the WTC, but I got rid of it."

14 You didn't say that?

15 A. I may said that, yes.

16 Q. Didn't we just hear it?

17 A. Well, I didn't hear anything here. The music and
18 the sound -- I heard my saying, "Yes, yes. I, I, I
19 purchased," and then I didn't hear the rest.

20 MR. WASSERMAN: Your Honor, could we just try
21 again. If he had trouble, perhaps the jury did.

22 THE COURT: Why don't you just ask a question.

23 MR. WASSERMAN: OK.

24 Q. Did Rashid then ask you: But you can get it
25 back. And you say: No, it was, it was hot.

1 A. Yes.

2 Q. When he asked you if you had a gun, you
3 stuttered, did you not?

4 A. Yes.

5 Q. You said: I, I, I, I, I purchased one for the
6 World Trade Center for the WTC, correct?

7 A. Yes, sir.

8 Q. Now, you've testified previously that you
9 purchased a gun from Ali Shinawy, correct?

10 A. Yes, sir.

11 Q. And a gun has been introduced into evidence that
12 you said you purchased from Ali Shinawy, correct?

13 A. Yes, sir.

14 Q. And that's a gun that you believe came from
15 Rashid, correct?

16 A. I cannot believe anything, because I don't -- I
17 didn't see that Mr. Ali Shinawy get it from who, so I cannot
18 speculate, sir.

19 Q. You used the proverb during your conversations
20 with Siddig, "There are many byways, the road to Abu Ziyad
21 has many byways." Do you remember using that?

22 A. Yes, sir.

23 Q. And I believe you used that in connection with
24 Rashid, correct?

25 A. I used it in so many times, sir, I don't recall

1 to specific -- just give me certain things, and I will
2 recall right away, sir.

3 Q. OK. And proverbs were a way that you tried to
4 capture or to express exactly what was going on, correct?

5 A. Yes.

6 Q. In other words, when you said, "May God give life
7 into Rashid's picture," in your mind this man is dead, doing
8 nothing, you've got to get moving, yes?

9 A. Yes, sir.

10 Q. God should give him life, move him off the mark,
11 yes?

12 A. Yes, sir.

13 Q. When you used the expression, "One hand alone
14 cannot clap," it is an expression -- have you heard, "What
15 is the sound of one hand clapping"?

16 Have you ever heard that?

17 A. I'm sorry, say it again, please.

18 Q. "What is the sound of one hand clapping."

19 Have you ever heard that expression?

20 A. No, sir.

21 Q. Without Rashid, without life being breathed into
22 his picture --

23 MR. WASSERMAN: I'm sorry, judge.

24 THE COURT: Mr. Wasserman, may I see you at the
25 side briefly.

1 MR. WASSERMAN: Yes, Judge.

2 (At the side bar)

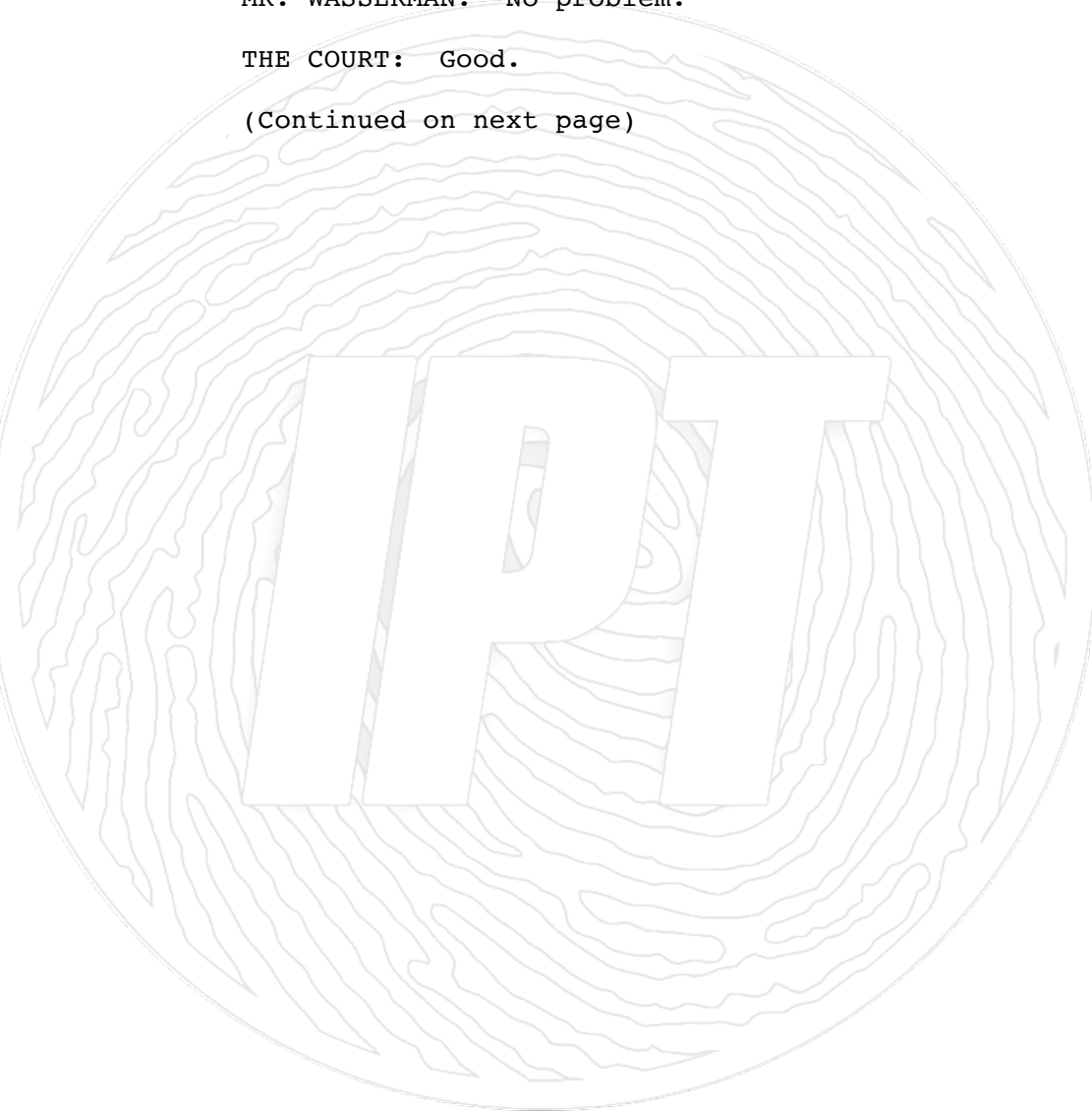
3 THE COURT: You have five minutes to wrap this
4 up.

5 MR. WASSERMAN: No problem.

6 THE COURT: Good.

7 (Continued on next page)

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1 (In open court)

2 Q. Sir --

3 A. Yes.

4 Q. -- you say that you met with Rashid from June '92
5 on and had conversations with him until the very --

6 MR. McCARTHY: Objection.

7 THE COURT: First of all, move back from the
8 microphone. Do you want to rephrase the question?

9 MR. WASSERMAN: Sure.

10 Q. In all the conversations that you had with
11 Siddig, in the meetings that you had with Rashid, you never
12 got anything from Rashid, correct?

13 He never gave you anything, correct?

14 A. No, sir.

15 Q. Your wish that God should breathe life into his
16 picture never was answered, was it? He never got activated?

17 MR. McCARTHY: Objection.

18 Q. Did he ever give you anything?

19 A. I said, no, sir.

20 Q. Without his response, without his offer, without
21 his giving you anything, there could be no clapping, it was
22 just you --

23 THE COURT: Sustained, Mr. Wasserman.

24 Q. Without Rashid providing you with anything, it
25 was only one hand, your hand, correct?

1 MR. McCARTHY: Objection.

2 A. No, sir.

3 THE COURT: Sustained.

4 Q. Without a response from Rashid, it was just you?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. When you said, "Yup, I got his ass," right, he
8 never gave you anything, did he?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q. When you told the FBI, "The doctor has his own
12 project, has nothing to do with us," you told the FBI that
13 the last night of this case, correct?

14 A. I'm sorry, sir. Would you just please say it
15 again.

16 Q. You told the FBI, when they were telling you,
17 "Got to get the doctor involved" -- this is on June 23, the
18 evening of the arrests.

19 A. Yes, sir.

20 Q. They told you, "Got to get the doctor involved
21 buying the ammunition, but --

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Ask one question, would you.

25 MR. WASSERMAN: Yes.

1 Q. In response to the FBI telling you that evening,
2 got to get to doctor involved --

3 MR. McCARTHY: Objection.

4 THE COURT: May I see counsel at the side.

5 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: That wasn't what the testimony
3 was.

4 MR. WASSERMAN: That's what the tape says.

5 MR. McCARTHY: You tried to get that out of him.
6 You didn't get it out of him.

7 MR. WASSERMAN: No.

8 MR. McCARTHY: The point is completely misleading
9 because the jury will decide based on the legal instructions
10 whether he was involved in something or not. What he's
11 trying to get in is the unedified perception, if it is that,
12 from an FBI agent as to whether Rashid was a successful --

13 THE COURT: The fact is that the question has
14 been asked and answered numerous times. If you are trying
15 to figure out a way of ending the cross, figure out another
16 way, but end it, OK?

17 MR. WASSERMAN: Just for the record, I am mindful
18 of your admonition, but I'm ending it because I'm through
19 with my material. I just want to close it.

20 THE COURT: I know.

21 MR. WASSERMAN: But not because your Honor has
22 set a time limit.

23 THE COURT: I think you were through a half hour
24 ago.

25 MR. WASSERMAN: That could be true, Judge.

1 (In open court)

2 Q. One last question: The evening that you had your
3 conversation with Louis Napoli, you told him that you wanted
4 to be told if they were coming to arrest the people,
5 correct?

6 A. Yes, sir.

7 Q. And you told him, "The doctor has his own
8 project, has nothing to do with us," correct?

9 A. Yes, sir.

10 MR. WASSERMAN: Thank you, Judge.

11 THE COURT: I take it that means no further
12 questions, Mr. Wasserman?

13 MR. WASSERMAN: Yes, your Honor.

14 THE COURT: Ladies and gentlemen, we are going to
15 break for lunch. Please leave your notes and other
16 materials behind. Please don't discuss the case. We will
17 resume at 2 o'clock.

18 (The jury was excused)

19 THE COURT: You can step down.

20 (Witness excused)

21 THE COURT: OK. 2 o'clock.

22 (Luncheon recess)

23

24

25

AFTERNOON SESSION

1

2

2:00 p.m.

3

(In open court; jury present)

4

EMAD SALEM, resumed.

5

THE COURT: Good afternoon, ladies and gentlemen.

6

JURORS: Good afternoon.

7

THE COURT: Miss Amsterdam, representing

8

Mr. Khallafalla.

9

CROSS-EXAMINATION

10

BY MS. AMSTERDAM:

11

Q. Good afternoon, sir. Before we begin I have one

12

question for you. You said in response to Mr. Wasserman

13

this morning that if you die in battle and you go to heaven

14

you get 72 wives. Do you remember saying that?

15

A. Seven wives --

16

Q. Seven? 72?

17

A. I am not sure because that's not my statement,

18

Dr. Rashid stated it.

19

Q. I was just curious if that was a reward or a

20

punishment.

21

A. It is a reward.

22

(Laughter)

23

Q. It is not likely my husband is going to convert.

24

Good afternoon, sir.

25

A. Good afternoon.

1 Q. I am going to take you back a little bit and ask
2 you some questions to begin with. In 1993, would I be fair
3 in saying that in the Muslim community there was quite a lot
4 of news coverage about Bosnia?

5 A. Yes, ma'am.

6 Q. I would also assume that there was much more news
7 coverage in the Muslim press than even in the western press
8 on the issue of Bosnia.

9 A. Yes, ma'am.

10 Q. And even yourself as a Muslim, albeit perhaps not
11 an overly religious Muslim, I assume, was concerned about
12 this issue.

13 A. Concerned about --

14 Q. Bosnia?

15 A. Yes, ma'am.

16 Q. And in your community and in Muslim communities
17 there was a lot of talk about helping Muslims who were
18 fighting the Serbs in Bosnia, right?

19 A. Yes, ma'am.

20 Q. And people took up collections of money, would
21 that be a fair statement?

22 A. Mainly the money being collected in my presence
23 for two purposes: number one, Mr. Sayyid Nosair's trial,
24 number two, through Sheik Omar Abdel Rahman for jihad,
25 ma'am.

1 Q. That wasn't my question, sir.

2 A. I am sorry.

3 Q. My question is, in the Muslim community as a
4 whole, in the mosques, for example, was there a lot of
5 discussion about Bosnia?

6 A. Yes, sometimes, yes.

7 Q. And in the Muslim community as a whole, did
8 people take up collections to send money or clothing to
9 Bosnia, if you know?

10 A. Not, not that I know about it, ma'am.

11 Q. Did you meet people unrelated to this case which
12 actually talked about going to Bosnia to fight, to help
13 their Muslim brothers in Bosnia?

14 A. No, ma'am.

15 Q. In any of the training that you attended, the
16 firearms training, there was never occasion that people
17 spoke about actually going and helping the Muslim brothers?

18 A. There is some occasion -- not during the firearms
19 training. Firearms training, we did not talk about Bosnia,
20 no, ma'am.

21 Q. You stated, I believe, that you met a Dr. Osman
22 who was a dentist, at the Nosair trial?

23 A. Yes, ma'am.

24 Q. Would it be fair to say that he used to come to
25 court dressed in, like, military clothes, on occasion?

1 A. I don't recall seeing him in military outfit,
2 ma'am.

3 Q. Did Dr. Osman tell you that he had attended the
4 University of Belgrade in Yugoslavia?

5 A. No, ma'am.

6 Q. Did he tell you that he was helping some of the
7 Muslim brothers to get into Bosnia, into the former
8 Yugoslavia to help fight?

9 A. No, ma'am.

10 Q. Did you know whether or not Siddig Ali's wife
11 actually collected used clothing to be sent to Bosnia?

12 A. No, ma'am.

13 Q. Do you know whether or not Siddig Ali himself
14 actually lectured in a mosque concerning the issue of Bosnia
15 and Muslim brothers helping in that cause?

16 A. I don't recall his saying any statement like
17 that, ma'am.

18 Q. You testified pertaining to Siddig Ali that you
19 had seen him several times during Mr. Nosair's trial,
20 correct?

21 A. Yes, ma'am.

22 Q. But he wasn't a personal friend of yours, was he,
23 at that time?

24 A. No, ma'am.

25 Q. He wasn't a confidant of yours, he didn't confide

1 in you at that time.

2 A. No, ma'am.

3 Q. You just happened to see him, I think one time
4 during Mr. Nosair's trial?

5 A. It was maybe more than one time but the occasion
6 that I get in touch with him was the occasion that I
7 testified about, ma'am.

8 Q. I believe you said you saw him once at the
9 victory party.

10 A. Yes, ma'am.

11 Q. So I would be correct in saying that until the
12 spring of 1993, you did not know Mr. Siddig Ali well.

13 A. Yes, ma'am.

14 Q. That you were basically acquaintances. Would
15 that be a fair statement?

16 A. Yes, ma'am.

17 Q. You testified that there came a time that you
18 went to Sheik Omar Abdel Rahman's home. Do you remember
19 that, and you met Siddig Ali there?

20 A. Yes, ma'am.

21 Q. Did Siddig Ali come alone on that occasion or was
22 his wife with him?

23 A. No, he was alone, ma'am.

24 Q. And if you recall, was the occasion of meeting
25 him at Dr. Rahman's home, did that coincide with the end of

1 Ramadan?

2 A. I am not so sure about the time frame.

3 Q. Would I be correct in saying that at the end of
4 Ramadan there is a feast, the feast of eed? Am I saying it
5 correctly?

6 A. Absolutely, yes, ma'am.

7 Q. And Ramadan lasts approximately one month?

8 A. Yes, ma'am.

9 Q. And at the end of that period of time there is
10 this feast of eed, correct?

11 A. Yes, ma'am.

12 Q. Is that a holiday where among other things people
13 who have had differences during the year may in fact attempt
14 to reconcile their differences?

15 A. Absolutely, ma'am.

16 Q. Would I be fair in saying, if you know, that
17 Siddig Ali was at Dr. Rahman's house that particular day
18 because he had come to apologize to him for having failed
19 him in being available for doing some translations?

20 A. I don't think so, ma'am, because Mr. Siddig Ali
21 made a statement that Hamdi Ali asked him to go and
22 apologize to Sheik Omar Abdel Rahman, and he say why should
23 I, I did nothing wrong, I told him that I will be away for a
24 while.

25 Q. So there was some falling out, as far as you

1 know, between Sheik Rahman and Siddig Ali, correct?

2 MR. McCARTHY: Objection, form.

3 MS. AMSTERDAM: I will rephrase it.

4 Q. There was some -- searching for a word.

5 THE COURT: Disagreement?

6 MS. AMSTERDAM: Disagreement. It doesn't get an
7 objection, either.

8 THE COURT: Doesn't come with a guarantee.

9 Q. -- some disagreement between Sheik Rahman and
10 Siddig Ali.

11 A. That was Mr. Hamdi Ali's statement to Mr. Siddig.

12 Q. So you don't know from your own personal
13 knowledge?

14 A. No, I don't.

15 Q. From your own personal observations of the day
16 that you met Siddig Ali at Sheik Rahman's apartment, do you
17 recall whether or not Siddig Ali brought with him some
18 magazines for the sheik?

19 A. No, ma'am.

20 Q. Do you recall whether or not he brought a
21 magazine, The Arab Immigrant, in which you yourself had
22 authored an article?

23 A. I didn't see him in that, ma'am.

24 Q. Were you there when Siddig Ali arrived or did you
25 come after he arrived?

1 A. I believe that I went, he was there.

2 Q. I am sorry, sir.

3 A. I believe that when I went over there he was
4 already there, ma'am.

5 Q. He was already there?

6 A. I think so.

7 Q. Do you recall if you had gone to Sheik Rahman's
8 house that day because it was the feast of eed?

9 A. I am not so sure what was the reason I was going
10 tour, because of what.

11 Q. So you are not certain but it is possible that it
12 coincides with that period of time? Would that be a fair
13 statement?

14 A. Could be, ma'am.

15 Q. Could be. You stated that when the -- how long
16 did you remain at Sheik Rahman's apartment, to the best of
17 your memory?

18 A. I will say an hour.

19 Q. Were there other people there?

20 A. Yes, ma'am.

21 Q. Many other people?

22 A. Four, five.

23 Q. And you stated that Mr. Ali left with you,
24 correct, or left at the same time that you left?

25 A. Yes, ma'am.

1 Q. According to you, it was Mr. Ali who asked for a
2 ride home, is that your testimony?

3 A. I think yes.

4 Q. Do you remember that specifically?

5 A. Not specifically, but --

6 Q. Is it possible that you offered him a ride home?

7 A. I am not sure.

8 Q. OK. What was the last time that you had seen
9 Siddig Ali prior to this meeting at Sheik Rahman's house,
10 approximately?

11 A. It would be the victory party, ma'am.

12 Q. That was at least a year earlier, correct?

13 A. Could be, yes.

14 Q. Had Siddig Ali attended any of the firearms
15 courses that you had attended?

16 A. No, ma'am.

17 Q. Had you ever seen him at that time at Attica?
18 Had he ever gone with you or seen you at Attica?

19 A. No, ma'am.

20 Q. When you attended the conferences in Detroit or
21 Chicago, was Siddig Ali there?

22 A. I did not attend conference in Chicago.

23 Regarding Detroit, he was not there, ma'am.

24 Q. Would I be fair in saying that after the World
25 Trade Center explosion, that there was a lot of fear and

1 suspicion within the Muslim community?

2 A. That's correct, ma'am.

3 Q. Would I be fair in stating that many members of
4 the Muslim community complained that they had been harassed
5 by law enforcement authorities?

6 A. Yes, ma'am.

7 Q. And I believe that you testified that even before
8 the World Trade Center explosion there was a time that you
9 yourself had wanted to stop working for the FBI. Do you
10 remember that?

11 A. Yes, ma'am.

12 Q. And that you didn't want to risk being exposed as
13 having been an informant.

14 A. Yes, ma'am.

15 Q. And as a result of that, a plan was arrived at
16 whereby 20 people, close to 20 people who had simply visited
17 Mr. Nosair were brought into police headquarters for
18 questioning, correct?

19 A. I am sorry. Just say it again, please. I am
20 sorry.

21 Q. I am sorry. Do you recall testifying that there
22 was an occasion that approximately 20 other Muslim men were
23 taken to, I guess the FBI headquarters, for questioning? Do
24 you recall that?

25 A. Yes, ma'am.

1 Q. And you also were taken to FBI headquarters but
2 you were not questioned.

3 A. No, I was not questioned.

4 Q. And that that was a way, actually, to give you
5 some protection within the community.

6 A. Give me a reason to withdraw myself, yes, ma'am.

7 Q. So the fact that the 20 people were actually
8 brought in for questioning, the purpose there was to give
9 you, you a reason to withdraw, right?

10 A. I don't know what's the FBI's intentions for
11 bringing these people, but I used this interview to say that
12 I got to slow down.

13 Q. And that had occurred, those 20 people being
14 brought to FBI headquarters had occurred even in advance of
15 the World Trade Center explosion, correct?

16 A. Yes, ma'am.

17 Q. And I would assume that I would be correct in
18 stating that after the explosion the degree of fear and
19 suspicion was even that much greater within the Muslim
20 community.

21 A. You are absolutely right.

22 Q. And even for people like your daughter, there was
23 a lot of -- your daughter -- there was a lot of criticism
24 among nonMuslims simply because she was a Muslim, right?

25 A. Yes, ma'am.

1 Q. She came into harassment and discrimination?

2 A. Yes, something to that effect, yes.

3 Q. And I would assume that people in the Muslim
4 community who attended mosques actively discussed the fact
5 that they felt that they were targets of law enforcement
6 during that period of time.

7 A. Yes, ma'am.

8 Q. Mr. Siddig Ali, when you were at Sheik Rahman's
9 house, as you left, he was himself quite concerned about FBI
10 informants, correct?

11 A. Yes, ma'am.

12 Q. And he asked you, did he not, that you sweep --
13 your car or his car? Your car.

14 A. My car at the beginning, and later on his
15 apartment, ma'am.

16 Q. But that day he asked you if you would check your
17 car for bugs, right?

18 A. Yes, ma'am.

19 Q. So he clearly was very concerned about FBI
20 informants or at least appeared to you to be very concerned
21 about FBI informants, right?

22 A. Not informants in this time, because his concern
23 that my car is being bugged, yes, ma'am.

24 Q. Yet it is your testimony that it is he who
25 initiates to you a discussion about bombing, correct?

1 A. Yes, ma'am.

2 Q. You are to him at this point virtually a
3 stranger, is that not true?

4 A. No, ma'am.

5 Q. You are a passing acquaintance. Would that be
6 fair?

7 A. No, ma'am.

8 Q. You have seen him once or twice at Mr. Nosair
9 air's trial, correct?

10 A. Yes, ma'am.

11 Q. You have seen him once at Mr. El-Gabrownny's
12 victory party, correct?

13 A. Mr. Sayyid Nosair's victory party.

14 Q. Mr. Sayyid Nosair's victory party. I apologize.
15 Correct?

16 A. Yes, ma'am.

17 Q. And it has been over one year since you have seen
18 him in any context since this day, correct?

19 A. Yes, ma'am.

20 Q. And in a period when people are very concerned
21 about law enforcement and law enforcement authorities, he
22 walks into your car and has a conversation with you, an
23 explicit conversation about bombing. Is that your
24 testimony?

25 A. Yes, ma'am.

1 Q. You stated that there was no taping of this
2 conversation, corrects, sir?

3 A. Yes, ma'am.

4 Q. You knew that day that you were going to Sheik
5 Rahman's house, did you not?

6 A. Yes, ma'am.

7 Q. And on other occasions you had sought to wear
8 body wires, recording devices, correct?

9 A. Yes, ma'am.

10 Q. On that day, despite the fact that you knew you
11 were going to Sheik Rahman's apartment, you chose not to
12 wear any recording devices. Right?

13 A. Yes, ma'am.

14 Q. Do you remember that specifically?

15 A. Yes, ma'am.

16 Q. That you did not record that conversation?

17 A. Yes, ma'am.

18 Q. Is it possible that you recorded the conversation
19 and just don't remember where the tape is?

20 A. No, ma'am.

21 Q. Is your memory clear on this point, sir?

22 A. Yes, I remember this very well, ma'am.

23 Q. It was also your testimony that on the next day
24 Mr. Siddig Ali invited you to his house, correct?

25 A. Yes, ma'am.

1 Q. And you remember specifically that that
2 invitation was at his request of you to come to his home,
3 right?

4 A. Yes, ma'am.

5 Q. Are you positive about that?

6 A. Positive, ma'am.

7 Q. Isn't it a fact, sir, that you actually called
8 Mr. Siddig Ali and indicated to him that you were in the
9 neighborhood?

10 A. No, ma'am.

11 Q. Isn't it a fact that you told him, sir, at that
12 time that you were thinking about opening up a jewelry
13 showroom in Elizabeth, town in New Jersey, and told him that
14 you were in the neighborhood and would like to stop by?

15 A. I never in any time talked about opening showroom
16 in Elizabeth. This the first time I heard that, ma'am.

17 Q. You didn't invite yourself up to Mr. Ali's
18 apartment?

19 A. That's not the Arab tradition. Never you can
20 invite yourself, no, ma'am.

21 Q. That may not be the Arab tradition, but at the
22 particular point in time you were working as an informant,
23 were you not?

24 A. Yes, ma'am.

25 Q. And it is in an informant's tradition to try to

1 gain access to people's homes and confidence, would that not
2 be true?

3 A. True, ma'am.

4 Q. And I would assume that in your role as an
5 informant, you would indeed forsake Arab customs and habits
6 if it were in your best interests, correct?

7 MR. McCARTHY: Objection to form.

8 THE COURT: Sustained.

9 Q. Would the fact that it was not an Arab custom to
10 invite yourself to someone's home, would that have prevented
11 you from inviting yourself to someone's home if it was in
12 the best interests of the investigation you were working on?

13 A. If it's for the best interests, I will make
14 myself available, and if they invited me I will response
15 positive, ma'am.

16 Q. It is your testimony, is it not, sir, that you
17 recorded the conversation, that first conversation with
18 Siddig Ali in his home, right?

19 A. Yes, ma'am.

20 Q. That is the conversation that was done on a
21 microcassette from a body wire, right?

22 A. That's right, ma'am.

23 Q. That is Government's Exhibit 41-1, if you know?

24 MR. McCARTHY: 641.

25 MS. AMSTERDAM: 641. Thank you.

1 Q. This conversation, sir, was done by a body wire,
2 right?

3 A. It wasn't on my body. I mean, we call it body
4 wire but I put it inside my briefcase, ma'am.

5 Q. The device that you used to record the
6 conversation is what is called a body wire, correct?

7 A. Yes, called body wire.

8 Q. And in questioning by Mr. McCarthy, you indicated
9 that the reason that the first part of the conversation was
10 not recorded was because you had actually had to physically
11 get down on your hands and knees to simulate sweeping the
12 apartment, right?

13 A. That is correct, ma'am.

14 Q. And it is your statement that despite the fact
15 that you had access to what is referred to as a body wire,
16 you kept that body wire not on your body but in a briefcase,
17 correct?

18 A. Yes, ma'am.

19 Q. Wouldn't it have been a more prudent thing to do
20 to wear the body wire on your body?

21 A. As a matter of fact, what happened in this, that
22 I used this device to sweep the apartment. In that time, I
23 don't have the transmission detector, so I used the body
24 wire to make him believe that I am sweeping the -- it's like
25 a small thing and a wire and the microphone at the end and I

1 lead him to believe this is a microphone sensor and I keep
2 sweeping the apartment.

3 Q. And the microphone and the wire is connected to
4 some type of recording device, right?

5 A. Right, yes, ma'am.

6 Q. So as you are sweeping the apartment with the
7 microphone and the wire, nothing prevented you from having
8 the recording device recording the conversation, did it?

9 A. No, it did not prevented me from recording the
10 conversation, but the recording device itself, it was in my
11 hand, ma'am.

12 Q. Fine. The recording device is in your hand and
13 you are speaking to Siddig, correct?

14 A. Yes, yes.

15 Q. So isn't this a perfect opportunity to in fact
16 record the conversation between you and Siddig? You are
17 holding the microphone in your hand.

18 A. It wasn't that much conversation because all what
19 I was doing, carrying a black paper and scrubbing the floor.
20 That's not going to be on the microphone saying anything,
21 scrubbing.

22 Q. When you are scrubbing you are indeed speaking to
23 Siddig, saying there are no bugs here, there are bugs here,
24 correct?

25 A. No, ma'am, that's not what happened.

1 Q. As you entered the apartment you must have
2 greeted Siddig, right?

3 A. Yes.

4 Q. At a minimum there must have been a conversation
5 about would you sweep my apartment for bugs, right?

6 A. No, ma'am.

7 Q. You just did it without being asked?

8 A. Because he already asked me the day before,
9 ma'am. He already asked me if I will be available to come
10 next day to sweep his apartment and his phone. I said sure,
11 no problem.

12 Q. So it would be your testimony that you entered
13 the apartment and with no preliminary discussion you simply
14 started going around with your microphone, correct?

15 MR. McCARTHY: Objection.

16 A. No --

17 THE COURT: I will allow it.

18 A. No, ma'am. I get to the apartment, and I greeted
19 him, he greeted me, I open the briefcase, I get the wire, I
20 made him believe, said OK, we going to start from here, all
21 right, then I start sweeping the apartment, then I came,
22 said OK, I put the device where did you kept your things,
23 pointed here, I get the black paper and the cloth, I came on
24 my hands and my knees, I start scrubbing here, where else,
25 he take me to the bedroom, open one of the drawers in a

1 dresser, I put black paper all over, I scrub it. It wasn't
2 that much of a conversation. Once we sit down and he start
3 talk, I flip the switch.

4 Q. You said that you asked him where he kept his
5 things. By things, you mean explosives?

6 A. Yes, ma'am, he said that he kept some stuff which
7 he brought it from the Pennsylvania camp training.

8 Q. So you had a conversation about the fact that he
9 had explosives, that he kept explosives, and that he had
10 gotten them from Pennsylvania, and none of that conversation
11 is recorded, is it, sir?

12 A. No, ma'am.

13 Q. Even though you have the microphone in your hand
14 with the wire which leads to a recording device, none of
15 that conversation is recorded, correct?

16 A. That conversation about what he got things in the
17 apartment on the day before and that's why I'm coming the
18 next day and that's why I got the wire with me, to record
19 the conversation, ma'am.

20 Q. You decided when you would begin recording the
21 conversation, is that not true?

22 A. It is true, ma'am.

23 Q. Let me ask you, something, sir. Isn't it a fact
24 that there were a series of conversations between yourself
25 and Siddig which were before May 7, before CM 1, which were

1 not recorded?

2 A. It wasn't a serious conversation. One
3 conversation after we left Sheik Omar Abdel Rahman's
4 apartment in my car, and this conversation led me to the
5 next day, where I got the recording device.

6 Q. So there is only one unrecorded conversation, is
7 that your testimony?

8 A. Yes, ma'am.

9 Q. And the next day you go to Siddig's house and you
10 sweep the house, correct?

11 A. Yes, ma'am.

12 Q. And the next day you go to the FBI and you get
13 your Nagra and you begin the consensually monitored, is that
14 correct?

15 A. Yes, ma'am.

16 Q. There are no conversations, and correct me if I
17 am wrong, but there are no conversations that were
18 unrecorded where Siddig talked about wanting to go to
19 Bosnia.

20 A. No, ma'am.

21 Q. There were no conversations that were not
22 recorded, where he told you that he lacked the money to go
23 to Bosnia?

24 A. He is always lacking money, ma'am.

25 Q. Specifically, were there conversations that you

1 did not record during this three-day period of time in which
2 Siddig said that he wanted to go to Bosnia and couldn't go
3 because he didn't have the money?

4 A. No, ma'am.

5 Q. Were there conversations that you did not record
6 where he said that Dr. Osman and Dr. Rashid failed to get
7 him into Bosnia even though that's where he wanted to go?

8 A. Unrecorded conversations?

9 Q. Unrecorded.

10 A. No.

11 Q. Were there unrecorded conversations where you
12 offered your services to reinitiate, to start up again the
13 camp in Pennsylvania for the purpose, explicit purpose of
14 Bosnia training?

15 A. No, ma'am, I did not.

16 Q. Were there any unrecorded conversations during
17 this period of time where you showed him a bag of jewels,
18 gemstones, which you said that you would use to finance the
19 camp, the new camp for Bosnia?

20 A. Ma'am, the time I showed him these stones, it was
21 inside the safe house, under the camera, under the
22 microphones.

23 Q. Right. That's later.

24 A. Right.

25 Q. But there was a time --

1 A. That was the first time I showed him the jewelry,
2 that's it.

3 Q. There are no unrecorded conversations earlier
4 where you showed him the jewelry and said I'll fund the
5 Bosnia camp, is that your testimony?

6 A. Absolutely did not say that.

7 Q. Were there any unrecorded conversations at this
8 period of time where Siddig told you I'm already trained,
9 why don't you just buy me an airplane ticket?

10 A. No, ma'am.

11 MS. AMSTERDAM: At this time, your Honor, I would
12 like the jurors to take out Exhibit 301, which is CM 1,
13 please.

14 THE COURT: 301T in the book.

15 MS. AMSTERDAM: Thank you, sir. May I approach
16 the witness, your Honor?

17 THE COURT: Yes.

18 Q. You don't have a complete 1 in here, so I will
19 give you a complete 1.

20 Sir, just to make sure that I don't put words in
21 your mouth, your testimony is that you meet Siddig Ali at
22 Sheik Omar Abdel Rahman's house on day one?

23 A. Yes, ma'am.

24 Q. That you go to Siddig's house on day two,
25 correct, 41Y?

1 A. Yes, ma'am.

2 Q. And that you return on day three, the consensual
3 monitored CM 1, correct?

4 A. Could be day three, day four, right after --

5 Q. Right after?

6 A. Yes, ma'am.

7 Q. Sir, I ask you -- I would ask everyone to turn to
8 page 7 of CM 1, which is in evidence, your Honor. Do you
9 have that, Mr. Salem?

10 A. Page 7, yes.

11 Q. At page 7 you are talking about getting, renting
12 an apartment at the top, and getting phony identification
13 cards. Do you see that at the top?

14 A. I remember saying that, but I am not going to
15 read because going to take long time.

16 Q. I would like to draw your attention to, say,
17 counting from the bottom, sir, three attributions -- by
18 attributions I mean at the bottom it says Salem, then it
19 says Siddig Ali and then it says you again.

20 A. Yes, ma'am.

21 Q. Do you see that it starts with how it is my
22 problem?

23 A. Yes, ma'am.

24 Q. Your conversation with Siddig Ali, at this point
25 of the conversation you say to him: How, it is my problem,

1 maybe you will tell me, no, I will rent the apartment. I
2 tell you fine, whatever, but I want you to put one, two, how
3 much time we have to do this.

4 Are you with me so far?

5 A. I am following, ma'am.

6 Q. During how long we get done.

7 And then you say: I gave you a month to prepare
8 the thing.

9 Siddig says: OK.

10 You say: Did you prepare anything or not yet?

11 On the next page Siddig says: First, regarding
12 the ingredient itself, of course, it is not ready yet, and I
13 don't want to tell these people what we do in advance, I
14 want to wait to the last moment.

15 Did you follow that passage, sir?

16 A. Yes, ma'am.

17 Q. Sir, if this is day three or day four, what do
18 you mean when you say to him I gave you a month to prepare
19 the thing, is it ready or not yet?

20 A. I believe if I hear it, ma'am, I can understand
21 what's going on.

22 Q. Sir, this is a transcript which is in evidence,
23 correct?

24 A. Correct.

25 Q. We read this transcript out loud, correct?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained. Miss Amsterdam, do you
3 want to let him listen to it or not?

4 MS. AMSTERDAM: No, your Honor, I do not.

5 Q. Were you present, sir, when Mr. McCarthy asked
6 you questions about CM 1?

7 A. Yes, ma'am.

8 Q. Did you state to this jury that you had worked on
9 the -- not the source tapes but the consensually monitored
10 tapes, correct? You had listened to them?

11 A. Yes, ma'am.

12 Q. You had spent many, many months working on them?

13 A. Yes, ma'am.

14 Q. That you had worked with the interpreter on them?

15 MR. McCARTHY: Your Honor, I object under Rule
16 106. I would like --

17 THE COURT: Sustained.

18 MS. AMSTERDAM: I don't know what else he wants
19 read under Rule 106.

20 MR. McCARTHY: I would ask that --

21 THE COURT: Go ahead.

22 Q. My question to you, sir, is, did you indeed give
23 him a month to get the thing ready?

24 MR. McCARTHY: Objection. It is not inconsistent
25 and I ask that if it is going to be read this way that it

1 ought to go back at least to the halfway point on this page.

2 MR. JACOBS: Object to the government's comments.

3 THE COURT: You've got no standing in this. Stay
4 out of it.

5 MR. JACOBS: Excuse me. I am sorry.

6 THE COURT: Take your seat right now. Go back to
7 the halfway point.

8 Q. Page 7, we will read the page, sir. Starting in
9 the middle of the page, you say: We disguise his face and
10 take his picture and put it on an ID. Who will rent the
11 apartment?

12 Siddig says: We did not agree on it.

13 You say: These are the points. I form
14 questions. Who is going to rent the apartment? Where,
15 where we are going to rent the apartment? Ah. How much
16 time frame we have?

17 Siddig says: How?

18 You say: Now. How is, we agree, where. These
19 are the basic points, 1, 2, exactly. Where and who, for
20 example, you tell me you rent the apartment Emad.

21 Siddig says: OK.

22 You say: Maybe I tell you OK, but I need such
23 and such.

24 Siddig says: How? That is your problem.

25 You say: How it is my problem, maybe you will

1 tell me. No, I will rent the apartment, I tell you fine,
2 whatever, but I want to put one, two, how much time we have
3 to do this, during how long we get done? I gave you a month
4 to prepare that.

5 Siddig says: OK.

6 And you follow up by saying: Did you prepare
7 anything or not yet?

8 And he answers you and says: First regarding the
9 ingredient itself, of course, it is not ready yet, and I
10 don't want to tell these people what we do in advance. I
11 want to wait till the last moment.

12 You say to him: Sir, I gave you a month to get
13 the thing ready.

14 What did you mean by that if this is the third
15 day of your meeting?

16 A. I mean, I am giving questions and answers here,
17 one and two. You tell me rent the house, Emad, I say yes, I
18 will rent the house. You tell me how long it will take, I
19 will say I will take a month or I will give you a month.
20 You tell me the ingredients is ready -- I am putting my
21 dialect here or my dialogue, my speech here as a question
22 and answer. I am not telling him I give you a month, but,
23 for example, you tell me, I tell you, you tell me, I tell
24 you.

25 (Continued on next page)

1 Q. It is a hypothetical situation, then, is that
2 what you mean? It is just you are asking a series of
3 questions, thinking about what you'll do in the future,
4 correct?

5 A. That's correct, ma'am.

6 Q. However, Siddig says to you -- when you say to
7 him: I gave you a month to prepare the thing, you follow up
8 by not asking a hypothetical question, you say: Did you
9 prepare anything or not yet.

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. I ask you again, sir: Wasn't there a series of
13 unrecorded conversations before May 7?

14 A. Absolutely not, ma'am, with Mr. Siddig.

15 Q. With Mr. Siddig?

16 A. Absolutely not.

17 Q. Weren't there another series of conversations in
18 which he told you it was important to get to Bosnia, and you
19 offered to resume training so that he could get there?

20 A. Absolutely not, ma'am.

21 Q. Did you ever have a conversation with Siddig Ali
22 in which you spoke to him about your suggesting that the war
23 in Bosnia could be fought here in the United States by
24 striking Serbian targets in the United States?

25 A. I don't recall that I suggested anything like

1 that, to Mr. Siddig Ali, ma'am.

2 Q. Do you recall ever having a conversation with him
3 in which you told him that the Serbians stored weapons in
4 Queens and that there were warehouses there that could be
5 the subject of a strike?

6 A. No, ma'am, I never said such a thing.

7 Q. You said that you weren't sure, but it was
8 possible that the conversation that you had at Sheik Omar
9 Abdel Rahman's house did coincide with the fees of eed, do
10 you recall that?

11 A. Could be.

12 Q. Could be.

13 When the World Trade Center explosion occurred,
14 which was February 23, 1993, you -- February 26, 1993, you
15 went to the hospital that day, did you not?

16 A. Yes, ma'am.

17 Q. And you complained of an inner ear problem,
18 correct?

19 A. Yes, ma'am.

20 Q. And among the ailments that you told the doctors
21 was that you were dizzy, correct?

22 A. Yes, ma'am.

23 Q. You also told them that you had been fasting for
24 religious purposes for several days, correct?

25 A. I may said that.

1 Q. If you had been fasting for religious reasons for
2 several days, would it have been fasting for Ramadan?

3 A. That is correct, ma'am.

4 Q. And if Ramadan was going on February 26 of 1993,
5 the latest it could have ended would have been March 26 of
6 1993, correct?

7 A. Yes, ma'am.

8 Q. And if the feast of eed had occurred on March 26,
9 1993, that would have been a month plus before May 7,
10 correct?

11 A. I'm sorry. I am lost here.

12 Q. The latest Ramadan could have occurred, if you
13 were fasting on February 26, the latest Ramadan could have
14 ended would have been March 26, right? The latest?

15 A. If it's, the beginning of Ramadan started on
16 February 26.

17 Q. Then the latest would have been March 26, right?

18 A. That's correct.

19 Q. And the feast of eed is the last day, correct?

20 A. Yes.

21 Q. All right. So, if indeed, sir, you met Siddig
22 Ali at Sheik Omar Abdel Rahman's apartment during the feast
23 of eed, that would have been at the latest the end of March
24 1993, correct?

25 MR. McCARTHY: Objection.

1 THE COURT: I will allow it. Go ahead.

2 A. I'm not sure what was the occasion. If it's the
3 feast or if it was a regular day of Ramadan, I'm not -- I'm
4 not sure, ma'am.

5 Q. Regardless of whether it was the feast or regular
6 day of Ramadan, if you were fasting on February 26, 1993 for
7 Ramadan, the latest Ramadan could have ended would have been
8 March 26, 1993, correct?

9 A. No, it is a not correct, ma'am, because I did not
10 make any statement that I was fasting on the 26th, ma'am.

11 Q. When you checked yourself into St. Claire's
12 Hospital, did you not tell the doctors, I have been fasting
13 for three days for religious reasons?

14 A. It's not necessarily the 26th. I was fasting
15 probably three days ago for religious reasons.

16 Q. Those religious reasons would have been Ramadan,
17 correct?

18 A. Correct, ma'am.

19 Q. So if you had been fasting three days earlier,
20 February 23rd, then the latest Ramadan could have ended
21 would have been March 23, correct? In any event, Ramadan
22 couldn't have ended any later than the end of March 1993,
23 correct?

24 A. I don't know.

25 Q. So if you met Siddig Ali at Sheik Omar Abdel

1 Rahman's house at the feast of eed it would have been --

2 MR. McCARTHY: Objection.

3 Q. -- the end of March, correct?

4 THE COURT: Sustained.

5 Q. Isn't it true, sir, that there was at least a
6 one-month period of time between the time that you met
7 Siddig Ali at Sheik Omar Abdel Rahman's apartment until the
8 time that you began the consensual monitored tapes in May of
9 1993?

10 A. Absolutely not, ma'am.

11 Q. You stated, sir, that after the World Trade
12 Center explosion you returned to work again with the FBI,
13 correct?

14 A. Yes, ma'am.

15 Q. When you first went back to work with the FBI,
16 you did not originally go back on salary, did you?

17 A. No, ma'am.

18 Q. There were some discussions as to whether or not
19 you would go back on salary?

20 A. That's correct, ma'am.

21 Q. In fact, you wanted to go back on salary and the
22 agents that you were dealing with were telling you that
23 their supervisors were not willing to place you on salary,
24 correct?

25 A. That's correct, ma'am.

1 Q. You had a conversation at some point with both
2 Agents Anticev and Napoli in which you discussed possible
3 reward money for disclosing the location of Mahmud
4 Abouhalima, correct?

5 A. That's correct, ma'am.

6 Q. And Mahmud Abouhalima, as we've established, is
7 one of the persons who were convicted in the World Trade
8 Center bombing, right?

9 A. That's correct, ma'am.

10 Q. And Mahmud Abouhalima was found by American
11 authorities to be held in custody in Egypt, correct?

12 A. Correct, ma'am.

13 Q. It was your position that you had indeed told
14 them where he was and you should get a reward, right?

15 A. That's exactly, yes.

16 Q. In fact, you suggested that you should get a
17 reward of \$200,000, to which Agent Anticev laughed, is that
18 true?

19 A. That's what the FBI announced in that time,
20 ma'am.

21 Q. What did the FBI announce?

22 A. That there is a reward \$200,000 for --

23 Q. For information leading to the arrest of Mahmud
24 Abouhalima?

25 A. That's correct, ma'am.

1 Q. When you told them that Mahmud Abouhalima was
2 found to be in custody in Egypt, or you believed him to be
3 in custody in Egypt, you thought that you would be entitled
4 to that reward, right?

5 A. Yes, ma'am.

6 Q. And they refused to give you that reward, is that
7 not true?

8 A. It's true, ma'am.

9 Q. In fact, they laughed at you when you asked for
10 the reward, right?

11 A. Yes, that's true.

12 Q. And I assume that that made you angry?

13 A. Yes.

14 Q. All right. Indeed, I believe in that same
15 conversation they said that the government's position was
16 that the State Department had already learned of where
17 Mahmud Abouhalima was three days in advance of you telling
18 them, right?

19 A. I don't remember anybody saying that, ma'am.

20 Q. In any event, they refused the reward, right?

21 A. Yes.

22 Q. They refused the reward?

23 A. Right.

24 Q. And it became clear to you in that conversation
25 that the selling of information was not going to get you any

1 major sums of money, would that be a fair statement?

2 A. I wasn't looking to sell information. I mean,
3 they were asking me to go back to the investigation. I had
4 very terrible experiences with them because, after losing my
5 job, they dropped me on the street without helping me
6 finding another job. I have two kids; we have very hard
7 times. That's why I was so angry when I went back. You
8 want me back? You better pay me, and don't drop me after
9 you've got the information, period.

10 Q. All right. In that conversation about Mahmud
11 Abouhalima, the agents were telling you that they couldn't
12 guarantee you being on salary, right, that their bosses were
13 reluctant to place you on salary, correct?

14 A. Yes, ma'am.

15 Q. And one of the agents, Agent Anticev, even
16 suggested to you that perhaps you continue your day job,
17 continue your regular job and simply work at night on this
18 case, correct?

19 A. Yes, ma'am.

20 Q. That did not meet your approval, did it, sir?

21 A. No, it did not.

22 Q. There came a time very shortly after you had this
23 conversation with Agents Anticev and Napoli that it became
24 clear to you that it was going to be a difficult financial
25 arrangement working with the FBI, right?

1 A. I'm sorry. Would you rephrase it?

2 Q. It became clear to you during this conversation
3 that it was going to be a difficult financial arrangement
4 working with the FBI, they didn't want to pay you what you
5 thought you were worth, correct?

6 A. Yeah, I felt in that time that they want to get
7 whatever they want and pay whatever they want, and I don't
8 want to go through the same hard time I went until I start
9 to reestablish myself.

10 Q. You believed that you had given them extremely
11 important information regarding Mahmud Abouhalima and had
12 been denied appropriate compensation, appropriate pay,
13 correct?

14 A. Yes, ma'am.

15 Q. You thought that that information that you
16 provided them was indeed very, very important, correct?

17 A. Yes.

18 Q. You even said to them did you not: Look, if I
19 hadn't told you where this guy was, you would have looked
20 for him for the rest of your life and see how much that
21 would have cost you, right?

22 A. I may said something like that, yes.

23 Q. So it did become increasingly clear that they
24 were not willing to pay just for information, right?

25 MR. McCARTHY: Objection.

1 Q. Did you come to the opinion, sir, that what you
2 needed to do was to actually create a crime?

3 A. Me?

4 Q. Yes.

5 A. I didn't create the World Trade Center bombing,
6 ma'am.

7 Q. I am not talking about the World Trade Center
8 bombing. I am talking about the plot, the mastermind plot
9 to blow up bridges and tunnels and the UN.

10 Isn't it a fact, sir, that it became clear to you
11 that what you needed to do was to actually create a crime
12 that you could step into announce that you had solved and
13 ask for your million-dollar reward?

14 A. Ma'am, when I stayed out of the World Trade
15 Center investigation they went and they bombed the World
16 Trade Center. I am not coming to create a plot. I am going
17 to help them because I know that that's not the last bomb,
18 and it's not going to be the last bomb. That's what it is.
19 I mean --

20 Q. So --

21 A. -- I didn't --

22 Q. I'm sorry. Go ahead.

23 A. I did not intend it to get somebody to tell me:
24 I have the cell. It's ten, eleven people well-trained and
25 they are ready for suicidal missions. I did not push them

1 to tell me that.

2 Q. So we are talking about Siddig here, right?

3 A. Correct, ma'am.

4 Q. So you say that you uncovered Siddig's plot,
5 which was underway, right?

6 A. Correct, ma'am.

7 Q. And that he had a cell. What does a cell mean?

8 A. A group of people.

9 Q. A group of people. A trained group of terrorist
10 people, right?

11 A. I would say yes.

12 Q. That he said were prepared to do suicide
13 missions, right?

14 A. As a mujahideen, yes.

15 Q. But prepared to die for the cause, right?

16 A. Yes, ma'am.

17 Q. It's your testimony here today that you didn't
18 create that scenario, you simply found Siddig Ali and his
19 terrorist cell actively at work, right?

20 A. How can I create it, ma'am, and take his mouth --
21 I'm sorry, no, ma'am.

22 Q. The answer is --

23 A. The answer is, no, ma'am.

24 Q. You didn't create it?

25 A. No, I did not, ma'am.

1 Q. Did the FBI ever give you any instructions about
2 what you could or could not do in the investigation of this
3 case?

4 A. Yes, ma'am.

5 Q. Did they talk to you about the legal concept of
6 entrapment?

7 A. I remember they said something about that which I
8 didn't understand at that time, ma'am.

9 Q. That you didn't understand. Who talked to you
10 about it?

11 A. I believe Agent John Anticev.

12 Q. But it wasn't clear to you when he explained it?

13 A. They told me if you take a tape and you go to
14 Sayyid Nosair in jail and you record him, and you bring an
15 admission that he killed Kahane, that will be entrapment.
16 And then later on they told me, take a wire and go tape him
17 in jail. That was a lot of confusion to me which I didn't
18 understand.

19 Q. Their instructions to you were confusing, they
20 were less than clear?

21 MR. McCARTHY: Objection.

22 THE COURT: Were you confused by their
23 instructions?

24 THE WITNESS: Yes, sir.

25 THE COURT: On that point?

1 THE WITNESS: Yes, sir.

2 Q. Did they explain to you that it was against the
3 rules to actually create the crime?

4 A. Yes, ma'am.

5 Q. Did they explain to you that it was against the
6 rules to supply the idea of a crime to a person and
7 encourage a person kind of against his will to do it?

8 Was that explained to you?

9 A. Yes, ma'am.

10 Q. So you understood the rules, right?

11 A. Yes, ma'am.

12 Q. Would I be fair in saying -- I want to talk a
13 little bit about Siddig Ali for a moment, sir. Would I be
14 fair in saying that Siddig Ali when you met him in the
15 spring of 1993 was financially very destitute, poor?

16 A. He wasn't paying -- yeah, he wasn't in a good
17 financial situation.

18 Q. In fact, he told you he hadn't had a job in two
19 years?

20 A. He suffered from not being having a job, on and
21 off.

22 Q. He had been driving a cab even though he claimed
23 he had been an NYU graduate, right?

24 A. Yes, ma'am.

25 Q. He said he hadn't been able to get employment, he

1 had -- withdrawn.

2 When you met him, isn't it a fact that he was
3 unable to pay his rent?

4 A. Yes, ma'am.

5 Q. Isn't it a fact that when you met him he had had
6 to sell his car?

7 MR. McCARTHY: Objection.

8 THE COURT: I will allow it, if you know.

9 A. He told me that he already sold his car, ma'am.

10 Q. He talked about having to sell his computer and
11 his furniture, right?

12 A. That when we came to the end of making the bombs.

13 Q. And there were times when he told you that he
14 didn't have enough money for food, is that true?

15 A. Sometimes, yes, he mentioned that.

16 Q. And you would go around with him over these many
17 weeks, and it was always you that paid for his breakfast or
18 his lunch or his dinner, correct?

19 A. It's not always.

20 Q. Can you tell us one instance in which Siddig Ali
21 actually paid for your meal?

22 A. Came a time when we went on Atlantic Avenue, we
23 were looking for barrels, and we went to a Yemenian
24 restaurant, a restaurant from Yemen, and he invited me for
25 lunch, ma'am.

1 Q. Who paid?

2 A. He invited, he paid.

3 Q. And who paid?

4 A. Mr. Siddig Ibrahim Ali.

5 Q. Siddig paid?

6 A. Yes.

7 Q. He told you at one point that they hadn't had
8 food for two weeks, is that correct?

9 A. That's correct, ma'am.

10 Q. In addition to being financially poor, did it
11 appear to you that he was -- let me withdraw that and start
12 over again.

13 Did it appear to you that Mr. Siddig Ali didn't
14 have many friends?

15 A. As a matter of fact, he's always associated with
16 a lot of people. They all know him. He always in the
17 mosque, take the stand and give preaching, so he have a lot
18 of friends, ma'am.

19 Q. Well, he had a lot of associates. He was at the
20 mosque very frequently, correct?

21 A. Yes?

22 MR. McCARTHY: Objection to the form of the
23 question.

24 THE COURT: Sustained.

25 Q. Would I be fair in saying that the Muslim

1 community, the immigrant community is a pretty close,
2 tight-knit group, right?

3 A. Yes, ma'am.

4 Q. It tends to stay together?

5 A. I'm sorry?

6 Q. It stays together?

7 A. Yes, ma'am.

8 Q. And the mosque is an extremely important part,
9 not only of the religious aspect of the community, but the
10 social part of the community, correct, for many people?

11 A. The mosque -- the people who goes to the mosque
12 for prayer they associate with each other there. The people
13 who don't go to the mosque for prayer, they don't associate
14 with these people, ma'am.

15 Q. Would you say that Siddig Ali was a respected
16 member of the Muslim community?

17 A. Yes, ma'am.

18 Q. Do you recall having a conversation with Siddig
19 Ali in which he told you that members of the mosque had
20 accused him of trying to further himself, had accused him of
21 wanting a title?

22 A. Yes, ma'am.

23 Q. Do you also recall in that same conversation him
24 telling you, "They are all against me, the ones of the board
25 of directors, and Haggag is with them also?"

1 A. Yes, ma'am.

2 Q. So there were a quite a number of people at the
3 mosque that didn't like Siddig, would that be a fair
4 statement?

5 MR. McCARTHY: Objection.

6 THE COURT: If you know.

7 Q. If you know.

8 A. Yes, the board of directors it was against
9 Mr. Siddig, yes.

10 Q. Indeed, he told you about an instance in which
11 somebody had called him a hypocrite and a liar, and that
12 Sheik Abdel Khalid had actually consoled the person accusing
13 Siddig, right, had taken the side of the person accusing
14 Siddig?

15 A. "Console"? I'm sorry.

16 Q. "Consoled" means to comfort.

17 A. Yes, ma'am.

18 Q. You do recall that?

19 A. Yes, ma'am.

20 Q. Do you recall Siddig having told you that he had
21 given a lecture at the Warren Street mosque where he was
22 booed and kicked out and told not to come back?

23 A. He did not get booed.

24 Q. But he was told not to come back?

25 A. But -- excuse me. He did not get booed because

1 nobody can boo in the mosque. But they told him, don't talk
2 about jihad in the mosque and we don't need troubles with
3 the --

4 Q. And we don't want you to come back, right?

5 A. Don't talk about jihad in the mosque, and they
6 don't want him to do so, ma'am.

7 Q. Isn't it a fact that what he told you was that
8 the people on the Warren Street mosque told me don't come
9 here anymore?

10 A. He may said that.

11 Q. Indeed, Siddig told you about the fact that he
12 had had a falling-out with the people who had done the
13 training in Pennsylvania, right?

14 MR. McCARTHY: Objection to "people."

15 Q. That he had had a falling-out with some of the
16 people running the camp in Pennsylvania, correct?

17 MR. McCARTHY: Objection to form.

18 A. Correct.

19 THE COURT: I will allow it. Go ahead.

20 Q. And that he had been accused of being a bully?

21 Do you know what a bully is?

22 A. A bully like a bum?

23 Q. No. A bully like a bully who beats on somebody
24 smaller than them, taking advantage of people?

25 A. I don't recall that, ma'am.

1 Q. And that there had been a fight over who would
2 actually lead up the training, right?

3 A. No. It was clear that there is the guy who had
4 two tours in Vietnam doing the military training. The owner
5 of the camp doing the hand combat training. Dr. Rashid is
6 financing that training and asked Mr. Siddig to select the
7 people or bring the people who will participate in the
8 training.

9 Q. He told you that people left this training
10 because he had been a bully, right, people had dropped out
11 of the training?

12 A. Yeah, people had dropped out.

13 Q. Dropped out?

14 A. The people who is not able physically dropped
15 out, some of them, yes.

16 Q. And that one of the trainers Abu Ubaidah had
17 gotten into a fight over who should be in charge, either
18 Siddig or Abu Ubeidah, right?

19 A. No, ma'am, there is nothing like that.

20 Q. Did he tell that you Dr. Rashid had taken Abu
21 Ubeidah's side?

22 A. I believe it was a dispute about money was taken
23 from Mr. Amir Abdelgani, and they argued to give him his
24 money back and they did not give him -- they told him, we'll
25 give you half of your money and then they did not give him.

1 And this is the incident you are talking that Mr. Rashid
2 talked about buying --

3 Q. My point is that the worker who dropped out --

4 MR. McCARTHY: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. I'm sorry.

7 There were people who dropped out of the
8 Pennsylvania training, correct?

9 A. Yes, ma'am.

10 Q. And there were people at the Pennsylvania
11 training who had disagreements with Siddig Ali, right, over
12 matters of money, over matters of who would be in charge,
13 but there were some disagreements, correct?

14 MR. McCARTHY: Objection to form.

15 THE COURT: Sustained.

16 Q. There were disagreements over money?

17 A. Yes, ma'am.

18 Q. And there were disagreements over who would be in
19 charge.

20 A. No, ma'am.

21 Q. All right. Just on the money issue, there had
22 been disagreements over money?

23 A. Yes, ma'am.

24 Q. And there were people who had parted friendship
25 with Siddig over that issue, right?

1 A. Yes, ma'am.

2 Q. In addition to that, would I be fair in saying
3 that Siddig himself was rather bossy?

4 MR. McCARTHY: Objection, relevance.

5 THE COURT: May I see counsel at the side.

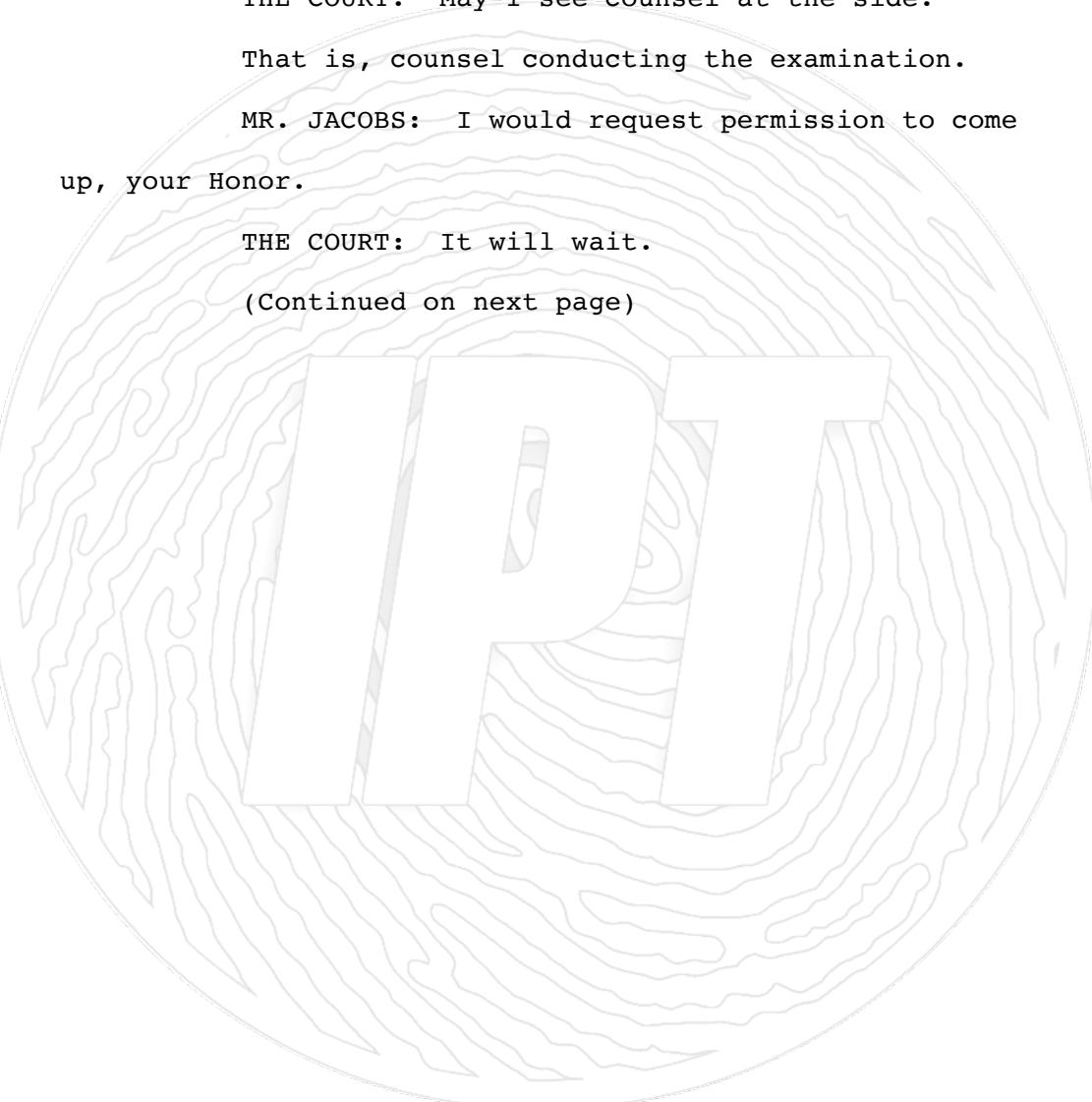
6 That is, counsel conducting the examination.

7 MR. JACOBS: I would request permission to come
8 up, your Honor.

9 THE COURT: It will wait.

10 (Continued on next page)

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1 (At the side bar)

2 MS. AMSTERDAM: As an aside your Honor, the
3 reason that some of the folks in the back wanted to come up
4 was because that part of the cross-examination is really
5 being done on behalf of all of those defendants, just so you
6 know for future reference.

7 THE COURT: Thank you very much. Otherwise, I
8 would have thought it was to --

9 MS. AMSTERDAM: They are very protective also.

10 THE COURT: -- assault me.

11 Protective in some ways, not in others.

12 Where is this going?

13 MS. AMSTERDAM: Well, my argument is that, and
14 I've asked in the questions to begin with, is that he didn't
15 uncover a crime. He didn't uncover a mastermind, terrorist,
16 leader. What he found was a person who was disenfranchised
17 from his entire community, and he used this tool as the
18 means of creating a crime.

19 So that if he wants to argue that this is the
20 leader of this cell, I think I have a right to point out
21 that, one, nobody likes him, two, nobody follows him, and,
22 three, he doesn't have the ability or the wherewithall to do
23 it.

24 THE COURT: OK.

25 Mr. McCarthy?

1 MR. McCARTHY: Well, I don't think this is
2 impeachment of anything that he did on direct examination.
3 That is for sure. If that is true or it is not true, it is
4 going to be evident from the conversations where we have
5 these people actually speaking about his characterizations
6 of it, which is what we're getting of it now. His
7 reputation for whether he was bossy or whether he was a good
8 person or whether he was disenfranchised --

9 THE COURT: I am going to allow it.

10 MS. AMSTERDAM: I will tighten it up a little
11 bit.

12 THE COURT: If you would, thank you very much.

13 MS. AMSTERDAM: I got a little flogged down for a
14 moment there, but I'll tighten it up.

15 THE COURT: Good.

16 (Continued on next page)

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1 (In open court)

2 Q. Would I be correct in saying that Siddig Ali in
3 many ways tried to act the big shot?

4 A. He told me that they elected him to be emir for
5 this group, ma'am.

6 Q. He told you that he had people who had elected
7 him to be the emir?

8 A. Yes.

9 Q. And by the "emir" you mean the prince, right?

10 A. That's correct, ma'am.

11 Q. He said that he was the leader of the group,
12 correct?

13 A. Yes, ma'am.

14 Q. That he had these people that were there at his
15 call, at his direction, correct?

16 A. Correct, ma'am.

17 Q. It appeared to you that he liked very much to be
18 able to give orders, correct?

19 A. I don't know if he liked it or not. He was doing
20 it.

21 Q. He indeed told you that he had been accused by
22 groups of people of wanting to have a title, right?

23 A. That's correct, ma'am.

24 Q. Now, in addition, there were people within the
25 community, the Muslim community who suspected that Mr. Ali

1 was working with the FBI, right?

2 A. That's correct, ma'am.

3 Q. In fact, there were a lot of rumors about the
4 possibility that Siddig Ali was an FBI informant, is that
5 not true?

6 A. That's true, ma'am.

7 Q. There were many, many people who refused to talk
8 to him or befriend him, right?

9 MR. McCARTHY: Objection.

10 Q. There were many people who refused to speak with
11 him because of those rumors?

12 A. I wouldn't say many. I will say some people
13 who's talking about something they don't want to be
14 delivered to the FBI, they don't want to talk to Siddig Ali
15 about, ma'am.

16 Q. He was very concerned about those rumors, was he
17 not?

18 A. Yes, ma'am.

19 Q. He was particularly angry at Haggag?

20 A. Yes, ma'am.

21 Q. He was particularly angry at someone else by the
22 name of Abdo Raof, who he wanted to beat up?

23 A. Yes, ma'am.

24 Q. And he told you, did he not, that he was very
25 concerned that people did not want to be around him, do you

1 recall that?

2 A. I recall he said that he's afraid that these
3 people will come to kill him.

4 Q. What?

5 A. He told me that he's afraid that this is a
6 serious matter --

7 Q. Being accused of being an FBI informant, is that
8 what you're referring to?

9 A. Yes. And that can cause some people to come to
10 kill him. He did say that.

11 Q. Did he tell you, sir, that he had been so upset
12 by the rumors that he had actually gone home and destroyed
13 his apartment and told his wife, don't talk to me for days?

14 Did he tell you that?

15 A. That's correct, ma'am.

16 Q. He told you that he was very upset about those
17 rumors?

18 A. Yes, ma'am.

19 Q. Mentally depressed about those rumors?

20 A. Yes. He was upset, ma'am.

21 Q. And during that period of time, sir, would I be
22 fair in saying that he knew a lot of people in the mosque,
23 had a lot of acquaintances with people in the mosque, right?

24 A. Yes, ma'am.

25 Q. But was there ever a period of time that he said

1 to you, "Emad, I can't meet you. I have plans with other
2 people for dinner tonight"?

3 A. No, I didn't tell me that, ma'am.

4 Q. Was there ever a time during this two-month
5 period of time that you drove around recording him on
6 conversations that he said, "Tonight's not a good night.
7 we're going over to some friend's houses for dinner"?

8 A. No, he didn't.

9 Q. Never happened, did it?

10 A. I don't remember a statement like that, ma'am.

11 Q. Indeed, would it be a fair statement to say that
12 during this period of time you were basically his only
13 friend?

14 MR. McCARTHY: Objection.

15 THE COURT: I will allow it, if you know.

16 A. No, ma'am. It was so many other people, he used
17 to talk to them and meet with them and come back, relate to
18 me, for example, when they went and made a surveillance for
19 the tunnel, then came next day, when I was with Mr. Siddig
20 going through the tunnel, he said, "Yesterday we did it, we
21 tried it, and we made the surveillance video." So he had
22 people -- I have no knowledge of them -- when he meet with
23 them he come back to me and tell me what happened with them.

24 Q. Those would be the people he referred to as his
25 men or his troops?

1 A. Could be.

2 Q. I'm asking you whether or not you had any
3 knowledge as to whether or not he had a friend other than
4 you?

5 A. Not to my knowledge, ma'am.

6 Q. I don't remember which attorney it was that asked
7 you the question, maybe Mr. Wasserman, but I believe you
8 stated that you studied people in an attempt to gain their
9 confidence, correct?

10 A. Yes.

11 Q. Would it be a fair statement to say that you
12 studied Siddig Ali also to gain his confidence?

13 A. Siddig Ali wasn't really needs me to study him
14 because he already start talking. He was already start to
15 telling me about his people, he already -- I mean, he opened
16 me to him. He wasn't on my mind at all when I went to Sheik
17 Omar Abdel Rahman's apartment. Siddig Ali was not on my
18 mind as a subject of the investigation until he opened the
19 subject.

20 Q. Well, let me rephrase it this way.

21 A. Yes, ma'am.

22 Q. As you began speaking with Siddig Ali, did you
23 form the opinion that Siddig Ali was exactly the person you
24 needed in order to create this crime?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q. Would I be fair in saying that not only did you
3 become Siddig's friend, but you became his defender?

4 A. I get to pretend that I am defending him, yes.

5 Q. That's correct. You told them him that you had
6 gone to Sheik Omar Abdel Rahman's apartment and spoken on
7 his behalf and defended him in the dispute with Haggag,
8 right?

9 A. With Ajaj?

10 Q. Haggag.

11 A. With Haggag, yes, ma'am.

12 Q. I'm sorry. Haggag.

13 A. Yes, ma'am.

14 Q. In fact, you told Siddig that you had said to
15 Sheik Rahman that I would defend this man and guarantee him
16 with my life, right?

17 A. Yes, ma'am.

18 Q. You realized as you spent time with him that
19 Siddig was the type of person who liked very much to be
20 flattered and appreciated by you, would that be a fair
21 statement?

22 A. Yeah, he liked his position as emir, and he
23 exercised it.

24 Q. You called him the emir all the time, did you
25 not?

1 A. Yes.

2 Q. You called him your prince?

3 A. I told him, you are the emir.

4 Q. You told him that you were there to serve him?

5 A. I'd told him I will follow his instructions.

6 Q. You told him that he was a man of principle who

7 could think with his brain, right?

8 A. Say it again, please?

9 Q. That he was a man of principle who could think
10 with his brain, right?

11 THE COURT: Ms. Amsterdam, we are going to need
12 to take a break right now. Ladies and gentlemen, please
13 leave your notes and other materials behind. Please don't
14 discuss the case. We will resume in a few minutes.

15 (The jury was excused)

16 (Continued on next page)

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1 THE COURT: You can step down.

2 (Witness excused)

3 MS. AMSTERDAM: Your Honor, do you need to speak
4 to me, or can I step out for a moment?

5 THE COURT: You can step out.

6 MR. McCARTHY: Judge, is this the break?

7 THE COURT: I think this is the break by default.

8 MS. STEWART: Judge, maybe you haven't learned
9 that it's daylight savings time for the Islamic --

10 THE COURT: I heard. Thank you.

11 (Recess)

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1 (Witness resumed)

2 (Jury present)

3 THE COURT: You may continue, Miss Amsterdam.

4 MS. AMSTERDAM: Thank you.

5 BY MS. AMSTERDAM:

6 Q. Mr. Salem, when we broke at the break, we were
7 talking about whether or not Siddig responded to flattery,
8 do you recall?

9 A. I recall.

10 Q. That is what we were speaking about.

11 A. I recall, yes.

12 Q. And you indicated that he seemed to appreciate
13 it, correct, that he liked it?

14 A. He exercised it.

15 Q. He what?

16 A. He was exercising of giving an instructions to
17 his group.

18 Q. No, no, no. Do you know what flattery is?
19 Flattery is when you compliment someone.

20 A. Yes.

21 Q. When you say nice things about them.

22 A. Yes.

23 Q. And I asked you whether or not during the course
24 of the time that you spent with Siddig, that you very often
25 complimented him, correct?

1 A. Yes.

2 Q. And that he seemed to respond in a positive way
3 to that.

4 A. He was trying to play humble in that respect.

5 Q. OK, and indeed there were times that you told
6 him, I believe there was a time, and correct me if I am
7 wrong, that you told him that God had given you all the
8 money but he had given Siddig all the brains. Do you recall
9 that?

10 A. No, that's not what I said, ma'am.

11 Q. You didn't say: It is so, or God would not give
12 everything to somebody and leave the other person with
13 nothing, he says Siddig is smart, he takes money from him,
14 Emad is stupid, give him some money. Do you recall that?

15 A. Yes, I recall that.

16 Q. And you told him, did you not, that he would be a
17 most respected member of the Sudanese government because he
18 was educated and smart. Do you recall saying that to him?

19 A. I may said it.

20 Q. And do you recall telling him that you personally
21 felt that you were benefiting from just being with him and
22 from his knowledge of Islam?

23 A. That is correct, I may said that.

24 Q. And that you also told him that you had gone to
25 Sheik Rahman and said that Siddig was gifted in his language

1 ability, that he did jihad with his tongue. Do you recall
2 that?

3 A. Yes, I did said that, yes.

4 Q. And he responded in a positive way, did he not?
5 He liked to hear you compliment him; would that be a fair
6 statement?

7 A. I don't want to make a statement about what he
8 felt. I said it, and that's what I said, ma'am.

9 Q. There were also times, sir, that you commented
10 about his physical appearance, you told him that he was
11 physically excellent. Do you recall that?

12 A. I may said it but I don't recall it.

13 Q. And you once asked him what his date of birth
14 was, and when he told you how old he was, you told him he
15 looked much younger than his years. Do you recall that?

16 A. I may said it, yes.

17 Q. And there were times that you said to him that
18 you admired his very strong muscles. Do you recall that?
19 Oh, my God, you have strong muscles?

20 A. I don't recall, but I may said it.

21 Q. Wasn't there a time that you said to him, you are
22 so handsome today, you are withering me next to you, Sheik?

23 A. Withering?

24 Q. Withering, meaning you feel like you could faint
25 by standing next to him, he was so handsome.

1 A. I don't think I used these terms, ma'am.

2 Q. Did you say, you are so handsome today, you are
3 withering me next to you today, Sheik? That's at CM 24,
4 page 5.

5 MS. AMSTERDAM: Will the government stipulate
6 that I am reading the statement accurately?

7 A. I disagree with the statement because I don't use
8 term fainting in front of another man. That's not my habit.

9 Q. That's what I am asking you, sir.

10 A. No, ma'am, I did not say it.

11 Q. Were you concerned that he might respond
12 negatively to you commenting about his physical appearance,
13 how handsome he was, his strong muscles?

14 A. Ma'am, I did not make comments in that effect.

15 Q. Didn't you give him a ring once to cement your
16 friendship?

17 A. He bought it from from me, ma'am.

18 Q. Didn't you give him a ring once to cement your
19 friendship?

20 A. He bought it from me, ma'am.

21 Q. Didn't he tell you when this was over that you
22 and he would go to the Sudan, that he would introduce you to
23 his mother and the two of you would go off together to the
24 Philippines?

25 A. Yes, ma'am.

1 Q. Didn't he tell you that it was important that the
2 two of you remain together?

3 A. Yes, ma'am.

4 Q. Didn't you try to make him jealous once, telling
5 him that Haggag had approached you about starting another
6 operation but that you had told Haggag that you would work
7 with no one but Siddig?

8 A. Make him jealous of what? I am sorry.

9 Q. Didn't you try to make Siddig jealous?

10 A. No, ma'am, I did not try to make him jealous.

11 Q. Do you recall telling him that Haggag had
12 approached you about working on another operation but you
13 had told Haggag that you would only work with Siddig?

14 A. I told him that Haggag told me about another
15 operation, yes, and when I talked about Siddig he told me
16 no, we don't want Siddig with us. That's what I said,
17 ma'am.

18 Q. When you first met Siddig at the Nosair trial,
19 can you tell us again what the circumstances were under
20 which you first spoke with him?

21 A. He approached us, we were standing in front of
22 the courtroom, and he approached me and he said see this son
23 of a gun or son of whatever, he is a cop, and he grabbed the
24 phone from my hand, and he told me fag.

25 Q. Who called who that?

1 A. The undercover cop called Mr. Siddig Ibrahim Ali.
2 And he took the phone from me. Something in that effect.
3 That was -- I told him no, he shouldn't call you that, fag,
4 and I were -- which one were that, and he walked with me to
5 the end of the hallway, he pointed him to me and I talked to
6 the cop, and I pushed him to apologize to him, which he did,
7 ma'am.

8 Q. You came to his defense, correct?

9 A. Yes, ma'am.

10 Q. In the purpose of being with Siddig, did you come
11 to the conclusion that you could -- do you know what the
12 word exploit means, to use, that you could exploit his
13 feelings towards you for your purposes?

14 A. I can use his feelings --

15 Q. Toward you for your own purposes.

16 A. I am sorry. Can you say the question again,
17 please.

18 Q. Did you at any time realize that Siddig had
19 strong feelings toward you as a friend?

20 A. What -- as a friend?

21 Q. Yes.

22 A. Yes.

23 Q. And did you come to realize that you could use
24 those feelings to get him to basically say or do anything
25 that you wanted him to say or do?

1 MR. McCARTHY: Objection.

2 THE COURT: Did you ever come to believe that he
3 could do that?

4 MS. AMSTERDAM: Yes.

5 A. I never believed that I can lead Siddig to do
6 something that I want him to do. All what I was doing, I
7 was letting Siddig to tell me what he did and what he is
8 planning to do. That's it.

9 Q. When you said to him, you're so physically
10 excellent, you have such strong muscles, what was your
11 purpose in complimenting him that way?

12 A. I believe, as far as I recall, that that came in
13 the time he said that so many people being dropped from the
14 Pennsylvania camp training, and then I told him yeah, you
15 have a strong body, you have a good muscles, you can take
16 that hard work, something in that effect. That's what I
17 recall, ma'am. But I am not going to come out of the blue
18 sky and flirt with Mr. Siddig's muscles, ma'am.

19 Q. Do you remember a time that you took Siddig Ali
20 to a job interview?

21 A. He asked me to give him a lift.

22 Q. You drove him to a job interview, right?

23 A. Yes.

24 Q. And do you recall that he came into your car and
25 you asked him, I was going to ask you where you got this

1 jacket from.

2 THE COURT: Would you indicate --

3 MS. AMSTERDAM: I am sorry, CM 8, page 24. I
4 apologize.

5 Q. That Siddig came into your car and you said: I
6 was going to ask you where you got this jacket from, this
7 blazer from where?

8 And Siddig said: Is that possible?

9 And you said: Oh, yes, this is so chic.

10 And later on you said: Yes, on page 25, this
11 blazer is chic, most people would wear this collar, the
12 pants and the jacket navy blue.

13 Siddig: So I've changed the color?

14 And you went on to say: Yes, you did like what,
15 the gray and the jacket is very beautiful and the pants are
16 black. So you've made a beautiful contrast. You have seen
17 how I dress with my beautiful suits.

18 And you go on to say: You'll go in style to that
19 test. You'll be hired on the spot, my dear brother.

20 Do you recall that conversation?

21 A. Yes, ma'am.

22 Q. Do you recall a conversation in which Siddig was
23 talking about getting money from a person in the United Arab
24 Emirates?

25 A. Yes, ma'am.

1 Q. This is at CM 27, page 18, and Siddig described
2 that person as a very dear friend. Do you recall that?

3 A. Yes, ma'am.

4 Q. And he went on immediately to say: But I don't,
5 I don't prefer him to you. Do you recall that?

6 A. I don't prefer him?

7 Q. I don't prefer, prefer, I don't like him better
8 than I like you.

9 A. I am not sure if he said that or not.

10 MS. AMSTERDAM: I would ask the government to
11 stipulate that I am reading the transcript accurately.

12 MR. McCARTHY: Yes, your Honor.

13 Q. Additionally, do you recall a time on June 16, CM
14 43, page 5, when Siddig enters your car, and the recorder
15 goes on and off, and your first words to him are, you are a
16 hot young youth, man. Do you recall saying that to him?

17 A. I may said it.

18 Q. So when you said that you would not just bring up
19 his muscles out of the clear blue, that wasn't correct, was
20 it? I mean, there were times when he would enter your car
21 and the first thing you would say to him is, you are a hot
22 young youth.

23 A. No, that's not true, ma'am, because when he
24 entered my car, you don't know what we were talking about
25 out of the car, and the car's recording will pick up the

1 first words inside the car, the minute he gets into the car,
2 ma'am.

3 Q. So there could have been other conversations that
4 weren't recorded?

5 A. That's correct, ma'am.

6 Q. And you chose to turn your recorder on at the
7 point that you said you are a hot young youth?

8 A. No, ma'am, I did not choose to turn on my
9 recording in this time. Once we get into the car, I got to
10 turn the car's recording device on, ma'am.

11 Q. Did you come to the belief at any point that you
12 were dealing with Siddig that he desperately wanted your
13 friendship?

14 A. I felt that he liked my friendship, yes.

15 Q. Did you feel that he was willing to say and do
16 anything to keep that friendship?

17 A. Ma'am, he was the boss, he won't do something I
18 tell him to do.

19 Q. OK. It's your testimony he was the boss?

20 A. That's his words on the tape, ma'am.

21 Q. Fine. Let's start with the obtaining of the safe
22 house.

23 A. Yes, ma'am.

24 Q. Whose idea was it to get the safe house?

25 A. I believe I enforced this idea.

1 Q. You enforced this idea, correct?

2 A. Yes, ma'am.

3 Q. And in fact Siddig was resistant to the idea, was
4 he not?

5 A. No, he did not.

6 Q. Originally resistant to the idea.

7 A. I think once I brought it, he wasn't resistant to
8 it because I explained that we don't want to keep explosives
9 in our houses because there is dogs will sniff it later on.
10 So I believe he accepted the idea.

11 Q. In CM 1, which is on May 7 --

12 A. Yes, ma'am.

13 Q. Didn't you in fact offer him money to get the
14 safe house -- to rent an apartment?

15 A. I told him I will pay my share, but I did not
16 give him a penny, ma'am, in that time.

17 In this time.

18 Q. Didn't you indeed say at page 25 of CM 1: The
19 building itself, that means we need a house, who will get
20 it?

21 And Siddig said: All of us, each one of us will
22 contribute.

23 And you asked him: How much do you want from me?

24 And he said: I don't need it now. Wait till we
25 see who will get the house.

1 He refused your money at that point, correct?

2 A. He did not refuse, ma'am. He said --

3 Q. I don't need it now, right?

4 MR. McCARTHY: Objection to cutting off the
5 witness.

6 THE COURT: Sustained.

7 MS. AMSTERDAM: I am sorry. I apologize.

8 Q. Go ahead.

9 A. What?

10 Q. He refused the money at that point, correct?

11 A. I did not offer him money. When he said that we
12 all going to get the safe house, I told him OK, how much do
13 you want from me, he said I don't want it now. That's it.

14 Q. And didn't there come a time later in the
15 conversation on page 39 where Siddig said: All right, I
16 will leave the house to you but not the money.

17 And you went on to say: Both, leave both, let me
18 and God take care of the house business.

19 You have CM 1 there if you would like to refer to
20 it. It's on page 39.

21 A. No.

22 Q. And Siddig said: God willing.

23 And you said: Once I prepare the house I will
24 tell you, Siddig, I'm ready.

25 And Siddig said: Yeah, yeah.

1 And you said: After that.

2 And Siddig said: Wait a little.

3 And you said: I shall not meet with you here any
4 more.

5 He said: Wait a little.

6 And you went: Hm.

7 And he said: You wait a little.

8 And you said: Not now?

9 And he said: No, not now. Wait a little.

10 Do you recall that?

11 A. Ma'am, the way you reading this transcript is
12 completely not what was going on. There is a language
13 barrier. Wait a little, when we say it in Arabic, it does
14 not give the same way you trying to explain it here.

15 (Continued on next page)

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1 Q. Sir.

2 A. Yes, ma'am.

3 Q. When this conversation was read out loud in
4 court, did you think that you should let the prosecutor know
5 that there were problems with the translations?

6 MR. McCARTHY: Objection. Objection.

7 THE COURT: May I see counsel at the side
8 briefly.

9 (At the side bar)

10 THE COURT: Ms. Amsterdam --

11 MS. AMSTERDAM: Could I say one thing first and
12 then you could yell at me?

13 THE COURT: Go ahead.

14 MS. AMSTERDAM: I think that for this witness who
15 sat in this courtroom on the stand and listened to the
16 prosecutors read CM 1 out loud, that he has some audacity to
17 try to hide behind the translation at this point.

18 THE COURT: Ms. Amsterdam, I think when you take
19 a conversation and put melodrama on it and a spin on it, he
20 is perfectly well entitled to tell you that the spin that
21 you are putting on as opposed to the literal words isn't the
22 spin intended.

23 MS. AMSTERDAM: I think he is trying to say that
24 the literal words aren't the literal words.

25 THE COURT: We are both listening to him.

1 MS. AMSTERDAM: I will try to remove the spin. I
2 took it to mean that he meant that the literal words weren't
3 the literal words.

4 THE COURT: I don't think that is what he meant
5 at all.

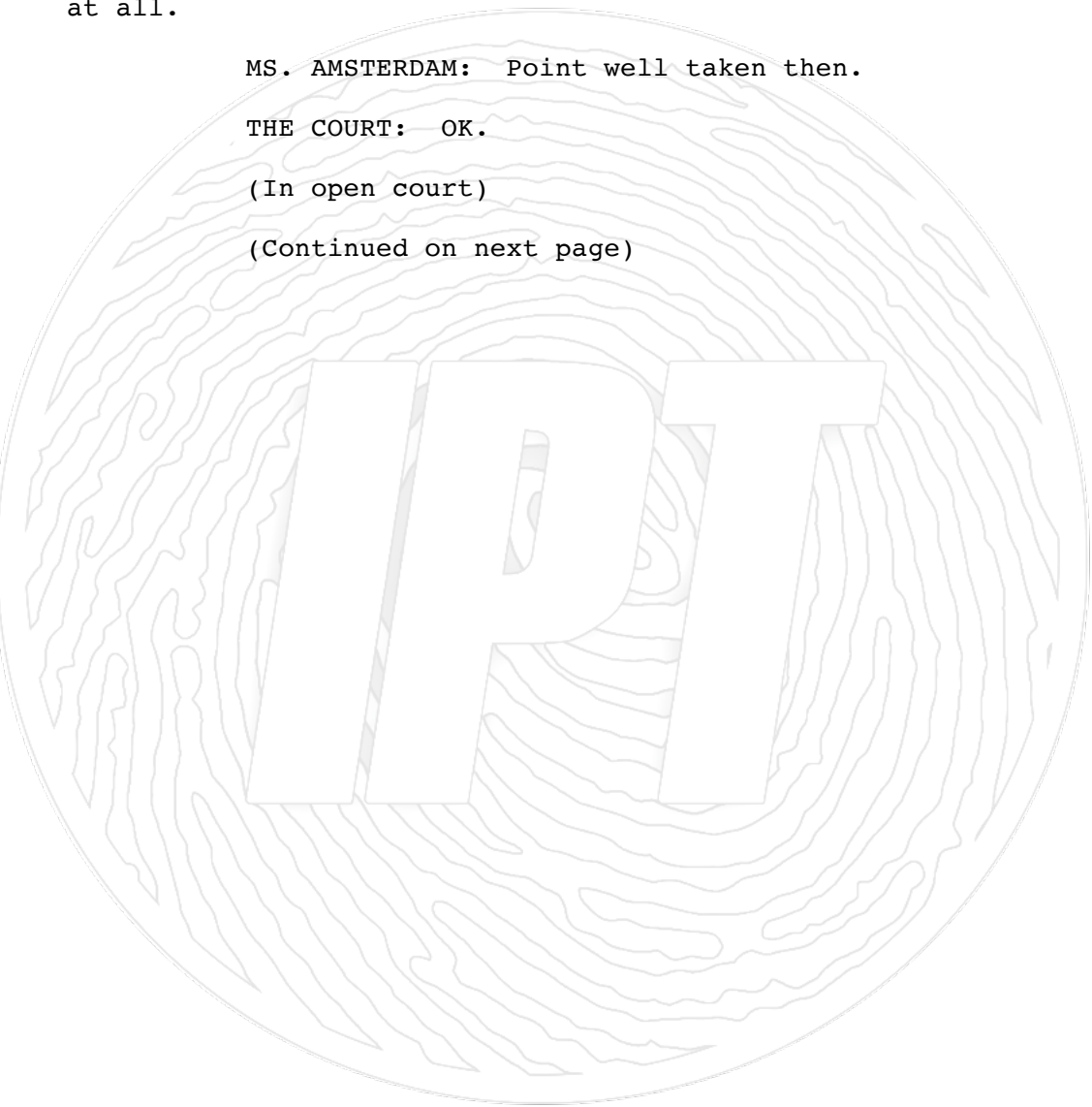
6 MS. AMSTERDAM: Point well taken then.

7 THE COURT: OK.

8 (In open court)

9 (Continued on next page)

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1 BY MS. AMSTERDAM:

2 Q. Mr. Salem, let me read this portion to you again,
3 and would you tell me whether or not you disagree with the
4 translation of the words, OK? Is it a fact, sir, that
5 Siddig said to you: But of course I will -- and this is on
6 page 39 of CM 1, if the government or the jurors -- this is
7 in evidence, if anyone wanted to follow along. There is an
8 entire CM 1 there.

9 THE COURT: As Exhibit 301T, I believe.

10 MS. AMSTERDAM: I apologize, 301, page 39.

11 Q. Sir, starting at the top, you indicated to
12 Siddig: I am your technician.

13 And Siddig said: But of course. I will, well,
14 what do you think? I leave the question of the house to
15 you.

16 MR. McCARTHY: Objection.

17 Q. I leave the question of the house to you,
18 question mark. I meant question mark. I leave the question
19 of the house to you? Like that?

20 A. See, that's what I am saying.

21 Q. And you say: Leave it to me.

22 And Siddig says: I will leave the house to you
23 but not the money, the uh.

24 And you say: But leave both, let me and God take
25 care of the house business.

1 And Siddig says: God willing.

2 And you say: Once I prepare the house I will
3 tell you, Siddig, I am ready.

4 Let me just stop here for a moment. At this
5 point you have told him that you will take responsibility
6 for the house and the money both. Correct?

7 A. No, ma'am. I will take care of the house and my
8 share of the money regarding to the house.

9 Q. So when Siddig said I will leave the house to you
10 but not the money and you respond both, leave both, it is
11 your testimony that what you meant was leave both, both the
12 house and that portion of the money?

13 A. That's correct, ma'am.

14 Q. All right.

15 You then say: Once I prepare the house I will
16 tell you, Siddig, I am ready.

17 Siddig says: Yeah, yeah.

18 And you say: After that.

19 And he says: Wait a little.

20 And you say: I shall not meet with you here any
21 more.

22 And Siddig says: Wait a little.

23 And you go: Hm.

24 And he says: Wait a little.

25 And you say: Not now.

1 And Siddig says: No, not now, wait a little.

2 And then you go on to say: Because we need a
3 month, Siddig, too.

4 And Siddig says something unintelligible, the
5 house.

6 And you go: Aha.

7 And Siddig says: We need to get the house but
8 what if we don't have.

9 And Mr. Salem says: The money.

10 And Siddig says: Of course.

11 Having read this transcript to you --

12 MR. McCARTHY: Your Honor, I would object under
13 Rule 106 and ask that it go on to the fifth attribution on
14 the next page.

15 MS. AMSTERDAM: All right.

16 The money of course, hm, you see. I am sorry.

17 Siddig says: You see.

18 Mr. Salem says: This is why you have to move and
19 get your people to move.

20 And Siddig says: Yeah, yeah, yeah.

21 And Emad says: I.

22 And Siddig says: As soon as I, unintelligible,
23 this thing, I will tell you to go ahead.

24 And Emad says: OK, I'm ready. You know, I have
25 to start looking for the house as of now. Leave the house

1 business in God's hands and mine.

2 And Siddig says: No objection to you looking for
3 a place here and there.

4 Fine, Mr. McCarthy?

5 MR. McCARTHY: Thank you.

6 Q. So in fact, sir, you had told him you would take
7 over the house, is that correct?

8 A. That is correct, ma'am.

9 Q. Five days later -- Mr. McCarthy, CM 4, page 29 --
10 you bring up the house thing again, and Siddig says to you:
11 We will get the house in June -- I am sorry, Mr. McCarthy,
12 the middle of the page.

13 Siddig says: Tell him there is a possibility for
14 one or two months.

15 And you say: It's done.

16 And he says: You think he might not agree?

17 And you say: No, no, there is no problem if we
18 don't agree there's no problem.

19 And Siddig says: We need to give ourselves a
20 little time.

21 Isn't it a fact, sir, that Siddig was reluctant
22 to rent the house? Correct?

23 A. No, he was not reluctant -- I am not sure what's
24 reluctant means, so I shouldn't answer. Can you explain to
25 me? Hesitant?

1 Q. Reluctant means he wasn't 100 percent willing.

2 A. No, he is 100 percent willing but not in this
3 moment because the money wasn't available in his end, ma'am.

4 Q. Earlier in my questioning you said that you had
5 not created a crime, that you had uncovered an ongoing
6 terrorist group that was plotting to do bombings, correct?

7 A. I did not say that, ma'am.

8 Q. You did not say that?

9 A. No, I did not say that, ma'am.

10 Q. My question is, isn't it a fact that it is your
11 position, that you say what happened, that Siddig had a
12 group, a cell, as you call it, of men trained to do suicide
13 missions who were actively plotting to do bombings? Right?

14 A. Yes, ma'am.

15 Q. And yet at this time this cell clearly has no
16 meeting place, correct?

17 MR. McCARTHY: Objection.

18 A. I don't know.

19 Q. Siddig never suggested that he had a safe house
20 to meet at, did he?

21 A. He didn't tell me that he had one.

22 Q. And it was your idea to rent the safe house,
23 correct?

24 A. That's correct, ma'am.

25 MS. AMSTERDAM: CM 6, Mr. McCarthy.

1 Q. May 18, which is six days later, you bring some
2 photographs to Siddig to show him pictures of the safe
3 house, right?

4 A. Yes, ma'am.

5 Q. And during this two week or one and a half week
6 period of time, Siddig has not given you any money on the
7 safe house, has he?

8 A. I don't know when the day he give me the \$300.

9 Q. At the time you bring him the photographs he
10 hasn't given you any money, has he?

11 A. Prior to the \$300, he did not give me, no, ma'am.

12 Q. And you bring some photographs to show him, and
13 you tell him that the man went ahead and rented the place
14 you wanted to get, and that you have lost that place and you
15 have to get another place. Do you recall that?

16 A. Yes, ma'am.

17 Q. A better place than the first place.

18 A. Yes, ma'am.

19 Q. And you are telling him this because during these
20 conversations he has not yet committed to renting a safe
21 house, correct?

22 A. No, it's not correct, ma'am.

23 Q. He says to you, does he not: What did you bring
24 the pictures for?

25 And you tell him: I'm bringing you the pictures

1 to show you it's perfect, there is a garage, you can bring a
2 car in.

3 Right?

4 A. Yes, ma'am.

5 Q. And at page 29, Mr. McCarthy -- isn't it correct,
6 sir, that you had a conversation with Mr. Siddig and you
7 said to Mr. Siddig: What is your opinion on this house?

8 And Siddig says: Wait a little.

9 And you said: Should we not mind this garage?

10 And he says: Yes. Wait a little.

11 And you say: By God, it's hard for me.

12 And he says: I'm with you.

13 And you say: Wait a second.

14 Siddig says: I'm with you because I see that
15 it's empty -- I apologize.

16 You say: Because I see that it's empty from the
17 top and that will ease my mind. It's vacant from the back
18 and that will ease my mind.

19 And he says again: Wait a little.

20 Do you recall having that conversation?

21 A. Yes, ma'am, I said that.

22 Q. And you go on to say to him, again on page 35:

23 We are not going to gather except for the utmost need.

24 That's it. If you feel that that's not it, my feeling is,

25 if it is a good place why should we lose it?

1 And Siddig says: That's it, if you see that's
2 it.

3 And you say: I'll take it for a month and see if
4 we can renew it on a monthly basis.

5 Do you recall having that conversation?

6 A. Yes, ma'am.

7 Q. And in the same conversation, page 44 when Siddig
8 has still not agreed to rent the safe house --

9 MR. McCARTHY: Objection to the form of the
10 question.

11 THE COURT: Sustained.

12 Q. And at that point during the conversation had
13 Siddig given you any money to rent the safe house, at this
14 point, the day that you bring the photographs to show him?

15 A. I don't recall the exact date, ma'am, he giving
16 me the money, but it's on the tape.

17 Q. Later in the conversation, page 44 at the bottom,
18 you say: I have no desire to do anything today, I want to
19 finish the subject of the house, meaning you want him to
20 finish the subject of the house, you want to finish talking
21 about the subject of the house, you want to get agreement
22 about the house, correct?

23 A. Yes, ma'am.

24 Q. Siddig doesn't agree on that day, does he,
25 doesn't give you any money, correct?

1 A. Again, I don't recall when did he give me \$300.
2 It's on the tape. You know the dates, I don't recall the
3 dates.

4 Q. Do you recall that in May 19, you drove back and
5 forth to Philadelphia with Siddig? Correct?

6 A. Yes, ma'am.

7 Q. And I presume on the way down you talked to
8 Siddig and that conversation was recorded?

9 A. Yes, ma'am.

10 Q. And on the way back you talked to Siddig and that
11 conversation was recorded, correct?

12 A. Yes, ma'am.

13 Q. During the trip back and forth, you discussed
14 renting the safe house still, correct?

15 A. We may discussed it, yes.

16 MS. AMSTERDAM: 7A, Mr. McCarthy, page 35.

17 Q. And at one point you have a conversation with
18 Siddig, and you say: By God, Sheik, I want to start, my
19 hand is itching.

20 And Siddig says: Yes, of course, so far it is
21 talk.

22 And you say: Yeah, for this reason, when I saw
23 this place I liked it, I don't want to lose it.

24 And Siddig says: Yes, we will get it tomorrow,
25 God willing.

1 And you say: On God's blessing we will get the
2 place.

3 You say it's your hand that's itching, correct?

4 A. Correct, ma'am.

5 Q. And it's Siddig who says to you so far this is
6 just talk, right?

7 MR. McCARTHY: Your Honor, objection. Could we
8 have the next three lines read?

9 MS. AMSTERDAM: Siddig: Yes, we will get it
10 tomorrow God willing. On God's blessing -- withdrawn.

11 Emad: On God's blessing on we get the place.

12 Siddig: Do you want \$500?

13 Emad: What?

14 Siddig: Do you want \$500?

15 Emad: I want \$500 God willing, and I will put in
16 500.

17 Q. Do you remember having that conversation?

18 A. Yes, he is offering me \$500.

19 Q. But he didn't give you \$500, did he, not that
20 day, did he?

21 A. Not that day, no.

22 Q. In fact, it was several days later when Siddig
23 finally gave you some money, correct?

24 A. He gave me \$300 and promised to give me another
25 200 later on.

1 Q. And the \$300 -- first of all, did you ever get
2 the \$200 from him later on?

3 A. No, ma'am.

4 Q. And the \$300 that you got from him came from
5 money that he had borrowed for rent, correct?

6 A. That's what he told me, he borrowed it for rent
7 and he will rather to pay for the safe house.

8 Q. So the ongoing terrorist group doesn't have a
9 safe house --

10 MR. McCARTHY: Objection.

11 MS. AMSTERDAM: I will withdraw it.

12 Q. It takes you almost three weeks of recorded
13 conversations to get Siddig to agree to give you money for
14 the safe house, correct?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q. In addition to getting the safe house, in CM 1
18 there was some discussion that you needed to get phony
19 identification to rent the safe house. Do you recall that?

20 A. Yes, ma'am.

21 Q. And Siddig said that he knew somebody who worked
22 at the motor vehicle department who would be able to help
23 him in that effort to get the phony ID. Do you recall that?

24 A. Yes, ma'am.

25 Q. He knew a woman, a Puerto Rican woman, he said,

1 who worked in the motor vehicle, correct?

2 A. Yes, ma'am.

3 Q. He never got you any phony ID, correct?

4 A. No. We went together to a photo ID place and he
5 stayed in the car, I went in, I find out that they do it, I
6 went back to him, and he suggested to get me Yahooo Arrad as
7 an alias name, and he give me -- he even wrote it down -- a
8 phone number which is later on told me that's a booth phone
9 number, he wrote down an address to put it in this ID and I
10 did make the ID, ma'am.

11 Q. Let me just back up a little bit.

12 A. Yes, ma'am.

13 Q. In CM 1 he indicated that he knew a woman in the
14 motor vehicle bureau who could help you get a phony ID card.
15 That never happened, correct?

16 A. Never happened.

17 Q. And you stated that there came a time that you
18 eventually went to a place that takes photographs, correct?

19 A. That is correct that's correct, ma'am.

20 Q. And he stayed in a car and you went inside,
21 correct?

22 A. Correct, ma'am.

23 Q. On the last day, the day of the arrests, June 23,
24 there came a time that there is a conversation, video 58,
25 there is a conversation between yourself, Siddig, and it was

1 in the presence of Mr. Wahid Saleh. Do you recall that?

2 A. Yes, ma'am.

3 Q. On that day you and Siddig say we do not have any
4 phony name capabilities. Do you recall that?

5 A. Yes, ma'am.

6 Q. Phony name capabilities, meaning we do not have
7 any ability to get phony ID, correct?

8 A. That was his statement, yes, ma'am.

9 Q. So in CM 1 which occurs on May 7, Siddig claims
10 to have contacts which will allow you to get phony ID's,
11 correct?

12 A. Yes, ma'am.

13 Q. And on June 23, the day of the arrest, you are
14 forced to confess that not only do you --

15 MR. McCARTHY: Objection.

16 MS. AMSTERDAM: I withdraw it.

17 Q. On June 23, you state that you not only do not
18 have any phony ID's but you have no ability to get phony
19 ID's, correct?

20 A. I said that I was told by Mr. Siddig that
21 Mr. Wahid have capability to bring me phony ID's.

22 Q. You wouldn't be looking for phony ID's if you had
23 the phony ID's, would you?

24 A. In that time I had a phony ID, yes.

25 Q. You had a phony ID that you yourself got,

1 correct, not through Siddig?

2 A. Mr. Siddig, he chose the information being on the
3 ID, and I went to that photograph place, he stayed outside
4 in the car, and I took the ID and I went back to him.

5 Q. He stays in the car?

6 A. Yes, ma'am.

7 Q. You go inside?

8 A. Yes, ma'am.

9 Q. You get yourself an ID card correct?

10 A. According to Mr. Siddig's instructions.

11 Q. Thank you.

12 A. You are welcome.

13 Q. In addition, in CM 1 Siddig says to you that he
14 has contacts to counterfeit money, correct? Do you recall
15 that?

16 A. Yes, ma'am.

17 MS. AMSTERDAM: And I would direct Mr. McCarthy
18 and the jurors if they are interested to page 41.

19 THE COURT: Of what exhibit?

20 MS. AMSTERDAM: The same exhibit. All of these
21 are CM 1, which is 301T.

22 Q. And starting at the beginning, Siddig says: Hm,
23 I, with him according to his style. There is no, uh, he
24 has, he used to have. And he whispers counterfeit.

25 And you go: Counterfeit currency.

1 Siddig says: Yeah.

2 Salem says: So what, with a question mark.

3 Siddig says: This much.

4 And Salem says: Big deal.

5 You go on to say that when Mustafa Shalabi was
6 alive, they used to print counterfeit money.

7 Do you recall that conversation?

8 A. Yes, ma'am.

9 Q. And Siddig says later down on the page -- I am
10 sorry. In the middle of the page you say to Siddig: Sure,
11 brother, bring it to me. Is that it? You think we traded
12 in gold for no reason?

13 When you said sure, brother, bring it to me, you
14 were referring to counterfeit money, correct?

15 A. Yes, ma'am.

16 Q. And Siddig had indeed claimed that he had access
17 to counterfeit money, right?

18 A. Yes, ma'am.

19 Q. And you in fact told Siddig that that would be
20 essential because it would be, in your words, the backbone
21 of our work. Do you recall that?

22 A. I may said it, yes.

23 Q. And I would assume that you thought it was very
24 important to find out what financial resources Siddig had,
25 or Siddig's cell had, right?

1 A. No, that's not right, ma'am. What I thought in
2 that time, that this is another case coming to the FBI, that
3 we going to discover another ring making counterfeit money,
4 ma'am.

5 Q. Did you ever get any counterfeit money from
6 Siddig?

7 A. No, he did not give me any.

8 Q. In fact in the same conversation at page 43,
9 Siddig tells you, does he not, they have millions, in the
10 middle of the page?

11 And you say: By God.

12 And Siddig says: But of course.

13 And you say: OK, prepare it, redeem it, and,
14 unintelligible.

15 Siddig said: He told me this verbally. I have
16 to see it with my own eyes.

17 And you said aha.

18 And Siddig said: He bought me some samples.

19 And you say to him: Do you have a sample now?

20 And Siddig says: No, not now.

21 And you say: If you have a sample, I have the
22 magnifying glass with me, I can check it.

23 And Siddig says: I will bring it from him.

24 And you say: Bring a sample and beep me.

25 And Siddig says: I'll fetch him tomorrow, God

1 willing.

2 A. I will what?

3 Q. I will fetch it, I will go get it tomorrow.

4 Siddig says I will fetch it tomorrow God willing?

5 A. Yes, sir.

6 Q. During that conversation?

7 A. Yes, ma'am.

8 Q. And when tomorrow came, God willing, did Siddig
9 fetch the sample for you?

10 A. No, he did not bring me counterfeit, ma'am.

11 Q. On May 18 -- Mr. McCarthy, CM 6 at page 17 --
12 Siddig goes on to tell you, did he not, sir: I took \$100
13 and I went to a bank as if I were naive and not
14 knowledgeable, meaning playing dumb.

15 And you said: Did they cash it for you?

16 And Siddig says: Yes.

17 And you go on to say to him: Fill a suitcase for
18 me, Sheik.

19 Did Siddig ever deliver a suitcase full of
20 counterfeit money?

21 A. The FBI instructed me not to follow up on this
22 counterfeit money, because they said we don't want to mess
23 up the main investigation by going into the counterfeit
24 investigation.

25 Q. So they told you that if Siddig -- they told you

1 not to follow up, what does that mean not to follow up?

2 A. Because I remember that we came to the point that
3 he told me a million dollars for 150,000. So I thought that
4 I have another case. I went to the FBI, said give me
5 150,000, I will get you a million dollars, and then you
6 follow up on this case.

7 Q. But you continued -- I am sorry. Go ahead.

8 A. The FBI said no, no, we are not going to give you
9 \$150,000, just let us to focus on what we are working on,
10 let us not jump to side investigations, ma'am.

11 Q. Did he ever bring you a sample of the money?

12 A. No, ma'am.

13 Q. Did he ever ask you why you didn't want to go
14 forward on the money?

15 A. No, he never ask me.

16 Q. Did he ever speak to you again about the money?

17 A. I believe yes, there is a time came when he told
18 me that this source of the money, he told me the name of
19 this person.

20 Q. The name of the source?

21 A. The name of the source? Name of the person who
22 have access to the counterfeit money.

23 (Continued on next page)

24

25

1 Q. That was out of a recorded conversation?

2 A. I believe it's recorded, ma'am.

3 Q. And was that source, to your knowledge, ever
4 arrested?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. I will withdraw that.

8 Did you ever meet that source?

9 A. I believe he's in court now, ma'am.

10 Q. In this court?

11 A. Yes, ma'am.

12 Q. In addition to counterfeit money, Mr. Siddig also
13 told you that he had strong contacts overseas which would be
14 willing to fund his operation, is that not true?

15 A. That's what he said, ma'am.

16 Q. And he said that -- just bear with me for a
17 moment. I apologize.

18 A. That's OK, ma'am.

19 Q. You told him, did you not, that you were
20 concerned about the issue of money because you were now
21 going to be embarking, meaning starting, on a big job,
22 right?

23 A. I'm sorry.

24 I apologize. Could you repeat the question,
25 please, again.

1 Q. That's all right.

2 Do you recall a conversation that you had with
3 Mr. Siddig where you told him where you were trying to find
4 out who his money sources were?

5 A. Yes, ma'am.

6 Q. You told him about his money sources, that you
7 were concerned about money, because you were now beginning a
8 big project and you wanted to make sure that there was money
9 to fund it, do you recall that?

10 A. I said that we are -- it's a big thing, which is
11 the million dollars and \$150,000, for a million.

12 Q. I am not talking about the counterfeit money.

13 A. I'm sorry. I'm confused a little bit.

14 Q. I'm sorry. I am not talking about the
15 counterfeit money, sir. I am talking about the fact that,
16 in addition to that, Siddig had claimed that he had a source
17 in the United Arab Emirate?

18 A. That's correct.

19 Q. And that that person in the United Arab Emirate
20 was going to be able to get him money, right?

21 A. That's correct, ma'am.

22 Q. You told him, that's good, because you were
23 concerned about starting on a project without there being
24 sufficient funds, do you remember that?

25 A. No, I was --

1 Q. Sufficient money?

2 A. I was concerned to find out that person who's
3 going, who's willing to finance this operation.

4 Q. You wanted to find out who that person was,
5 right?

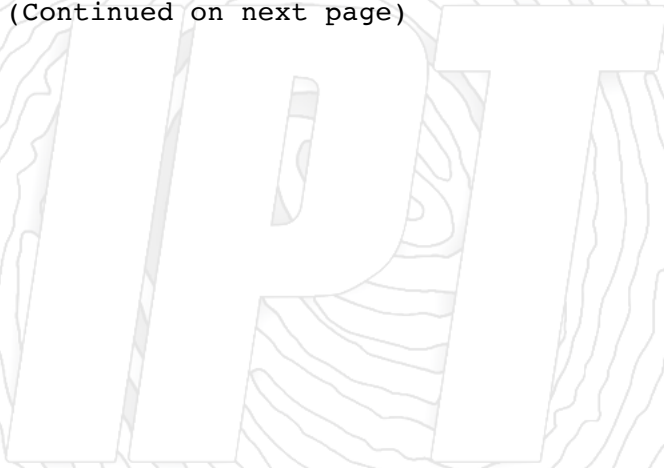
6 A. Of course. That was my job, ma'am.

7 Q. OK. I apologize. To paraphrase Ms. Stewart,
8 this is a lot harder than it looks.

9 THE COURT: May I see counsel briefly at the
10 side?

11 (Continued on next page)

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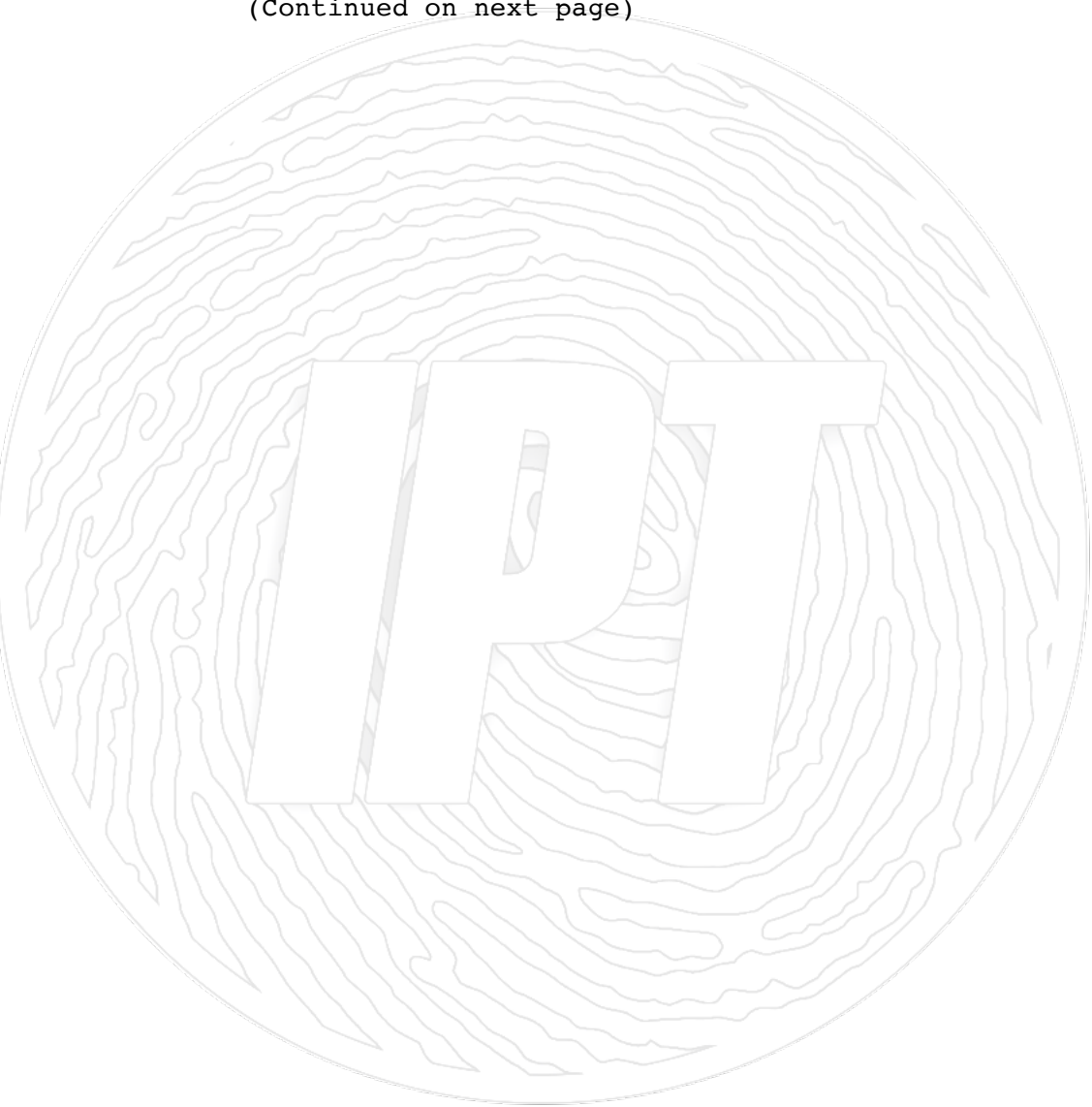
(At the side bar)

THE COURT: Do you want a five-minute break?

MS. AMSTERDAM: Yes, please. Thank you.

THE COURT: All right.

(Continued on next page)



1 (In open court)

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

6 MS. AMSTERDAM: Thank you, Judge.

7 (Recess)

8 THE COURT: Go ahead, Ms. Amsterdam.

9 MS. AMSTERDAM: Thank you, your Honor.

10 Q. I'm sorry, sir. We were speaking before the
11 minibreak about the fact that Siddig Ali claimed that he had
12 sources in the Gulf and the Middle East who would finance
13 his operation, do you recall?

14 A. Yes, ma'am.

15 Q. Originally, at one point he said that he knew
16 people in Saudi Arabia, but that didn't work out, correct?

17 A. Yes, ma'am.

18 Q. Eventually he said to you that actually he knew
19 people in the United -- he knew someone in the United Arab
20 Emirate, specifically in the province of Abu Dhabi?

21 A. Yes, ma'am.

22 Q. Am I saying that correctly?

23 A. Yes, ma'am.

24 Q. Abu Dhabi, who would be able to fund this
25 operation, right?

1 A. Yes, ma'am.

2 Q. It was determined that -- CM, 21, sir, and
3 Mr. McCarthy, page 20.

4 In a conversation about Saudi Arabia, he told you
5 that that wasn't going to work out, but that he had actually
6 spoken to somebody in Abu Dhabi, and you said to him: Do
7 you have the phone numbers?

8 And he says: Of course, I have everything. I
9 spoke with them.

10 And you ask him: You spoke with them by phone?

11 And he says: Well, I cannot tell them, I mean --

12 And you said: Obviously you have to be cryptic,
13 meaning that you couldn't say specifically on the phone what
14 you needed the money for.

15 But it was clear that Siddig was saying that he
16 had had contact with these people, correct?

17 A. That's what you told me, ma'am.

18 Q. He told you that in fact they would be willing to
19 finance it, right?

20 A. I don't -- one second.

21 Could you repeat the question?

22 Q. That the person in Abu Dhabi would be willing to
23 finance, give money for the operation?

24 A. Yes. He told me that he will be willing, but he
25 did not tell me that he did agree. I mean, he told me that

1 the person in Abu Dhabi and El Sharikha, will -- he did
2 contributed money for jihad before, he is going, I think
3 that he will be willing to contribute for our --

4 Q. Cause?

5 A. Yes.

6 Q. Plan?

7 A. Jihad.

8 Q. OK. Then it was decided that you would send a
9 Federal Express, a second-day mail for \$75, right?

10 Do you recall that?

11 A. No, I recall that he -- we sent more than one fax
12 to this individual.

13 Q. Before that? On June 3, CM27, page 19 --

14 A. Yes.

15 Q. -- do you recall that Siddig said: Yes, I asked
16 him what shall I do, and he told me send me a letter, I
17 mean, such a love letter, ha.

18 And you said: Good.

19 And Siddig said: And send it to me by Federal
20 Express, and when they second day mail, you know.

21 And he goes on to say: It will cost \$75 and that
22 three people will chip in \$25 each to send this letter.

23 Do you recall that?

24 A. Yes, ma'am.

25 Q. He told you that this man in Abu Dhabi was one of

1 the richest people in the country, right?

2 A. Yes, ma'am.

3 Q. On June 23, CM27, at page 22, you say again to
4 him: Let us get back to the subject about Abu Dhabi. What
5 do you want me to do? And it's decided that the only thing
6 that needs to be done is that everyone has to chip in \$25,
7 right, to send this Federal Express letter?

8 A. We never send Federal Express letter, ma'am.

9 Q. All right. But originally that was the first
10 plan, the first plan was we were going to send a letter for
11 \$75, right?

12 A. It could be, yes.

13 Q. You asked him at that point, in that same
14 conversation can he pay, meaning the man in Abu Dhabi, can
15 he pay \$15,000, can he pay \$25,000?

16 A. And Siddig says: Absolutely.

17 Q. And you tell him: Tell him we're going to be
18 preparing for a task. "A task" meaning an operation,
19 correct?

20 A. I may said it.

21 Q. In the same conversation it's decided that rather
22 than send a letter you would get him to transfer the money,
23 do you recall that, transfer it from his bank account to a
24 bank account?

25 A. Yes.

1 Q. And Siddig actually asked you whether or not you
2 had a bank account that he could transfer it to, do you
3 recall that?

4 A. Yes, ma'am.

5 Q. Then it was decided that you couldn't send it to
6 your bank account, because he wouldn't know your name, so he
7 might not trust sending it to your account, do you recall
8 that?

9 A. Yes, ma'am.

10 Q. So then it was decided that it would be better if
11 you received it by hand. By hand. Do you recall that, that
12 somebody would go and get it by hand?

13 A. No, I don't recall that.

14 Q. Do you recall that then there was another plan
15 that they would -- that we would get the man in Abu Dhabi to
16 send it by money order through Federal Express?

17 A. Yes.

18 Q. Through American Express?

19 A. Yes.

20 Q. Through a money draft, a draft order?

21 A. Yes, ma'am.

22 Q. And you told him -- again in CM27, page 61 --
23 write a letter and give it to me, and I'll send it by
24 Federal Express. Then it was decided that perhaps you could
25 get it in tourist checks, like tourist, American Express

1 tourist checks.

2 A. Yes, ma'am.

3 Q. Do you remember that?

4 A. Yes, ma'am.

5 Q. And you told Siddig that you have a fax and that

6 you would be willing to fax the letter to the man in Abu

7 Dhabi, right?

8 A. Yes, ma'am.

9 Q. You even say to him in the same conversation at
10 page 62: You can make the call from my place if you want,
11 you can call him from my place, right?

12 A. To be recorded, ma'am.

13 Q. Right. But you offered your phone, your phone
14 was at his disposal to use to call the man in Abu Dhabi,
15 right?

16 A. Yes, ma'am.

17 Q. And Siddig says to you in that conversation:
18 Shall we do it tomorrow?

19 And you say: I am under your -- I am under your
20 command.

21 Do you remember that?

22 A. Yes, ma'am.

23 Q. And in the same conversation Siddig goes on to
24 say: We've solved the problem.

25 And you say: That's right. Just tell him we

1 need \$20,000.

2 Do you recall?

3 A. Yes, ma'am.

4 Q. Now, in that same conversation Siddig says that
5 he doesn't have a phone number, and he's going to have to
6 call somebody else to get the phone number because he's lost
7 the phone number, do you remember?

8 A. Yes, ma'am.

9 Q. This is a dear friend of his in Abu Dhabi,
10 somebody that he could trust, somebody he had a strong
11 connection with, but he's lost the phone number?

12 A. Yes, ma'am.

13 Q. Do you recall?

14 A. Yes, ma'am.

15 Q. The next day -- CM31, June 4, page 27 -- you ask
16 him, the very next day, page 27: Are we going to send the
17 fax. Did you get the number?

18 And Siddig says: We are going to Brooklyn and
19 we'll come back, right?

20 You say: God willing.

21 And Siddig says: We did not say we were going to
22 send the fax. Oh, yeah, we spoke about the fax yesterday.

23 Do you remember that?

24 A. Yes, ma'am.

25 Q. And you tell him again to call him and get his

1 fax number so you can fax him a letter, right?

2 A. Yes, ma'am.

3 Q. Four more days go by -- June 8, page 7 -- and you
4 ask him again: The man who is in the Emirates, have you
5 heard from him? Do you want to call him from my place or
6 yours?

7 And Siddig says: We just get the number, God
8 willing. Please be a little more patient, Emad. I know you
9 are tired.

10 And you say: No, I got irritated. Yes, when I
11 get irritated, I go like, and then you laugh.

12 Why were you irritated, sir?

13 A. No, I wasn't irritated, but I tried to make him
14 believe that I am irritated, because I want to know, I want
15 to know what is the person's name who did finance jihad
16 before, and who is willing to finance another operation. I
17 want to know what's his phone number, I want to know who
18 did, who he did -- in the past financed already, so I can
19 relay all of this information. Then they can, the FBI can
20 put an eye on these people.

21 Q. Understood. Now, this is June 8. This is over a
22 month since the first FBI recorded conversations and still
23 he has not produced the name or the phone number of the man
24 in Abu Dhabi, right?

25 A. Mr. Siddig is very, very cautious with me. He

1 never released so many information to me. So many things,
2 he said, you don't have to know. Excuse me. So many
3 information he said, you don't have to know about it now.
4 You will know about it later. That's his way. He's very
5 protective to the information, ma'am.

6 Q. He's spent about eight hours a day with you,
7 almost every day through the entire month of May, is that
8 correct?

9 A. Around that.

10 Q. In conversations he talked about blowing up
11 buildings, bridges, tunnels, the UN, and it is your
12 testimony that he was very cautious with you?

13 A. Yes, ma'am. He was very cautious. That's why he
14 did not release the whole names of his cell until today.
15 There is some of his people still out on the street, ma'am.

16 Q. There's still people in his cell out on the
17 street?

18 A. Absolutely, ma'am.

19 Q. All right. Well, we've established that he
20 didn't release the man's name.

21 Did he produce any money at that point?

22 A. He give me \$300 for the safe house.

23 Q. \$300, which was borrowed rent money, correct?

24 A. He told me that he borrowed \$500.

25 Q. And he gave you \$300 of the \$500 he borrowed to

1 pay his rent, correct?

2 A. To pay the safe house rent.

3 Q. Right?

4 A. Yes, ma'am.

5 Q. He borrowed \$500 to pay his rent, and after two
6 weeks of asking him about the safe house, he gave you \$300
7 of the \$500 he had borrowed, correct? That was the only
8 money he gave you, correct? No Abu Dhabi money, no \$15,000,
9 no \$25,000, no Moneygrams, no American Express checks, no
10 money drafts?

11 THE COURT: Ms. Amsterdam, which of those 15
12 questions would you like him to answer?

13 MS. AMSTERDAM: If he could answer them all with
14 one answer, it would be that much quicker.

15 Q. Did you get any one of those things from him?

16 A. Can we break it down.

17 Q. Sure. Did you get an American Express draft from
18 him?

19 A. No, ma'am.

20 Q. Did you get any money transferred into your
21 account by him?

22 A. No, ma'am.

23 Q. Did you get any answer to your fax from him?

24 A. No, ma'am.

25 Q. Did you get any money delivered in hand from Abu

1 Dhabi?

2 A. No, ma'am.

3 Q. Did you get any money in draft money orders?

4 A. It wasn't enough time to receive it because the
5 FBI moved in, ma'am.

6 Q. You started the consensual monitored tapes in May
7 of 1993, and the arrests were June 23, 1993. During that
8 period of time did you get any money from Siddig Ali other
9 than the \$300 of his rent money?

10 A. There is a money --

11 Q. From Siddig. Any other money but the \$300?

12 A. Given to me hand in hand, no, ma'am.

13 Q. Did you get any other money from anybody else
14 that was Siddig Ali's money?

15 A. I'm sorry?

16 Q. My question is: Siddig Ali personally gave you
17 \$300, correct?

18 A. Yes, ma'am.

19 Q. Did anybody come to you and say, "Here's \$5,000
20 from Siddig Ali"?

21 A. No, ma'am.

22 Q. Eventually you get him to call a phone number in
23 the United Arab Emirates, correct?

24 A. I did not get anybody to do anything, ma'am.

25 Q. Could you estimate the number of times that you

1 said to Siddig Ali, "Have you called the man in Abu Dhabi?"

2 A. Yes, I did kept asking because I want to know,
3 like I said, I want to know who is this person since he did
4 finance the jihad before, probably he has something to do
5 with the World Trade Center bombing. I want to know who is
6 this person, what's his phone number, and what's his role in
7 this cell, ma'am.

8 Q. You eventually got Siddig to handwrite a letter
9 which you faxed, correct --

10 MR. McCARTHY: Objection.

11 Q. -- to a phone number that he gave you in Abu
12 Dhabi?

13 THE COURT: Sustained.

14 Q. There was a document that Mr. McCarthy showed you
15 on direct, do you recall that?

16 A. Yes, ma'am.

17 Q. Can you refresh my memory as to what that
18 document was.

19 A. It was a fax being written to be faxed to this
20 individual in El Sharikha so he can send \$5,000 for people
21 going to invasion.

22 Q. And who wrote that fax, if you know?

23 A. Who?

24 Q. Who wrote the letter?

25 A. He get me to write one letter and he wrote one

1 letter, fax. I mean, there is more than one fax.

2 Q. How many faxes were there?

3 A. Either two or three.

4 Q. Did you get any response to any of the faxes?

5 A. By the time I send it, few days later, the case
6 was taken down, ma'am.

7 Q. The answer is no?

8 A. The answer is no, ma'am.

9 MS. AMSTERDAM: I think this might be an
10 appropriate point, your Honor.

11 THE COURT: Ladies and gentlemen, we are going to
12 break for the day. Please leave your notes and other
13 materials behind. Please don't discuss the case. Please
14 don't read see or hear anything about the case or anything
15 related to it and we will see you tomorrow morning. Good
16 night.

17 (The jury was excused)

18 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

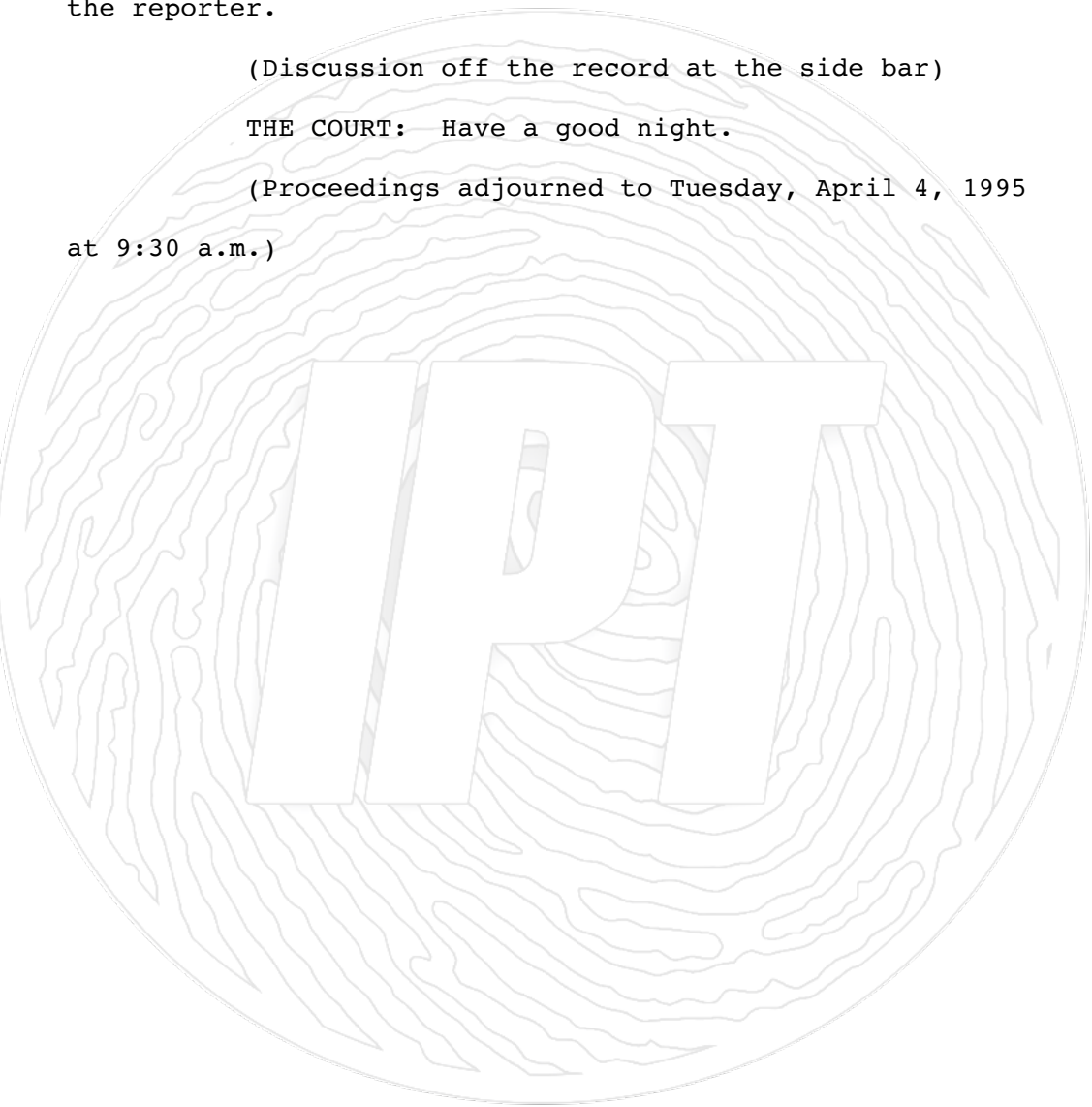
4 THE COURT: Ms. Amsterdam, just briefly without
5 the reporter.

6 (Discussion off the record at the side bar)

7 THE COURT: Have a good night.

8 (Proceedings adjourned to Tuesday, April 4, 1995
9 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

April 4, 1995
9:30 p.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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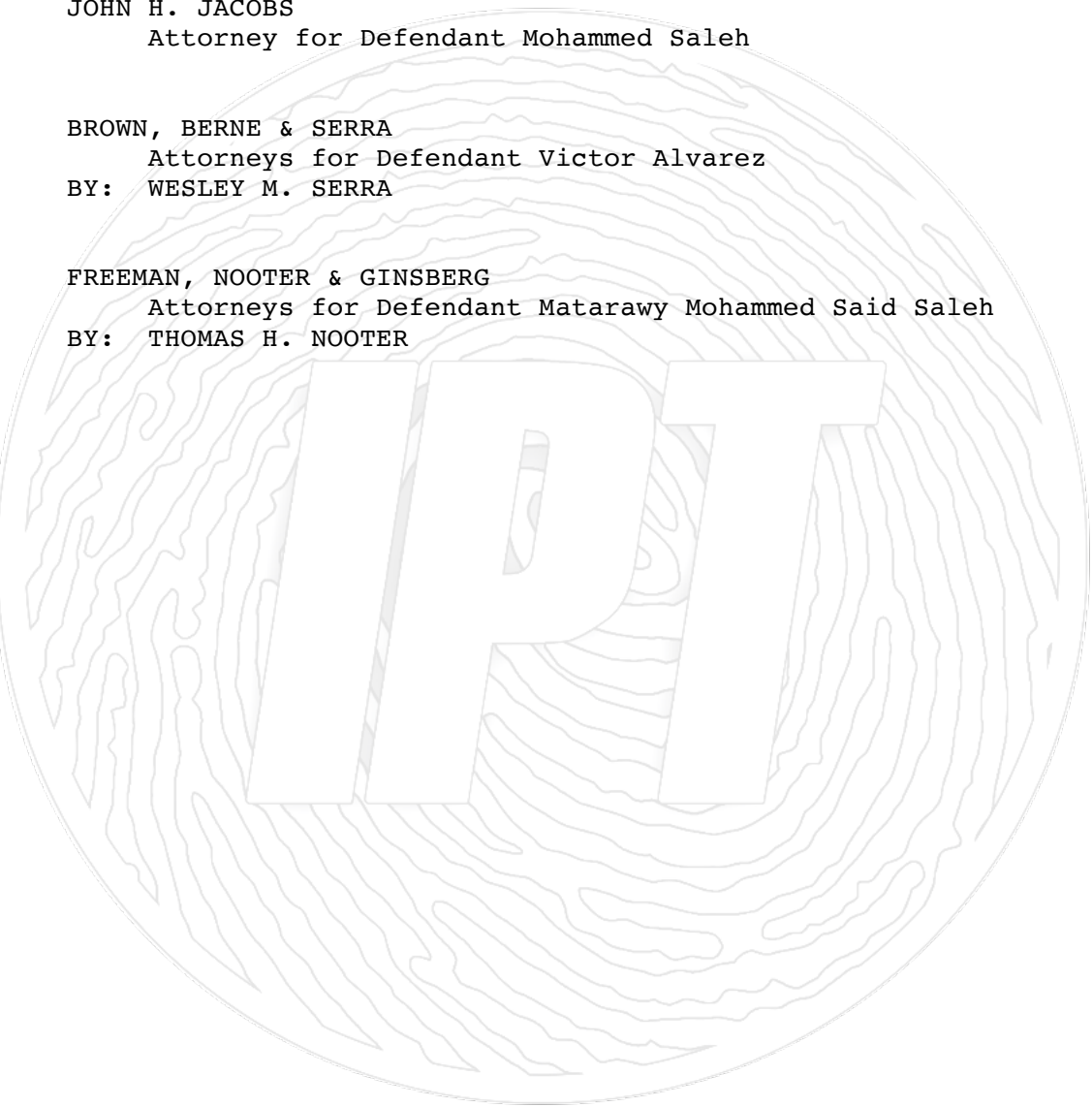
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1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Good morning. Before we get started,
4 just one reminder: A while ago we had talked about charge
5 requests. I think we agreed that they were going to be due
6 the end of this month.

7 MR. STAVIS: Yes, your Honor.

8 THE COURT: Good.

9 EMAD SALEM, resumed.

10 THE COURT: Ms. Amsterdam.

11 (Discussion at the bench off the record)

12 (Jury present)

13 THE COURT: Good morning, ladies and gentlemen.

14 THE JURY: Good morning.

15 THE COURT: Mr. Salem, you are still under oath.

16 THE WITNESS: Yes, sir.

17 THE COURT: Ms. Amsterdam.

18 CROSS-EXAMINATION (Continued)

19 BY MS. AMSTERDAM:

20 Q. Good morning, sir.

21 Yesterday, when we finished at the end of the
22 day, we were talking about --

23 THE COURT: Ms. Amsterdam, if you could turn
24 towards the microphone.

25 MS. AMSTERDAM: I'm sorry, sir. I didn't even

1 realize it.

2 Q. Yesterday afternoon when we broke for the day, I
3 was speaking to you about Mr. Siddig's financial contacts,
4 his financial capabilities, do you recall that?

5 A. Yes.

6 Q. In addition to the topics that we've discussed,
7 there were several other people that Mr. Siddig Ali said
8 that he thought he could turn to for money, is that correct?

9 A. Say it again, please?

10 Q. There were other people that Siddig Ali attempted
11 to contact for money, correct?

12 A. Yes.

13 Q. In fact, there was a time that you went, I
14 believe you testified on direct, that you went to a grocery
15 store that was owned by a man called Adil?

16 A. Yes, ma'am.

17 Q. That was for the express purpose of gaining
18 money, correct?

19 A. Yes, ma'am.

20 Q. Isn't it a fact, sir, that when you were en route
21 on Adil's grocery store that you and Siddig Ali got lost in
22 your car? Do you recall that?

23 A. Yes, ma'am.

24 Q. Do you recall, sir, saying to Siddig Ali that:
25 Adil gave us the wrong address, I told you he gave us the

1 wrong address because he doesn't want to pay, correct?

2 A. I don't recall that.

3 MS. AMSTERDAM: I would ask Mr. McCarthy -- this
4 is CM34, page 6 -- the middle of the page.

5 MR. McCARTHY: Stipulated.

6 THE COURT: OK.

7 MS. AMSTERDAM: Thank you, Mr. McCarthy.

8 Q. When you got to the store, Mr. Adil didn't want
9 to speak with you, correct?

10 MR. McCARTHY: Objection unless she clarifies who
11 "you" is.

12 Q. When you and Siddig Ali arrived at the grocery
13 store, Adil did not wish to speak with you, he only spoke
14 with Siddig Ali, correct?

15 A. Yes, ma'am.

16 Q. When Siddig Ali returned and met with you, he
17 told you that Adil would not give him any money, correct?

18 A. Yes, ma'am.

19 Q. He also told you that Adil was a bit crazy, that
20 he had been not mentally well and had been in a mental
21 hospital, correct?

22 A. Yes, ma'am.

23 Q. That was one of Siddig Ali's possible contacts
24 for money, correct?

25 A. Yes, ma'am.

1 Q. In addition, there came a time that Siddig said
2 that he knew a good brother by the name of Mohsin who he
3 thought, Mohsin?

4 A. I don't know what you're saying.

5 Q. M-O-H-S-I-N, or M-U-H-S-I-N?

6 MS. AMSTERDAM: May I approach the witness.

7 A. I don't know what you're saying.

8 Q. Mohsin?

9 A. Mohsin, yes.

10 Q. I'm sorry. I apologize. Mohsin?

11 A. Yes.

12 Q. You recall that, correct?

13 A. Yes.

14 Q. He indicated that this was one of the good
15 brothers, that he had actually fought in Afghanistan,
16 correct?

17 A. Yes.

18 Q. He told you that he thought this person would
19 contribute to your operation, do you recall that?

20 A. Yes.

21 Q. In fact, he said that Mohsin loved jihad very
22 much, do you recall that?

23 A. Yes, ma'am.

24 Q. And isn't it a fact that when you went to
25 Mohsin's to get money, you found out that Mohsin had gone to

1 a racetrack?

2 A. A what?

3 Q. A racetrack.

4 A. What does that mean, ma'am, please?

5 Q. A racetrack is where either people go to watch
6 cars race or where they go to watch horses race and bet on
7 them.

8 Do you recall that?

9 A. No, I don't recall such a thing, ma'am.

10 Q. Isn't it a fact, sir, at CM44, page 31, starting
11 at the bottom of 30, Siddig Ali said to you: You know that
12 he likes, he likes jihad very much, brother.

13 And you said: OK. Good.

14 And Siddig says: The mujahideen. Then there is
15 unintelligible, a pause, see the insanity?

16 And you say: Yeah.

17 And Siddig said: He thinks he is at a racetrack
18 very, unintelligible, oh, God, oh lord.

19 Q. Isn't it a fact that when you went to Mohsin's to
20 get money for your operation you found out that he was at a
21 racetrack?

22 A. That's not true, ma'am.

23 Q. Isn't that what Siddig Ali told you, sir?

24 A. That's the translator's translation, ma'am.

25 That's not what happened, ma'am.

1 Q. Did you review the translation?

2 A. I did not, ma'am.

3 MR. McCARTHY: Objection.

4 MS. AMSTERDAM: Mr. McCarthy, will you stipulate
5 that I read the transcript accurately?

6 MR. McCARTHY: I will stipulate that "a
7 racetrack" is underlined, indicating a dispute. Otherwise,
8 it's read accurately.

9 Q. Thank you, sir.

10 Now, in addition, Mr. Salem, you testified that
11 the original plan to bomb the United Nations originated with
12 Siddig Ali, right?

13 A. That's correct, ma'am.

14 Q. And that that was a plan that substituted for the
15 plan, the first plan, which was to bomb the armory at 67th
16 and Park, correct?

17 A. Correct, ma'am.

18 Q. And that was the armory that was spoken about in
19 the first recording, your personal recording, correct?

20 A. Yes, ma'am.

21 Q. As to that first plan to bomb the armory, isn't
22 it a fact that Siddig Ali told you that he had someone who
23 was working inside the armory?

24 A. Yes, ma'am.

25 Q. He had a contact inside the armory?

1 A. Yes, ma'am.

2 Q. And he told you: I know some people who work
3 there. It -- meaning the armory -- contains trucks, very
4 big, ammunition, supply weapons, light weapons and small
5 artillery. Do you recall that?

6 A. Yes, ma'am.

7 Q. And then he told you on May 7 that he had to
8 cancel that plan because he had read in the newspaper that
9 the armory was running a flea market?

10 A. Yes, ma'am.

11 Q. Did you begin to doubt the truthfulness of
12 Mr. Siddig Ali's statements after that?

13 A. I did not, ma'am.

14 Q. When he told you that he had someone working
15 inside the armory and that person could help him get the
16 light weapons, the tanks and the artillery, and then the
17 next day he told you that they're running flea markets in
18 that armory, didn't that make you doubt whether or not what
19 he had said to you initially was true?

20 A. That's not what he said, ma'am. That's what
21 you're saying, ma'am, now. That's not what Mr. Siddig said,
22 ma'am.

23 Q. Mr. Siddig Ali said to you in the recorded
24 conversation that you recorded, the first one, that he had
25 someone who worked inside the armory, and that he knows some

1 people who work there, it contains trucks, very big, and
2 ammunition, supply weapons, light weapons, and small
3 artillery. He said that to you, correct?

4 A. But what you said now, ma'am, that he will supply
5 us with tanks and weapons, and that's not what had been
6 said, ma'am.

7 Q. No, no. I apologize if I confused you.

8 A. OK.

9 Q. I am not suggesting that the person who worked
10 there was going to supply you with weapons.

11 A. That's what you just said, ma'am.

12 Q. Then I apologize.

13 A. OK.

14 Q. My point is that he did say that he had someone
15 that worked inside the armory?

16 A. Correct, ma'am.

17 Q. And who had actually seen these weapons, correct?

18 A. He did not say that, ma'am.

19 Q. Well, that the person had provided him with
20 information that there were weapons there?

21 A. He did not say that the person provided him with
22 information, ma'am.

23 Q. He said that he knew people that worked there,
24 right?

25 A. Correct, ma'am.

1 Q. And then he went on to tell you that he knew that
2 there were trucks, very big, supply weapons, ammunition,
3 light weapons and artillery inside the armory, right?

4 A. Correct, ma'am.

5 Q. Then he tells you the next day that's a mistake,
6 right?

7 A. No, he did not say mistake, ma'am.

8 Q. Well, he said there were flea markets in that
9 armory, right?

10 A. He did not say "mistake," ma'am.

11 Q. That's true.

12 He never admitted that he was incorrect, did he?

13 A. He said that he read in the newspaper that it was
14 a flea market in the armory, so it seems to be the
15 information he had was not correct, ma'am.

16 Q. So the information that Siddig Ali had about what
17 was in that armory had to have been incorrect, is that your
18 testimony?

19 MR. MCCARTHY: Objection.

20 THE COURT: Sustained.

21 Q. I think your words were it seemed that that
22 information was incorrect, right?

23 A. According to what he read in the newspaper,
24 ma'am.

25 Q. Did that make you doubt whether or not he

1 actually had people working inside the armory?

2 A. No, ma'am, I did not have doubts.

3 Q. You did not doubt that?

4 A. No, I have no doubt.

5 Q. You told Siddig Ali that you had actually gone up
6 and done a surveillance of the armory at 67th and Park, do
7 you recall that?

8 A. Yes, I recall that.

9 Q. And had you done that?

10 A. No, ma'am.

11 Q. You did not do that?

12 A. The FBI did it.

13 Q. Have you ever been to the armory at 67th and
14 Park?

15 A. I went there, outside, yes.

16 Q. Would it be a fair statement to say that the
17 building at 67th and Park has antique shows, flea markets,
18 and things of that nature, correct?

19 A. I --

20 MR. McCARTHY: Objection, unless she clarifies
21 when.

22 Q. At any time during this investigation, at any
23 time --

24 MR. McCARTHY: Objection.

25 Q. -- from 1991 to today, at the point that you went

1 to the armory, would it be a fair statement --

2 MR. McCARTHY: Your Honor, I withdraw the
3 objection.

4 Q. -- that that armory has antique shows, flea
5 markets and things like that?

6 A. I have never been inside it, ma'am.

7 Q. Did Siddig Ali ever admit to you that he had lied
8 to you?

9 A. No, ma'am.

10 Q. Did he ever admit to you that he was wrong?

11 A. No, ma'am.

12 Q. In fact, he went on to tell you that even though
13 there was a flea market in the armory, he still said they
14 had trucks and everything in a different location in the
15 armory, correct?

16 A. I don't recall that, ma'am.

17 Q. I'll come back to that point.

18 Did you consider at any point that Siddig Ali was
19 exaggerating to you?

20 A. I did not, ma'am.

21 Q. You testified, did you not, on direct that Siddig
22 Ali claimed to have very strong contacts with one of the
23 missions of the United Nations, correct?

24 A. Correct, ma'am.

25 Q. Indeed, he told you that in the first recorded

1 consensually monitored conversation, right?

2 A. Right, ma'am.

3 Q. He told you he had contacts inside the mission,
4 right?

5 A. That's what he said, ma'am.

6 Q. All right. You responded by saying to him: You
7 are dangerous, you have connections, you are certainly a big
8 shot. Do you recall saying that to him?

9 A. I recall saying that, ma'am.

10 Q. Well, it turned out, sir, that he really didn't
11 have any connections, did he?

12 A. That's not true, ma'am.

13 Q. All right. In the first recorded conversation on
14 May 7, CM1, he stated to you that he would be responsible
15 for the entry card, the clearance into the United Nations,
16 right?

17 A. Right.

18 Q. And that he would get the car and the plate
19 number, a diplomatic car and a diplomatic plate number,
20 correct?

21 A. Correct, ma'am.

22 Q. And that would allow you to get entrance into the
23 United Nations without being detected, right?

24 A. Right, ma'am.

25 Q. Without inspection he said, right?

1 A. Right, ma'am.

2 Q. And you said: Good, good.

3 And he said: Something like that, I can get it,
4 God willing, I could try.

5 And you responded and said: Fine, the car, where
6 will it come?

7 And he said: We take their own car.

8 He meant by that the embassy car, right?

9 A. Right, ma'am.

10 Q. He went on to say: The embassy car, there is a
11 specific embassy which I know a group.

12 And you said: An embassy within the United
13 Nations?

14 And he went on to say: Yes.

15 Do you recall that?

16 A. I recall that, ma'am.

17 Q. Later on in the conversation he said to you: We
18 will take their cars, because their cars --

19 And you interrupted and said: Don't get
20 inspected.

21 And he said: Yes.

22 And you said: But how are you going to get their
23 car?

24 Siddig said: I will get it.

25 You said: You're a hell of a guy, a hell of a

1 guy, praise God.

2 Do you remember having that conversation?

3 A. I remember saying that, ma'am.

4 Q. And Siddig Ali went on to say: We'll get it
5 normal?

6 And you said: Hum.

7 And he said: We'll get it. We'll take the key
8 and start it there normal.

9 You said: But who will give you the key?

10 He said: I will, unintelligible, brother.

11 And you said: I don't want the one who gives you
12 the key to go back and, uh, but, oh, where will he be?

13 And Siddig said: No, no, no. We will take it
14 itself, meaning the key, do you recall that?

15 A. That's not what is being said.

16 Q. This is CM1, sir?

17 A. If you will be kind enough, the last two lines,
18 it is not coming back to the key, ma'am.

19 Q. We will take it itself referring to the car?

20 A. Thank you, ma'am.

21 Q. Fine. Thank you.

22 And in that same conversation Siddig goes on to
23 say: I will see how to get in, meaning get into the garage
24 at the United Nations?

25 A. Correct, ma'am.

1 Q. And you say: Hum.

2 And he says: I mean, if a driver with a car who
3 has the plate numbers, do they look thoroughly at the plate
4 numbers, and if they found that they have them, they will
5 let them in. Meaning he would get the plate numbers on the
6 car and he could drive into the United Nations without being
7 detected, right?

8 A. Correct, ma'am.

9 Q. All right.

10 He says to you: We will take their license
11 plates and we will put them on a van.

12 And you say: Hum.

13 He says: With the ID card.

14 And you say: Hum, is this man trustworthy? He
15 may come and say, I gave the key to Siddig. You mean by the
16 "man" his contact within the United Nations, right?

17 A. Right.

18 Q. You are asking if that man is trustworthy, right?

19 A. Right, ma'am.

20 Q. Siddig says: No, no, he's trustworthy, hundred
21 percent. It's important. And goes on to say: He shouldn't
22 get into any details. I will take the key from him and make
23 a duplicate copy?

24 And you say: Now you are thinking right.

25 Do you recall having that conversation?

1 A. Yes, I recall it, ma'am.

2 Q. On May 18, which is 11 days later, you still do
3 not have the key, the license plate, or the diplomatic entry
4 card, do you?

5 A. No, we don't.

6 Q. And on May 18 Siddig reassures you and says: I
7 have a possibility 99 percent the car will not be a problem.
8 Do you recall that?

9 A. I recall that, ma'am.

10 Q. All right. Then, on May 18, on the way to
11 Philadelphia, you say to him: Didn't you say that there is
12 a van of the embassy?

13 And he says: Yes, yes. I want to take another
14 van from the Egyptian embassy.

15 Now --

16 A. Excuse me.

17 Q. The Egyptian embassy.

18 A. I don't know where you get this transcript,
19 ma'am.

20 Q. Mr. McCarthy, 7A, page 29.

21 MR. McCARTHY: Stipulated.

22 MS. AMSTERDAM: You stipulate that I am reading
23 accurately?

24 MR. McCARTHY: I do.

25 Q. Isn't it a fact, sir, that Siddig not only

1 claimed to have contacts with the Sudanese embassy but he
2 also claimed that he was going to get a van from the
3 Egyptian embassy?

4 A. I'm sorry, ma'am. I cannot disagree about
5 something I know that did not happen, ma'am.

6 Q. In that same conversation isn't it a fact that he
7 said: There is someone who is going to help me.

8 And you ask him: A driver there?

9 And he says: No, no, a very high level, high
10 level. Meaning the person who is his contact was a very
11 high-level, important person, correct?

12 A. Correct, ma'am.

13 Q. That is what you believed, right?

14 A. Right, ma'am. That's what I heard.

15 Q. That's what he told you?

16 A. No, that's what I heard him on the phone with
17 this person, ma'am, and that's what I saw in the embassy,
18 ma'am.

19 Q. On May 18, when you're driving to Philadelphia,
20 when he says he has a very high-level person, you heard him
21 on the phone talking to someone?

22 A. No, it was --

23 Q. Thank you.

24 A. It was in his home when he called --

25 Q. We'll get there.

1 A. All right, ma'am.

2 Q. Thank you.

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q. On that same ride from Philadelphia, isn't it

6 true that Siddig Ali said to you: Where did I get this

7 information from? I get it from the highest level.

8 You said to him: Then, who is this high level?

9 Who got you this?

10 He said: I am telling you that there are people

11 from inside the embassy, brother.

12 You say: The Sudanese embassy, too?

13 He says: I'm telling you, brother, the

14 ambassador, brother.

15 You say: Good.

16 He says: My contact is the ambassador himself.

17 You say: Good.

18 He says: So these people know the details. It

19 is not a game. They know the details.

20 You say: Good.

21 He says: Yeah.

22 Then you ask him: Is the ambassador going to

23 participate with us in this operation?

24 And Siddig says: No, no, no. Laughing.

25 You laugh and say: Man, I am just kidding.

1 And Siddig says: The ambassador does not know,
2 he does not know, by God.

3 And you respond and say: Man, I'm kidding. A
4 man in the diplomatic level comes and connects wires. And
5 you laugh again.

6 Isn't it a fact that you had that conversation?

7 A. Yes, ma'am.

8 Q. Then, at the end of the month, the end of May,
9 you still have not received a van, correct?

10 A. No, I did not.

11 Q. Or a key to a van?

12 A. No, I did not.

13 Q. Or a United Nations entry pass?

14 A. No, I did not.

15 Q. Or a diplomatic license plate?

16 A. We should receive it on the 24th at the morning,
17 ma'am.

18 Q. The 24th of June?

19 A. Correct, ma'am.

20 Q. So you began speaking about this on May 7, 1993,
21 and you would have received the diplomatic license plate on
22 June 24, 1993, had it not been for the fact that the FBI
23 decided to close down the operation, right?

24 A. That's what happened, ma'am.

25 Q. And that's the reason also that you did not

1 receive a response from the fax to Abu Dhabi because they
2 closed down the operation, correct?

3 MR. McCARTHY: Objection to "Abu Dhabi."

4 THE COURT: Sustained.

5 Q. From the man in the United Arab Emirate.

6 A. Yes, ma'am.

7 Q. That's the reason?

8 A. Yes, ma'am.

9 Q. At the end of May -- CM21 -- you say to Siddig:
10 You said that you have a license plate, right?

11 Siddig told you he had the diplomatic license
12 plate, did he not?

13 A. He said it's in the possession of the driver who
14 going to get it from Qatar embassy, ma'am.

15 Q. And Siddig --

16 A. I'm not finished.

17 Q. I'm sorry. Go ahead. I'm sorry. I apologize.
18 You can finish your answer. I didn't mean to cut you off.

19 A. Thank you. Can you ask me the question, please?

20 Q. Siddig in fact said that he had possession of the
21 license plate, did he not?

22 A. No, ma'am. He said that he, the driver going to
23 get him the license, diplomatic plates from Qatar embassy,
24 ma'am.

25 Q. And he said, Siddig said that he had possession

1 of the license plate and he was keeping it at the driver's
2 home, right?

3 A. It was at the driver's home. It's not with
4 Mr. Siddig, ma'am.

5 Q. But Siddig said he had already gotten possession
6 of it, did he not?

7 A. Ma'am, that's what you saying. What he said,
8 it's with that driver's possession. It's not with him,
9 ma'am.

10 Q. Sir, on CM18 isn't it a fact that at the end of
11 CM18 you speak, as you did from time to time, into the
12 microphone and you explain what had just happened at the
13 meeting? That happened on other occasions, correct?

14 A. Correct, ma'am.

15 Q. And in that particular conversation --
16 MR. McCARTHY: Your Honor, could I see this
17 first?

18 THE COURT: Show it to him.

19 (Pause)

20 MR. McCARTHY: It is not inconsistent. I object.

21 THE COURT: Sustained.

22 Q. Isn't it a fact, sir, that Siddig Ali told you
23 that he had gotten the license plate from the --

24 MR. McCARTHY: Same objection.

25 Q. -- Sudanese embassy and was keeping it in the

1 driver's home?

2 MR. McCARTHY: Same objection.

3 THE COURT: Sustained.

4 Q. You never got the license plate, did you, sir?

5 A. The FBI took the case down before next morning,
6 which we supposed --

7 THE COURT: The question was simply whether you
8 got the license plate. The answer is?

9 THE WITNESS: No, sir.

10 Q. Now, Siddig also told you that he had somebody
11 who was going to be able to take photographs of the inside
12 of the United Nations garage, correct?

13 A. Correct, ma'am.

14 Q. And that that would be important so that you
15 would know, not you personally, but that Siddig would know
16 where to place the bomb inside the United Nations, right?

17 A. Right.

18 Q. Indeed, even in CM1, the first recorded
19 conversation, he is talking about the fact that he has one
20 of his men who he is going to assign to take pictures of the
21 surroundings of the United Nations, right?

22 A. Right.

23 Q. And on May 19, approximately 11 days later, you
24 ask him: Didn't you bring us pictures? Haven't you tasked
25 anyone to get pictures of the big house?

1 "Tasked" meaning assigned anyone to get pictures
2 of the big house, do you recall saying that?

3 A. Yes, ma'am.

4 Q. And Siddig said: Now, five minutes ago or
5 quarter of an hour, one was with me, and we will take care,
6 God willing, of the details and everything.

7 And you say: Because yesterday you said
8 something when you said the basement's garage is in a
9 different building, the principal one.

10 And Siddig said: I have told you that there are
11 buildings like that sometimes.

12 Siddig was talking about assigning someone to
13 take photographs of the respective garages underneath the
14 United Nations, right?

15 A. Right.

16 Q. This is 11 days after you first had this
17 discussion, and he's not yet done that, correct?

18 A. Correct, ma'am.

19 Q. In that same conversation you say to him: I need
20 pictures for this stuff. Meaning that you need to see the
21 photographs so that you can figure out how best to construct
22 the bomb, right?

23 A. That was --

24 Q. In your role. You're not actually going to build
25 the bomb, but you're pretending that you need to see the

1 photographs so that you know how best to construct the bomb,
2 right?

3 A. My intention is not to see the pictures, is to
4 locate the bomb. I need the pictures to give the FBI to
5 know who get these pictures and who get this surveillance,
6 ma'am.

7 Q. It was very important to you to find out who was
8 doing the surveillance, that makes sense, correct?

9 A. Correct, ma'am.

10 Q. And Siddig says to you -- when you say: I need
11 pictures for this stuff, he says: This is all talk
12 basically. Who is going to permit you to take pictures down
13 there? Meaning who's going to let you go down to the
14 basement and take photographs?

15 A. I'm sorry.

16 Can you repeat that part again, please.

17 Q. Do you recall this conversation with Siddig
18 Ali -- CM8, Mr. McCarthy, page 5:

19 You say: I need pictures for this stuff.

20 And Siddig says: This is all talk. Basically,
21 who is going to permit you to go take pictures down there.

22 And you say: No, of course. I will never go.

23 And Siddig says: It's like -- someone takes
24 pictures like this, whoever takes pictures must be --

25 You say: One that is specialized.

1 And Siddig says: One that is specialized and
2 knows how to enter and exit.

3 And you say: Knows how to enter and exit.

4 Do you recall having that conversation with
5 Siddig Ali?

6 A. I recall the second part, but it's all talk, or
7 it's only talk, this part. I don't know where it came from,
8 ma'am.

9 MS. AMSTERDAM: Will you stipulate, Mr. McCarthy?

10 MR. McCARTHY: I do.

11 MS. AMSTERDAM: All right.

12 Q. In that same conversation, sir -- page 18,
13 Mr. McCarthy -- you have a conversation with Siddig and you
14 say: Bring me the pictures, I need the pictures.

15 Siddig says: For the place?

16 And you say: For the big house.

17 He says: Yes, OK. Fine.

18 You say: All around, meaning all around the UN?

19 And he says: Fine, fine.

20 You say: I need to see all my corners.

21 And Siddig says: So you need someone to go under
22 and to get these pictures.

23 You say: If there is an entrance to the low
24 level of the big house, then I need pictures of the lower
25 part of the big house.

1 And Siddig says: Pictures under are impossible.

2 You go: Impossible, ah?

3 He says: Impossible.

4 You say: OK, fine.

5 Siddig says: Because they have extreme security
6 there.

7 Do you recall having that conversation?

8 A. Yes, ma'am.

9 Q. Now, Siddig has told you that he has a contact
10 person who is going to get up into the garage either to take
11 the photographs or he personally is going to take the
12 photographs, right?

13 A. Right, ma'am.

14 Q. Now he is telling you two weeks later
15 approximately that pictures of the inside are impossible, do
16 you recall that?

17 MR. McCARTHY: Objection, Rule 106. I would ask
18 your Honor --

19 MS. AMSTERDAM: I will keep reading.

20 Q. After "impossible," you say: OK, fine?

21 And Siddig says: Because they have extreme
22 security there.

23 You say: OK. Then get me some from the outside.

24 Siddig says: One might be able to enter.

25 Possible. However, not available at this time.

1 You say: Yes.

2 Siddig says: Didn't I tell you that I spoke with
3 someone a little while ago?

4 You said: Yes.

5 He said: I beeped about him.

6 And you said: Yes.

7 He said: Then he met me on the street and I told
8 him that I need to go down there.

9 Do you recall that conversation?

10 A. Yes, ma'am.

11 Q. In the same conversation he says to you: What do
12 you need? You need pictures of all directions, fine. You
13 need pictures from under there, is it possible or not.

14 You say: Yes, no, leave down there. I do not
15 want to sacrifice anyone.

16 He says: I do not know. I do not think that it
17 is possible however. Maybe it is allowed.

18 You then tell him --

19 MS. AMSTERDAM: This is page 20 and 21,
20 Mr. McCarthy.

21 MR. McCARTHY: You're skipping 19?

22 MS. AMSTERDAM: Yes.

23 MR. McCARTHY: OK.

24 Q. You then say: Sometimes on the inside of the
25 building they will have a guide to the building.

1 He says: Yes.

2 And you say: So if someone could locate one of
3 these guides?

4 And he says: The one that says you are here?
5 What type of guides were you talking about?

6 A. When you stand in front of the elevators --

7 Q. Yes.

8 A. -- ma'am, there is a chart always by the fire
9 department required to be posted there to locate that you
10 are here, that's your location, and where is the exits and
11 where is the stairways, right beside every elevator, ma'am.

12 Q. So at this point you have no photographs or no
13 blueprints of the United Nations and you suggested to Siddig
14 Ali that he get someone to copy one of the "you are here"
15 elevator signs, correct?

16 A. Correct, ma'am.

17 Q. All right. Isn't it a fact that Siddig goes on
18 to say: Don't rush in connection with getting these signs?

19 And you say: Fine.

20 MR. McCARTHY: Objection. Unless it goes back to
21 at least the attribution before that.

22 MS. AMSTERDAM: All right. I will read the
23 whole -- after the "you are here."

24 You say: God bless you.

25 Siddig says: At the elevator?

1 You say: I need to see that.

2 Siddig says: Showing entrances and exits.

3 And you say: If he could make a Xerox copy of
4 it, or if we could get one.

5 Siddig says: No, it's on the elevator.

6 And you say: Yes.

7 And he says: On the elevator.

8 You go on to say: OK. Is it possible that this
9 brother can take us there and afford us entry and show us
10 someone from the inside?

11 And Siddig says: Don't rush.

12 You say: Fine.

13 And he says: Don't rush too much.

14 And you say: Fine. Should I go straight?

15 I presume that means directions, because Siddig
16 says: Go right.

17 And then he continues to say: Do not go too fast
18 because I want him to do it at his convenience.

19 And you say: Yes.

20 And he says: At his convenience.

21 And you say: It's done.

22 And Siddig says: If he needs me, if he sees that
23 it is feasible, if he needs us to come, fine. If not, we'll
24 leave it to his discretion.

25 And you say: Fine.

1 And Siddig says: Because I want him to do things
2 at his convenience.

3 And you say: Fine, without any pressure on him.

4 Correct?

5 A. Correct, ma'am.

6 Q. He's the emir of this terrorist cell, correct,
7 Siddig Ali, according to your testimony the emir of a
8 terrorist cell, the head of a terrorist cell?

9 A. I did not say "terrorist cell," ma'am.

10 Q. Siddig is the head of a cell, correct?

11 A. That's better --

12 Q. A cell that by your testimony is plotting
13 bombings of bridges, buildings and the United Nations,
14 right?

15 A. That's correct, ma'am.

16 Q. As to his contact inside the UN, he says: Let's
17 leave it as his convenience. We don't want to pressure him,
18 correct?

19 A. Correct, ma'am.

20 MR. McCARTHY: Your Honor, I object under Rule
21 106, and I would ask her to go over to at least the third
22 attribution on page 22 if she's going to leave it there.

23 MS. AMSTERDAM: May I have your book?

24 Q. On the next page, Siddig says: You see how
25 because I don't want any haste,

1 You say: No rush.

2 He says: Basically I need you to be as far as
3 possible, us especially, me and you from there, we don't
4 people, we don't want people to see us.

5 And you say: You're right.

6 Five days later, on May 24, Siddig Ali has still
7 not produced any photographs, sketches or blueprints for the
8 garage of the United Nations, right?

9 A. Yes, ma'am.

10 Q. And you have a conversation with him where you
11 say: Is there anybody working on -- working or are you
12 running low?

13 And he says: Until now. There is somebody else
14 working today.

15 And you say: On the big house?

16 He says: Yeah.

17 You say: Did he reply to you?

18 And you say: He contacted me today and said yes,
19 there is something nice, I will bring it to you. I told
20 him, fine. Where? He told me tomorrow. He told me it is
21 coming tomorrow.

22 Do you recall having that conversation?

23 A. I recall it, ma'am.

24 (Continued on next page)

25

1 Q. And tomorrow came and of course -- withdrawn.

2 And tomorrow came and there were no photographs, correct?

3 A. Correct, ma'am.

4 Q. At the end of May -- CM 21, page 83 -- you say to
5 Siddig: Did you bring the pictures of the big house or the
6 man is still taking pictures?

7 And Siddig says: Not yet, unintelligible,
8 tomorrow no, he was supposed to be a few days.

9 And you say to him: You told me this a week ago.

10 And he says: Yeah, yeah.

11 And you say: You told me that you asked him, and
12 he told you that he is ready. The next day he told you he
13 is ready.

14 Referring to the fact that he told you tomorrow
15 he would have the photographs, correct?

16 A. I am sorry. I am lost here.

17 Q. Referring to the fact that he had told you a week
18 earlier that he would get the photographs, right?

19 A. Right, ma'am.

20 Q. And isn't it a fact that Siddig says to you: OK,
21 Emad, when you have a camera, brother, why don't you do it?

22 A. That's a question?

23 Q. Yes.

24 A. Yes.

25 Q. Isn't it a fact that Siddig told you, Emad, if

1 you have a camera, why don't you go do it?

2 A. Yes, ma'am.

3 Q. And you say to him: Well, I'll bring you the
4 camera and you can do it.

5 Right?

6 A. Yes, ma'am.

7 Q. And he says: Well, I'm going to need the camera
8 and I am going to need a car ride to Manhattan.

9 And you say: No problem, brother, I will do
10 both.

11 Right?

12 A. Right.

13 Q. You bring a camera, he never goes to take photos.

14 A. That is not correct, ma'am.

15 Q. Did he ever go to take photos of the UN?

16 A. We went to the UN but we didn't take photos. We
17 took the camera and we drove through the tunnel, and I think
18 you saw the tape, ma'am.

19 Q. I am not asking about the tunnel tape made on the
20 last day. I am asking about the fact that Siddig says to
21 you Emad, if you have a camera why don't you go do it? You
22 don't take pictures of the UN, do you?

23 A. No, I did not, ma'am.

24 Q. You said to him: I will bring you a camera,
25 Siddig, and you can get one of your men to take pictures of

1 the UN, right?

2 A. Yes, ma'am.

3 Q. And you bring him a camera and nobody goes to
4 take any photographs of the UN, do they?

5 A. It's not true, because I did not bring him still
6 camera, ma'am.

7 Q. You brought him a video camera.

8 A. I brought the video camera the day we take
9 pictures to the tunnel, ma'am.

10 Q. Isn't it a fact that you had a conversation with
11 Siddig about taking video pictures of the United Nations?

12 A. Yes, ma'am.

13 Q. And Siddig thought that that was even a better
14 idea than using still pictures of the video, right?

15 A. Yes, ma'am.

16 Q. And in fact it was suggested that he would send
17 one of his men to go take videos of the United Nations, and
18 no videos were ever taken, were they?

19 A. No, ma'am, the United Nations, no videos.

20 Q. So over the entire two-month period of time
21 during which Mr. Siddig Ali said that he had someone in the
22 United Nations who would provide photographs or designs or
23 blueprints of the structure of the United Nations, you never
24 received any of that, did you?

25 A. No, I did not, ma'am.

1 Q. Isn't it a fact that he told you at first that
2 Ahmed Yousef from the Sudanese mission was his contact?

3 A. Yes, ma'am.

4 Q. And isn't it a fact, sir, that on June 13 -- CM
5 37, Mr. McCarthy, page 30 -- Siddig Ali talks about trying
6 to recruit somebody to help him, help Siddig Ali, and Siddig
7 Ali says: Oh, he added that he could get in. I tried to
8 recruit him. He said I don't think so, because his
9 situation does not allow him because he works for the
10 Sudanese mission.

11 You say: Yeah.

12 And he says: You see? So this work, I will be
13 frank with you, Emad.

14 And you say: Yes, we don't hide anything from
15 each other.

16 And he says: Yeah, I cannot talk to these people
17 and tell them about this issue. I can't, I can't tell them
18 get out, I can't, Emad.

19 Meaning get out of the United Nations, right?

20 A. I am sorry. I got to stop at one point here
21 ma'am when you said recruit. Siddig doesn't need to recruit
22 nobody, ma'am. I don't know where this word came from.

23 Q. Do you know what recruit means?

24 A. I know what recruit mean, ma'am, because the way
25 I went and I saw his treatment with everybody in the

1 embassy, everybody in the embassy from the door until
2 Mr. Yousef Siraj or Siraj Yousef, hugs and kisses, and hi
3 Siddig, hi Siddig, inside the mission on the tape, ma'am.

4 Q. We will get to that in one moment.

5 A. All right.

6 Q. It is your testimony that he didn't try to
7 recruit anyone because in fact these were his men already,
8 correct, that these men in the Sudanese embassy were already
9 his partners in this plan? That's your testimony?

10 A. I cannot say partners here. I will say he is
11 very well known in the Sudanese embassy. He called the
12 Sudanese consulate on the phone in front of me at very early
13 morning hour, ma'am.

14 Q. Would you agree that the Sudanese community is a
15 small community within the United States in relative
16 numbers?

17 A. Not to my knowledge, ma'am.

18 Q. Do you know how many people are in the Sudanese
19 community in the United States?

20 A. Not to my knowledge, ma'am.

21 Q. Do you have any idea how many people are in the
22 metropolitan -- by that I mean New York-New Jersey area?

23 A. Not to my knowledge, ma'am.

24 Q. Would you think that most people within the
25 Sudanese community know where the Sudanese mission is?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q. When you went to the Sudanese mission the first
4 time you showed up there, it was for the express purpose of
5 Siddig helping you get a passport to go to the Sudan, right?

6 A. Correct, ma'am.

7 Q. And you showed up there that day and you were not
8 given access to the consul to speak with. You were told
9 that he was not there, right?

10 MR. McCARTHY: Objection to form.

11 Q. What happened the first time you went to the
12 Sudanese mission?

13 A. We went over there and we met the consul Siraj
14 Yousef, hugs and kisses, knows each other, greeting, where
15 is Mr. Ahmed Yousef, he is not in and he is out and I am
16 about to leave. He greeted us and we sat for a minute, he
17 explained to him that I need a visa to go to Sudan, and he
18 said that Mr. Ahmed Yousef will do it later.

19 Q. Did Mr. Ahmed Yousef ever give you a visa to the
20 Sudan? Did you ever get it?

21 A. No, I never did get it.

22 Q. In fact Siddig set up a appointment for you to
23 meet with Ahmed Yousef, right?

24 A. That's when he called on the phone.

25 Q. And when you got to the Sudanese embassy to meet

1 with Ahmed Yousef, you were told that he was not there,
2 right?

3 A. I was told that his wife went to the hospital and
4 he have to leave on an emergency leave from the consulate,
5 ma'am.

6 Q. You were told he was not there, right?

7 A. Pardon me.

8 Q. You were told he was not there. He did not keep
9 the appointment, correct?

10 A. Right.

11 Q. And he did not call you back to reschedule the
12 appointment?

13 A. The consul?

14 Q. Yes.

15 A. He doesn't know my phone number.

16 Q. Did you leave your phone number?

17 A. I did not.

18 Q. Did you go back?

19 A. I did not.

20 Q. Did you ever get a visa?

21 A. I did not.

22 Q. When you say hugs and kisses, would I be fair in
23 saying that in the Middle East many men greet as a custom
24 people with hugs and kisses?

25 A. If they know each other.

1 Q. If they know each other.

2 A. If I am a stranger --

3 Q. It's not unusual --

4 MR. McCARTHY: Objection to cutting the witness
5 off.

6 THE COURT: Sustained.

7 MS. AMSTERDAM: I am sorry.

8 THE COURT: You were saying if you were a
9 stranger, and then what?

10 Q. If you were a stranger, then what?

11 A. If you are a stranger to nobody you never going
12 to get hugs and kisses, you going to shake hands. If you
13 know somebody you going to get hugs and kisses because we
14 know each other, ma'am.

15 Q. Did Siddig Ali ever give any lectures, to your
16 knowledge, at the United Nations mosque?

17 A. I am not sure, ma'am.

18 Q. Did he ever tell you that he knew these people
19 because he had given lectures at the United Nations mosque?

20 A. No, ma'am, he did not say that.

21 Q. And if you did know someone, it would be fair to
22 say that it is not uncommon to greet them with hugs and
23 kisses, correct?

24 A. Know them closely, yes, ma'am.

25 Q. Sir, going back to Ahmed Yousef, did there come a

1 time, sir -- CM 37, Mr. McCarthy, page 32 -- where you said
2 to Siddig Ali: I thought that Ahmed Yousef is helping you?

3 And Siddig says: No, not Ahmed Yousef.

4 And you say: Let us go one step at a time
5 instead of dreaming and flying. Let us do something and
6 think about the next step. It is as simple as that.

7 Do you remember having that conversation?

8 A. Yes, ma'am.

9 Q. Isn't it a fact that you began to doubt whether
10 or not Ahmed Yousef was helping Siddig Ali?

11 A. No, I did not doubt that, ma'am.

12 (Continued on next page)

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1 Q. You didn't doubt it even when Siddig said Ahmed
2 Yousef is not helping us?

3 A. Right --

4 MR. McCARTHY: Objection. Your Honor, I would
5 ask that it go back to the prior page, about the third
6 attribution down where there is a discussion about the
7 subject.

8 MS. AMSTERDAM: Could we have a side bar, your
9 Honor?

10 THE COURT: Yes.

11 (At the side bar)

12 MS. AMSTERDAM: Your Honor, I feel that I have
13 been most willing to abide by any 106 stuff but there does
14 come to a point where some of what Mr. McCarthy is asking
15 for is the proper subject of redirect and I think that I
16 have to go into a completely different subject -- he is
17 telling me to be quiet.

18 THE COURT: No, he is nodding in agreement. It
19 is very important that he be here to nod in agreement
20 because otherwise you might have gotten a dissent.

21 It is a question of degree like a lot of what
22 goes on here. You can't take a little snippet, a really
23 little snippet of a conversation --

24 MS. AMSTERDAM: I agree with that.

25 THE COURT: -- and try to score a small point and

1 not expect that somebody is going to point out that two or
2 three attributions earlier the sense changes if you read it
3 all together. To what degree you have done that I don't
4 know, and I don't want to know. All I am saying is be
5 careful.

6 MS. AMSTERDAM: I say, I have been accomodating
7 but I do think at some point there comes a point where what
8 Mr. McCarthy wants to go into is the subject of redirect and
9 not the subject of 106.

10 MR. McCARTHY: Your Honor, I think most of the
11 time I have been sitting there as she reads on and frankly I
12 think most of it is the defense case and not impeachment of
13 the witness. But where I have made objections, I have
14 pointed out passages in the transcript which are completely
15 related to what Miss Amsterdam has gone into and frankly
16 change the sense, and what she is trying to do is blow major
17 points out of small snippets of the transcript, and I don't
18 think she should be able to do that when there are related
19 portions of the transcript --

20 THE COURT: Now that everybody has delivered
21 themselves of self-serving statements, let's get on with it.

22 (In open court)

23 (Continued on next page)

24

25

1 BY MS. AMSTERDAM:

2 Q. Sir, on June 13, did you have this conversation
3 with Siddig Ali, where Siddig said: You understand, so what
4 we are thinking about him and myself, now I am trying to
5 collect this information from Siraj, who comes frequently to
6 these people.

7 And you say: Who is Siraj?

8 And Siddig says: The one we met, the brother who
9 we met.

10 Siddig says: Siraj Al Din. So I always get
11 information from him who went to Ahmed Yousef who goes to
12 the building. I want to know.

13 And you say: Hm.

14 And he says: Who and who?

15 And you say: Hm.

16 And Siddig says: At all times who and who and
17 what are the days that they go driving van. See now, we will
18 open a new subject.

19 And you say: Yeah.

20 And Siddig says: Because I don't want them to be
21 there.

22 And you say: Right, of course.

23 Siddig says: Yes, you see.

24 And you say: Hm.

25 And Siddig says: I don't care about the rest of

1 them, frankly.

2 And you say: Yes, of course, there will be
3 casualties.

4 And Siddig says: Of course, there will be other
5 people. I don't know by God, brother Emad. So my opinion,
6 my opinion that we depend on God completely. If it happen
7 and they are there by chance, so what can I do?

8 I take it this is people being in the United
9 Nations if a bomb should go off.

10 A. That is correct, ma'am.

11 Q. And you say: Hm.

12 And Siddig says: What can I do? Delay it?

13 And you say: See what you want to do.

14 And Siddig says: So I go to their homes one day
15 before the bomb and I put something in their food to make
16 them sick, and they have diarrhea, ah, good. Think with me
17 how to do it.

18 Meaning he is going to go to the people's homes
19 who belong to the various missions and put something in
20 their food to get diarrhea so they won't come to work that
21 day?

22 MR. McCARTHY: Objection.

23 Q. Is that what you took the conversation to mean,
24 that he would go to the homes of some people that he did not
25 want to be at the United Nations that day and put something

1 in their food that would make them sick so that they
2 couldn't come to work the day of the bombing, correct?

3 A. You are asking my understand --

4 Q. Yes, is that your understanding of what Siddig
5 Ali was telling you?

6 A. I understood that he have access to these
7 people's home, ma'am.

8 Q. And he would go there to put something in their
9 food so they would get diarrhea and not come to work the
10 next day, right?

11 A. Yes, ma'am.

12 Q. And after that you said I don't know, I thought
13 that Ahmed Yousef is helping you. And he says: No, not
14 Ahmed Yousef, unintelligible.

15 And you say to him: Let us go one step at a
16 time. Instead of dreaming and flying, let us do something
17 and think about the next step. It is as simple as that.

18 Do you recall having that conversation?

19 A. Yes, ma'am.

20 Q. You told him to stop dreaming, stop flying and do
21 something specific to get the plan under way, correct?

22 A. I want to know who is behind the Sudanese
23 consulate exactly, ma'am.

24 Q. And when you said to him stop dreaming and
25 flying, what did you mean?

1 A. I mean by putting sleeping pills in their food in
2 their home -- to me it's not logical.

3 Q. Sounded a little crazy to you, would that be
4 fair?

5 A. No, it's not fair, ma'am.

6 Q. Fair.

7 A. No, it's not fair, ma'am.

8 Q. It didn't seem reasonable to you, did it?

9 A. Yes, ma'am.

10 Q. Did you ever meet Ahmed Yousef?

11 A. No, ma'am.

12 Q. Did you ever receive any passports or visas from
13 Ahmed Yousef?

14 A. No, ma'am.

15 Q. Did you ever receive any entrance card allowing
16 you entrance into the United Nations from Ahmed Yousef?

17 A. No, ma'am.

18 Q. Did you ever get any diplomatic passes from Ahmed
19 Yousef?

20 A. No, ma'am.

21 Q. Any keys to a van from Ahmed Yousef?

22 A. No, ma'am.

23 Q. Any van or car or diplomatic plates from Ahmed
24 Yousef?

25 A. No, ma'am.

1 Q. Or from anyone in the Sudanese embassy?

2 A. No, ma'am.

3 Q. Is that because the FBI closed this case down too
4 soon?

5 A. That's my opinion, ma'am.

6 Q. During your conversations with Siddig Ali, he
7 boasted to you, did he not, that he was an expert marksman?

8 A. Excuse me.

9 Q. He boasted, he bragged to you that he was an
10 expert marksman with a rifle.

11 A. He said he is good shooter, yes.

12 Q. And he told you that he had gone to training, did
13 he not, in Pennsylvania?

14 A. Yes, ma'am.

15 Q. And he told you that he had been trained on
16 secrecy and silence, did he not?

17 A. Yes, ma'am.

18 Q. That they had used torture on him to train him.

19 A. That's not what happened, ma'am.

20 Q. All right. Did you have this conversation where
21 Siddig said: They are also used to be torture? Do you have
22 an idea about this?

23 This is 7B, Mr. McCarthy, page 29.

24 And you said: No.

25 And Siddig said: Yes, of course, they are

1 trained on torture, beating and slapping with spikes in
2 their eyes like this.

3 Do you remember having that conversation?

4 A. I remember he said they get this training but the
5 first time you asking me the question you said he got this
6 training.

7 Q. The they were the people that Siddig claimed to
8 have trained, right?

9 A. That's correct, ma'am.

10 Q. He was the commander of these troops, correct?

11 A. Correct, ma'am.

12 Q. And he said that they were trained on torture
13 with beating, slapping and spikes in their eyes, right?

14 A. Correct, ma'am.

15 Q. And that they had stretched their necks and
16 gases. Do you recall that?

17 A. I am sorry.

18 Q. Stretched their necks.

19 A. No, I don't recall that.

20 Q. That they were used to torture, they were used to
21 hunger, three days in a row without eating. Yes, of course,
22 you see.

23 And you said: Same as the commando course which
24 we took.

25 Did you take a commando course of that nature?

1 A. Yes, ma'am.

2 Q. You did?

3 A. Yes, ma'am.

4 Q. Trained on torture, slapping, beating spikes in
5 your eyes?

6 A. No, ma'am, something different a little bit.

7 Q. So that when you said you took a commando course,
8 you were acting like a big shot?

9 A. No, ma'am, that's what you say.

10 Q. Did it occur to you that Siddig was acting like a
11 big shot?

12 A. I think he was.

13 Q. He was. Siddig went on to say: This is torture.
14 There is something called survival.

15 And you said: Yes.

16 And he said: You see, I put them in the woods
17 and come to pick them up in three days. Yes, of course.

18 And you say: Gee.

19 And he says: Yeah, unintelligible, training, it
20 is not a joke. Praise God, you say.

21 And he says: These people want to reach the
22 highest level of training.

23 And you say: Yes.

24 And he says: Supplies were not available, so
25 what is available is very minimum. Good things, thanks to

1 God. I am telling you that they are not 100 percent. I
2 really want them to be 100 percent, but so far they are only
3 50 percent.

4 Meaning his troops, the people he had trained,
5 correct?

6 A. Correct, ma'am.

7 Q. And he goes on to say: This training, they used
8 to be sprayed with gas.

9 And you say: Yeah.

10 And Siddig says: Do you know how much? Fifteen
11 percent.

12 And you say: Ah?

13 And he says: Fifteen percent.

14 And you say: Yeah.

15 And he says: Do you know what 3 percent of it
16 will do, 3 percent of the gas?

17 And you say: Of course, it will blind you of
18 course.

19 And he says: God forbid you will lose your
20 breath, 15 percent if you got sprayed with it, if the spray
21 will remain with you for one and a half minutes.

22 You say: No God but God.

23 And he goes on to say: It must be one and a half
24 minutes. He will remain motionless for 90 seconds, waiting
25 far away. He is tied of course. He is not going to stand

1 still. He has to deal with it one and a half minutes. He
2 gets sprayed with gas and he is screaming with and crying
3 and it is dark.

4 And you say: Yes.

5 And he says: And he is tied up to a tree after
6 he gets sprayed. He has to search for, unintelligible, to
7 get in it it, you see.

8 And he says: Yeah.

9 And you say -- and Siddig says: Training, you
10 see. I know you have better than that in the commando. It
11 is severe.

12 And you say: Of course, the commando is another
13 type.

14 And he says: There is nothing better than that.
15 I know that. But these people did well, thanks to God, in
16 cold water, 15 degrees below zero.

17 Do you remember having that conversation?

18 A. I remember, ma'am.

19 Q. Did it occur to you to point out that 15 degrees
20 below zero was ice?

21 A. Yeah, I know.

22 Q. And you go on to say: You told me that Mohammed
23 Abouhalima was practicing scuba diving.

24 And Siddig says: Yes, all of them received it,
25 thanks to God. They dived in this lake, they dived in. All

1 of them used to dive, get out of pikes, pikes which did not
2 allow a little kid to go through, they get in it and they go
3 out the other side, they got good training.

4 Did you believe him what he talked about this
5 nature training or did you think he was exaggerating?

6 A. I took the information on the tape, delivered it
7 to the FBI, ma'am.

8 Q. Did you ever at any time say to the FBI, you
9 know, I think that this guy should be watched closely, may
10 very well be exaggerating what he is telling us?

11 A. No, I never said that to the FBI, ma'am.

12 Q. This man also told you he took part in an
13 assassination of a Sudanese rebel leader. Do you recall
14 that?

15 A. Yes, ma'am.

16 Q. He said he flew out to Chicago and that he and
17 another person killed a man by the name of Francis Dane,
18 correct?

19 A. Correct, ma'am.

20 Q. And you told him: I looked in the newspaper, I
21 didn't see anything about it.

22 And he went on to tell you: Well, they hushed it
23 up and they said that his family killed him.

24 Correct?

25 A. That's not correct, ma'am.

1 Q. That's not what you said?

2 A. That's not what I said.

3 Q. That's not what happened or that's not what you
4 said?

5 A. What you saying, it's not what I had said. He
6 didn't say his family killed him. That's not happened,
7 ma'am, or did not happen.

8 Q. He went on to say that they had, that the papers
9 had said that the political opposition or his family had
10 been accused of killing him, right?

11 A. That's right.

12 Q. But Siddig said it was actually him who had done
13 it, right? Siddig said it was he that had done the
14 assassination.

15 A. Yes, ma'am.

16 Q. Did you believe him?

17 A. Absolutely.

18 Q. Did he believe you when you told him that you
19 stopped the assassination of Sadat?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 Q. Didn't there come a time when you felt that you
23 were looking in a mirror?

24 MR. McCARTHY: Objection.

25 A. I am sorry?

1 THE COURT: Sustained.

2 Q. He tells you he did an assassination, correct?

3 A. Correct.

4 Q. And you tell him that you stopped an
5 assassination, correct?

6 A. Assassination never stopped, ma'am.

7 Q. What?

8 A. The assassination of President Sadat never
9 stopped because he is killed.

10 Q. Well, that you attempted to stop the
11 assassination of Sadat by taking a bullet for him, right?

12 A. Attempted, yes, ma'am.

13 Q. Didn't it become obvious to you that Siddig
14 really had no experience at all in being a terrorist?

15 A. I don't know how can I judge terrorist from not
16 terrorist. I am not in a position to do that, ma'am.

17 Q. The first day, the first consensual monitored
18 conversation on May 7, you bring the timer, do you not? You
19 bring a timer to show him, right?

20 A. Yes, ma'am.

21 Q. And he asks you how does this work, right?

22 A. Yes, ma'am.

23 Q. You tell him, I'll show you how I set the timer,
24 right?

25 A. Yes, ma'am.

1 Q. And you tell him when we get to an advanced stage
2 I will explain to you how it works, right?

3 A. Yes, ma'am.

4 Q. Then in that same conversation, you ask him about
5 dynamite, right?

6 A. Yes, ma'am.

7 Q. And he tells you that getting a ton of dynamite,
8 that's going to be very difficult, right?

9 A. I think, yes, ma'am.

10 Q. And he wasn't even able to get a single stick of
11 dynamite, was he?

12 A. No, ma'am.

13 Q. In fact in that conversation he asks you if
14 dynamite comes in sticks or do you buy it in bundles, right?

15 A. Right, ma'am.

16 Q. He tells you that he has chosen an armory but
17 then he has to admit that it's a flea market, right?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q. You ask him whether or not he knows a chemist and
21 he tells you he doesn't know a chemist, right?

22 A. Right, ma'am.

23 Q. He has to ask you what kind of amounts of
24 explosives do you need? Do you recall that?

25 A. Yes, ma'am.

1 Q. And he asks you whether or not bullet powder
2 is -- how it's sold, is it sold in cans. Do you remember
3 that?

4 A. Yes, ma'am.

5 Q. He asks you can you buy this on the market?

6 A. Yes, ma'am.

7 Q. He even asks you what do you call this stuff? Is
8 it called magnum? You tell him it's called magnum. Do you
9 recall that?

10 A. Yes, ma'am.

11 Q. When you tell him about the -- on May 18, you
12 explained to him how the timer and the detonator are going
13 to work, correct?

14 A. Correct, ma'am.

15 Q. He doesn't know how to connect them, does he?

16 A. No, ma'am.

17 Q. And on the way to Philadelphia -- you went to
18 Philadelphia, correct?

19 A. Correct, ma'am.

20 Q. With the purpose of trying to buy explosives,
21 right?

22 A. Correct, ma'am.

23 Q. And on the way down he says to you, the questions
24 we need to ask, what are they? He is asking you, what
25 questions do I need to ask of the person who is going to

1 sell us explosives, right?

2 A. Right.

3 Q. And on the way down you go over with him, you
4 rehearse the questions, you tell him what he has to ask,
5 what he has to make inquiry about, right?

6 A. Right.

7 Q. He gets back into the car and he tells you that
8 he can get a gun, a 9 millimeter gun for \$200. Do you
9 recall that?

10 A. Yes, ma'am.

11 Q. And he says to you, is that expensive? Do you
12 recall that?

13 A. No, ma'am.

14 Q. He asks you, is that expensive?

15 A. He may say it, ma'am.

16 Q. He doesn't even know how much a gun costs, does
17 he?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q. Isn't it a fact that you have a conversation with
21 him where he says: He is not going to bring it but he is
22 going to bring us what, the gun, brand new, 9 millimeters,
23 semiautomatic? Is it good?

24 And you say: Good.

25 And he says: Brand new, around \$200.

1 And you say: And you're saying it is an Islamic
2 operation? And the man, Islamic operation?

3 And he says to you: Is it expensive?

4 And you say: Of course it is expensive.

5 And Siddig says: \$200 is expensive?

6 And you say: Well, it's not that much but.

7 He is asking you what the price of a 9 millimeter
8 gun should be, correct?

9 A. He asked, yes.

10 Q. Do you remember having a conversation with Siddig
11 where you were talking about getting phony identification
12 and Siddig told you that you could go to the library and get
13 a birth certificate?

14 A. He may said it. I don't recall it, ma'am.

15 Q. Didn't that make you begin to wonder about his
16 ability --

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained.

19 Q. During this time when Siddig is plotting the
20 bombings, he is also going to job interviews, is he not?

21 A. Yes, ma'am.

22 Q. And on the way back from the trip in
23 Philadelphia, isn't it a fact that you have this
24 conversation with him?

25 A. What conversation, ma'am?

1 Q. One moment. I apologize, sir. Just give me a
2 moment.

3 7B, Mr. McCarthy, page 9.

4 You say: We are hot blooded, sheik. Do you
5 know -- and by sheik, you were referring to Siddig. You
6 were calling him sheik, correct?

7 A. Correct, ma'am.

8 Q. Do you know, Sheik, that the C-4 with God's order
9 if it comes.

10 And Siddig says: Is it good? Do you like it?

11 And you say: My friend, you don't know what C-4
12 could do? The explosive force is four times stronger than
13 dynamite.

14 And he says: Is C-4 the same material used to
15 make bullets?

16 And you say: No, bullets is cordite.

17 And he says: Huh?

18 And you say: The bullets is called cordite.

19 And Siddig says: No, the material used to make
20 bullets.

21 And you say: Yes, I know.

22 And Siddig says: Is it the same?

23 And you say: No.

24 Siddig says: It is not? Question mark.

25 And you say: The other is called black powder,

1 and the other is.

2 And Siddig says: And this one is not good?

3 And you say: It's good, yeah, but.

4 Siddig says: It's not powerful, huh?

5 And you say: You are preparing for the big

6 house, Sheik.

7 And Siddig says yes, I think I made a mistake

8 with him.

9 And you say: Huh?

10 Siddig says: A mistake.

11 And you go on to say: With this Abdul Rashid.

12 That's not this Rashid, that's the man in

13 Philadelphia, correct?

14 A. The other Rashid, yes, ma'am.

15 Q. And Siddig says: Yeah.

16 And you go: What?

17 Siddig says: He told me that it has the refill

18 for the bullets.

19 And you say: Yes.

20 He says: He knows the man who has the refill for

21 the bullets, black powder.

22 And you go: Yeah.

23 And he says: He has it.

24 And you go: Good.

25 He gets into the car and he tells you that he has

1 made a mistake, that he has confused C-4 with the powder
2 that is inside bullets, correct?

3 A. Correct, ma'am.

4 Q. What is C-4?

5 A. Plastic explosives.

6 Q. It's a plastic explosives.

7 A. Yes.

8 Q. Very powerful, correct?

9 A. Very powerful, yes, ma'am.

10 Q. And Siddig Ali didn't know the difference between
11 C-4 and the black powder inside bullets, correct?

12 A. It appears to me in that time that he doesn't
13 know, ma'am.

14 Q. But you reassure him in that conversation don't
15 worry, magnum is good, the gun powder will work fine,
16 correct?

17 MR. McCARTHY: Objection to form.

18 THE COURT: Sustained.

19 Q. Didn't you say to him magnum is fine?

20 A. I did say that, yes.

21 Q. And that the gun powder will work fine?

22 A. I did say that, yes.

23 Q. And in fact you never got any C-4 from Siddig,
24 right?

25 A. No.

1 Q. Never got got any gun powder from Siddig, right?

2 A. No, ma'am.

3 Q. At one point, sir, you have a conversation with
4 Siddig in which he says: Napalm, huh?

5 And you say: Yes, napalm.

6 Siddig says: What is it?

7 And you say: Napalm is a powder. When it is
8 mixed with water it turns to gel.

9 Do you remember that?

10 A. Yes, ma'am.

11 Q. Siddig did not know what napalm was, did he?

12 A. Appears to me in that time, no, ma'am.

13 Q. You tell him, do you not, that if he can get you
14 hand grenades you will be able to take the hand grenades
15 apart to get the detonator out, right?

16 A. Right, ma'am.

17 Q. He doesn't know how to do that, does he?

18 A. No, he doesn't, ma'am.

19 Q. In a conversation that you have with him -- CM 8,
20 page 7 -- he says: The hand grenade.

21 And you say: Hm.

22 And Siddig says: If they get it for us, do they
23 bring it in full or empty?

24 And you say: Full, we'll take it apart.

25 Siddig says: Are we going to take it apart?

1 And you go: Well I'm going to take it apart.

2 He says: Yes.

3 And you say: I'm going to take out of it the.

4 And Siddig says: If it was empty, wouldn't it be
5 useful? I mean if it was empty and it has a detonator.

6 And you go; if it was empty and it has a
7 detonator, good.

8 And Siddig says: Good, no problem.

9 So Siddig doesn't know how to remove a detonator
10 from a hand grenade, correct?

11 A. No, ma'am.

12 Q. He doesn't know whether or not you can get a
13 detonator out of a hand grenade, does he?

14 A. Yes, he knows there is a detonator in a hand
15 grenade, ma'am.

16 MR. JACOBS: Your Honor, I am having trouble
17 hearing. Can the witness adjust the microphone a little?

18 THE COURT: Would you adjust the microphone a
19 little.

20 MR. JACOBS: Thank you.

21 Q. At one point, sir, you have a discussion with him
22 on June 3, CM 27, where you are talking about money and
23 money can buy weapons, munitions and explosives.

24 And Siddig says to you: I'm asking you how much
25 money is needed? This is the question.

1 And you say to him: I, too, didn't bring these
2 things beforehand.

3 And you ask him: Do you have any previous
4 experience in buying certain things?

5 And he says: No, I never bought anything
6 previously, Emad, such things.

7 Do you recall that?

8 A. I recall it, ma'am.

9 Q. And indeed, sir, June 20, three days before the
10 arrests, you drive into the country with Siddig for the
11 purpose of doing a test bomb, right?

12 A. Right, ma'am.

13 Q. And you actually do do a test, is that not
14 correct?

15 A. Correct, ma'am.

16 Q. And when it's over you speak into the microphone
17 at the end of the tape after Siddig has left, do you not?

18 A. Yes, ma'am.

19 Q. And you say in the microphone: We've made a
20 firecracker which he know, he, he was thinking is the bomb
21 sample that we say preparing for.

22 You took a firecracker and convinced Siddig Ali
23 that this was a bomb explosives, right?

24 A. I couldn't blow a real bomb, ma'am.

25 Q. That's not the question.

1 A. What was the question, ma'am.

2 Q. The question is, did Siddig Ali believe that the
3 firecracker was the bomb sample? Right?

4 A. Correct, ma'am.

5 MS. AMSTERDAM: Your Honor, this would be an
6 appropriate point to break if that is agreeable to the
7 court.

8 THE COURT: Ladies and gentlemen, please leave
9 your notes and other materials behind. Please don't discuss
10 the case. We will resume in a few minutes.

11 (Jury excused)

12 (Witness excused)

13 (Continued on next page)

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1 THE COURT: Is Ms. Stewart among us?

2 MR. PATEL: Your Honor, may I?

3 EMAD SALEM, resumed.

4 MS. STEWART: I'm sorry, Judge.

5 THE COURT: That is all right.

6 (Jury present)

7 THE COURT: Ms. Amsterdam?

8 MS. AMSTERDAM: Thank you.

9 Q. When we broke, sir, we were speaking about
10 Mr. Siddig's expertise.

11 Do you recall?

12 A. Yes, ma'am.

13 Q. Isn't it a fact that there came a time, the last
14 day before the FBI moved in, that there was a gun that was
15 brought to the safe house, correct?

16 A. I'm sorry?

17 Q. That there was a gun that arrived at the safe
18 house on the very last day.

19 A. Yes, ma'am.

20 Q. Correct?

21 A. Yes, ma'am.

22 Q. When that gun was brought into the safe house,
23 isn't it a fact that Siddig Ali didn't even know how to hold
24 it?

25 A. He hold it with a different way.

1 Q. Didn't you tell him that -- didn't you have to
2 tell him how to release the safety?

3 A. Yes.

4 Q. Didn't you tell him that if he held it the way
5 that he was holding it, he would burn his hands?

6 A. He can injure his finger, yes.

7 Q. And didn't you tell him that if he held it the
8 way he was holding it, he would probably dislocate his
9 shoulder?

10 A. No, ma'am.

11 Q. Isn't it a fact that you yelled at him and told
12 him, don't ever point a gun at anyone, even if it's empty?

13 A. Yes, I did.

14 Q. Wouldn't you consider that to be pretty basic
15 knowledge in terms of firearms training?

16 A. It is, ma'am.

17 Q. I am correct in saying that at no time during the
18 course of this investigation did you ever receive any
19 plastic explosives, would that be correct?

20 A. Correct, ma'am.

21 Q. And would I be also correct in saying that at no
22 time during the course of this investigation did you ever
23 receive any black powder?

24 A. No, ma'am.

25 Q. Would I be correct in saying that there was no

1 dynamite that you ever received?

2 A. No, ma'am.

3 Q. Not a stick or a ton or a bundle, correct?

4 A. Correct, ma'am.

5 Q. There came a time that you told Siddig Ali that a
6 detonator was a must, do you recall that?

7 A. Yes, ma'am.

8 Q. And you never received a detonator, is that
9 correct?

10 A. No, ma'am.

11 Q. And there came a point that you said, just one
12 hand grenade, just get me one single hand grenade, and you
13 never got a hand grenade, correct?

14 A. Yes, ma'am.

15 Q. Isn't it a fact that there came a time that you
16 asked Siddig Ali just to get you a gun for your personal
17 use? Do you recall that?

18 A. No, ma'am.

19 Q. On June 3 -- CM27, page 24 -- isn't it true that
20 you said to Siddig: Yes, I need a gun with me. I don't
21 know how to walk. How -- I feel naked like this. I need a
22 piece of weapon now so that I can be at ease. I see it this
23 way, I've always been like this all my life. And Siddig was
24 never able to produce a gun for you, was he?

25 MR. McCARTHY: Objection. I will withdraw the

1 objection.

2 THE COURT: Go ahead.

3 Q. Siddig was never able to produce a gun for you,
4 was he?

5 A. No, he never produced a gun.

6 Q. Indeed, there came a time that Siddig told you
7 that he could get you a silencer for a machine gun, do you
8 recall that?

9 A. He may said it, yes.

10 Q. He said that he had used a machine gun during the
11 assassination of Francis Dane, do you recall that?

12 A. Yes, he said that.

13 Q. As you sit here today, do you know whether or not
14 Francis Dane is still alive?

15 A. I don't know who is Francis Dane, ma'am.

16 Q. Isn't it a fact that he said to you that he could
17 get a -- that he used a silencer on a machine gun?

18 A. I don't think that he said that.

19 Q. CM54, page 4, June 20. He said, starting in the
20 middle of the page: Boom, boom, boom, boom, and two in the
21 driver and four in him. Meaning he had shot Francis Dane
22 and his driver, correct?

23 A. Yes, ma'am.

24 Q. And you say: Who was the shooter?

25 And he says: A brother.

1 You say. Yes, God bless?

2 And he says: With a silencer.

3 And you say: A silencer, a silencer.

4 And he says: Yes, in a machine gun, not on a
5 pistol.

6 And you say: A silencer on a machine gun?

7 Can you have a silencer on a machine gun?

8 A. I don't recall this conversation, ma'am.

9 Q. My question to you is: Can you have a silencer
10 on a machine gun? Have you ever seen a silencer on a
11 machine gun?

12 A. I'm not sure, ma'am.

13 Q. Such a thing does not exist, does it, sir?

14 A. I'm not sure, ma'am.

15 Q. You go on to say -- Siddig says: Yes, on a
16 machine gun?

17 And you say: You are the most weird ever then.
18 So how come we are not able to get that thing now?

19 And Siddig says: Sheik, we will get it -- now,
20 by "sheik" he is addressing you. This is not Sheik Omar
21 Abdel Rahman, right? He's calling you "sheik," correct?

22 A. Correct.

23 Q. Sheik, we will get it now if we want to, Brother.
24 We will get it now if we want, of course.

25 And you say: Yes.

1 Siddig says: We can get it now, by God, if we
2 want to, God willing. I mean, but we need money. I know a
3 brother who manufactures these things?

4 And you say: Well, I want one.

5 He says: Yes, he manufactures them.

6 Later on you go on to say: Can you arrange for
7 that silencer, sheik? I want to buy one.

8 Siddig says: You see.

9 You say: How much will it cost?

10 And Siddig says: By God, doesn't cost more than
11 \$50.

12 You go: \$50?

13 And Siddig says: Yes, by God.

14 And you say: Well, I will pay it.

15 And Siddig says: No way.

16 And you say: I want one for me personally.

17 You never got a machine gun silencer, did you?

18 A. No, ma'am.

19 Q. At this point in the investigation did you begin
20 to doubt whether or not Siddig's claims of having expertise
21 were in fact true?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q. Did you begin to wonder why Siddig didn't seem to
25 know the most basic things?

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q. Did you have any second thoughts about how you
4 were able to fool him with a firecracker?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. Siddig Ali at one point suggested to you that he
8 had taken part in the test bombing of the World Trade
9 Center, correct?

10 A. Correct, ma'am.

11 Q. After you were able to trick him with the
12 firecracker, did you in fact doubt whether or not he had
13 taken part in the test bombing of the World Trade Center?

14 MR. McCARTHY: Objection.

15 MS. AMSTERDAM: I would cite Rule 806, your
16 Honor.

17 THE COURT: I will allow it, although I don't
18 think that was his objection. But go ahead.

19 A. What was the question, ma'am?

20 Q. My question to you is: After you were able to
21 trick Siddig Ali with a firecracker, did you begin to doubt
22 whether or not he had actually taken part in a test of the
23 World Trade Center bomb?

24 A. No, I never doubted that.

25 Q. You never doubted it?

1 A. I never doubt it, ma'am.

2 Q. Would I be correct in saying that during the
3 months of April, May and June that you were in contact with
4 Siddig Ali almost every day?

5 A. Correct, ma'am.

6 Q. Would I also be correct in saying that you spent
7 hundreds of hours with him at a minimum?

8 A. Yes, ma'am.

9 Q. As you got to know him better, did you form any
10 impressions about him?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. Did you become -- withdrawn.

14 Did you sense that he was under any great
15 emotional stress during this period of time?

16 A. No, ma'am.

17 Q. Did you sense that he was a little bit crazy
18 during this period of time?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q. All right. Did Siddig Ali tell you during this
22 period of time that he had lost a lot of weight?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Q. Did he tell you that he hadn't been sleeping,

1 that he was suffering from mental exhaustion?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 MS. AMSTERDAM: Your Honor, I would cite Rule
5 806.

6 THE COURT: I am sure you would. I would still
7 sustain the objection.

8 Q. Did he tell you that his head felt like it would
9 explode?

10 A. I'm sorry?

11 Q. That his head felt like it was going to explode.

12 THE COURT: Sustained.

13 Q. That he hadn't been sleeping for days?

14 THE COURT: Sustained.

15 Q. Isn't it a fact that during the period of time
16 that you spent with him that Siddig Ali consistently changed
17 targets?

18 A. At the beginning, yes.

19 Q. At the beginning he said that he wanted to shoot
20 President Mubarak of Egypt, right?

21 A. Yes.

22 Q. You told him not to do that because it would hurt
23 the brothers, meaning the World Trade Center defendants,
24 because their trial was coming in September, correct?

25 A. I'm not sure that's what I said, ma'am.

1 Q. Do you recall Siddig Ali saying that perhaps,
2 then, you should do a target of trying to get the Jewish
3 Defense League upstate New York?

4 A. Yes, I recall that, ma'am.

5 Q. Do you recall having a conversation with him
6 where he told you he wanted to delay 26 federal -- that he
7 wanted to cancel or push back 26 Federal Plaza, the bombing
8 of 26 Federal Plaza?

9 A. I think he said that, ma'am.

10 Q. Isn't it a fact that you said to him, yeah, you
11 change your mind every day. Every day you have a different
12 opinion, man?

13 Do you recall that?

14 A. Yes, ma'am.

15 Q. All right. In CM1, in the first recorded
16 conversation with him, isn't it a fact that Siddig said that
17 he wanted to have a consultation, he wanted to consult with
18 other people before he took any action?

19 A. Yes, ma'am.

20 Q. Isn't it a fact that you said to him: Look,
21 Siddig, I told you that you are the emir. Listen, if you
22 are emir, I am emir, Ishmael is emir and Mahmud is emir,
23 then the group is not going to work. There must be one
24 person who has the final word. Who is that person? You
25 said you were, and Siddig said: I'd like a consultation?

1 And you said: Consultation is something;
2 decision is something else.

3 Do you recall that conversation?

4 A. Yes, ma'am.

5 Q. Did that indicate to you that Siddig Ali had some
6 hesitancy about the plan?

7 A. Absolutely --

8 MR. McCARTHY: Objection.

9 Q. Isn't it a fact that you pushed Siddig along in
10 terms of taking part in this plan?

11 A. No --

12 Q. That you didn't --

13 MR. McCARTHY: Objection to cutting the witness.

14 MS. AMSTERDAM: I stopped. I stopped.

15 Q. Go ahead. Sorry.

16 THE COURT: That is all right.

17 A. I'm sorry. What was the question, ma'am?

18 MS. AMSTERDAM: I'm sorry. I will have to have
19 the reporter read it back. Sorry, sir.

20 (Record read)

21 A. No, ma'am, I did not.

22 Q. It is still your testimony that you simply
23 uncovered an ongoing plot, correct?

24 A. Yes, ma'am.

25 Q. All right. Do you recall Siddig talking about

1 let's bomb embassies abroad?

2 A. Let us? I'm not sure --

3 Q. Let us go abroad, overseas and bomb American
4 embassies there. We will hit them. We will hit them with
5 rockets and capture their personnel?

6 A. He may said that, yes.

7 Q. That was another one of his plans, correct?

8 A. One of his future plans, yes.

9 Q. And there came a time where he talked about
10 bringing Boutros Boutros Ghali to you like a piece of cake?

11 A. No, that's not correct, ma'am. That's not what
12 he said.

13 Q. That he wanted to target Boutros Boutros Ghali
14 from the United Nations, do you recall that?

15 A. That's not what he said, ma'am. What he said
16 that the guy in the embassy told him that he can hand him
17 Boutros Ghali like piece of cake (witness gestured).

18 Q. And you responded to him: OK, we are now looking
19 for Boutros?

20 And then you said to him: To kill one person,
21 man. I'm a busy man. I'm not -- unintelligible.

22 You said to Siddig Ali you weren't interested in
23 just killing one man, you were a busy man, you wanted a
24 bigger plot, isn't that true?

25 A. No, that's not true, ma'am.

1 Q. Do you remember having a conversation with Siddig
2 Ali where Siddig Ali said he wanted to do another bombing of
3 the World Trade Center?

4 A. That's correct, ma'am.

5 Q. That if he could get a small piece of a C-4 he
6 would do it, right?

7 A. Yes, a small bomb.

8 Q. A small bomb?

9 A. Yes.

10 Q. And you asked him: Who will do this with you?
11 You or one of the brothers?

12 And he said: No, I will do it alone.

13 And you said: You?

14 And he said: Of course.

15 You said: Damn your brain.

16 Do you recall that?

17 A. Yes, ma'am.

18 Q. Then there came a time that he said he wanted to
19 attempt to kill Senator D'Amato, do you recall that?

20 A. I recall something like that, yes.

21 Q. And he said it wasn't personal, he liked the
22 challenge, do you recall that?

23 A. I'm not sure that I recall that, ma'am.

24 Q. It is not personal. It is not personal. But we
25 do not like challenges.

1 You asked him: Who are you going to do that
2 with? One of your group? One of your brothers?

3 And he said: By myself.

4 You said: You alone is no good.

5 And he said: I mean me and you.

6 Do you recall that conversation?

7 A. Yes, ma'am.

8 Q. That conversation took place, did it not, on June
9 20, three days before the arrest, correct?

10 A. Correct, ma'am.

11 Q. Three days before the arrest, he's changed the
12 plan again and the only person he's going to --

13 MR. McCARTHY: Objection.

14 Q. -- go off and do it with is you?

15 THE COURT: Sustained.

16 Q. Do you recall that he also talks about killing
17 Dov Hikind, correct?

18 A. Who, ma'am?

19 Q. Dov Hikind, I'm sorry. Dov Hikind. He wants to
20 kill Dov Hikind?

21 A. That as per Mr. Sayyid Nosair's instructions to
22 him, ma'am.

23 Q. He didn't say to you: Dov Hikind I want to kill
24 Dov Hikind, right?

25 A. That's --

1 Q. He wants to do both of them?

2 A. That's, again, as per Mr. Sayyid Nosair's
3 instructions to Mr. Siddig Ali, the name that --

4 Q. This is all. I'm sorry. Go ahead.

5 A. The day we visited him in Attica jail, ma'am.

6 Q. This conversation occurred on June 20, three days
7 before the arrests, correct?

8 A. I'm not finished, ma'am.

9 Q. Finish.

10 A. I'm lost. Sorry. Go ahead.

11 Q. I am asking you three days before the arrest, did
12 he not change his target once again --

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q. Three days before the arrest did he not suggest
16 that you and he should go kill Dov Hikind?

17 A. That was future plans, ma'am. It was not
18 changing subjects.

19 Q. In that conversation did you say to him: I have
20 no objection. I have no objection.

21 And he said to you: What do you think?

22 And you said: I have no objection.

23 And he said: Do not patronize me.

24 Do you know what "patronize" means?

25 A. No, ma'am, I don't.

1 Q. Patronize means do not --

2 MR. McCARTHY: Objection.

3 Q. Do not smugly pretend to go along with me, if you
4 don't really believe me.

5 Do not try to --

6 MS. AMSTERDAM: Give me a definition.

7 MR. McCARTHY: Objection to form.

8 MS. AMSTERDAM: Give me a definition of
9 "patronize."

10 (Counsel conferred)

11 BY MS. AMSTERDAM:

12 Q. Put down. Do not talk down to me.

13 A. I'm sorry.

14 THE COURT: Is this a question or --

15 MS. AMSTERDAM: CM54, page 24.

16 Q. Did you have this conversation with Siddig Ali
17 regarding Dov Hikind?

18 A. Yes, we had a conversation regarding Mr. Hikind.

19 Q. He said --

20 A. I'm not finished, ma'am.

21 Q. I'm sorry. Go ahead.

22 A. Go ahead.

23 Q. No. No. Go ahead.

24 A. I'm lost. When you cut me, I lose track of my
25 answer, ma'am.

1 Q. Did you have a conversation with Siddig Ali, June
2 20, three days before the arrest about Dov Hikind?

3 A. Yes, ma'am.

4 Q. In that conversation did you not say to him in
5 response to -- in the course of this conversation, Siddig
6 Ali said: What do you think? What do you think about the
7 plan?

8 You said: I have no objection, I have no
9 objection.

10 Siddig Ali said: What do you think?

11 And you said: I have no objection.

12 And Siddig said: Do not patronize me.

13 And you said: I'm not patronizing you, Siddig.
14 The only point I want to ask about is the legitimacy or the
15 nonlegitimacy of that. And after that, I can get in the
16 names. I don't care.

17 Do you recall that conversation?

18 A. The word, you said it, which is --

19 Q. Patronize.

20 A. Patronize, I disagree about that translation
21 about it. It's not giving the meaning we had said it in
22 that time, ma'am.

23 Q. What was the meaning that you meant at that
24 point?

25 A. If I may listen to the tape, I can tell you what

1 we had said, ma'am.

2 Q. Did you spend six months listening to these
3 tapes?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q. Isn't it you, sir, who has to keep Siddig Ali
7 focused? Do you know what "focused" means? On target?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. Isn't it a fact that Siddig Ali changed his mind
11 consistently --

12 MR. McCARTHY: Objection.

13 Q. -- over the month-long period of time?

14 THE COURT: It's been asked and answered.

15 Q. Isn't it a fact that you encouraged him to stay
16 focused, to stay on the plan?

17 A. No, ma'am, I did not.

18 Q. Isn't it a fact that on May 18 you said to him:
19 We must agree on something? That on May 18 he said: I want
20 to kill Saddam Hussein himself.

21 And you said: Fine. Leave him for a separate
22 operation.

23 Do you recall that?

24 A. Yes, I recall it, ma'am.

25 Q. Do you recall Siddig Ali talking about: Let's do

1 an operation to bring weapons in from Jordan?

2 A. Yes, I recall that.

3 Q. And you said: Let's leave that for another
4 operation. Right?

5 A. Yes, ma'am.

6 Q. You said to him: This is another project, and I
7 basically do not want to branch out myself.

8 Do you recall saying that?

9 A. Yes, ma'am.

10 Q. Do you recall having a conversation with him
11 where you said: We have to concentrate to one side. We
12 must concentrate and accomplish.

13 Siddig said: Right.

14 You said: But we sit and we distract our
15 efforts.

16 And Siddig says: No, no, no.

17 And you say: Between Iran and Iraq.

18 And Siddig says: No, no.

19 And you say: That way we will keep running left
20 and right.

21 Siddig says: No, Emad.

22 And you say: We are not going to accomplish.

23 Siddig says: Right.

24 You say: We need to accomplish.

25 And Siddig says: Let us stay at this first

1 issue.

2 Do you recall saying that?

3 A. Yes, ma'am.

4 Q. Do you recall a time that Siddig Ali was very
5 concerned about Abdul Raouf at the mosque, somebody that was
6 saying bad things about him. Abdul Raouf?

7 Do you remember that?

8 A. Yes, ma'am.

9 Q. And Siddig at that point wanted to abandon your
10 plan and he wanted to go and beat up Abdul Raouf, do you
11 recall that?

12 A. That's not true, ma'am.

13 Q. No?

14 A. That's not true.

15 Q. Do you remember him saying that: We must hit
16 him, by "hit him," meaning he should be beaten up, correct?

17 A. Yes.

18 MR. McCARTHY: Objection your Honor. On this one
19 issue can we approach very briefly?

20 THE COURT: Yes.

21 (Continued on next page)

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1 (At the side bar)

2 MR. McCARTHY: I don't think this is a big point,
3 but when went into this on direct, if the court recalls,
4 there was a big objection about whether it was appropriate
5 to go into this, given the fact that generation of the Abdul
6 Raouf conversation that was intercepted was about the
7 dispute at the mosque and involving Sheik Abdel Rahman, etc.
8 I think your Honor even ended up instructing the jury that
9 it wasn't coming in for the truth; it was just to explain
10 what the jury was going to hear in the transcript.

11 If this area is going to be gone into again, then
12 I am going to have to at least weigh cleaning it up on
13 redirect, which basically will mean going into an area that
14 I was trying to steer clear of.

15 THE COURT: Was there any coordination on this?

16 MS. STEWART: No.

17 MS. AMSTERDAM: No.

18 MR. McCARTHY: I don't know if it is a major
19 point. I doubt it.

20 MS. AMSTERDAM: It's a very, very, very minor
21 point.

22 THE COURT: That I will agree on.

23 MS. AMSTERDAM: What?

24 THE COURT: That I will agree on.

25 MS. AMSTERDAM: I am doing the best I can, your

1 Honor.

2 THE COURT: Why don't you just pass it by?

3 MS. AMSTERDAM: OK.

4 THE COURT: Good.

5 (Continued on next page)

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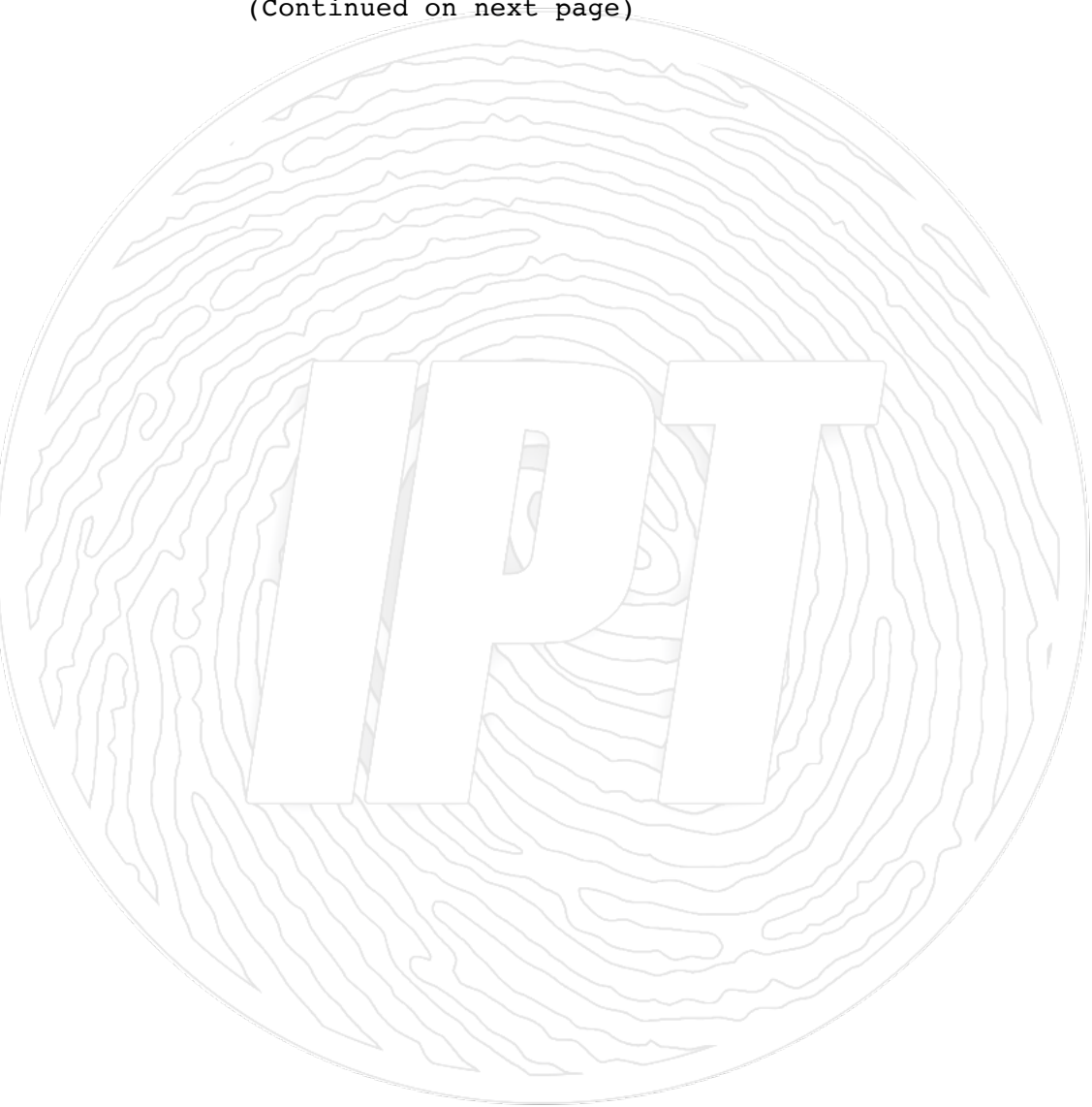
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1 (In open court)

2 MS. AMSTERDAM: Could you just give me one
3 second, your Honor.

4 Q. Didn't there come a time where Siddig wanted to
5 focus his attention upon getting his -- not his own, but
6 getting his group of people their own mosque?

7 A. That's not true, ma'am.

8 Q. Didn't you have a conversation with Siddig Ali
9 where he said: It's very important that we have our own
10 mosque?

11 A. Yeah, we said that, ma'am.

12 Q. Isn't it a fact that you did not want him to be
13 distracted?

14 A. Yes, ma'am.

15 Q. Isn't it a fact that you did not want him to be
16 distracted because you were attempting to get your ultimate
17 million-dollar reward on this case?

18 A. No, ma'am, that's not true.

19 Q. All right.

20 A. Because in that time the million-dollar reward
21 never been discussed or even I never know about it, ma'am.

22 Q. I assume you were hoping in your mind that there
23 would be some major amount of money on this, right?

24 A. That's your assumption, ma'am, but that's not the
25 truth.

1 Q. Well, before this, you had had a conversation
2 where you had asked for \$200,000 for the information leading
3 to the arrest of Mahmud Abouhalima, so you were thinking in
4 terms of large sums of money, were you not?

5 A. No, ma'am, I was not.

6 Q. Weren't you concerned that Siddig Ali might
7 abandon the plan and move on to something else, like getting
8 the mosque?

9 A. No, he never said that he will abandon the plan
10 and go to fight for the mosque.

11 MS. AMSTERDAM: All right. CM10, which I believe
12 is in evidence. Page 14.

13 Q. Isn't it a fact that Siddig Ali said to you --

14 MR. McCARTHY: Can I have a moment, please?

15 MS. AMSTERDAM: I'm sorry.

16 (Counsel conferred off the record)

17 Q. Isn't it a fact that Siddig --

18 MR. McCARTHY: Object. It is not inconsistent.

19 MS. AMSTERDAM: I'm not reading it for an
20 inconsistency.

21 Q. Of course you know it is very important that we
22 have our own mosque?

23 And you say: Fine. If God is willing.

24 And Siddig says: Very important.

25 And you say: Huh.

1 Siddig says: Very important.

2 And you say: Fine.

3 And Siddig says: Because whatever -- wherever
4 you call, the call should be launched from a mosque where
5 you belong.

6 You say: Yes, yes. Good, if God is willing, but
7 we are now starting a job.

8 And he says: Huh?

9 And you say: And a great job, so we all know
10 must focus on it.

11 And Siddig says: Of course.

12 You say: You see me every day.

13 He says: Yeah.

14 And you say: Nothing in my head except, ah --

15 And Siddig says: Focused.

16 And you say: Target, target.

17 You are telling him to stay focused on the
18 target, correct?

19 A. I believe you just read that he is the one who
20 said "focused," not me. But the way, you -- I did not tell
21 him focused, ma'am.

22 Q. You say: And a great job so we all know must
23 focus on it.

24 He says: Of course.

25 You say: You see me every day.

1 He says: Yeah.

2 You say: There's nothing in my head except,

3 ah --

4 And he says: Focused.

5 And you say: Target, target.

6 Correct?

7 A. Yes, ma'am.

8 Q. You're telling him "target, target," keep it in
9 your mind?

10 A. That's -- I may said it, yes.

11 Q. Did it ever occur to you or did it become clear
12 to you that if you simply stopped encouraging Siddig Ali, he
13 would have abandoned his plan?

14 A. No, ma'am. He will never abandon the plan.

15 Q. Which one of the many plans wouldn't he have
16 abandoned?

17 A. It was a lot of plan to destroy the American
18 streets, and it started already.

19 Q. The American streets, Dov Hikind, Al D'Amato, the
20 embassies abroad with rockets, Boutros Ghali, all of those
21 plans he would not have abandoned if you simply left them
22 alone?

23 A. Because they already had accomplished one, ma'am,
24 or two, or maybe three.

25 Q. Siddig had already accomplished?

1 A. He took part of the World Trade Center, ma'am.
2 God knows who took part of some other things. I don't want
3 to say it, otherwise the judge will be mad at me. I am not
4 going to reveal things. But it started in the American
5 street by assassinating some people, by bombing the World
6 Trade Center, by planning to blow the tunnels and so and so.
7 All what you -- that's what was going on happen, and that's
8 what they hired me to prevent, ma'am.

9 Q. When Siddig Ali told you he had taken part in the
10 test bombing of the World Trade Center, you believed that,
11 correct?

12 A. Absolutely.

13 Q. When you asked him if he knew Nidal Ayyad, who
14 was the chemist who was convicted in the World Trade Center
15 case, he didn't know him, did he?

16 A. No, he did not.

17 Q. Didn't there come a time that you realized that
18 Siddig Ali would in fact abandon these plans?

19 A. No, ma'am, absolutely not.

20 Q. During the months that you spent with him, isn't
21 it a fact that he continued to go on job interviews? You
22 drove him to job interviews?

23 A. It was one of them, yes, ma'am.

24 Q. He was going for a job interview to be a security
25 guard, correct?

1 A. I believe, yes, ma'am.

2 Q. He told you that for that job it would require an
3 FBI check, correct?

4 A. Yes, ma'am.

5 Q. He was also very excited at one point about
6 getting a sales commission job, do you recall that?

7 A. Yes, ma'am.

8 Q. He told you he was going to work very hard, and
9 that he was going to get to be a millionaire, do you
10 remember that?

11 A. I'm sorry. Say it again, please?

12 Q. Do you remember him telling you: I am going to
13 be a businessman. I am going to be a millionaire next year,
14 God willing?

15 A. I don't recall that, ma'am.

16 MS. AMSTERDAM: CM31, page 11. I would ask the
17 government to stipulate that I am reading correctly from the
18 transcript.

19 MR. McCARTHY: We stipulate, your Honor.

20 Q. You do not recall that conversation?

21 A. No, ma'am.

22 Q. Do you recall a conversation in which he
23 attempted to get a job selling hot dogs on a hot dog stand
24 that Wahid Saleh was going to supply him?

25 A. Yes, ma'am.

1 Q. All these things he continued to do even though,
2 according to you, he was planning to do the bombings and
3 flee the country, correct?

4 A. No. That's according to what he said on the
5 tapes, ma'am.

6 Q. Isn't it a fact that there came a time that he
7 talked about moving to Canada, where houses were cheap?

8 A. No, ma'am. I don't recall that at all.

9 Q. Isn't it a fact that there came a time where he
10 said he thought he would leave to go to help Muslims in the
11 Philippines, and he said that he was wanted at home by his
12 family and he might go home there? Do you recall that?

13 A. Yes, ma'am, I recall that.

14 Q. Isn't it a fact that you had a conversation with
15 him on June 8 about when he was attempting to get money from
16 Dr. Rashid, and Siddig Ali said to you: Don't you let the
17 devil enter your head. No matter if it is alone or not, the
18 both of us are together, sheik. God willing, I could have
19 kept it from you if I wanted to, and I could have gone and
20 met him alone, and if there is money, I would have taken
21 \$50,000 from him or --

22 And you say: No, that's not a problem. No
23 that's not a problem.

24 And he continues: Or a hundred thousand dollars,
25 and I could have bought a ticket to the Sudan and traveled.

1 I mean --

2 And you go: God.

3 And you laugh and you say: Well what is that
4 going to solve?

5 Correct?

6 A. Correct, ma'am.

7 Q. He talked about taking money, getting a plane and
8 leaving the country, and you say: What is that going to
9 solve? Meaning if you leave before there's bombings, what's
10 that going to solve?

11 A. No, ma'am. That's what you're trying to say.
12 But that's not what I said.

13 Q. At CM36, four days after that conversation on
14 June 12, did you have this conversation with him?

15 A. Which conversation?

16 Q. I am going to tell you.

17 He said: I thought about leaving you and not
18 talking to you because you were upset.

19 You said: Frankly, I felt we started hot and
20 everybody cooled off.

21 And he said: No, there's no cooling down. Now
22 all the brothers let us go where there is no money.

23 Do you recall that?

24 A. Ma'am, when he said "I thought about leaving
25 you," the way it's in English means I am leaving, going

1 away.

2 Q. Yes.

3 A. But when I say in Arabic that I thought to leave
4 you, it gives another complete different meaning: I will
5 leave you alone for a while because I felt that you are
6 upset.

7 Q. So he was saying to you --

8 A. So --

9 Q. Go ahead.

10 That he might leave you alone for a while because
11 you were upset?

12 A. So when he felt that I was upset, he thought to
13 leave me alone for a little while. The way it is being
14 translated, that I thought to leave you and flee the
15 country, that's never been said, ma'am.

16 Q. Why were you upset?

17 A. Me?

18 Q. Yes.

19 A. Because at the beginning he start to telling me
20 the target stuff, things start to slow down, I got to give
21 him the impression that I am upset.

22 I wasn't really upset, but I got to give him that
23 impression so he can speed up, bringing me his so called
24 cell he told me about, start to bring these people who is
25 hiding in the back alleys, bombing the World Trade Center

1 and so on and so on.

2 These people got to come out to justice. That
3 was my role and my job, ma'am.

4 Q. You were upset because nothing was happening,
5 isn't that so?

6 A. I was not upset, ma'am. I made him believe that
7 I was upset that he's slowing down.

8 So he can speed up and tell me how he did took
9 part in bombing the World Trade Center and so -- all of the
10 hidden things, the FBI never know about it in that time
11 until a bomb went off, and we trying to know what was going
12 on, ma'am.

13 (Continued on next page)

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1 Q. You testified yesterday that you didn't create
2 this crime, you stumbled upon a cell that was plotting
3 bombings of the United States, correct?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q. That you did not create the crime, correct?

7 A. I never created the crime, ma'am.

8 Q. That you found Siddig Ali, who had an ongoing
9 plan to do bombings, correct?

10 A. That is correct, ma'am.

11 Q. And in June of 1993, two weeks before the
12 arrests, you were by your testimony pretending to be upset
13 because nothing is happening, correct?

14 A. Correct, ma'am.

15 Q. Weren't you really upset because you thought
16 there would be no money for you unless something happened?

17 A. The money issue, ma'am, it's only being discussed
18 at the very last couple of weeks of the investigation. I
19 never ever know that there is that amount of money going to
20 take take place at all, in any time during the
21 investigation, ma'am.

22 MS. AMSTERDAM: One moment, your Honor.

23 Q. June 4 you went to Mohammed Saleh's house in
24 Yonkers, correct?

25 A. Yes, ma'am.

1 Q. And after that, you refused to give the agents
2 when they came to your house the tapes of that conversation,
3 correct?

4 A. That is not correct, ma'am.

5 Q. You didn't refuse to give them the tapes?

6 A. In that time, ma'am, all of my thoughts, what
7 going to happen to my family and to me, all what was on my
8 mind at that time --

9 THE COURT: The question was simply whether you
10 refused to give them the tapes. Did you?

11 THE WITNESS: No, I did not, sir.

12 Q. Did they leave with the tapes?

13 A. I don't recall that they took the tapes in this
14 meeting, no.

15 Q. The conversation that we heard in court on the
16 headphones where you are talking to Louis Napoli about
17 money, correct?

18 A. Yes.

19 Q. That is the beginning of June 1993, is it not?

20 A. I don't recall the date but it is very end of the
21 case, ma'am.

22 Q. And on June 12, in CM 36, the conversation that
23 we are talking about, you said that you were upset because
24 we had started off hot and then everything cooled down,
25 correct?

1 A. I am sorry, which conversation, and who is the --

2 Q. June 12, 1993, CM 36, page 4.

3 Siddig: I thought about leaving you and not
4 talking to you because you are upset.

5 You say: Frankly I felt we started hot, then
6 everybody cooled down.

7 Correct?

8 A. Correct, ma'am.

9 Q. That conversation is June 12, which coincides,
10 does it not, sir, with the time that you are negotiating
11 with the FBI over how much money you are going to get?

12 MR. MCCARTHY: Objection.

13 THE COURT: Were you talking to the FBI about
14 money at the time you had that conversation with Siddig?

15 THE WITNESS: I believe, yes, sir.

16 Q. You were upset, were you not, because you were
17 fearful that you were not going to get the money from the
18 FBI? Isn't that true?

19 A. That is not true, ma'am.

20 Q. You stated that when Siddig said he would leave
21 you, that didn't mean actually leave and go away, it meant
22 just remove himself from you for a period of time, correct?

23 A. Correct, ma'am.

24 Q. The same day, in the same conversation -- page 6,
25 Mr. McCarthy -- Siddig says to you: No, I mean he wants

1 people to go with him.

2 And you say: Where?

3 And he says: The Philippines.

4 You say: The Philippines?

5 He says: He is going to the Philippines, I mean.

6 Siddig goes on and says: So he wants my opinion.

7 He was telling me that he is going, and if I wanted to go
8 with him or not.

9 And you say: Are you going with him?

10 And he says: Maybe I will go with him.

11 And you say: You?

12 And he says: If God willing, we'll finish this
13 thing God willing.

14 And you go: There is no God but God, we should
15 finish this thing first, sheik, and then, unintelligible
16 move.

17 Siddig says: Of course, of course, of course, of
18 course, of course, we will not leave without.

19 And you say: I mean, don't leave me here by
20 myself.

21 Do you recall that conversation?

22 A. Yes, ma'am, I do.

23 Q. You couldn't let him leave you alone by yourself,
24 could you?

25 A. I beg your pardon.

1 Q. You couldn't let him leave, could you?

2 A. I had no control of him, ma'am.

3 Q. Well, he was talking about going to the
4 Philippines and you say to him, do not leave me by myself.
5 Correct?

6 A. But he also said that he is not going to leave,
7 never, never, never, or whatever he said it now, before he
8 finish the bombing, ma'am.

9 Q. Didn't you realize that Siddig was just talking,
10 talking, talking, big shot, big shot, big shot?

11 A. No, ma'am. From what I see he accomplished
12 already in the past and was doing with me in the current
13 time or in that time, he was doing actual act, not talking,
14 talking, talking, ma'am.

15 Q. Do you remember having a conversation with
16 Siddig, CM 6 page 13, where you said: Yes, everyone has
17 time to run, everyone wants to be emir, wanting to be the
18 boss, hadduta, and wanting to be, oh, give me a break.

19 Isn't it a fact that a lot of people were
20 talking, talking, talking, and doing nothing?

21 A. No, ma'am. They talked about it and they blow it
22 up. That's what they did.

23 Q. Isn't it a fact that on May 23, CM 11, page 32,
24 you said: I don't want to bother myself with some airheads
25 who do nothing but talk. I hope these talking people will

1 do something. Was Siddig one of those airheads?

2 MR. McCARTHY: Objection to form.

3 Q. Did you have that conversation with Siddig?

4 THE COURT: I will allow it. Go ahead. The
5 second question.

6 A. We had the conversation, but -- we had the
7 conversation, ma'am.

8 Q. On the ride back from Philadelphia, did you say
9 to Siddig Ali on May 19, page 43: No, when it comes to
10 serious business, maybe it's OK during the training, but
11 when serious business comes, everybody will withdraw. They
12 will back off.

13 Do you recall that?

14 A. I was referring to what happened at the first --
15 I was trying to make him believe that in the first phase,
16 the time we start to build bombs and then I draw myself and
17 the World Trade Center get bombed. I tried to make him
18 believe in that time that everybody left me, not that I am
19 the one who left them, ma'am.

20 Q. Didn't you have this conversation with Siddig Ali
21 on June 13, 10 days before the arrests, at page 27: As long
22 as you have the intention for this job, then everybody could
23 go pray at his house, but what I see is that you started
24 camps, training, you do this, do that, then everyone leaves.
25 Then again come on, do, rent, then everybody will vanish for

1 a month. Are we going to do it the same was the camp? I
2 have two weeks and the work was real.

3 And Siddig says: Yeah.

4 And you say: Four, five hours every day and it
5 would be done. Ten days and you'll be able to move your
6 haddutas. It needs -- are you willing or not?

7 And Siddig says: Brother, God is great.

8 And you say: Do you want to say it or not?

9 Do you recall having that conversation?

10 A. I am lost, ma'am.

11 Q. Let me start again. Ten days, on June 13, did
12 you have a conversation with Siddig in which you said to
13 him: As long as you have the intention for this job, then
14 everybody could go pray at his house, but what I see is that
15 you started camps, training, do this, do that, then
16 everybody leaves. Then again come on. Do, went. Then
17 everybody will vanish for a month. Are we going to do it
18 the same was as the camp?

19 Do you recall saying that to him?

20 A. Yes, ma'am.

21 Q. And this is at least six weeks that you have been
22 with Siddig, correct?

23 MR. McCARTHY: Objection.

24 Q. And are you saying to Siggig in this
25 conversation, is this going to be another one of those

1 training exercises where everybody just disappears? Is that
2 not what you are saying to him? Aren't you saying to him,
3 is everybody just going to disappear?

4 A. Nobody disappeared, ma'am, and -- I am sorry.
5 OK, go ahead.

6 Q. And you go on and you say to him, I have two
7 weeks and the work is real. Four and five hours every day
8 and it will be done. It's you that's pushing him to get the
9 job done, is it not?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained. Miss Amsterdam, the
12 summation comes at the end of the case. Ask questions.

13 Q. Do you recall having a conversation with Siddig
14 where Siddig talked about moving the training camp upstate
15 to the Catskills, up to the mountains, the Catskills?

16 A. I recall that he want to go up north to shoot --
17 or to do something with the Jewish training camps there.
18 But I don't know moving the training up there, I don't
19 recall.

20 Q. Moving the safe house up to the Catskills.

21 That's --

22 Q. Do you remember him --

23 A. Yes, he want to make the safe house away of the
24 city, yes, that's true, ma'am.

25 Q. And he says: There are houses up there for rent,

1 where there are hills and rivers and lakes and full of
2 trees.

3 Do you remember that?

4 A. Yes, ma'am.

5 Q. Isn't it a fact that he says: There is nobody
6 besides you. The third thing that we can bring dogs, dogs.
7 You can put all your cameras and you can have fun yourself.

8 Do you recall that?

9 A. Yes.

10 Q. Siddig wants to take a house upstate where you
11 can bring your cameras, he can bring his dogs, and everybody
12 can have some fun, correct?

13 A. No, cameras to monitor the FBI if they coming to
14 the house, and bring dogs to attack the FBI if they come to
15 the house. Not to have fun by playing; have fun to build
16 bombs, ma'am.

17 Q. Do you recall a conversation in which Siddig Ali
18 talked about Martin Luther King?

19 A. He may say, yes.

20 (Continued on next page)

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1 Q. Do you remember him saying that Martin Luther
2 King is the hero of American nationalism, he is also the
3 hero of a nonviolence movement, nonviolence is the right
4 thing? Do you recall that?

5 MR. McCARTHY: Objection, relevance.

6 THE COURT: Sustained.

7 Q. Nonviolence doesn't pay very well, does it?

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained and stricken.

10 May I see you at the side. Not you, Mr. Jacobs.

11 (At the side bar)

12 THE COURT: Do you want a piece of advice? Don't
13 take advantage of the fact that your daughter is in the
14 back. Self-restraint.

15 MS. AMSTERDAM: I will say that I would have
16 asked the question whether my daughter was in the back or
17 not.

18 THE COURT: In that event --

19 MS. AMSTERDAM: Under Rule 806, 806 says that if
20 there are statements introduced, there is an exception with
21 the hearsay rule, that the credibility of the declarant can
22 be attacked as if he were on the stand --

23 THE COURT: Miss Amsterdam, your questions are
24 improper as to form.

25 MS. AMSTERDAM: I apologize.

1 THE COURT: Good.

2 MS. AMSTERDAM: Your Honor, I am only going to be
3 about 10 more minutes. I would like to break if possible a
4 couple minutes early. I only have an hour as to my own
5 client but I would rather do that in the afternoon.

6 THE COURT: You have 10 more minutes of this
7 stuff?

8 MS. AMSTERDAM: Yes.

9 THE COURT: Then you have an hour on your own
10 client?

11 MS. AMSTERDAM: Right.

12 THE COURT: You are going to do it --

13 MS. AMSTERDAM: I am going to do it back to back.

14 MR. MCCARTHY: The last thing about the race is
15 out? That was the nature of my objection. I thought we
16 weren't going to go into that stuff, unless I misunderstood.

17 MS. AMSTERDAM: Black/white race?

18 THE COURT: That's not where that was going.

19 MS. AMSTERDAM: No, not at all.

20 THE COURT: What happened was Siddig Ali as an
21 advocate of nonviolence.

22 MS. AMSTERDAM: Absolutely. Race is not my
23 issue.

24 (In open court)

25 (Continued on next page)

1 BY MS. AMSTERDAM:

2 Q. Sir, you indicated in answer to other counsel's
3 questioning that there was a time that you told Agent Floyd
4 that you had met Colonel Qaddafi of Libya, correct?

5 A. Yes, ma'am.

6 Q. Was is there also a time that Siddig Ali told you
7 that he knew Qaddafi and that Qaddafi drove an Alfa Romeo?

8 A. I beg your pardon.

9 Q. That Qaddafi drove an Alfa Romeo, a sports car.
10 Do you recall that conversation?

11 A. No, ma'am.

12 Q. Did you tell the FBI agents about your career
13 with Egyptian military?

14 A. Yes, ma'am.

15 Q. Did Siddig Ali tell you at one point that he
16 regarded himself as one of the Islamic movement's greatest
17 figures? Do you recall that?

18 A. He may said that, yes.

19 Q. Do you recall telling Siddig Ali that you had an
20 uncle who lost over 300,000 pounds, pounds as a substitute
21 for dollars, on a business deal?

22 A. I said that?

23 Q. Yes.

24 A. Yes.

25 Q. Do you remember Siddig Ali telling you that he

1 had a dear uncle who was a millionaire?

2 A. He may said it.

3 Q. Do you remember telling Siddig Ali about your war
4 injuries, bullet in the head, two in the stomach, two in the
5 leg?

6 A. Yes, ma'am.

7 Q. Do you remember Siddig Ali telling you about
8 being trained on torture?

9 A. Yes, ma'am.

10 Q. Do you remember telling Siddig Ali that you could
11 do dogleg maneuvers, frogmen training, correct?

12 A. Yes, ma'am.

13 Q. And he told you about scuba dive training, going
14 through freezing water through pipes, correct?

15 A. Yes, ma'am.

16 Q. Siddig Ali told you that he knew somebody -- he
17 had given someone the test device for the World Trade
18 Center, correct?

19 A. He said that Mr. Mahmoud Abouhalima and
20 Mr. Muhammed Salameh came to him and give him a case and
21 they told him to check it out for him, and he give it to
22 that appropriate people or the professional people, they
23 conducted the test, and he came back to Mr. Mohammed
24 Abouhalima with the results.

25 Q. And you told him that you had a remote device

1 that you buried in Central Park to use for bombings,
2 correct?

3 A. I showed it to him in that time, ma'am.

4 Q. You told him also that you had buried a device in
5 Central Park, correct?

6 A. Yes.

7 Q. Was that true that you buried it in Central Park
8 under a tree?

9 A. No, that was at the FBI office.

10 Q. That was a lie, was it not?

11 A. That was my role in that time, ma'am.

12 Q. Siddig told you he had close contacts in the
13 Sudanese mission, correct?

14 A. Yes, ma'am.

15 Q. And you told him that you had close contacts with
16 Egyptian folks, right?

17 A. Folks?

18 Q. With Egyptian -- with people in Egypt, with
19 people in politics in Egypt.

20 A. No, I never said I have contacts with Egyptian
21 politicians.

22 Q. Do you remember a time that Siddig Ali talked
23 about a man by the name of Issam Gilgal?

24 A. Yes, ma'am.

25 Q. And Siddig said Issam Gilgal -- did you ever meet

1 him?

2 A. No, ma'am.

3 Q. Did Siddig ever tell you that he was a Sudanese
4 taxicab driver?

5 A. No, he told me he is a Sudanese pilot -- I am not
6 finished.

7 Q. I am sorry. I didn't mean to do it.

8 THE COURT: Please.

9 Q. I do apologize.

10 A. Mr. Siddig Ali told me that Mr. Issam Gilal is a
11 pilot in the Sudanese air force, ma'am.

12 Q. Living in the United States.

13 A. In the time being he was in the United States,
14 yes.

15 Q. He was going to introduce you to him, correct?

16 A. That is correct, ma'am.

17 Q. But he couldn't find his phone number, correct?

18 A. Correct, ma'am.

19 Q. He was going to try to get the phone number,
20 correct?

21 A. I recall, yes, ma'am.

22 Q. And Mr. Gilgal was driving a cab, according to
23 Mr. Siddig Ali, while living in the United States, right?

24 A. I don't know that.

25 Q. And Mr. Siddig Ali said that Mr. Gilgal was going

1 to leave the United States, go to Sudan, pick up his fighter
2 pilot plane, drive into Egypt, bomb the presidential palace,
3 take out the American embassy, and land it in the middle of
4 a square, correct?

5 A. No, ma'am. He said that he wants me to
6 facilitate the entry of Mr. Issam Gilal through the gaps in
7 the air defense in Egypt so he can drive to bomb the
8 presidential house, and then turn around, crash the plane
9 into the American embassy after he eject himself out of the
10 plane, and I supposed to make arrangements through my
11 contacts in Egypt like I arrested him, and then I take him
12 from there and flee him out of Egypt, ma'am.

13 Q. So you indeed did tell him that you had contacts
14 in Egypt, correct?

15 A. Yes.

16 Q. And that those contacts would be able to allow
17 you to get this man to get in under the radar, correct?

18 A. I told him I will help him, yes.

19 Q. And you told him that your contacts would be able
20 to get this man, when he ejected out of this plane he would
21 be able to get out of Egypt, correct?

22 A. Yes, ma'am.

23 Q. At the same time Siddig is telling you that he
24 has very close contacts in the Sudanese mission, correct?

25 A. He wasn't telling me, he already let me to meet

1 with them and I have some of them on tape, ma'am.

2 Q. Sir, you have told us that you have throughout
3 your life acted the big shot, correct?

4 A. I beg your pardon.

5 Q. Acted as a big shot, correct?

6 A. I am sorry, the first part of the question,
7 please.

8 Q. That during your life you have acted like a big
9 shot, correct?

10 A. No, that is not correct, ma'am. I did not act in
11 my life as a big shot. Since I came in United States, I did
12 pretended that I am a big shot, that's true.

13 Q. Did you ever get the impression that Siddig Ali
14 was also acting like a big shot?

15 A. From the practical thing he had done already and
16 the practical thing he was doing it already, I don't think
17 he was acting as a big shot.

18 Q. Of the practical things did you ever meet Mr.
19 Gilgal?

20 A. No, ma'am.

21 Q. Did you ever meet the head of the Sudanese
22 mission?

23 A. I met his deputy, ma'am.

24 Q. Did you ever get the plans to the UN?

25 A. I beg your pardon.

1 Q. Ever get the plans to the UN?

2 A. I am sorry.

3 Q. Ever get the plans to the UN? Ever get the
4 plans?

5 A. No, ma'am.

6 Q. Did any of the things that Siddig Ali told you,
7 the plans, the weapons, the C-4, did you get any of that?

8 MR. McCARTHY: Objection.

9 THE COURT: Miss Amsterdam, less cross, more
10 examination. Thank you.

11 Q. Did you uncover this plot or did you create this
12 plot?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q. Did you prevent a man who wanted to go to Bosnia
16 from going to Bosnia? Did you prevent him from going there?

17 A. No, ma'am.

18 Q. Go ahead.

19 A. You keep cutting and then you apologize, ma'am.

20 Q. I stopped, so you can go ahead.

21 A. No, ma'am, I did not stop the man who wanted to
22 go to Bosnia.

23 Q. Did you become his friend, feed him, flatter him?

24 A. Came a time I did that, yes, ma'am.

25 Q. Isn't it you who got the safe house?

1 A. No, ma'am, the FBI did.

2 Q. At your request, correct?

3 A. My request?

4 Q. Yes.

5 A. That was their request, ma'am.

6 Q. Didn't you keep Siddig Ali on target?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q. Didn't you keep him focused?

10 A. No, ma'am. He was already focused. He already
11 did help bombing the World Trade Center, ma'am.

12 (Continued on next page)

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1 THE COURT: Do you want to break, Miss Amsterdam?

2 MS. AMSTERDAM: Yes. Yes, your Honor, I would
3 like to break now.

4 THE COURT: Ladies and gentlemen, we are going to
5 break for lunch. Please leave your notes and other
6 materials behind. Please don't discuss the case, and we
7 will resume at 2:00.

8 (Jury excused)

9 (Witness excused)

10 MR. BERNSTEIN: Judge, if Mr. McCarthy and I
11 could see you in the robing room before we break.

12 THE COURT: With the reporter?

13 MR. BERNSTEIN: Fine.

14 (In the robing room)

15 MR. BERNSTEIN: We have an issue regarding my
16 cross that Mr. McCarthy and I have to resolve prior to
17 cross. I had indicated to Mr. McCarthy that I had wanted
18 the government to deliver to the courtroom for my
19 cross-examination the physical evidence seized from the safe
20 house for purposes of my cross-examination. I had wanted to
21 offer through Mr. Salem most if not all of the items that
22 were recovered, and we have prior access to under Rule 16 as
23 part of the way of continuing the demonstration of the
24 government's activity here. Most of those materials were
25 brought by Mr. Salem to the safe house. It goes to continue

1 to show the control and the access that he exercised. It
2 goes to a lot of the defenses of the defendants in the safe
3 house.

4 Mr. McCarthy's position is, I think, along the
5 bright line test that you have set forth, not to put in
6 affirmative evidence during their case, but I don't think it
7 is evidence in chief other than the fact it is physical
8 evidence. It really goes to the jury seeing better that
9 which he can testify to, which is what he brought on what
10 occasions and how he furthered things along.

11 So I would like to resolve that.

12 MR. NOOTER: I have the same interest for a
13 different reason, relating directly to Mr. Salem's direct
14 testimony, what was happening in the safe house while my
15 client was there. I haven't spoken to Mr. McCarthy about it
16 but it would be the same thing. I would want some of the
17 physical items in court. If they have been introduced by
18 Mr. Bernstein who will be preceding me, that is
19 accomplished.

20 MR. McCARTHY: Your Honor, I don't think this has
21 anything to do with impeachment. I think what they want to
22 do is put in the search so we can't put it in when we want
23 to put it in. This is not impeaching the witness.

24 THE COURT: I don't see why he can't be asked
25 about who brought what when without it being there.

1 MR. BERNSTEIN: He obviously can. There is a
2 question of whether or not we get the ability for the jury
3 to see the full flavor of it rather than it coming at
4 another time when he is not on the witness stand.

5 MR. NOOTER: My position is more specific, that
6 he specifically stated that he showed my client the timer
7 and the bombs, and I want the jury to see what it is that he
8 claims to have shown him. Maybe we should wait until it is
9 my turn, but it seems if it accomplishes what both of us
10 want to do, there is no harm. If they are putting it in
11 anyway, I don't understand why there is a hesitation.

12 MR. MCCARTHY: There is a very good reason there
13 is a hesitation. There is the government's case which is
14 being presented --

15 THE COURT: It has to do with order of proof,
16 which they are entitled to decide.

17 Frankly, I find your point somewhat more
18 appealing than his, but I still don't understand it. You
19 want to show him --

20 MR. NOOTER: There is a point in the videotape
21 where Mr. Salem goes over to the table, picks up a box,
22 speaks to Siddig Ali about it, lifting off the top, while my
23 client is sitting there in front of him. He said on direct
24 he showed my client the timers. I want the jury to be able
25 to see what that is, what that box is and what there is

1 about it that my client can see or not see.

2 THE COURT: This can be gotten both off the
3 videotape and off examination of him.

4 MR. NOOTER: I could fall back to a photograph.
5 The videotape is not that physically clear. The camera is
6 quite far back, the quality of the tape is not that great.

7 THE COURT: You can sum up on it. Because it is
8 going to be here eventually, I am not going to make them
9 bring it in.

10 MR. JACOBS: Your Honor, the government and I
11 have an agreement as I spoke with chambers on Sunday, that I
12 am possibly going to call Mr. Salem back on all CM's that
13 the government has not put into evidence, the transcripts,
14 since the government already examined about my client on
15 June 4. I informed the government and the government had no
16 objection.

17 THE COURT: I have been on notice for sometime
18 that various -- the bargain we made was that if you wanted
19 to put in your case through Salem you would put it in when
20 it was time to put in your case, and if you had to recall
21 him you would recall him.

22 MR. JACOBS: I just wanted to put it on the
23 record, is all.

24 THE COURT: And he will be made available. I
25 also don't want -- if we all survive until the time that he

1 is excused, I don't want somebody getting up and saying
2 well, your Honor, we want him back on our case. If he is
3 excused, yes, he can come back on your case, but I don't
4 want -- let's not have a show in front of the jury, is what
5 I am saying.

6 MR. JACOBS: In front of the jury is two
7 different things. That is an inappropriate statement to
8 make in front of the jury.

9 THE COURT: It has been made before.

10 MR. JACOBS: You know, I mean, you know.

11 THE COURT: The only reason I mention it -- if I
12 hadn't seen it happen, I wouldn't have mentioned it. Once
13 burned, twice shy.

14 MS. LONDON: Obviously if the physical safe house
15 evidence is not going to come in during Mr. Bernstein's
16 cross-examination, I think it is highly likely that I will
17 be joining in Mr. Jacobs' application to have him brought
18 back, because I believe that there is a lot of material,
19 relevant cross-examination on that physical evidence, and as
20 the government has their right to order of proof it is also,
21 I believe, our right to cross-examine on the appropriate
22 evidence or items in evidence.

23 THE COURT: At the time that it comes time to
24 present your case you think your cross-examination has not
25 been sufficient in some respect and you think it is worth

1 coming him back, fine, you will cull him back.

2 MS. LONDON: Thank you.

3 THE COURT: Is there anything else I can do for
4 you?

5 MR. BERNSTEIN: Judge, can I go off the record
6 with Mr. McCarthy for a second?

7 THE COURT: Sure.

8 (Discussion off the record)

9 (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

EMAD SALEM, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

The jury: Good afternoon.

THE COURT: Ms. Amsterdam.

CROSS-EXAMINATION (continued)

BY MS. AMSTERDAM:

Q. Good afternoon, sir.

A. Good afternoon, ma'am.

Q. From the time that you met Siddig Ali in April of '93, would I be correct in saying that you made every attempt to encourage him to bring his team to you?

A. Yes, ma'am.

Q. In fact, there were numerous conversations in which you very much pushed him to bring his men, correct?

A. Yes, ma'am.

Q. And there were various excuses that you used or you employed in order to get him to bring them, would that be a fair statement?

A. Yes, ma'am.

Q. You told him at the very beginning of the recorded conversations, did you not, that you wanted to make sure that there would be guards for the entrances to the

1 safe house, and that he should bring his men for that
2 purpose, right?

3 A. Yes, ma'am.

4 Q. And you told him that you were prepared to take
5 responsibility for the house, but that it would be his job
6 to bring the team, correct?

7 A. Yes, ma'am.

8 Q. And you told him, did you not, that you had to
9 move forward, and that one of the ways to move forward was
10 that he had to bring the people, correct?

11 A. Yes, ma'am.

12 Q. And you told him also that it was very important
13 that he assign one of his men to take photographs of the
14 various targets, correct?

15 A. Yes, ma'am.

16 Q. In addition, you told him, did you not, that it
17 was important that he bring the men soon so that you would
18 be able to start the meetings and start the learning,
19 correct?

20 A. I may said that, yes, ma'am.

21 Q. And you told him, did you not, that you were
22 going to need help building the hadduta, correct?

23 A. Yes, ma'am.

24 Q. You told him at a minimum you were going to need
25 two brothers who would be able to help you at the safe

1 house, right?

2 A. Yes, ma'am.

3 Q. And you told him -- withdrawn.

4 There came a time in the middle of May of 1993
5 when he had still not brought any of his team to you,
6 correct?

7 A. I don't recall the date where -- when he brought
8 me the first two guys, ma'am.

9 Q. But a number of weeks went by, correct, before
10 you met anyone? That would be fair to say, right?

11 A. Probably, yes.

12 Q. And during that period of time you kept pushing
13 him, correct?

14 MR. McCARTHY: Objection. "You kept encouraging
15 him."

16 A. For what, ma'am?

17 Q. To bring the men.

18 A. Yes, ma'am.

19 Q. You told him at one point, since you are the emir
20 of these people and they trust you, right?

21 A. Yes, ma'am.

22 Q. You told him that you needed the brothers to help
23 you hammer the nails, right?

24 A. Yes, ma'am.

25 Q. You told him, did you not, that you were going to

1 need help running the wires, right?

2 A. Yes, ma'am.

3 Q. That you were going to need help installing the
4 alarms on the door, correct?

5 A. Yes, ma'am.

6 Q. There came a time in the middle of May, May 19 --
7 7D, Mr. McCarthy, page 19 -- when you asked Siddig Ali
8 whether or not he had someone who was an electrician, do you
9 recall that?

10 A. Yes, ma'am.

11 Q. And he assured you that, by God, there is one of
12 them who is a master of all trades. He's a plumber.

13 And you said: Yeah.

14 And he said: A professional carpenter.

15 And you said: Yeah.

16 And he said: An electrician, a home electrician.

17 And you said: Good.

18 And he said: Yeah, he is better than all of us
19 in the field of bravery.

20 And you responded: Praise God. And you asked
21 him: Is he a Sudanese too?

22 And Siddig said: Yes, yes.

23 And Siddig went on to say: Emad, do you know
24 this guy? If you tell him you are going to put this thing,
25 and you're going to be blown up with it --

1 You said: Ha.

2 He said: He will do it.

3 Do you recall that?

4 A. That's correct, ma'am.

5 Q. Isn't it a fact that Siddig said on numerous
6 occasions that he had people who were completely prepared to
7 commit suicide missions?

8 A. He said it at the beginning, yes, ma'am.

9 Q. He said it so many times, did he not, that you at
10 one point said to him: Look, I don't want to die in this
11 mission. Don't you have somebody who doesn't want to commit
12 a suicide mission? Do you recall that?

13 A. I told him I don't want to die in this mission?

14 Q. Right.

15 A. I don't recall saying that, ma'am.

16 Q. All right. This master of all trades, this
17 plumber, professional carpenter, electrician, Sudanese
18 person, did you ever meet that person?

19 A. Probably. He never revealed his name to me,
20 ma'am.

21 Q. He never revealed his name?

22 A. He could be one of the people in the safe house,
23 and I don't know that that's his capacity, ma'am.

24 Q. Well, you met with some of the men in the -- you
25 met with all of the men in the safe house, correct?

1 A. Yes.

2 Q. Did any one of them ever tell you that they were
3 a master of all trades a, plumber, a carpenter or
4 electrician?

5 A. Nobody told me that, ma'am.

6 Q. In that same conversation he said to you: He is
7 prepared to be blown up with it, meaning the hadduta, right?

8 A. Yes, ma'am.

9 Q. And he went on to say: What is your opinion?
10 Siddig said: This is not only talk. Correct?

11 A. Yes, ma'am.

12 Q. In fact, it was just talk, because you never met
13 that man, did you?

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q. In the same conversation you continued to tell
17 Siddig, did you not: Why should we expose ourself to
18 danger? We need the people. There is a lot of work. This
19 is at 7B 53.

20 And Siddig said: They don't work, brother. They
21 are lazy.

22 Do you recall that?

23 A. Can you please repeat that, again, ma'am? I'm
24 sorry.

25 Q. It is 7B, May 19. You had a conversation on the

1 way back from Philadelphia with Siddig, correct?

2 A. Yes, ma'am.

3 Q. And even after having gone to Philadelphia,
4 you're still encouraging Siddig to bring forth the brothers,
5 correct?

6 A. Yes, ma'am.

7 Q. During the course of that conversation you have a
8 conversation with Siddig where you say: My work is all
9 technology, which was created by God to be put to use.

10 Siddig says: Yes.

11 You go on to say: We have a brain to use.

12 Siddig says: Yes.

13 You say: That's it. Why should we expose
14 ourselves to danger.

15 Siddig agrees and says: No, no. It's not
16 necessary.

17 And you say: Because we need the people. There
18 is a lot of work.

19 And Siddig says: They don't work, brother. They
20 are lazy.

21 And you say: Lazy? I really wish this is the
22 case. They are fully awake, fighting each other, destroying
23 each other. It is really sad.

24 Do you recall that conversation?

25 A. Yes, ma'am.

1 Q. All right. Siddig said about the people: They
2 don't work, brother. They are lazy, correct?

3 A. Yes, ma'am.

4 Q. In describing his commando terrorist cell, that's
5 how he described the people, correct?

6 A. No, it's not correct, ma'am.

7 Q. And on May 19 -- CM8, page 15 -- there came a
8 time that you were concerned that Siddig was not in fact
9 bringing forth any of the brothers, any of the men, right?
10 It started to bother you, did it not?

11 A. No, ma'am. It did not bothers me. I made him
12 believe that it did bother me only. But it wasn't bothering
13 me, ma'am.

14 Q. You made Siddig think that it bothered you,
15 right?

16 A. That's correct, ma'am.

17 Q. You hoped that if he thought it bothered you,
18 that he would actually deliver, correct? He would actually
19 bring the people if he thought you were upset?

20 A. That was my role, ma'am.

21 Q. So you pretended to be upset so that you could
22 get Siddig to take certain actions, correct?

23 A. Yes, ma'am.

24 Q. You told him, did you not: There's one thing
25 that bothers me. What I understood from you is that these

1 people are guaranteed at your disposal.

2 Do you recall saying that to him?

3 A. I'm sorry. I'm not sure. What's "at your
4 disposal"?

5 Q. "Disposal" means like at your control, at your
6 beck and call?

7 A. OK. What was the question here, please?

8 Q. Did you at one point say to Siddig: There's one
9 thing that bothers me. What I understood from you is that
10 these people are guaranteed at your disposal.?

11 A. Yes, ma'am.

12 Q. You told him, did you not: I'm concerned since
13 we are embarking on a job, we're starting a job?

14 MR. McCARTHY: Objection.

15 THE COURT: As to what?

16 MR. McCARTHY: Under Rule 106, your Honor.

17 THE COURT: Do you want to indicate her which
18 part you want read.

19 MR. McCARTHY: To the following page.

20 MS. AMSTERDAM: I'm sorry. I can't hear you.

21 MR. McCARTHY: I'm sorry. The following page,
22 the fifth attribution.

23 MS. AMSTERDAM: Excuse me, your Honor.

24 (Counsel conferred)

25 MS. AMSTERDAM: OK.

1 Q. In that conversation, Siddig said: They're under
2 control, but not financially. They have no capabilities.

3 Do you recall that?

4 A. Yes, ma'am.

5 Q. And you said: Yes.

6 And he said: Are you following me?

7 And you said: Yes.

8 And you said: Meaning -- I'm sorry -- and he
9 said: Meaning they all work like what, like day's income,
10 day by day.

11 MS. AMSTERDAM: That's an objection sustained.

12 Q. In connection with money, getting money, you said
13 to Siddig, did you not: I'm concerned, since we're starting
14 a job. We're embarking on a job, right?

15 A. I'm sorry, please? The question, ma'am?

16 Q. I'm sorry.

17 You were saying to Siddig during this period of
18 time: We need to get the men because we need money,
19 correct? We need to get our finances?

20 A. Not money. We need to do the job.

21 Q. We need to do the job?

22 A. Ma'am --

23 Q. So we need men?

24 A. That's correct, ma'am.

25 Q. And you were encouraging him day after day after

1 day, where are your men, correct?

2 A. I was asking him to bring the men, yes, ma'am.

3 Q. And there came a time that Siddig told you that,
4 you and Siddig discussed the UN, and that there would be a
5 driver who would drive the van into the UN, do you recall
6 that?

7 A. Yes, ma'am.

8 Q. At that time you said to Siddig: Well, who will
9 be the driver?

10 And Siddig said to you: I would like to do it
11 myself.

12 Do you recall that?

13 A. Yes, ma'am.

14 Q. And you said to him: You want to do it yourself?
15 I will suggest since you are the emir you must be out of the
16 picture, and you must have people to execute and you will
17 have scope, control.

18 And Siddig responded: But frankly I would love
19 to do things my way.

20 Correct?

21 A. Yes, ma'am.

22 Q. Siddig was saying he wanted to do the job, right?

23 A. I'm sorry?

24 Q. At that point Siddig was saying he wanted to be
25 the driver, right?

1 A. Yes, ma'am.

2 Q. And you encouraged him again by saying, did you
3 not: You're going to want people in front of it and people
4 behind it. There's people that need to be supervised.
5 These people must be under your control.

6 Correct?

7 A. I'm sorry. You keep saying "encouraging him,"
8 and I did not encourage him.

9 I requested him to bring me his men, yes, ma'am.

10 Q. You requested over and over and over --

11 A. That was my --

12 Q. -- did you not?

13 A. That was my job. That was my role, to get him to
14 bring these people, ma'am.

15 Q. And Siddig resisted and resisted and resisted,
16 did he not?

17 A. Until the end he did not reveal the whole people,
18 ma'am.

19 Q. There came a time, sir, that you saw Siddig, did
20 you not, standing on the street by a car with two Sudanese
21 men that you did not know, do you recall that?

22 A. Yes, ma'am.

23 Q. A station wagon?

24 A. Yes, ma'am.

25 Q. When you approached Siddig you said to Siddig, in

1 effect: Who were those two men I saw you with, right?

2 A. Yes, ma'am.

3 Q. And he told you, did he not, that one was Issam
4 and one was Muhyi El Din, do you recall that?

5 A. Yes, ma'am.

6 Q. And he said -- withdrawn.

7 And you asked him if those were his men, if that
8 was part of the team, correct?

9 A. Yes, ma'am.

10 Q. And he responded: No, not from here, not from
11 them.

12 And you said: These are not from the men.

13 THE COURT: Ms. Amsterdam, could you stop for one
14 second.

15 MS. AMSTERDAM: I'm sorry, your Honor.

16 THE COURT: We are just going to get the window
17 closed.

18 MS. AMSTERDAM: I'm sorry, your Honor.

19 THE COURT: Go ahead.

20 Q. He said that they were not part of his team,
21 that's Issam and Muhyi El Din, right?

22 A. Yes, ma'am.

23 Q. But you went on to say: They have nothing to do
24 with the hadduta?

25 And Siddig said: Well, they have no objection.

1 Meaning they're not against it.

2 You said: Yes?

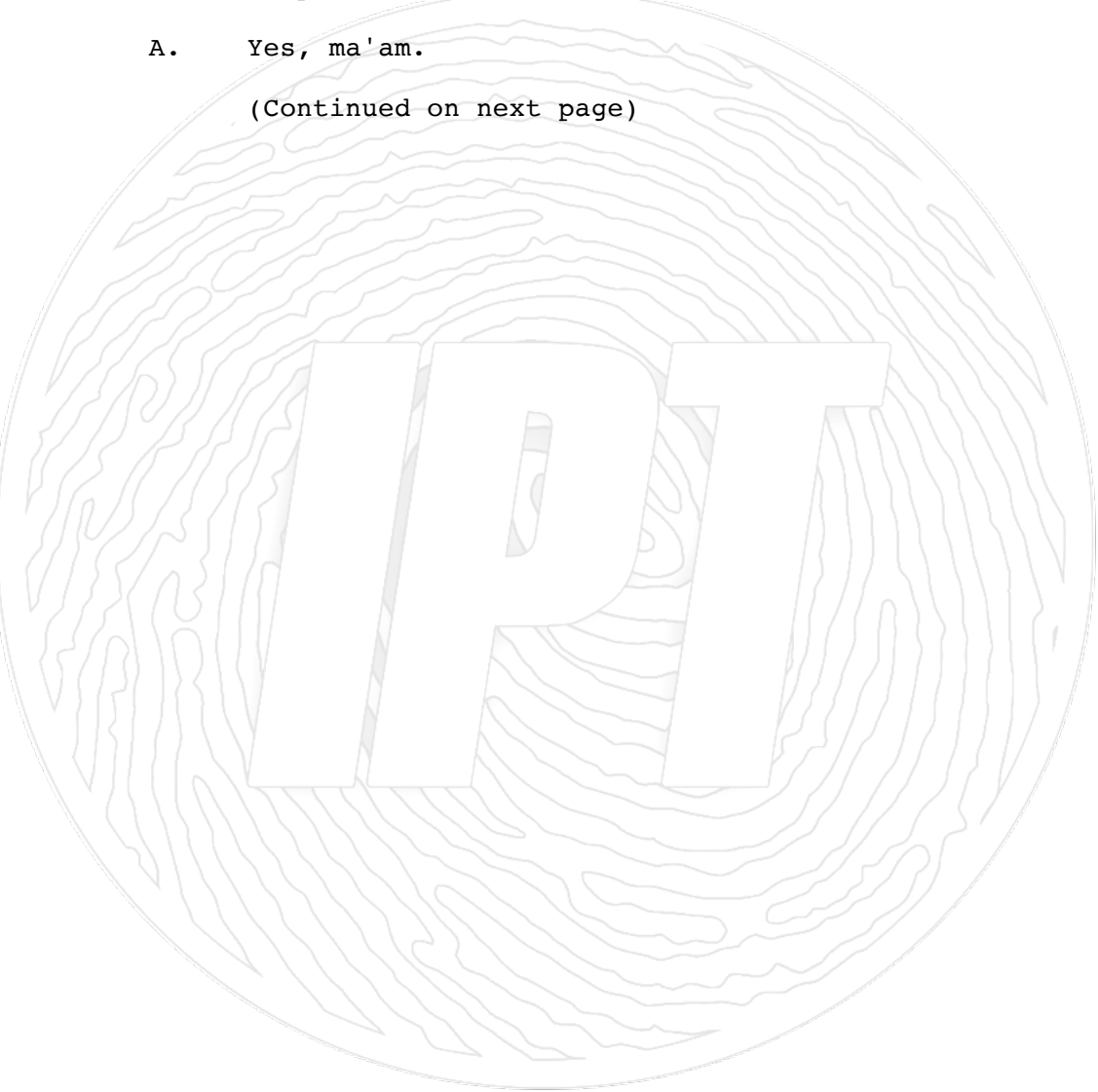
3 And Siddig went on to say: They are all my men,
4 yes. God is greatest.

5 Do you recall that conversation?

6 A. Yes, ma'am.

7 (Continued on next page)

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1 Q. Siddig had a way of saying everyone was part of
2 his team, did he not?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q. And Siddig said at the same time that he had
6 assigned special people for this plan. Do you recall that?
7 This was in CM 10.

8 A. Yes, ma'am.

9 Q. He said that there was somebody by the name of
10 code name Abu Aiysha?

11 A. Abu Aiysha.

12 Q. Abu Mohammed?

13 A. Yes.

14 Q. And Abu Jalil?

15 A. Yes.

16 Q. And Abu Jalil, he said, was a man who dressed in
17 a suit like Lionel Ritchie. Do you recall that?

18 A. Yes, ma'am.

19 Q. None of those people are my client Fares
20 Khallafalla, are they?

21 A. I beg your pardon.

22 Q. Abu Aiysha, that's not Fares Khallafalla, is it?

23 A. No, ma'am.

24 Q. And Abu Mohammed is not Fares Khallafalla, is he?

25 A. No, ma'am.

1 Q. And Abu Jalil is not Fares Khallafalla, is he?

2 A. No, ma'am.

3 Q. At the end of May, May 23, CM 13, Siddig Ali has
4 still not produced any of his team, correct?

5 A. Until when, ma'am?

6 Q. May 23. He had still not shown you any of his
7 special men assigned to this task, correct?

8 A. I don't recall what exactly the dates he brought
9 Mr. Fares Khallafalla and Mr. Amir Abdelgani, ma'am.

10 Q. But you continue to tell him, do you not, that
11 you are going to prepare the hadduta, that you need one or
12 two brothers to help you, right?

13 A. Yes, ma'am.

14 Q. And there comes a time, May 24, 1993, page 15, in
15 talking about the UN, getting the plans for the UN, that you
16 actually say to him, is there anybody working or are you
17 running alone? Do you recall that?

18 A. I am sorry, I apologize. Will you say it again,
19 please.

20 Q. Is there anybody working or are you running
21 alone?

22 A. In which conversation this, please?

23 Q. In the conversation May 24, CM 14, page 15, which
24 had to do with getting the United Nations plans and whether
25 or not there was somebody who was helping him.

1 A. Yes, ma'am.

2 Q. You actually asked Siddig Ali, is there anybody
3 working or are you running alone, correct?

4 A. Yes, ma'am.

5 Q. At that point did you start to have doubts as to
6 whether or not Siddig Ali actually had any men?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q. Were you concerned as to whether or not Siddig
10 Ali actually had a cell?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. There came a time, did there not, at the end of
14 May that you met Mr. Abdelgani and my client
15 Mr. Khallafalla, right?

16 A. Yes, ma'am.

17 Q. Siddig Ali did not have a car, did he?

18 A. No, ma'am.

19 Q. And you met Mr. Abdelgani and Mr. Khallafalla at
20 the mosque on 11th Street in Manhattan, correct?

21 A. Yes, ma'am.

22 Q. They did not come with you to the mosque, they
23 arrived separately, correct?

24 A. Yes, ma'am.

25 Q. Isn't it a fact that they came in my client's

1 car?

2 A. I have no idea. I didn't see which car they
3 arrived with, ma'am.

4 Q. Siddig did not have a car, correct?

5 A. To my knowledge, he told me that he sold it.

6 Q. And they came in a car, did they not?

7 MR. McCARTHY: Objection.

8 Q. If you know, did they come in a car?

9 A. I don't know. I didn't see them, ma'am.

10 Q. You have no idea from your own personal
11 observations what if anything Siddig Ali said to them as
12 they came to the 11th Street mosque. You weren't there,
13 where you?

14 A. No, I wasn't there, ma'am.

15 Q. So you would have no idea what Siddig told them
16 as to why they were meeting you at the mosque, right?

17 A. No, I don't, ma'am.

18 Q. And even after the first night in the safe house,
19 you continued to push Siddig Ali to take some action, did
20 you not? Encouraged him?

21 A. To do what?

22 Q. To take any action, any criminal action.

23 MR. McCARTHY: Objection, form.

24 THE COURT: Sustained as to form.

25 Q. On May 30, did you not have a conversation with

1 Siddig Ali where you said: Between you and I, so far I have
2 seen talk, I have not seen execution.

3 Siddig said: God.

4 And you said: I have played my role like that,
5 military style, take order, execute it, it is done.

6 And Siddig said: Fine.

7 And you said: I hope.

8 And Siddig said: The execution always starts
9 with talk at first.

10 And you said: The rest of the brothers need to
11 start putting their share of participation, the work and the
12 achievement.

13 Correct?

14 A. That is correct, ma'am.

15 Q. In June 4 of 1993, you say to Siddig: By God,
16 God is great, we can help them, Siddig. I can train them, I
17 can teach them things.

18 Do you recall that?

19 A. Who "them," ma'am?

20 Q. That you said to Siddig: By God, God is great,
21 we can help them, Siddig, I can train them, I can teach them
22 things.

23 Do you remember having that conversation?

24 A. Who am I -- I am sorry, ma'am.

25 Q. To Siddig.

1 A. I know, but who am I talking about? I don't
2 recall that.

3 Q. Do you remember having a conversation with Siddig
4 where you continue to say to him bring me people?

5 A. Yes.

6 Q. And you say to him: By God, we can help them,
7 Siddig, I can train them, I can teach them things.

8 Correct?

9 A. I remember talking about train them and teach
10 them things about the Hamas group with Mr. Mohammed Saleh.
11 That's what I remember, ma'am. When this Mohammed Saleh
12 tell me he have Hamas people he need to be trained, I say I
13 am here, I am willing to give my time to train them. It's
14 on the tape.

15 Q. On June 4, did you not say I am in need for
16 anyone who is ready to come to work, work? Do you recall
17 saying that?

18 A. Yes, ma'am.

19 Q. Because nobody is coming at that point, isn't
20 that true?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q. You have been with this man for a minimum of six
24 weeks and nothing is happening.

25 MR. McCARTHY: Objection.

1 THE COURT: Miss Amsterdam, please.

2 Q. In a conversation on June 13, ten days before the
3 arrest, talking about whether or not Ahmed Yousef is
4 helping, you told Siddig let us go one step at a time,
5 instead of dreaming and flying let us do something instead
6 of thinking about the next step. It is as simple as that.
7 Do you recall saying that?

8 MR. McCARTHY: Objection to form. Objection to
9 form.

10 THE COURT: What is the date?

11 MS. AMSTERDAM: June 13, 1993.

12 MR. McCARTHY: My objection, your Honor, is only
13 to the beginning of the question. I don't have any
14 objection to the reading of the transcript.

15 THE COURT: Do it again.

16 Q. In that conversation do you recall saying to
17 Siddig Ali -- do you recall Siddig Ali saying: And a few
18 days before the event, one of us has to see, this will be an
19 assignment.

20 And you said to Siddig: These are not ready for
21 assignments. Before you told me they were trained -- they
22 were tried. They are ready and trained. They can come and
23 go, and so far no one has bought pictures of the big house,
24 and no one has bought pictures of, ah.

25 Do you remember saying that?

1 A. Yes.

2 Q. And on June 13, 1993, Siddig Ali responds: No
3 one requested that from them, no one asked them.

4 Do you recall that?

5 A. Yes, ma'am.

6 Q. Siddig Ali told you on June 13 that he had not
7 asked anyone to go get photos. Do you recall that?

8 A. Yes, ma'am.

9 Q. And then on June 16, one week before the arrest,
10 do you remember having this conversation with Siddig:
11 Whoever is there --

12 MR. McCARTHY: Can I have --

13 MS. AMSTERDAM: I am sorry, CM 41.

14 Q. Do you remember saying to him -- this is one week
15 before the arrest in this case -- I don't want to wait for
16 nobody. If he want to send the money fine, let him take his
17 time.

18 Siddig says: Huh?

19 And you say: The need things are available with
20 the hands of people who want to participate.

21 Siddig says: It has been sent already.

22 You go on to say: Whoever there is, you bring 20
23 bottles and you 10. You want to participate, man, sign.

24 Don't you have your troops?

25 And Siddig says: Yes, yes, yes, yes.

1 And you say: Are you telling me I have?

2 And Siddig says: Money, Emad. What you say what
3 money, sheik, are you talking about? Is \$200 money? Siddig
4 laughs.

5 You say: Is \$50 money for these people? Is it
6 going to make them broke? No. Tell me if it is so, so I
7 will understand.

8 What was it that you needed to understand?

9 A. I need to understand where is his people, and I
10 need to understand why he did not bring me more people to
11 bring them out to light, ma'am.

12 Q. On the same day, June 16, CM 44, at page 88, do
13 you recall having this conversation with Siddig about the
14 rent of the safe house coming due?

15 You say: I know by the end of the month.

16 Siddig Ali: Unintelligible.

17 You go: Nothing happened dear, we need.

18 And Siddig says: A thousand dollars.

19 And you go: A thousand dollars, everyone says
20 huh.

21 Siddig says: Who will pay a thousand dollars?

22 And you say: Everyone says huh. Please have
23 the, unintelligible, take it, see you, bye.

24 And Siddig goes: Hm.

25 And you go: Who wants this heartache? Are we

1 playing games here? Are we going to play hide and seek?

2 Do you recall having that conversation?

3 A. No, ma'am. I am not --

4 MS. AMSTERDAM: Will the government stipulate
5 that I read that accurately with the exception of the fact
6 that "are we going to play hide and seek" is a disputed
7 portion?

8 MR. McCARTHY: I assume you did. That page is
9 not in my book. We will stipulate.

10 Q. And further on in that conversation, you go on to
11 say, and this is June 16: Since then no action has been
12 taken.

13 I agree with you, says Siddig.

14 And you say: You want to do something, you have
15 the paper in your pocket. You are the emir of the group.
16 Have the members of your group get together and sit with
17 them. Here is the paper. He who wants to join in doing
18 work is welcome. He who doesn't may go home. That is what
19 I understand.

20 Siddig says: Hm.

21 And you say: And work starts tomorrow.

22 And Siddig says: But it doesn't go this way,
23 sheik.

24 And you go: Really, by God?

25 And he says: Yeah.

1 And you laugh and say: Well.

2 And Siddig says: It just doesn't, exclamation
3 point.

4 And you go: Yeah.

5 And Siddig says: Everyone will tell you, sheik,
6 don't boss us around this way.

7 Do you recall that conversation?

8 A. Yes, ma'am.

9 Q. Siddig is telling you that his cell will not take
10 orders, is that correct?

11 A. From me, yes, ma'am.

12 Q. That the cell is going to say don't boss us
13 around, correct?

14 A. Me bossing them around? No, they won't accept
15 that, ma'am.

16 Q. No, not only that --

17 MR. McCARTHY: Objection.

18 MS. AMSTERDAM: Withdrawn.

19 Q. Not only is he saying that they will not take
20 orders from you, he is saying that they will not take orders
21 from him, isn't that correct?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q. And on June 23, the last day, the day of the
25 arrests, page 63, did you say this to Siddig --

1 MR. McCARTHY: CM number, please.

2 MS. AMSTERDAM: CM 63, page 6.

3 Q. You bring your people, make them sit down and
4 explain your plan correctly. All of them will understand.

5 Do you recall having that conversation?

6 A. I may said it, ma'am.

7 Q. Pardon?

8 A. I may said it, ma'am.

9 Q. Wasn't it you, sir, who actually created this
10 fantasy of being in a play --

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. Wasn't it you who basically wrote the script and
14 directed the players?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q. Do you know, are you aware of the English
18 expression bit players?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q. Didn't you supply the theater and the sound
22 equipment?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained.

25 Q. Didn't you cast Siddig Ali as the star in your

1 movie?

2 THE COURT: Sustained.

3 Ms. Amsterdam, may I see you at the side.

4 MS. AMSTERDAM: I am moving on to another part,
5 your Honor.

6 THE COURT: Good.

7 Q. Eventually, after all the encouragement, you
8 didn't even find --

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q. On May 28, 1993, you met Fares Khallafalla at the
12 mosque, correct?

13 A. Yes, ma'am.

14 Q. Was that by arrangement with Siddig Ali? Had you
15 agreed to meet there that night?

16 A. Yes, ma'am.

17 Q. As you have stated, you don't know what Siddig
18 Ali said to Mr. Khallafalla on the way to meet you at the
19 mosque, right?

20 A. Right, ma'am.

21 Q. You had never met Fares before that evening, had
22 you?

23 A. No, ma'am.

24 Q. You had never seen him at Mr. Nosair's trial?

25 A. If he will be there, I won't recognize him.

1 Nobody introduced me to him, ma'am.

2 Q. You had never seen him at the conference that you
3 attended?

4 A. No, ma'am.

5 Q. You had never seen him at Mr. Nosair's victory
6 party?

7 A. No, ma'am.

8 Q. He had never gone to Attica with you?

9 A. No, ma'am.

10 Q. You had never seen him at Sheik Omar Abdel
11 Rahman's apartment?

12 A. Mr. Fares?

13 Q. Yes.

14 A. No, ma'am.

15 Q. You had never seen him at the Brooklyn mosque?

16 A. No, ma'am.

17 Q. In fact, prior to that date -- I would ask at
18 this point that the jurors have their notebook.

19 Prior to May 28, would I be correct in saying
20 that the only time that Siddig Ali ever mentioned
21 Mr. Khallafalla was on May 23 -- and I would direct the
22 jurors' attention to CM 11 -- just for the record, I have
23 supplied a notebook that has portions of certain
24 transcripts. They are behind tabs and they are tabbed by
25 number. At CM 11 on page 31, on May 23. Isn't it a fact

1 that prior to meeting Fares, the only time Siddig Ali ever
2 mentioned him was when he said -- start at the fourth
3 attribution down -- God by God, as a matter of fact, I came
4 to know that there is a dear brother who is ill. He helped
5 me moving and many other things, a brother from Sudan. His
6 name is Fares, very good brother. I found out that he is
7 ill.

8 And you say: Visiting him is a duty.

9 Do you recall that conversation?

10 A. Yes, ma'am.

11 Q. That is the first time that Mr. Siddig Ali ever
12 mentioned my client, correct?

13 A. Yes, ma'am.

14 Q. And that conversation took place within days of
15 you meeting Mr. Khallafalla, correct?

16 A. Probably, ma'am.

17 Q. And at no time before meeting Mr. Khallafalla did
18 Siddig Ali ever say Fares, my dear brother Fares who is sick
19 is one of my special assigned people or helping me, correct?

20 A. He did not say that statement, ma'am.

21 Q. The night that you met Mr. Khallafalla and
22 Mr. Amir Abdelgani, you knew -- did you know that Siddig Ali
23 was bringing with him some friends?

24 A. Yes, ma'am.

25 Q. So I assume that I would be correct in saying

1 that that would be a conversation that you would have
2 thought was extremely important to record.

3 MR. McCARTHY: Objection to form.

4 THE COURT: Why not just did you think.

5 MS. AMSTERDAM: Good.

6 Q. Did you think that it was extremely important to
7 record that conversation?

8 A. Yes, ma'am.

9 Q. And you have stated, have you not, that there
10 were many instances in which you relied on more than one
11 taping device. You might use a body wire and a Nagra, you
12 might use a body wire and a car tape, you might use a Nagra
13 and a car tape, correct?

14 A. I decided to use that, ma'am, after the failure
15 of the machine on that day, and we lost the first meeting
16 with Mr. Fares Khallafalla, ma'am.

17 Q. That wasn't the first time that a car recording
18 system had failed, was it?

19 A. That was the first time, ma'am.

20 Q. On May 21, 1993, you had gone to Attica for the
21 thirds time, correct?

22 A. Yes, ma'am.

23 Q. And the FBI professionally installed in a
24 rent-a-car a taping device, correct?

25 A. But that was after this incident, ma'am.

1 Q. You meet, Mr. Khallafalla, do you not, on May
2 28 -- I believe the government will stipulate as to that
3 being CM 18 and 19.

4 MR. McCARTHY: I do, your Honor.

5 Q. And you stated that on May 21 you went to Attica
6 for the third time, correct?

7 A. Yes, ma'am.

8 Q. So one week prior to meeting my client for the
9 first time, you had made a trip to Attica in a car that had
10 a professionally installed recording system, correct?

11 A. Yes, ma'am.

12 Q. And that system failed, did it not?

13 A. Yes, ma'am.

14 Q. Knowing that you had had problems only a week
15 before with a car --

16 MR. McCARTHY: Objection.

17 Q. -- with a car recording system, did it occur to
18 you that you should have a backup for your taping of this
19 conversation with my client?

20 THE COURT: Sustained.

21 Q. Did you think to use a backup of the recording of
22 the conversation with my client in the car?

23 A. No, ma'am.

24 Q. When you first met Mr. Khallafalla, you were at
25 the mosque already, correct?

1 A. I did not talk to him at the mosque, ma'am.

2 Q. You stated on direct, did you not, that you all
3 prayed together?

4 A. The mosque full of people. It's not necessarily
5 because we pray together that we talked.

6 Q. You prayed at the mosque?

7 A. Yes, ma'am.

8 Q. How often do Muslims pray, or should they pray?

9 MR. McCARTHY: Objection.

10 THE COURT: I will allow it. Go ahead.

11 A. Five times a day, ma'am.

12 Q. And that is normal custom for any Muslim?

13 A. Yes, ma'am.

14 Q. At the mosque after you pray, weren't you in fact
15 introduced to Mr. Khallafalla by Siddig Ali?

16 A. No, ma'am. Mr. Siddig Ali asked me to go to my
17 car and he will bring both Mr. Fares Khallafalla and
18 Mr. Amir Abdelgani, ma'am.

19 Q. The conversation that you had with Siddig Ali at
20 the mosque, was that recorded?

21 A. No, ma'am.

22 Q. You had on other occasions chosen to wear a body
23 wire inside a mosque to record conversations, did you not?

24 MR. McCARTHY: Objection to form, "had."

25 THE COURT: Prior to this?

1 MS. AMSTERDAM: I am sorry, sir.

2 THE COURT: The objection is to the word "had."

3 MS. AMSTERDAM: "had"?

4 THE COURT: Right.

5 Q. There were times during the course of this
6 investigation that you chose to wear a body wire when
7 recording conversations inside a mosque, did you not?

8 A. Yes, ma'am.

9 Q. On that occasion you did not record the
10 conversation with Siddig Ali, did you?

11 A. No, I did not, ma'am.

12 Q. You drove out to Queens and you have stated that
13 there is no recording of this conversation, right?

14 A. Yes, ma'am.

15 Q. And it was your belief that there was no
16 recording of the conversation because Mr. Khallafalla had
17 sat on the recording device, right?

18 A. Yes, ma'am.

19 Q. And you thought that he had scrunched, squished
20 the machine?

21 A. Yes, ma'am.

22 Q. And it was your testimony that you actually told
23 that to the agents when it was discovered that the tapes
24 hadn't worked, right?

25 A. Yes, ma'am.

1 Q. On the way back from the safe house that night,
2 there is a recorded conversation -- that's CM 18 -- correct?

3 A. I am not sure, ma'am. Could be. Could be.
4 Could be. I am not -- could be, yes.

5 Q. And if indeed there is a recorded conversation on
6 the way back, that would have meant that you would have had
7 to have used your briefcase, right?

8 A. Could be, ma'am.

9 Q. It couldn't have been the car system because you
10 stated the car system had failed.

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. If it wasn't the briefcase Nagra, what other
14 device did you have that was available to you that night
15 that would have produced a Nagra recording?

16 A. The left side where Mr. Amir was sitting, ma'am.

17 Q. The left side?

18 A. Yes.

19 Q. Of the car?

20 A. The left side of the couch, ma'am.

21 Q. On voir dire on this question, sir, did you not
22 state that Mr. Khallafalla had sat in the same place both on
23 the way out and on the way back?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. Sir, I am asking you.

2 THE COURT: Sustained. There was an objection.

3 Q. Isn't it a fact that the conversation on the way
4 back was tape recorded in your briefcase?

5 A. Could be. I don't know, ma'am.

6 Q. If the conversation had been tape recorded in
7 your briefcase -- withdrawn.

8 There is a conversation at the safe house, a
9 Nagra conversation, and that conversation, I assume, was
10 indeed recorded on your briefcase Nagra, right?

11 A. Yes, ma'am.

12 Q. That was the only Nagra that you had with you
13 that night, right?

14 A. There was two Nagras in the car and one Nagra in
15 the briefcase, ma'am.

16 Q. If, as you say, it's possible that the
17 conversation on the way back was recorded by your briefcase
18 Nagra, it would have required you to change the tape, would
19 it not? They are on two separate Nagra reels.

20 A. The conversation back on two Nagra reels?

21 Q. The conversation at the safe house is on CM 19.
22 That's on one reel. And the conversation on the way back is
23 on CM 18. That's a on a separate reel.

24 A. That's what I'm saying, that probably I got the
25 safe house -- it's sure that I get the safe house on the

1 briefcase but on our way back probably I switched the left
2 seat Nagra, ma'am.

3 Q. So when you got back into the car, it is your
4 testimony that you chose to activate the other Nagra system,
5 is that your testimony?

6 A. Could be, ma'am.

7 Q. It also could be that you used your briefcase on
8 the way back, correct?

9 A. I don't know, ma'am. I remember that I recorded
10 the conversation. I don't know on which tape, which switch
11 I flipped. I don't know.

12 Q. If you had recorded it on your briefcase on a
13 separate reel, you would have had to have changed the reel,
14 correct?

15 A. That's correct, ma'am.

16 Q. Do you recall at any time in the safe house
17 changing the reel?

18 A. I recall I did it once.

19 Q. At the safe house?

20 A. I think.

21 Q. That night?

22 A. No, not that night.

23 Q. So you don't recall changing the reel that night?

24 A. I did not change the reel that night in the safe
25 house, I don't recall.

1 Q. That, you specifically remember?

2 A. I recall that, yes.

3 Q. So then if there is a separate reel of the
4 conversation on the way back, it must by process of
5 elimination be the car system, correct?

6 A. That is correct.

7 Q. You did not, sir, deliberately decide not to
8 record the conversation on the way out, did you?

9 A. No, ma'am.

10 Q. I presume, sir, that you really don't remember
11 the details of the conversation on the way to Queens, do
12 you?

13 A. I remember that he introduced them to me under
14 the alias names, and we drove to the safe house. They were
15 very pro -- well, that's it. That's it.

16 Q. Do you remember that you got lost on the way out
17 to the safe house?

18 A. It was the very first time that I go over there,
19 yes.

20 Q. And it took a long time to get to the safe house.
21 Do you recall that?

22 A. Longer than usual, yes.

23 Q. Do you remember that there was a long
24 conversation about Bosnia?

25 A. On our way to the safe house.

1 Q. On the way to the safe house.

2 A. No, ma'am.

3 Q. Do you remember Mr. Amir Abdelgani telling you
4 that he wanted to go to Bosnia but his father was against
5 it?

6 A. In our way to the safe house? No, ma'am.

7 Q. Do you remember my client Fares Khallafalla
8 telling you that he was not willing to go to Bosnia? Do you
9 remember that?

10 A. No, ma'am.

11 Q. Do you remember him telling you that he felt that
12 it was his personal responsibility to stay and work and send
13 money back to his family in Sudan?

14 A. No, ma'am.

15 Q. Do you remember telling Mr. Khallafalla that you
16 also were not prepared to go to Bosnia?

17 A. I may said that.

18 Q. Do you remember telling him that you were going
19 to do your part, however, to help the brothers by helping
20 them train?

21 A. Yes, ma'am.

22 MR. McCARTHY: When, your Honor?

23 Q. On the way out to the safe house.

24 A. No, not in the safe house.

25 Q. On the way out to the safe house?

1 A. No, we did not talk about that.

2 Q. You did not have a conversation with my client
3 about that?

4 A. We had conversation numerous time with different
5 members of this investigation, that I am willing to help, I
6 am willing to train the people who want to get training. I
7 did stated that numerous of times, ma'am.

8 Q. So on other occasions you did talk to people
9 about your willingness to train people to go to Bosnia.

10 A. Absolutely, yes, ma'am.

11 Q. Do you remember having a conversation with my
12 client en route to the safe house -- withdrawn.

13 Is there an Arabic expression -- and I will not
14 say it in Arabic, but an expression that translates into
15 teach your children swimming, archery and horseback riding,
16 it will serve them well in both peace and war?

17 A. That's not the way the term being used, ma'am.

18 Q. There is an --

19 A. You added something to it, ma'am.

20 Q. Is there an expression that translates roughly
21 teach your children swimming, archery, horseback riding?

22 A. That is correct.

23 Q. Do you recall on the conversation out to Queens
24 that you used that expression speaking to my client?

25 A. No, ma'am.

1 Q. Didn't you tell my client that it was his Muslim
2 duty to be supportive both emotionally and monetarily to the
3 brothers who were going to fight in Bosnia?

4 A. No, ma'am.

5 Q. Didn't you indeed tell him that the training that
6 was going to take place in Queens was for Bosnia?

7 A. Absolutely not, ma'am.

8 Q. Do you follow sports, sir?

9 A. Sometimes, yes.

10 Q. Do you know who the Nicks are, the New York
11 Nicks, the basketball team?

12 A. No, ma'am.

13 Q. On the way out to Queens, do you recall my client
14 saying to you how long is this going to take, I want to go
15 home and watch the basketball players?

16 A. No, he did not say that, ma'am.

17 Q. You are positive on that issue?

18 A. We never talked about basketball, ma'am.

19 Q. Could your memory have failed you on that issue?

20 A. I don't think so, ma'am.

21 Q. You arrived that night for the first time at the
22 garage -- when you say safe house, that's a garage in
23 Queens, right?

24 A. Yes, ma'am.

25 Q. And it is a relatively small room?

1 A. No.

2 Q. One room?

3 A. No, ma'am.

4 Q. Would you say that the dimensions of the room
5 probably were -- could you approximate the dimensions of the
6 room?

7 A. Three quarters of this courtroom by half of the
8 width, ma'am.

9 Q. Three quarters of the entire courtroom?

10 A. Yes.

11 Q. By half of the width of the courtroom?

12 A. Yes, ma'am.

13 Q. You wouldn't say that the size of the garage was
14 closer to, say, maybe the jury box and over to where Mr.
15 Nosair is?

16 A. That would be smaller, ma'am.

17 Q. At the garage that first night, you did a
18 demonstration, a simulation -- do you know what simulation
19 is?

20 A. Yes, ma'am.

21 Q. A simulation of an explosion with a light bulb,
22 correct?

23 A. Yes, ma'am.

24 Q. And you were talking about how explosives work in
25 that conversation, were you not?

1 A. Yes, ma'am.

2 Q. Would you agree with me that if someone was
3 training for Bosnia, it would be important to learn about
4 explosives?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. The conversation that you had at the safe house
8 the first night was recorded, was it not?

9 A. Yes, ma'am.

10 (Continued on next page)

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1 Q. That recording is CM19.

2 You have a book there, sir.

3 If you would please open to page 7.

4 A. CM?

5 Q. CM19, page 7.

6 I direct your attention to the bottom of the
7 page -- one, two, three, four, five -- five attributions up,
8 where Siddig Ali says: I am thinking.

9 A. Yes, ma'am.

10 Q. Isn't it a fact that Siddig Ali said to you that
11 night at the safe house: I am thinking about other things.
12 I consulted him about the same operation we are talking
13 about, the target that you and I spoke about which they
14 don't know about.

15 And you say: Fine, that's it. It's up to you.

16 And he says: But I will tell them in a little
17 bit.

18 You say: God willing.

19 Siddig says: I will tell them in a little bit.

20 Then on the next page you say: God willing?

21 And Siddig says: Or in a suitable day, as there
22 is no reason to tell, there is no reason to talk about it at
23 all.

24 Siddig is talking about the fact that

25 Mr. Khallafalla and Mr. Amir Abdelgani in the safe house do

1 not know the targets, correct?

2 A. Until this sentence, yes, ma'am. But a little
3 later, different story.

4 Q. But in this sentence he says, does he not, I will
5 tell them in a little bit --

6 A. Yes, ma'am.

7 Q. -- right?

8 A. Yes, ma'am.

9 Q. Or on a suitable day, as there is no reason to
10 tell, there is no reason to talk about it at all.

11 Correct?

12 A. Correct, ma'am.

13 Q. Now, you stated in court here that there was this
14 cardboard, this cardboard diagram.

15 Do you recall Mr. McCarthy showing that to you?

16 A. Yes, ma'am.

17 Q. Indeed, you said on direct that that very evening
18 Siddig told them the targets, correct?

19 A. Correct, ma'am.

20 Q. But in this very recorded conversation he is
21 saying: I will tell them at some other time on a suitable
22 day there is no reason for them to know.

23 Correct?

24 A. Yes, ma'am.

25 Q. All right. Indeed, sir, two days later -- this

1 is at tab 20-21 which is a combination transcript, at page
2 64, in discussing this diagram, you say, do you not, to
3 Siddig: That's why when you were diagramming yesterday, or
4 the day before yesterday when you were diagramming, I did
5 not understand.

6 Do you recall saying that to him?

7 A. I was playing stupid so he can explain it
8 verbally to microphone, ma'am.

9 Q. You were playing stupid about the fact that it's
10 your testimony that he explained the targets that night?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. Who would you be playing stupid for? You are
14 talking to Siddig, either he knows or he doesn't know.

15 THE COURT: Sustained.

16 Ms. Amsterdam, may I see you at the side.

17 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Do you anticipate doing what she's
3 doing, is that why you are here?

4 MR. JACOBS: We worked on her cross together,
5 Judge, so I thought maybe I could be of some --

6 THE COURT: Maybe you can share the blame.
7 I have told you several times to stop this. You
8 are not here to argue with the witness, and you are not here
9 to deliver a summation.

10 MS. AMSTERDAM: I guess the problem -- not the
11 problem, I guess --

12 THE COURT: I also want you to keep your voice
13 down.

14 MS. AMSTERDAM: I guess that what bothers me is
15 that there are times that the witness says something that in
16 my opinion, in my opinion is preposterous, and that it is
17 such an out and out lie that it does seem to me as if I
18 shouldn't be bound by the answer. I should be able to
19 follow it up.

20 THE COURT: There is a difference between
21 following it up and arguing with it.

22 If you don't know what the difference is, you are
23 going to have to do something else.

24 MS. AMSTERDAM: Off the record, it's a little
25 late in life for me to start thinking about changing

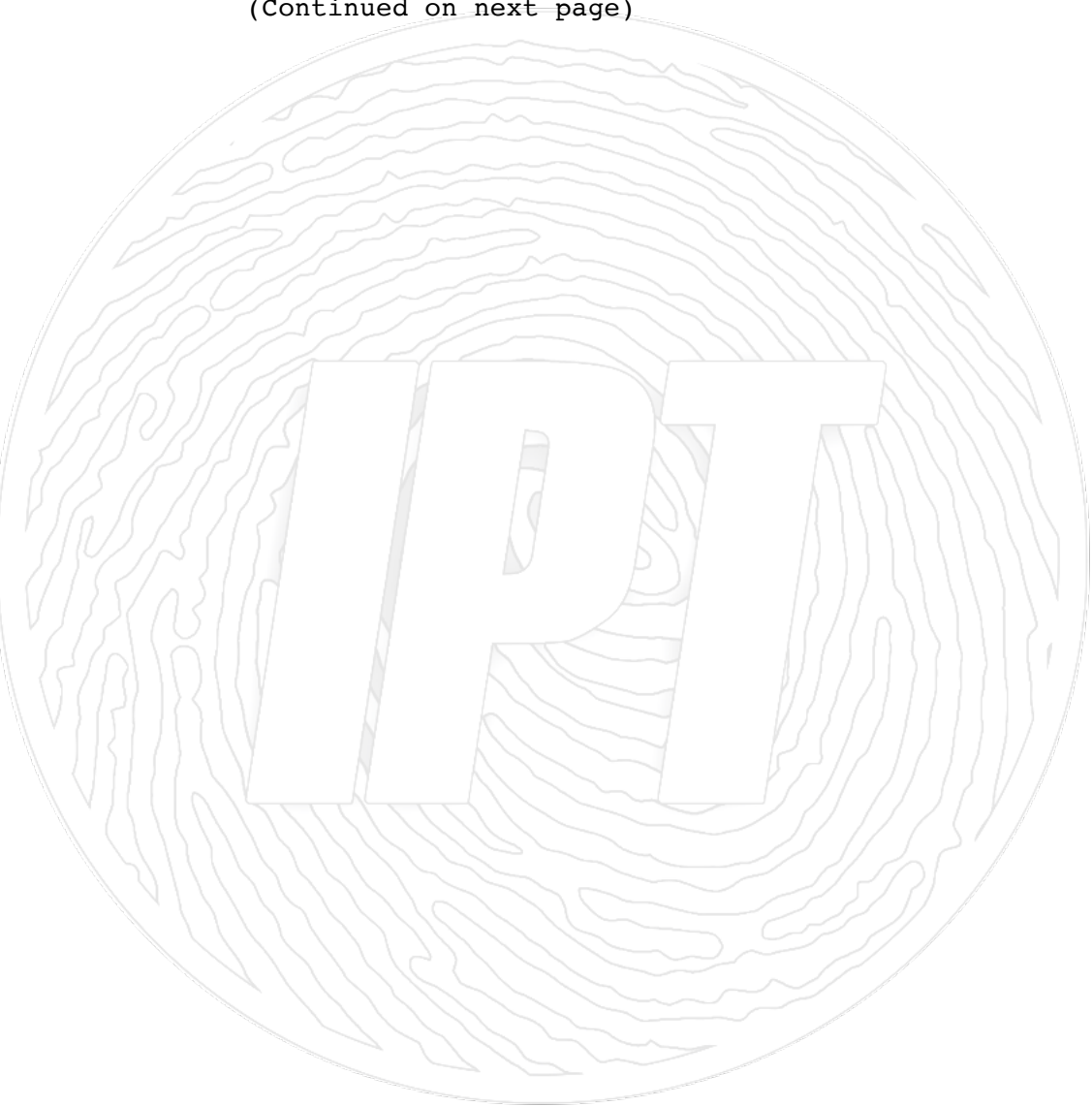
1 professions.

2 THE COURT: I wasn't suggesting a change of
3 profession. I was suggesting a change of topic.

4 MS. AMSTERDAM: I got it.

5 (Continued on next page)

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1 (In open court)

2 Q. I would like people to turn to Tab A, which is
3 the last tab in the notebook.

4 Isn't it a fact, sir, that Siddig Ali repeatedly
5 told you that he was not going to tell the people what the
6 targets were, he was going to keep people in the dark?

7 A. He said that a few times, yes, ma'am.

8 Q. And, indeed, on page 1 of tab A, CM1, Siddig Ali
9 said to you, did he not, starting at the --

10 MR. McCARTHY: I'm sorry. Page?

11 MS. AMSTERDAM: It's the numbered -- I'm sorry.
12 For the record, I'm at tab A and the pages are numbered by
13 hand. So starting with the one that is marked page 1.

14 MR. McCARTHY: Your Honor, I'm sorry. Can I just
15 have a moment with counsel.

16 THE COURT: Sure.

17 MS. AMSTERDAM: I'm sorry.

18 (Counsel conferred)

19 MS. AMSTERDAM: OK.

20 For the record, I am reading from CM1, page 8.

21 MR. McCARTHY: Thank you.

22 Q. That Siddig Ali said to you: First, I don't want
23 to tell these people -- starting at the beginning: First,
24 regarding the ingredient itself, of course, it is not ready
25 yet. And I don't want to tell these people what we do in

1 advance. I want to wait to the last moment.

2 And you said: Hum.

3 He said: Regarding the persons, individuals, our
4 habit, my own habit, I don't speak to these people about
5 what we are going to do until the last moment.

6 You say: Well done.

7 He says: So they know that -- I told them be
8 ready. The individuals are so and so and so, five of them
9 or four, four and a fifth, I did not speak to him, whatever
10 I said.

11 Do you recall having that conversation?

12 A. Yes, ma'am.

13 Q. And on what is page 2 in the juror's books, the
14 next page, but reading from CM1 again, page 9, in the middle
15 of the page, Siddig Ali said to you: There are brothers,
16 you and I are talking about the subject which is required
17 from them now. It is required from them phase -- in
18 parentheses -- there is a certain phase for everybody.
19 Everybody is going to have a certain role to play. I am not
20 going to provide details to the people, and things may be
21 they will makes their brains. Don't be occupied next
22 Thursday, Friday, Saturday, Sunday, that is my order.

23 Do you recall that conversation?

24 A. Yes, ma'am.

25 Q. On the next page, page 3 in the jurors' books,

1 CM1, page 10, do you recall Siddig Ali saying, starting at
2 the top: Make yourself available on Wednesday, Thursday,
3 Friday, and Saturday. When I tell him this, that's it.
4 There is no delay. When Wednesday comes we have --
5 unintelligible -- we used to do operations, you see what the
6 possibility of executing means actual execution. Fine. We
7 use not to talk with them because they considers it
8 training. You know, you have an idea until the operation
9 takes place as it looks like training. They found
10 themselves in an operation executing location, that's it.
11 They did not know.

12 And you say: They did not know if it is an
13 actual execution or not?

14 Siddig says: Yeah. That's my rule.

15 Turning to the next page, page 4, which for the
16 record is CM4, page 23, starting from the third attribution
17 up, do you recall Siddig saying to you: We need the people
18 to obey.

19 And you say: Blind obedience.

20 And Siddig says: Blind obedience, without him
21 saying what is this, and that is, and what is that.

22 Do you remember that conversation, sir?

23 A. I'm sorry. Could you just --

24 Q. Do you remember Siddig talking about blind
25 obedience?

1 A. Yes, ma'am.

2 Q. Do you recall five attributions from the bottom
3 of that same page, you saying: There are things that cannot
4 afford consultation. There are things that not all of us
5 are supposed to know. Correct?

6 A. Yes, ma'am.

7 Q. On the next page, page 5, which for the record is
8 CM7, page 28, you are talking about the Sudanese
9 ambassador --

10 MR. McCARTHY: Your Honor, I object to this.

11 MS. AMSTERDAM: All right. I will move on to the
12 next page. Do you object to the whole line of questioning
13 or that page?

14 MR. McCARTHY: I object to this manner of
15 reporting the conversation.

16 MS. AMSTERDAM: I'm sorry.

17 THE COURT: Let's move to the side and deal with
18 it. Come up to the side.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Go ahead.

3 MR. McCARTHY: My objection is I think at this
4 point it goes even beyond most of the questioning that we
5 have heard during the day, which in and of itself was
6 basically slicing and dicing 65 different conversations, a
7 line here and a line there.

8 This conversation as it is being read to the
9 jury -- and if it's being read to impeach him, that is not
10 evidence. If it is being read to read it to the jury and to
11 use him as a device for doing that, it's being taken totally
12 out of context and doesn't even resemble the conversation as
13 it took place.

14 THE COURT: I think the point that is being made
15 is a legitimate point, but it is repetitive. I am not going
16 to let you keep reading over and over and over again.

17 MS. AMSTERDAM: OK. Fine. I only have will two
18 more and I'm done with that.

19 THE COURT: You are done with it right now.

20 MS. AMSTERDAM: There's one more that I need to
21 do, and that's it.

22 MR. McCARTHY: One more conversation?

23 MS. AMSTERDAM: Just one more reference in the
24 CM's that I need to read, and that's it.

25 THE COURT: Fine.

1 (In open court)

2 MS. AMSTERDAM: Mr. McCarthy?

3 (Discussion at the side bar off the record)

4 Q. Turning to page 8, the handwritten 8, which is
5 for the record CM27, page 3, do you recall having a
6 conversation with Siddig in which starting halfway down the
7 page you say: Those people must learn one, two, three as we
8 say?

9 And Siddig says: Huh.

10 And you go: Those people must learn and must --

11 Siddig says: One, two, three, then they will.

12 And you say: Yes, this is it.

13 Siddig says: Learn. And it becomes normal
14 training for them.

15 And you go: As if it is a training exercise.

16 Do you remember having that conversation?

17 A. Probably, yes.

18 Q. Lastly, sir, turning to page 10 in the books --
19 CM11, page 20 -- it's speaking about getting cooperation
20 from people at the UN. Isn't it a fact that Siddig had a
21 conversation with you in which he said in the middle of the
22 page, Siddig Ali: I must invent something. I will tell him
23 I need information regarding what? I will tell him that I
24 want to get the Serbs. He will agree, of course. He will
25 agree with me and he deserves it, so I will tell him I want

1 to know where the entrance is, the entrance to the UN.

2 Correct? Do you remember having that
3 conversation?

4 A. Yes.

5 Q. Now, isn't it a fact that Siddig Ali had told you
6 repeatedly that he was not going to tell people specific
7 targets? Correct?

8 A. At the beginning, yes, ma'am.

9 Q. Throughout?

10 A. No, ma'am, not throughout.

11 Q. Isn't it a fact, sir, that he also told you that
12 there were times that he was going to deceive people and
13 suggest that he wanted information about Serbian targets?

14 A. He was talking about the people inside the United
15 Nations, ma'am.

16 Q. Right. But as you sit here today, you have no
17 idea whether or not Mr. Siddig Ali ever told Fares
18 Khallafalla that the training was to get the Serbs, do you?

19 You don't know that from your personal hearing,
20 do you?

21 A. I do know from my personal hearing that
22 Mr. Siddig Ibrahim Ali told Mr. Fares Khallafalla and the
23 others that he's going to bomb the United Nations, the
24 Holland Tunnel, the Lincoln Tunnel, the Washington Bridge.
25 It came a time some of them suggested extra targets, ma'am.

1 MR. JACOBS: Excuse me. Object. Move to strike
2 "others."

3 THE COURT: Overruled.

4 MR. JACOBS: I'm sorry. Does the answer stand,
5 Judge?

6 THE COURT: The answer stands.

7 Q. On that first day in the safe house, sir, we've
8 already gone through that transcript, Siddig Ali says: I'm
9 not going to tell them the targets, is that not true?

10 MR. McCARTHY: Objection. Asked and answered.

11 THE COURT: Sustained.

12 Q. You have no idea what Mr. Khallafalla thought the
13 training was for, is that correct?

14 MR. McCARTHY: Objection.

15 Q. You don't know?

16 THE COURT: Which training? When?

17 MS. AMSTERDAM: The training at the safe house,
18 in the garage.

19 MR. McCARTHY: Objection.

20 Q. You don't know what Fares Khallafalla thought was
21 going on there, do you?

22 MR. McCARTHY: Objection to form.

23 A. I --

24 THE COURT: Do you want to change "thought" to
25 "heard."

1 MR. McCARTHY: My objection is to the word
2 "training at the safe house."

3 THE COURT: All right.

4 Q. You don't know from your own personal
5 observations what Fares Khallafalla believed was happening
6 at the safe house, do you?

7 A. I do know through my own belief, my own hearing
8 that Mr. Siddig Ibrahim Ali described to Mr. Fares
9 Khallafalla and Mr. Amir Abdelgani in the first day on this
10 cardboard, under the camera, that three bombs and three
11 targets: The United Nations, the Lincoln Tunnel, and the
12 Holland Tunnel, ma'am.

13 Q. If he had had that conversation with Fares
14 Khallafalla and Amir Abdelgani, it would have been recorded
15 and it would appear in transcript CM19, would it not?

16 A. It will appear on the videotape, ma'am.

17 Q. Oh, it would appear on the videotape?

18 A. It will, ma'am.

19 Q. The videotape, sir, wouldn't that be the exact
20 copy of the conversation recorded by the Nagra?

21 A. That's correct, ma'am.

22 Q. It would be the exact same conversation, correct?

23 A. No. The Nagra started from certain point, but
24 the videotape in the safe house, since we stepped in until
25 we stepped out, ma'am. So the Nagra will be portion of --

1 Q. The Nagra continued until you got into the car,
2 did it not, sir?

3 A. Since it started, until the car, yes, ma'am.

4 Q. So it would be your testimony that before the
5 Nagra was turned on the videotape would contain references
6 to Siddig telling them about the targets, correct?

7 A. You're going to see in the videotape, ma'am, when
8 Mr. Siddig writing on the cardboard and saying: First one,
9 boom; and five minutes later, second one, boom. What is
10 this? What is that? Third one, boom.

11 You're going to see three booms, and he's writing
12 down this board, clear on the videotape, ma'am.

13 Q. Sir --

14 A. Yes, ma'am.

15 Q. Were the words "United Nations" ever used in that
16 conversation?

17 A. Absolutely, yes, ma'am.

18 Q. They will be in the videotape?

19 A. Well, unfortunately we don't have hundred percent
20 of the words being said, but you are going to see it, ma'am.

21 Q. Will the words Lincoln Tunnel appear in the
22 recorded conversation?

23 A. Not in this time, ma'am.

24 Q. Not in this time?

25 A. Yes.

1 Q. What's the other target, sir?

2 A. The Lincoln Tunnel, the Holland Tunnel, and the
3 United Nations.

4 Q. Well, the Lincoln Tunnel, those words appear in
5 the recorded conversation, sir?

6 A. No, ma'am.

7 Q. So there will not be a recording of what you're
8 saying, is that your testimony?

9 A. There is a recording for what I am saying. It
10 appear on the video, but the audio was not clear, ma'am.

11 Q. All right. And the Nagra, the Nagra that's in
12 your briefcase failed to capture that conversation, is that
13 your testimony?

14 A. The Nagra did not start at this time, ma'am, and
15 you can see by the time when I went and I lied down beside
16 him on this cardboard, and I start to put the briefcase
17 then, or I start to -- I turn it on.

18 Q. So it would be your testimony, correct me if I'm
19 wrong, that the targets were named before the Nagra
20 conversation started, right?

21 A. Possibly, ma'am, yes.

22 Q. But in the Nagra conversation which we just read,
23 Siddig Ali says: I'm not going to tell them the targets.
24 I'll tell them to some other day?

25 Do you recall that?

1 A. He said: I will tell them later or some other
2 day, yes, ma'am.

3 Q. And it would be your testimony that that
4 statement was made after he had already told them the
5 targets, that's your statement?

6 A. No, ma'am, that's not true.

7 Q. You just said --

8 MR. McCARTHY: Objection.

9 Q. -- the targets were said on the video before the
10 Nagra began, correct?

11 A. Yes, ma'am.

12 Q. And then when the Nagra begins, he says: I'll
13 tell them the targets some other day, correct?

14 A. Correct.

15 Q. Thank you.

16 Q. On the way back, sir, that conversation is
17 recorded, correct?

18 A. Yes, ma'am.

19 Q. During that conversation there is a lot of talk
20 about directions, the Garden State Parkway is mentioned, do
21 you recall that?

22 A. Yes, ma'am.

23 Q. The 59th Street Bridge is mentioned?

24 A. Yes, ma'am.

25 Q. The Yellowstone Bridge is mentioned?

1 A. Yes, ma'am.

2 Q. The Triboro Bridge is mentioned?

3 A. Yes, ma'am.

4 Q. The Midtown Tunnel is mentioned?

5 A. Yes, ma'am.

6 Q. And at no time during that recorded conversation
7 does anyone say: Pay attention, these are the very targets
8 we're going to be bombing, do they?

9 A. We did not discuss bombing these bridges, ma'am.

10 Q. In fact, in that conversation somebody comments
11 on how beautiful the Manhattan skyline is, do they not?

12 A. Yes, ma'am.

13 Q. In addition to that --

14 THE COURT: Could you come to a convenient break
15 point within the next five minutes.

16 MS. AMSTERDAM: Yes, absolutely.

17 Q. In that conversation, sir, there came a time that
18 you and Siddig discussed when the exterminator was going to
19 clean up, do you recall that?

20 A. Yes, ma'am.

21 Q. And "the exterminator" was yourself, correct?

22 A. Correct.

23 Q. And "clean up" meant sweep for bugs, right?

24 A. Right, ma'am.

25 Q. And in the course of that -- withdrawn.

1 You and Siddig are sitting in the front of the
2 car, you're sitting in the front seat --

3 A. In which?

4 Q. -- of the car?

5 On the way back from the safe house the first
6 night.

7 A. Yes.

8 Q. And Fares and Amir Abdelgani are sitting in the
9 back, correct?

10 A. I believe, yes, ma'am.

11 Q. In that discussion about the exterminator, isn't
12 it a fact that you said to Siddig: Of course, the brothers
13 in the back are wondering what's that exterminator, and you
14 laugh.

15 A. In that time, they don't know what we talking
16 about, about the exterminator, ma'am.

17 Q. This is on the way back from the safe house they
18 don't know what the exterminator is, correct?

19 A. We did not talk about it in the safe house,
20 ma'am.

21 Q. On the way back, Mr. Amir Abdelgani falls asleep,
22 does he not?

23 A. I didn't check him, ma'am.

24 MS. AMSTERDAM: This would be a convenient break
25 point, your Honor.

1 THE COURT: Ladies and gentlemen, we are going to
2 take a short break. Please leave your notes and other
3 materials behind. Please don't discuss the case. We will
4 resume in a short while.

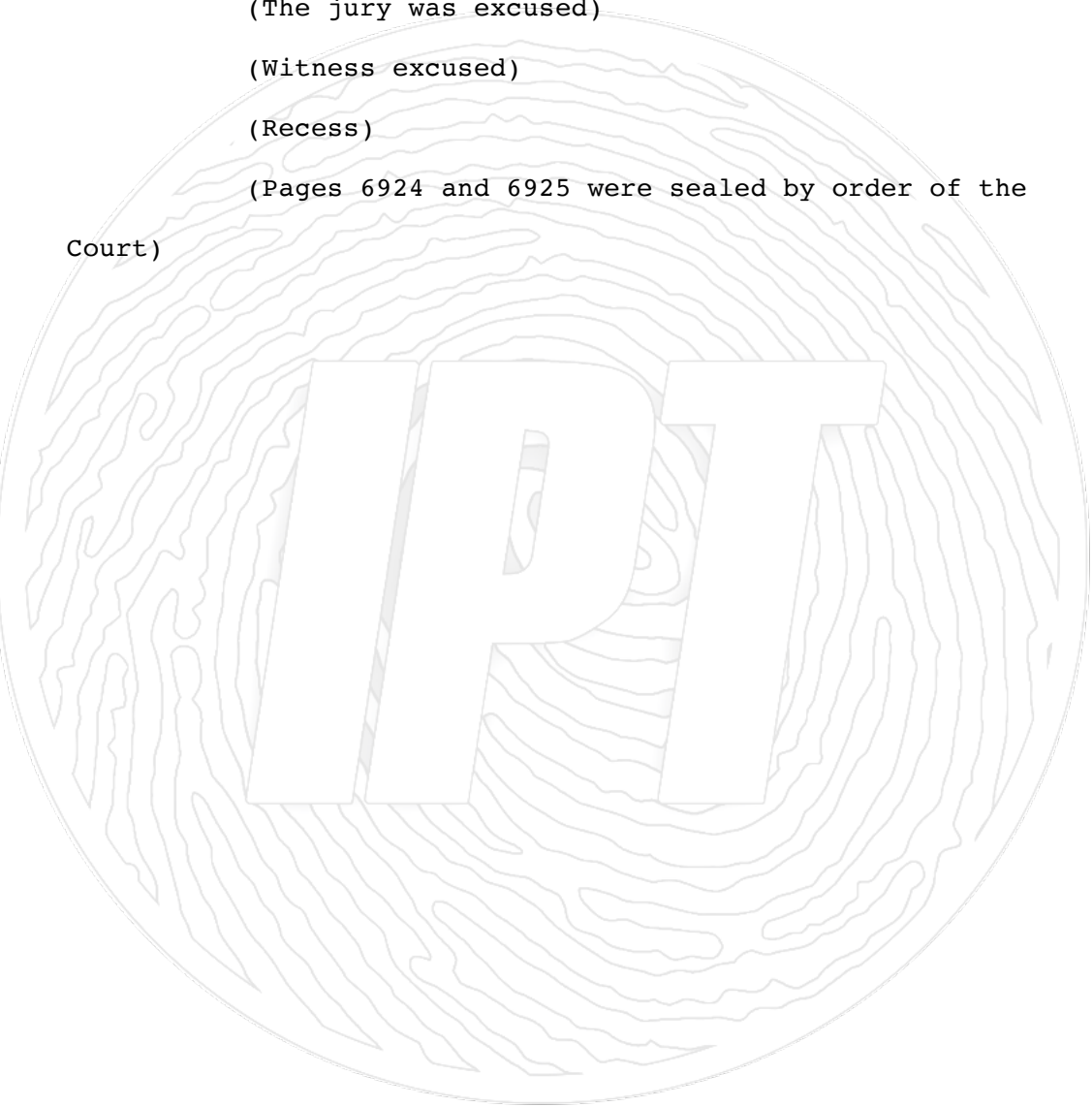
5 (The jury was excused)

6 (Witness excused)

7 (Recess)

8 (Pages 6924 and 6925 were sealed by order of the
9 Court)

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1 (In open court)

2 EMAD SALEM, resumed.

3 (Jury present)

4 THE COURT: Ms. Amsterdam.

5 MS. AMSTERDAM: Thank you, sir.

6 Q. After that night at the safe house, the first
7 night at the safe house, you didn't see Mr. Khallafalla for
8 several weeks thereafter, isn't that correct?

9 A. I'm sorry, ma'am?

10 Q. I apologize.

11 After the night, the first night at the safe
12 house at the end of May, you did not see Mr. Khallafalla
13 until approximately two weeks later, is that correct?

14 A. Probably.

15 Q. And the next time you saw him, sir, it was at the
16 mosque, the night of the elections, correct?

17 A. Correct, ma'am.

18 Q. You recorded the part of the conversation until
19 you got to the mosque, is that correct, outside the mosque,
20 that's recorded?

21 A. Could be.

22 Q. The conversation inside the mosque is not
23 recorded, is it?

24 A. No, I did record it, some of it, but I don't know
25 what happened with it.

1 Q. You don't know what happened to the tape?

2 A. No, I don't. It wasn't a tape. It was a chip,
3 ma'am.

4 Q. I'm sorry?

5 A. It was a computer chip.

6 Q. You don't know what happened to that computer
7 chip?

8 A. No, ma'am, I don't.

9 Q. That night when you saw Mr. Khallafalla at the
10 mosque, isn't it a fact that he told you that he was going
11 shopping the next day, that he had some things that he
12 wanted to buy to send back to the Sudan, do you recall that?

13 A. No, ma'am.

14 Q. Do you recall that he told you that he had some
15 friends who were going back to the Sudan and that he wanted
16 to buy some things to send to them?

17 A. I don't recall it, ma'am.

18 Q. All right. Isn't it a fact that you suggested
19 that he might be able to buy things inexpensively on Canal
20 Street?

21 A. That was Mr. Siddig's suggestion to Mr. Fares,
22 ma'am.

23 Q. That he could buy things inexpensively at Canal
24 Street?

25 A. I don't know where "inexpensive" came from, but

1 Mr. Siddig told Mr. Fares to buy the timers from Canal
2 Street, ma'am.

3 Q. Isn't it a fact, sir, that Mr. Khallafalla had
4 indicated to you that he was going to Canal Street to buy
5 some personal items and you suggested that you would come
6 with him to buy some timers?

7 MR. McCARTHY: Objection. Rule 801.

8 MS. AMSTERDAM: I'm sorry, I didn't hear.

9 THE COURT: 801. May I hear the question again.

10 (Record read)

11 THE COURT: Sustained.

12 Q. Isn't it a fact that Mr. Khallafalla told you at
13 the mosque that he was going shopping the next day for some
14 personal items to be sent back to the Sudan?

15 A. No, ma'am, he did not say that.

16 Q. And isn't it a fact, sir, that you suggested that
17 you would go along with him at that time?

18 A. No, ma'am. That's not what I suggested.

19 Q. All right. The next day, on June 13, you do
20 indeed meet Mr. Khallafalla in Manhattan, is that correct?

21 A. Correct, ma'am.

22 Q. And you pick him up at the PATH train at 32nd
23 Street, right?

24 A. Right.

25 Q. And you drive him down to Canal Street, right?

1 A. Correct, ma'am.

2 Q. You have a recorded conversation with him, do you
3 not?

4 A. Yes, ma'am.

5 (Continued on next page)

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1 Q. And the elections of the night before are
2 discussed between the two of you, the mosque elections of
3 the night before are discussed between the two of you,
4 right?

5 A. Could be, ma'am.

6 Q. And you mentioned the laughing cow, correct?

7 A. Yes, ma'am.

8 Q. The laughing cow being the code word for the
9 assassination of Mubarak?

10 A. That is correct, ma'am.

11 Q. Mr. Khallafalla told you, I don't know anything
12 about it. Do you recall that?

13 A. No, I don't, ma'am.

14 MS. AMSTERDAM: If the jurors could turn to tab
15 CM 38, page 4.

16 Q. Starting at the third attribution. Isn't it a
17 fact that you said: I want you to understand the situation.
18 I told him, quote, Abdel Rahman Haggag said so and so. He
19 said no God but God --

20 MR. McCARTHY: Objection.

21 MS. AMSTERDAM: What?

22 MR. McCARTHY: Your Honor, I would ask that it be
23 made clear that the first part is a quotation.

24 THE COURT: The first part is also a quotation.

25 MS. AMSTERDAM: Apologize. He said no God but

1 God. Quote, he was talking with me when we used to talk
2 about the laughing cow issue. End quote. I don't know if
3 you know it or not.

4 And Mr. Khallafalla says: No, I don't know it.

5 And you say: You don't know, so we keep it that
6 way.

7 Does that refresh your recollection?

8 A. Yes, ma'am.

9 Q. During the course of that meeting together, you
10 and Mr. Khallafalla went into several stores, did you not?

11 A. Yes, ma'am.

12 Q. Did you recall a time at which point the two of
13 you walked by an army navy store that had a gun bolted to
14 the front of the store?

15 A. Yes, ma'am.

16 MS. AMSTERDAM: May I approach the witness, your
17 Honor? I have showed the government.

18 Q. I show you what has been marked as Defendant
19 Khallafalla's B1, 2 and 3. I ask you, sir, do these
20 photographs fairly and accurately --

21 A. Will you hold one second, please.

22 Q. Do these photos fairly and accurately represent
23 the gun that was bolted outside the front of the army navy
24 store on June 13, 1993?

25 A. No, ma'am.

1 Q. They do not?

2 A. No, ma'am.

3 Q. In what way do they not fairly and accurately
4 represent the item outside the army navy store?

5 A. It's not the same, ma'am.

6 Q. It's not the same?

7 A. No, it's not.

8 Q. Thank you.

9 A. You are welcome.

10 Q. In any event, there was some gun that was in fact
11 bolted in front of the army navy store?

12 A. It was a cannon.

13 Q. A cannon?

14 A. A big cannon and like big missile, something to
15 that effect.

16 Q. Missile?

17 A. Yes.

18 Q. And you and Mr. Khallafalla had a conversation to
19 that effect?

20 A. Yes, ma'am.

21 Q. And you said to Mr. Khallafalla: This is a
22 country, meaning the United States, of freedom.

23 And he said: In relationship to that missile,
24 this is abuse of freedom.

25 Do you recall that?

1 MR. McCARTHY: Objection to the form.

2 THE COURT: Sustained.

3 Q. Do you recall pointing out the cannon to
4 Mr. Khallafalla, talking of the cannon?

5 A. Yes, ma'am.

6 Q. Do you recall saying to Mr. Khallafalla, this is
7 a country of freedom, referring to the United States?

8 A. I may said that, yes.

9 Q. And do you recall Mr. Khallafalla saying to you,
10 this is abuse of freedom?

11 A. No, I don't recall that, ma'am.

12 Q. At the top of page 4, CM 39, second attribution,
13 Mr. Khallafalla laughing: The people selling danger on the
14 street. That's in relationship to the cannon, correct?

15 A. Yes, ma'am.

16 Q. And you say: This is a country of freedom,
17 sheik. Do you recall that?

18 A. Yes, ma'am.

19 Q. And Mr. Khallafalla says: Praise God, country of
20 abuse of freedom.

21 Do you recall that? Abuse of freedom, for the
22 record, is underlined as being one of the portions in
23 dispute. Do you recall that?

24 A. I don't recalling him saying that, ma'am.

25 Q. In any event, that day you and Mr. Khallafalla

1 went into several stores and ultimately some timers were
2 purchased, correct?

3 A. He did purchase two timers, ma'am.

4 Q. To be certain, Mr. Salem, you didn't need timers,
5 did you?

6 A. I am sorry.

7 Q. The first time you met with Siddig Ali in a
8 recorded conversation, you showed him a timer, correct?

9 A. Correct.

10 Q. And during the course of this investigation there
11 were arguments with the FBI agents as to whether or not the
12 timers should be left in the safe house. Do you recall
13 that?

14 A. That's correct, ma'am.

15 Q. And those were arguments that you ultimately won,
16 correct?

17 A. Ultimate --

18 Q. That you prevailed, that the timers were not
19 removed, correct?

20 A. Yes, ma'am.

21 Q. And indeed you had spoken on many occasions of
22 having purchased timers before, before this investigation,
23 right?

24 A. Yes, ma'am.

25 Q. So in the context of this investigation, you did

1 not actually need a timer, did you?

2 MR. McCARTHY: Objection, relevance.

3 THE COURT: Sustained.

4 Q. The fact that you and Mr. Khallafalla were on
5 Canal Street to buy timers was in fact done so that you
6 could -- withdrawn.

7 The fact that you and Mr. Khallafalla were on
8 Canal Street to purchase timers was done so that you
9 actually could create some action which would inculcate,
10 involve Mr. Khallafalla, is that not true?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 Q. You said at some point earlier this morning that
14 you had gone to the Sudanese embassy to get a visa, right?

15 A. Yes, ma'am.

16 Q. You didn't need a visa, did you?

17 MR. McCARTHY: Objection to relevance.

18 THE COURT: Sustained.

19 Q. In this particular instance, you didn't need
20 timers, did you?

21 MR. McCARTHY: Same objection.

22 THE COURT: Same ruling.

23 Q. During the course of the conversation that you
24 had with Mr. Khallafalla on June 13, was there any mention
25 of any targets during that conversation?

1 A. I don't think so, ma'am.

2 Q. And isn't it a fact that during the course of
3 this recorded conversation with him there was no mention at
4 to the purpose of the timers, was there?

5 A. No, I don't think so, ma'am.

6 Q. And indeed during the course of that conversation
7 you asked Mr. Khallafalla whether or not Siddig Ali had told
8 him about anything other than the timers, and he responded
9 that's it. Correct?

10 A. Correct, ma'am.

11 Q. And during the course of the conversation he said
12 to you, after the timers were purchased: Ali, I'll go back
13 to New Jersey, I'll try again to buy things, we have one of
14 our brothers traveling to the Sudan.

15 And you said: Yeah.

16 And he said: I'll try to buy some things and I
17 will write one or two letters to give to him.

18 Do you recall that?

19 A. That was the time when he talk about somebody
20 going to Sudan, not in the mosque like you mentioned before,
21 ma'am.

22 Q. So indeed he had been there to purchase some
23 items to send back to the Sudan, correct?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 Q. During the course of that conversation, you asked
2 him whether or not he knew about -- withdrawn.

3 You asked him whether or not Siddig had told him
4 about anything other than the timers and you responded that
5 he said that's it, correct?

6 A. Yes.

7 Q. And then you had a discussion about the rent of
8 the safe house, and during the conversation about the rent
9 he said to you, I don't know what is happening, is that
10 correct?

11 A. You cutting pieces of conversation. I am not
12 able to follow it that way, ma'am, please.

13 Q. Do you remember having a conversation with him
14 about the rent and the fact that Siddig had not paid the
15 balance of the \$500?

16 A. Yes, ma'am.

17 Q. All right, and do you recall you saying to him:
18 No problem, no problem, that's fine, I just told him when we
19 come to the next month's rent there is another \$1,000
20 needed. Do you recall that?

21 MR. McCARTHY: Page?

22 MS. AMSTERDAM: I am sorry, page 8 CM 39.

23 Q. Do you recall saying that?

24 A. Yes, ma'am.

25 Q. And Mr. Khallafalla saying: No problem God

1 willing, we can all share in solving the problem, God
2 willing, so there is no problem, Emad.

3 And you said: God willing.

4 And Mr. Khallafalla responded: That's what we
5 are supposed to do. We have no idea what the expenses will
6 be? Question mark. I mean, we don't know what is
7 happening. Unintelligible.

8 Do you recall that conversation?

9 A. Yes, I recall, I recall that -- yes, I recall
10 that conversation.

11 Q. During the course of this conversation --

12 MR. MCCARTHY: Objection. Your Honor, may I ask
13 that at least the next attribution get read?

14 Q. And you responded by saying: What happened? I
15 am telling you that there is an agreement that Siddig
16 assigned me to find the place. I found the place.

17 That's the safe house, right?

18 A. That is correct, ma'am.

19 Q. And Mr. Khallafalla told you that he had known
20 nothing about the arrangements for renting the safe house,
21 correct?

22 A. In that time, yes, ma'am. But he -- OK.

23 Q. Sir, at the end of -- during the course of this
24 conversation, it is your testimony that there was no
25 discussion about the purpose of the timers, correct?

1 A. Say --

2 Q. No discussion between you and him about the
3 purpose of the timers, correct?

4 A. On the visit to Canal Street?

5 Q. Yes.

6 A. No, ma'am.

7 Q. And no discussion about the targets, correct?

8 A. No, ma'am.

9 Q. And at the end of this conversation on Canal
10 Street, you drove Mr. Khallafalla to the World Trade Center,
11 to the Path train of the World Trade Center, correct?

12 A. Yes, ma'am.

13 Q. You went down Broadway to World Trade Center,
14 right?

15 A. Yes, ma'am.

16 Q. You passed 26 Federal Plaza?

17 A. Could be, yes.

18 Q. And you came up close to the World Trade Center,
19 correct?

20 A. Yes, ma'am.

21 Q. And at no time did you say to him, Fares, these
22 are the targets that we will be bombing, did you?

23 A. The World Trade Center?

24 Q. 26 Federal Plaza?

25 A. No, we did not say that.

1 Q. World Trade Center?

2 A. It was not one of the targets at the minute,
3 ma'am.

4 Q. Mr. Siddig Ali had made 26 Federal Plaza one of
5 his targets, correct?

6 A. The Federal Plaza, yes, ma'am.

7 Q. And when you drove by it, you said nothing to
8 Mr. Khallafalla about that's one of our targets, did you?

9 A. No, I don't.

10 Q. And Mr. Khallafalla said nothing to you like,
11 that's the building we're going to be bombing, right?

12 A. No, I don't recall him saying that.

13 Q. And you dropped him off at the World Trade Center
14 and he said nothing about praise God, I hope our bomb will
15 be as strong as that bomb, did he?

16 A. No, I don't recall him saying that, ma'am.

17 Q. Isn't it a fact that you were deliberately vague
18 in your conversation with him?

19 A. What's vague mean, please?

20 Q. Vague meaning you didn't give him any details.

21 A. He already knows what's the whole details. He
22 knows that we building a bomb. He knows that we need timers
23 which at the first meeting when I showed him the timer. He
24 know that this timer will make boom, and he shake my hand
25 for that. And three bombs Mr. Siddig Ali explain it to him.

1 So there is no reason for me to keep talking about the same
2 subject. We already talked about it in the safe house,
3 ma'am.

4 Q. You drive right by one of the suspected
5 targets --

6 MR. McCARTHY: Objection.

7 Q. -- and neither one of you discuss it, is that
8 correct?

9 THE COURT: Sustained, sustained.

10 Q. Isn't it a fact that you deliberately did not
11 mention targets because you were concerned that he might say
12 to you, what are you crazy?

13 A. No, ma'am --

14 Q. Didn't you deliberately refuse to mention the
15 targets on the tape?

16 A. No, ma'am, because we already, four of us on this
17 cardboard and at the camera of the FBI talked about three
18 targets, it's being drawn down --

19 THE COURT: Miss Amsterdam, move it along.

20 MS. AMSTERDAM: I am.

21 THE COURT: Good.

22 MS. AMSTERDAM: I am.

23 Q. Sir, on your direct examination you said that
24 Mr. Khallafalla had been with you on the day that you met
25 Tarig Elhassan, and that you had driven around trying to

1 steal trash cans to be used as buckets for mixing. Do you
2 remember that?

3 A. I don't recall.

4 Q. You don't recall saying that?

5 A. I may said it, but I don't recall it, ma'am.

6 Q. Do you know whether or not Mr. Khallafalla was
7 with you on that day?

8 A. Probably.

9 Q. Probably? I ask you, sir, to look in your book,
10 CM 59. Do you see that, sir?

11 A. One second. CM 258 -- 59, I got it.

12 Q. At the beginning where it says this is Emad
13 Salem, that's you speaking into the tape recorder, correct?

14 A. Yes, ma'am.

15 Q. This is Emad Salem, it's 10:30 p.m., 6/21/1993.
16 I am in Manhattan at the First Avenue and 11th Street. I am
17 coming to pick up Siddig Ali and Amir and Fares, ah, sorry,
18 Tarig, three of them. I am going to pick them up at the
19 corner of the mosque. Do you see that?

20 A. Yes, ma'am.

21 Q. Isn't it a fact that when you testified on direct
22 that Mr. Khallafalla was with you that evening, you were
23 incorrect?

24 A. I am not sure about that, ma'am.

25 Q. I would ask you to look at the transcript,

1 continue on. I would point you to the next page, at the top
2 of the page. See if that refreshes your recollection as to
3 whether or not Mr. Khallafalla was present on that occasion.

4 A. No, I don't see any attribution to his voice,
5 ma'am.

6 Q. So you were wrong when you said he was there that
7 evening, correct?

8 A. I could be wrong, ma'am, yes.

9 Q. You also testified that he was with you, did you
10 not, when you got the beeper number for the car thief; do
11 you recall that?

12 A. Say it again, please.

13 Q. That Mr. Khallafalla was with you when he,
14 Mr. Khallafalla, obtained the beeper number for a thief who
15 was selling stolen cars. Do you recall that?

16 A. He was with Mr. Victor Alvarez. They both went
17 to meet this individual and they came back and they said
18 that they give him the beeper number.

19 Q. I would like just you, sir, to take a look behind
20 what is tab 49 in the book.

21 MS. AMSTERDAM: May I approach the witness?

22 THE COURT: Yes.

23 Q. I would like you to take a look at the
24 attributions in that conversation and tell me whether or not
25 Mr. Khallafalla was in fact present on that occasion?

1 A. Well, it's not because his voice is not here that
2 mean he is not present. He could be there but he is not
3 talking because Mr. Alvarez was talking, ma'am.

4 Q. Do you remember specifically whether or not
5 Mr. Khallafalla was there?

6 A. Yes, he came back, absolutely, yes, because they
7 both went together to get the car and they both came back,
8 and they were talking about what happened with the guy who
9 they give him the beeper number to page him when he get the
10 car.

11 Q. That is your testimony, that he was present at
12 that point?

13 A. As far as I recall, yes, ma'am.

14 Q. Could your memory be wrong about that, sir?

15 A. If we see the videotape, we will see who was
16 present, ma'am.

17 Q. I am asking you, could your memory be wrong on
18 that matter?

19 A. I don't think so, ma'am.

20 Q. Sir, does Fares mean anything in Arabic, the word
21 Fares?

22 A. Far we see Fares means a warrior, a horseback
23 rider, a warrior.

24 Q. Did there come an occasion when there was a
25 discussion in the safe house where Mr. Khallafalla was asked

1 whether or not he wanted to remain with the group or not?

2 Do you recall that?

3 A. It was a discussion about Mr. Alvarez, if he want
4 to quit or not, ma'am.

5 Q. I turn the jurors and Mr. Salem's attention to CM
6 58, page 49, starting eight lines from the bottom.

7 Mr. Elhassan said to Mr. Khallafalla, did he not, what are
8 you going to do, my brother? Do you recall that?

9 A. I don't think that he was talking to Mr. Fares,
10 ma'am.

11 Q. And Mr. Elhassan continues and says: Brother, we
12 will trust you, OK? Unintelligible. Two, we will change
13 the planning.

14 A. He was -- I am sorry. I am sorry. I apologize.

15 Q. And Mr. Alvarez says: We trust you, we trust
16 everybody.

17 MR. McCARTHY: Objection. I would ask that we go
18 to page 48, the bottom of the page.

19 MS. AMSTERDAM: Your Honor, I would say that that
20 is the subject of redirect.

21 Q. At this part of the conversation, sir, isn't it a
22 fact that Mr. Alvarez says we trust you, we trust
23 everybody --

24 MR. McCARTHY: Objection.

25 THE COURT: I will allow it. Go ahead.

1 Q. And Mr. Elhassan says: And we do it next time
2 somewhere and someplace and you are still our brothers.

3 And Siddig says: Still, there's no,
4 unintelligible.

5 And Mr. Khallafalla says: I'll call you
6 tomorrow.

7 And Siddig laughs.

8 And Mr. Khallafalla says: I will give you my
9 opinion tomorrow.

10 And Mr. Elhassan says: Ah?

11 And Mr. Khallafalla says: I'll give you my
12 opinion tomorrow.

13 And Mr. Abdelgani says: Say it in English.

14 And in English Mr. Khallafalla says: He's gonna
15 tell you -- there is a disputed portion. Isn't it a fact
16 that in English Mr. Khallafalla says I'm going to tell you
17 tomorrow? Do you recall that?

18 A. Ma'am, you switch up the whole people, you messed
19 up the whole, who is talking to who and who is talking to
20 who. I am sorry, I cannot agree about what you say, ma'am.

21 Q. Did Mr. McCarthy ask you last week to review this
22 tape?

23 A. I don't know last week or the week before.

24 Q. Week before.

25 A. Yes.

1 Q. And Mr. Khallafalla says: God, my brother, we
2 are.

3 And Siddig said to Mr. Khallafalla: Serious,
4 serious, OK.

5 I am sorry. Let me go further on.

6 Mr. Khallafalla says: Going to tell you to go.
7 Siddig says, one, two, three, four, five, six,
8 seven, seven attributions from the top on page 50. The next
9 attribution Siddig Ali says: No, this is not a joke, not a
10 joke, not a joke. Serious, serious.

11 Mr. Khallafalla says: God, my brother, we are,
12 unintelligible.

13 And Siddig says: Serious, serious, OK. And
14 Siddig continues to say: Yeah, yeah, English, English, it's
15 hard for him.

16 And in English Mr. Khallafalla says: Shame on
17 us, shame on us.

18 And Siddig says: He's a brother, so. After that
19 is there.

20 And Mr. Khallafalla says: Shame on us, brother.

21 And Mr. Siddig says: Ah?

22 And Mr. Khallafalla says: Shame on us.

23 And Siddig says: Why shame?

24 And Mr. Khallafalla says: No God shame.

25 And Siddig says: There is no shame.

1 And Mr. Khallafalla says: Islam, my brother.

2 Siddig says: Ah?

3 Mr. Khallafalla says: Islam, my brother.

4 Siddig says: God is greatest.

5 And Mr. Khallafalla says: Shame.

6 Do you recall that conversation, sir?

7 A. That's a question, ma'am?

8 Q. Yes.

9 THE COURT: I think you ought to note for the
10 record that all of those attributions insofar as they
11 indicate Mr. Khallafalla are obscured.

12 MS. AMSTERDAM: No, they are not, your Honor.
13 Despite being underlined there is acceptance by the
14 government that that is Mr. Khallafalla speaking.

15 Q. Do you recall that conversation, sir?

16 A. This conversation is completely out of the right
17 order. When Mr. Fares Khallafalla said shame on us, he was
18 saying because we were talking in Arabic and they were under
19 dressing or putting Mr. Alvarez down, and he said shame on
20 us, speak in English, and he start speaking English. When
21 Mr. Fares Khallafalla laughed and say I will tell you my
22 opinion tomorrow, Mr. Siddig told him, that's serious
23 business, it's not a joke, because he was laughing and he
24 was joking about it. But the way you read it, ma'am, I
25 disagree about it.

1 Q. Let me ask you a question.

2 A. Yes, ma'am.

3 Q. That night was the last night you saw
4 Mr. Khallafalla, correct, before seeing him in court,
5 correct?

6 A. Could be, ma'am.

7 Q. I turn your attention to page 58 of the
8 transcript.

9 MR. McCARTHY: Your Honor, just to clarify, where
10 it says Khallafalla, the government does agree that is
11 Mr. Khallafalla. There are a couple of other underscores.

12 MS. AMSTERDAM: But the attributions the
13 government consents to.

14 MR. McCARTHY: With respect to Mr. Khallafalla.

15 MS. AMSTERDAM: Yes.

16 THE COURT: Go ahead.

17 Q. Page 56, sir, 56 of the transcript, start, at the
18 fourth attribution down: Let's ask them one by one. Fares,
19 come over here.

20 And you say: Wait, I didn't finish.

21 And Siddig says: OK, all right, leave the door
22 open. Listen, listen, Fares. We will come to you.

23 And you say: God willing.

24 Fares says: Unintelligible.

25 And Emad says: Unintelligible, emir once.

1 Then the door opens and closes because Fares has
2 walked out, has he not?

3 A. Which door you talking about, ma'am?

4 Q. Door open, door close, background noises.

5 A. Which --

6 Q. The door to the safe house. Fares Khallafalla
7 walked out of the safe house, did he not?

8 A. I can't tell you out of my memory now.

9 Q. At that point Siddig says, Fares, we thought he
10 was a Fares. What does Fares mean, sir?

11 A. Fares mean warrior.

12 Q. And you responded no, he is not a Fares, correct?

13 A. That is not correct, ma'am.

14 Q. No, he is not a Fares.

15 MS. AMSTERDAM: Will the government stipulate
16 that I am reading the transcript accurately?

17 MR. McCARTHY: I stipulate that she is reading
18 the transcript accurately.

19 Q. That is the last time you saw my client, correct?

20 A. Could be, ma'am.

21 Q. Could be. And Mr. Khallafalla, when he left that
22 night, had said I will give you my opinion tomorrow, and his
23 opinion was that he never called you again, did he?

24 MR. McCARTHY: Objection.

25 THE COURT: Did he ever call you again?

1 Q. Did he ever call you again?

2 A. He never called me at home, ma'am.

3 Q. Did you in fact, did Siddig tell you to try to
4 call him and was he unreachable?

5 A. Could be.

6 Q. And in the days that followed, for the first time
7 barrels of oil came to the safe house, correct? He wasn't
8 there then, was he?

9 A. No, he was not.

10 Q. And for the first time a gun say came to the safe
11 house and he wasn't there then, was he?

12 A. I am not sure of that, ma'am.

13 Q. And for the first time mixing began and he wasn't
14 there, was he?

15 A. He wasn't there at the time of the mixing, ma'am.

16 Q. Fares was no Fares, was he, sir?

17 A. He was a Fares, and very good one, ma'am.

18 Q. And that's why you said Fares no, he is no Fares?

19 A. That's what you saying out of the transcript,
20 ma'am, and I said that I cannot agree with you about
21 everything you have been reading from this transcript,
22 ma'am.

23 Q. Sir.

24 A. Yes.

25 Q. Mr. McCarthy asked you two weeks ago at my

1 direction to review that part of the transcript, correct?

2 A. Yes, ma'am.

3 (Continued on next page)

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1 MS. AMSTERDAM: Mr. McCarthy, will you stipulate
2 that I read it accurately?

3 MR. McCARTHY: I think I did that already.

4 MS. AMSTERDAM: I have no further questions.

5 THE COURT: Thank you, Ms. Amsterdam. Do you
6 want to come up.

7 (At the side bar)

8 MR. BERNSTEIN: I can start.

9 THE COURT: Do you have something you can do in
10 20 minutes?

11 MR. BERNSTEIN: Yes, I can do preliminary stuff.

12 THE COURT: I need to break at 10 of because one
13 of the jurors has to go to school.

14 MR. BERNSTEIN: And if you have to break me off,
15 that's fine.

16 THE COURT: Fine.

17 (In open court)

18 THE COURT: Mr. Bernstein, representing Amir
19 Abdelgani. Go ahead.

20 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. BERNSTEIN:

3 Q. Sir, during your examination by Miss Amsterdam,
4 she asked you some questions about whether in the middle of
5 June you were trying to negotiate for a million dollars. Do
6 you recall that?

7 A. Yes, sir.

8 Q. You told her you didn't think there was such
9 money available at that time, correct?

10 A. I believe what I said, that until the last, very
11 last end of the case I don't know that it was, there is a
12 million dollars, something in that effect, sir.

13 Q. But you knew in March of '93 the FBI had offered
14 something like \$200,000 just for information leading to the
15 arrest of Mahmoud Abouhalima, right?

16 A. Yes, sir, I know.

17 Q. And you claimed that money at that time and were
18 denied that \$200,000, correct?

19 A. Yes, sir.

20 Q. So two months earlier you understood what just
21 giving up or producing Mahmoud Abouhalima was worth to the
22 United States government, correct?

23 A. Yes, sir.

24 Q. So that it wasn't a far cry to expect that a
25 million dollars might be something you could claim from the

1 FBI or seek, given your work in this case.

2 A. It never occurred to my mind, sir.

3 Q. Sir, you started working for the FBI in 1991, is
4 that correct?

5 A. Yes, sir.

6 Q. And you call that the first phase of the
7 investigation or your first phase of the investigation,
8 correct?

9 A. Yes, sir.

10 Q. During that period of time, you worked for
11 approximately seven or eight months, is that correct?

12 A. Yes, sir.

13 Q. During that time, no one ever gave you any
14 detonators, did they?

15 A. No, sir.

16 Q. During that time, no one ever showed you any
17 detonators, did they?

18 A. No, sir.

19 Q. During that time, no one ever gave you any money
20 for detonators, did they?

21 A. No, sir.

22 Q. Let's talk about C-4. That's plastic explosives,
23 right?

24 A. Yes, sir.

25 Q. In that seven or eight months you never saw any

1 C-4, did you?

2 A. I did saw substitute for it, sir.

3 Q. No, sir. I asked you, did you ever see C-4
4 plastic explosives?

5 A. No, sir.

6 Q. Did anybody ever show you any C-4 plastic
7 explosive?

8 A. No, sir.

9 Q. No one gave you any money for it, did they?

10 A. No, sir.

11 Q. During that time, did you see any hand grenades?

12 A. No, sir.

13 Q. Nobody ever showed you any, right?

14 A. No, sir.

15 Q. Nobody ever gave you any money to go buy hand
16 grenades, did they?

17 A. No, sir.

18 Q. During that period of time, did you see any
19 dynamite?

20 A. No, sir.

21 Q. There was no money for dynamite given to you by
22 anyone, go get dynamite, here's some money?

23 A. No, sir.

24 Q. And no one ever presented or showed you any,
25 correct?

1 A. No, sir.

2 Q. If we discussed ready-made bombs, the same
3 answers would be true of that, you never saw any ready-made
4 bombs?

5 A. I am sorry, sir.

6 Q. You talked on your prior examination about
7 ready-made bombs, correct?

8 A. Yes.

9 Q. You never saw any ready-made bombs, did you?

10 A. No, sir.

11 Q. In fact, you never even -- nobody ever gave you
12 any gun powder other than these carpenter nails you claim
13 you got from Mr. El-Gabrownny, correct?

14 A. Yes?

15 A. Yes, sir.

16 Q. That is the closest you ever came to any gun
17 powder in those eight months, correct?

18 A. Yes, sir.

19 Q. That box of carpenter nails that you claim you
20 got from him you brought to the FBI, right?

21 A. Yes.

22 Q. The FBI gave them right back to you that day,
23 right?

24 A. Yes.

25 Q. They didn't bother to take it for laboratory

1 tests, they gave it right back to you, right?

2 A. I believe the explosive expert, he checked one of
3 them on the ashtray and then he give me the rest back, sir.

4 Q. They didn't take the box for fingerprinting, did
5 they?

6 A. No, sir.

7 Q. In that whole seven or eight month period, no one
8 gave you any money to aid the projects and the plans that
9 you say were ongoing, correct?

10 A. No, that's not correct, sir.

11 Q. People gave you money for bomb making?

12 A. Not for bomb making, no.

13 Q. No. People gave money for the Nosair defense
14 committee, right?

15 A. I got plastic bag full of money from Mr. Tarig
16 Elhassan, and I got 300 --

17 Q. I am sorry, I am talking about the first phase of
18 the investigation.

19 A. I am sorry, I apologize.

20 Q. First seven or eight months.

21 A. No, sir.

22 Q. During that first phase of the investigation, you
23 went to Canal Street and bought things, correct? You went
24 to Canal Street and purchased things during that seven or
25 eight months in 1991 into 1992, correct?

1 A. Yes, sir.

2 Q. You went and you bought, I think you said, M80
3 firecrackers in that area, correct?

4 A. Yes, sir.

5 Q. You did that on your own, correct?

6 A. As per Mr. Sayyid Nosair's instructions, sir.

7 Q. Sir, I didn't ask you that.

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. Sir, did you go and purchase the M80 firecrackers
11 alone?

12 A. Yes, sir.

13 Q. No one was with you?

14 A. No, sir.

15 Q. Sir, you said that you purchased a timer in 1991
16 or '92 on Canal Street, correct?

17 A. Yes, sir.

18 Q. You did that alone, no one went with you,
19 correct?

20 A. No one went with me, sir.

21 Q. I think you may have said you also purchased some
22 kind of fuse wire in that same first phase of the
23 investigation, correct?

24 A. That's correct, sir.

25 Q. You also purchased that in the Canal Street area?

1 A. Yes, sir.

2 Q. And you purchased that again alone, no one was
3 with you?

4 A. Yes, sir.

5 Q. Did you turn those items over to the FBI at some
6 point?

7 A. I showed it to them, yes, sir.

8 Q. What did you do with them after you showed them
9 to them?

10 A. They didn't take it at the beginning, but later
11 on they took it, sir.

12 Q. So in the summer of 1992, you took possession of
13 those items, correct?

14 A. Yes, sir.

15 Q. You took them back to your house?

16 A. Yes, sir.

17 Q. Kept them in your house?

18 A. They stayed for awhile and then I get rid of
19 them, sir. I get rid of some of them, sir.

20 Q. You came back to the investigation shortly after
21 the World Trade Center incident, correct?

22 A. Yes, sir.

23 Q. Sometime around late February, early March of
24 1993?

25 A. Yes, sir.

1 Q. And ultimately you hooked up with Siddig Ali, as
2 you have described here, correct?

3 A. Yes, sir.

4 Q. In 1993, prior to the time that you hooked up
5 with Siddig Ali, you hadn't started to build any bombs with
6 anyone, had you? In this 1993 second phase, before you met
7 Siddig Ali and hooked up with Siddig Ali, you hadn't started
8 building bombs with anyone else, right?

9 A. No, sir.

10 Q. After you and he started to get together, there
11 was talk about creating the safe house, right?

12 A. Yes, sir.

13 Q. During that time you kept asking Siddig for his
14 share of the money, and as you have described, he didn't
15 come up with his share very quickly.

16 MR. McCARTHY: Objection -- withdrawn.

17 THE COURT: Go ahead.

18 A. He did give me \$300, sir, and he promised to
19 bring me another \$200, sir.

20 Q. But for a period of time he was having
21 difficulties giving you the 500 he had originally promised,
22 correct?

23 A. I am sorry.

24 Q. Originally, you and he had somehow agreed he
25 would pay 500 and you would pay 500?

1 A. Correct, sir.

2 Q. And in the initial weeks of this, he didn't come
3 up with the 500, ultimately you put up \$700 is what you told
4 him, right?

5 A. I did not put up any money, sir.

6 Q. That's what you told Siddig Ali, right, that you
7 put up the money?

8 A. Yes, but that is not in fact what happened.

9 Q. There was discussion of delay, of losing the safe
10 house because he didn't come up with the money fast enough,
11 because he wasn't ready, correct?

12 A. Yes.

13 Q. You said Siddig Ali gave you \$300, is that
14 correct?

15 A. Yes.

16 Q. Did that money get turned in to the FBI by you?

17 A. I beg your pardon.

18 Q. Did that money get turned in to the FBI?

19 A. Yes, sir.

20 Q. Any other money get turned in by you to the FBI
21 in connection with this?

22 A. Mr. Tarig Elhassan's money, sir.

23 Q. How much was that, sir?

24 A. I don't recall. He said that's all what I have,
25 and he opened a little bag and he get a plastic bag for

1 change, and he gave it to me to buy some wires and tunnels,
2 sir.

3 Q. Was that toward the very end of this, June 23 --

4 A. It happened inside the safe house, sir.

5 Q. Did you actually go out and locate the safe house
6 that was used in Queens?

7 A. The FBI did that, sir.

8 Q. When for the first time did you ever see the safe
9 house?

10 A. I don't recall the exact date, sir.

11 Q. If we use May 27 as the first day that anyone
12 came with you to the safe house, can you go backwards in
13 time to --

14 A. Seven to eight days, sir.

15 Q. How much time prior to the seven or eight days
16 did the FBI inform you that they had already secured the
17 safe house?

18 A. They did not inform me that they secured the safe
19 house until the day they instructed me to go with them to
20 Queens, and they showed me the safe house, sir.

21 Q. When they took you out to the safe house, was
22 that daytime or nighttime?

23 A. Daytime, sir.

24 Q. You went out there with some agents, correct?

25 A. Yes, sir.

1 Q. At that time, was the cameras already installed
2 in the safe house, to the best of your knowledge?

3 MR. McCARTHY: Objection, relevance.

4 THE COURT: Sustained.

5 Q. Sir, when you first got to the safe house -- let
6 me digress for a second.

7 When Siddig Ali wasn't coming forward with the
8 money, the safe house was already in existence, correct?
9 Meaning -- withdrawn.

10 By the time Siddig Ali gave you the \$300, the
11 safe house already existed --

12 MR. McCARTHY: Objection, form.

13 Q. Is that correct?

14 THE COURT: Overruled.

15 A. I am not sure, sir.

16 Q. Was it before or after -- if we use May 27 as the
17 day that people first went there and you say seven or eight
18 days earlier, bringing it to about May 19, May 20, had
19 Siddig given you the \$300 by May 19, May 20?

20 A. I don't recall the date Mr. Siddig Ali gave me
21 the \$300, sir.

22 Q. So it is possible that the safe house existed
23 before Siddig gave you a dollar?

24 A. I cannot confirm that, sir.

25 Q. Had there been discussions between you and the

1 FBI about going forward with the safe house even if Siddig
2 didn't give any money toward procuring the safe house?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q. Sir, did you get keys for the safe house from the
6 FBI?

7 A. Yes, sir.

8 Q. When did they actually give you physical control,
9 custody of the keys to the safe house?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. Sir, were there locks on the doors at the safe
13 house?

14 A. Yes, sir.

15 Q. How many locks or what type of locks were they?

16 A. Two locks, sir.

17 Q. When you say two locks, are they locks that go
18 key into door or padlocks?

19 A. Padlocks, sir.

20 Q. You ultimately had keys for both padlocks, is
21 that correct?

22 A. Yes, sir.

23 Q. Who purchased the lock and keys, to your
24 knowledge?

25 A. I have no idea. I saw them there when I went to

1 the safe house the first time, sir.

2 Q. You didn't purchase them?

3 A. No, sir.

4 Q. From the time that you got those keys, you kept
5 those keys in your possession until the arrests June 24,
6 correct?

7 A. Yes, sir.

8 Q. Siddig Ali did not have a set of keys to the safe
9 house?

10 A. No, sir.

11 Q. Did Siddig Ali ever demand of you to make a set
12 of keys for him?

13 A. No, sir.

14 Q. That meant that he had no ability to go in or out
15 of the safe house without you, correct?

16 A. Correct, sir.

17 Q. So therefore you controlled all of the access in
18 and out of the safe house because you controlled the keys,
19 correct?

20 A. Yes, sir. But the FBI also has access, sir.

21 Q. None of the other defendants had keys, did they?

22 A. No, sir.

23 Q. Did any of the other defendants ever ask to have
24 keys or access to the safe house?

25 A. No, sir. Excuse me, sir. I believe Mr. Amir

1 once requested to move and stay permanently in the safe
2 house, sir.

3 Q. But he didn't ask you for keys, did he?

4 A. No, sir.

5 Q. So the only times that people could come and go
6 to the safe house was when they either came with you or came
7 when you were already there, correct?

8 A. Came with me or --

9 Q. Or when you were already in the safe house.

10 A. Yes, that is correct, sir.

11 (Continued on next page)

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1 MR. BERNSTEIN: Judge, this would be a convenient
2 time if it is all right with the court.

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 or see or hear or
6 read anything about the case or anything related to the
7 case.

8 See you tomorrow morning.

9 (Jury excused)

10 (Witness excused)

11 MR. RICCO: Your Honor, I have one question.

12 THE COURT: Yes.

13 MR. RICCO: During the course of Mr. Bernstein's
14 examination he asked a question of the witness, and the
15 question, I think, was did Emad Salem discuss whether a plan
16 would go on even if the defendants were unavailable to pay
17 for the safe house.

18 THE COURT: Right.

19 MR. RICCO: There was an objection to that.

20 THE COURT: And I sustained it.

21 MR. RICCO: I just was curious as to the court's
22 ruling.

23 THE COURT: Relevance.

24 MR. RICCO: Because I thought that the whole
25 issue of whether or not the setting up of the safe house,

1 whether or not the government was prepared to go forward
2 with this case notwithstanding the defendants' readiness or
3 ability to do so was a relevant issue.

4 THE COURT: There is a difference between being
5 ready to go forward with something and coming up with the
6 money to pay the rent. I assume your objection was
7 relevance, was it not?

8 MR. McCARTHY: On that issue, yes.

9 MR. RICCO: Judge, I would think that if there is
10 an inability to proceed in any aspect of the case, that is,
11 providing detonators or providing the place to build them,
12 and if the FBI had discussions with its informant about what
13 to do in the event that situation comes back as a part of
14 the investigation, that that would be relevant.

15 THE COURT: The FBI's discussion with their
16 informant, discussions with their informant are totally
17 irrelevant to the question of entrapment. The question of
18 entrapment insofar as it goes to the defendants' state of
19 mind goes to their actions, their conduct, their
20 inclinations or lack of them.

21 MR. RICCO: I thought one of the issues raised by
22 Mr. Lewis in the pretrial motions, at some point I received
23 some very thick motions submitted by him --

24 THE COURT: So did I.

25 MR. RICCO: -- discussing this question of

1 outrageous government conduct and this, it would seem to me,
2 is one of the facts that would go to that issue.

3 MR. McCARTHY: Your Honor, that is a legal issue.
4 The court has deferred that until after the trial.

5 THE COURT: The only issue this jury is to
6 determine is entrapment. If there is some issue as to the
7 government that constitutes independently outrageous
8 government conduct, I suppose we can get into that after the
9 trial is over. The defendants' not paying for the rent --

10 MR. RICCO: Judge, I didn't mean to trivialize
11 the issue in terms of paying the rent, but to the extent the
12 government included in this the paying of the rent among
13 other things would go to that issue at some point.

14 THE COURT: Maybe it will and maybe it won't, but
15 it is not --

16 MR. RICCO: I only pose the question to the court
17 because in my mind at what point does the court consider
18 those facts. The court will ultimately make a legal
19 determination of that issue and it would seem to me at some
20 point the court would have to have facts that relate to
21 those issues.

22 THE COURT: If those facts relates to those
23 issues at some point I will have them, but they don't relate
24 to entrapment.

25 Mr. Jacobs, may I see you briefly.

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(Pages 6972 - 6973 sealed)
(Proceedings adjourned until 9:30 a.m.,
Wednesday, April 5, 1995)



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.

-----x

S5 93 Cr. 181 (MBM)

April 5, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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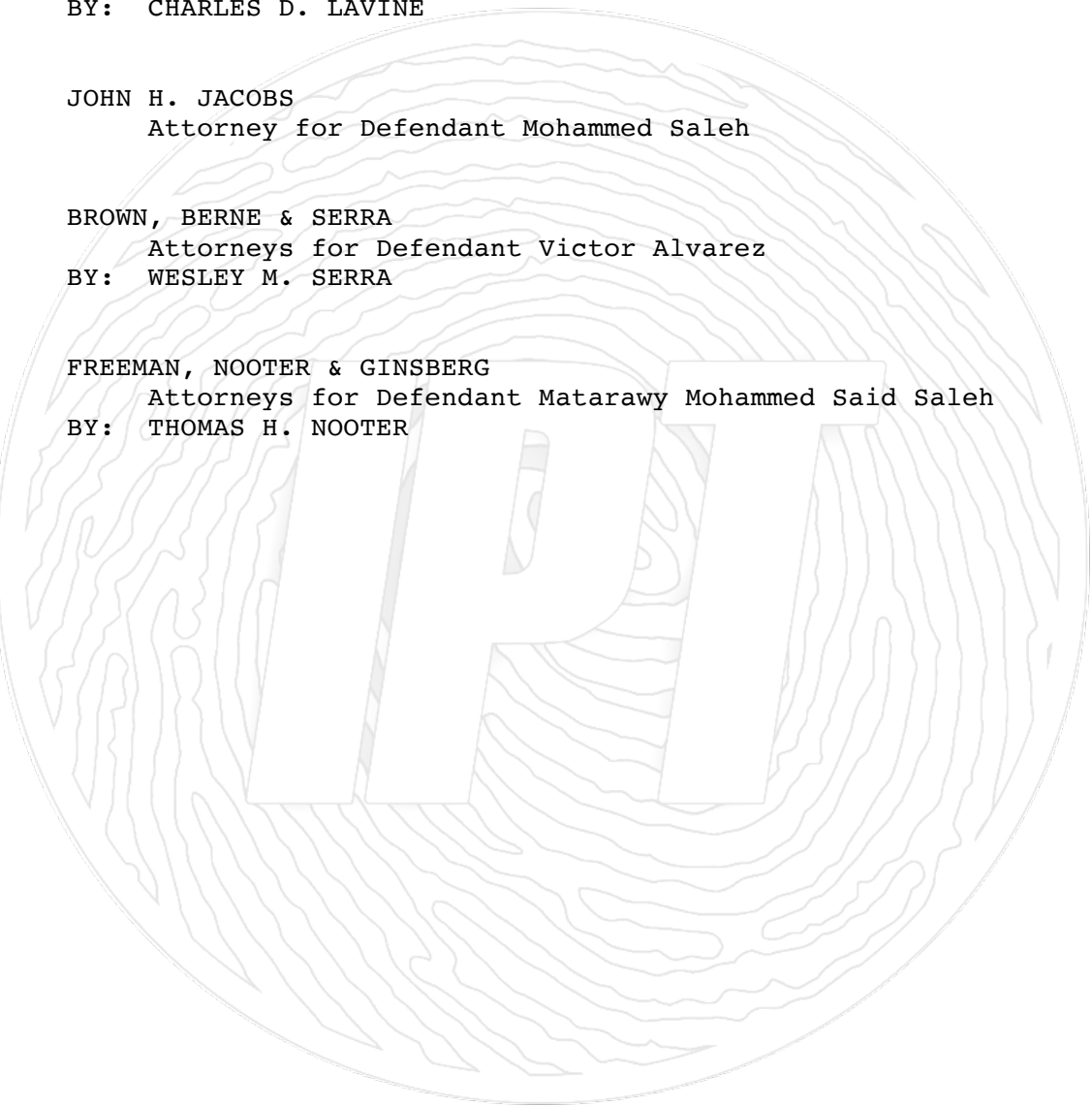
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1 (Trial resumed)

2 (In open court; jury not present)

3 MR. RICCO: I have to go over to argue a writ.

4 Mr. Serra said he would fill in for me. I should be back in
5 25 minutes.

6 THE COURT: Is that satisfactory, Mr.
7 El-Gabrowny?

8 DEFENDANT EL-GABROWNY: Fine.

9 THE COURT: Thank you very much.

10 MR. RICCO: Thank you, your Honor.

11 (Continued on next page)

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1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: Mr. Salem, you are still under oath.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Bernstein, representing Mr. Amir
8 Abdelgani. Go ahead.

9 CROSS-EXAMINATION continued

10 BY MR. BERNSTEIN:

11 Q Mr. Salem, when we left off yesterday afternoon
12 we were talking about the locks and keys to the safe house,
13 remember?

14 A Yes, sir.

15 Q That nobody had keys, only you and the FBI,
16 right?

17 A Yes.

18 Q The first time anybody comes to you with you to
19 the safe house is on May 27, correct?

20 A Yes, sir.

21 Q Before anybody ever got to the safe house, you
22 brought things into the safe house, correct?

23 A Yes, sir.

24 Q For instance, on the videotape -- I think that is
25 Government's Exhibit 338, I think that is the correct

6980

1 number -- that the jury has already seen, there is a big
2 work bench set up that is seen in the videotape, correct?

3 A Yes, sir.

4 Q Was that a work bench that was built by you?

5 A No, sir.

6 Q Was that work bench built at your request?

7 A No, sir.

8 Q Do you know if that work bench was already there
9 when the FBI rented the premises?

10 A I have no idea, sir.

11 Q The first night that anybody goes out to the safe
12 house is May 27. That is when you go with Siddig Ali and
13 Amir Abdelgani and Fares Khallafalla.

14 A Yes, sir.

15 Q That is the night that you have described that
16 the tape recorders didn't work in the back seat of the car
17 going out, correct?

18 MR. McCARTHY: Objection.

19 Q You said the tape recording --

20 MR. McCARTHY: The tape recorders, I think he
21 said.

22 MR. BERNSTEIN: There were two tape recorders put
23 in the back seats of the car, right?

24 THE COURT: I think he said one of them didn't
25 work.

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1 Q Did the other one work?

2 A Your question, please.

3 Q You went out to the safe house, Amir Abdelgani
4 and Fares Khallafalla were sitting in the back seat of the
5 car, right?

6 A Yes.

7 Q They weren't sitting in each other's laps, were
8 they?

9 A No, sir.

10 Q They were sitting next to each other?

11 A Yes.

12 Q There were two tape recorders in the back seat?

13 A Yes.

14 Q One was under one seat, one under the other?

15 A Yes.

16 Q There was no tape recording of the trip going out
17 to the safe house?

18 A No, sir.

19 Q There is a recording coming back from the safe
20 house?

21 A I think, yes, sir.

22 Q And you don't know whether or not that recording
23 was made in your briefcase or one of the back seat tape
24 recorders, correct?

25 A I am not sure, sir.

6982

1 Q Would it be fair to say that Amir Abdelgani and
2 Fares Khallafalla went back in the car, sitting in the back
3 seat?

4 A Yes, sir.

5 Q So that one gentleman was sitting in one seat,
6 one gentleman was sitting in the other seat in the rear?

7 A Yes, sir.

8 Q The same way they were when they came out?

9 A I am not sure it was the same way or not.

10 Q Meaning they may have switched positions?

11 A I am not -- could be but I am not sure. What I
12 am sure, sir, that when we went to let safe house, Mr. Amir
13 Abdelgani was right behind me, Mr. Fares Khallafalla was on
14 the right back seat, sir.

15 Q But they didn't sit on top of each other on one
16 seat going back, did they?

17 A No, sir.

18 Q So that coming back there was a --
19 Mr. Khallafalla is very tall, correct?

20 A Yes, sir.

21 Q And Mr. Abdelgani is about 5, 11 or 6 feet also?

22 A Mr. Abdelgani?

23 Q Yes.

24 A No, sir, he is like 5, 8, 5, 9.

25 MR. BERNSTEIN: Mr. Abdelgani, would you stand.

6983

1 Q Sir, with me standing near Mr. Abdelgani --

2 THE COURT: In front of.

3 Q With me standing in front of Mr. Abdelgani, is it
4 still your position that he is only about 5, 8 or 5, 9?

5 A That is my estimate, sir.

6 Q Would you say he weighs at least 150, 175 pounds,
7 from your guesstimate?

8 A Could be, yes.

9 Q So that in either event there was a large
10 gentleman in either seat going and coming to the safe house
11 that night?

12 A That's --

13 Q Either Mr. Khallafalla or Mr. Abdelgani in one or
14 the other seat, going and coming?

15 A Yes, sir.

16 Q You had testified, I think on direct examination,
17 that you wanted the safe house to feel safe, secure and
18 comfortable, correct?

19 A I am sorry, I am not getting the question.

20 Q You had wanted to make the safe house safe,
21 secure and comfortable, correct?

22 A No, sir.

23 Q You don't recall saying that?

24 A I want to go to the safe house to be under the
25 observation of the FBI and any explosive or material harmful

6984

1 could not be any outside of the safe house, could hurt
2 people, and everything to be under the observation --

3 Q Sir, you testified on direct examination that you
4 wanted people to feel safe -- meaning the defendants, to
5 feel safe, secure and comfortable.

6 A Oh, the defendants, the defendants, yes, sir.

7 Q You wanted to make them feel at ease, correct?

8 A Yes, sir.

9 Q Prior to getting there, you had brought things
10 like a coffee machine, right?

11 A Yes, sir.

12 Q Did you get that from the FBI?

13 A No, sir.

14 Q Where did you get that from, sir?

15 A I had it in my place.

16 Q You brought that coffee machine from your own
17 home?

18 A Yes, sir.

19 Q And you brought some kind of hot pot to heat
20 things up in, cooking?

21 A Yes.

22 Q You brought that from your own home also?

23 A Yes, sir.

24 Q Before any of them got there, was there also
25 sugar and coffee and tea bags, things like that in the safe

6985

1 house?

2 A I believe one of the guys brought it, sir.

3 Q Was that on the second night when Mr. Abdelgani
4 got out of the car and you were stopped by a police officer
5 and you told him to get Maxwell House coffee?

6 A No, sir, I did not say Max -- Max -- Maxwell
7 House. The coffee, we bought it from McDonald's, sir. So
8 it was ready made, it wasn't Maxwell House.

9 Q You brought five or six drinking glasses to the
10 safe house the first night?

11 A Yes -- it was six -- sorry. I think I brought a
12 dozen. I give them six, and then I put six in the bathroom
13 until they use the six and I replaced them with the other
14 six, sir.

15 Q That was for the purpose of getting their
16 fingerprints, right?

17 A Yes, sir.

18 Q Sir, was there a big great extension cord at the
19 beginning of this?

20 A Yes.

21 Q You brought that, right?

22 A No, sir.

23 Q Where would that come from?

24 A The FBI brought it, sir.

25 Q The FBI gave it to you to put in the safe house?

6986

1 A They put it there, yes.

2 Q Sir, on that first night or before that first
3 night was there some type of, looked like a gray video
4 cassette box, looked like a squarish box with electronic
5 equipment in it?

6 A It was a VCR machine, which is -- that's what you
7 talking about?

8 Q No, sir.

9 A Sorry.

10 Q Sir, let me show you what has been marked as
11 Defendant Amir Abdelgani's Exhibit A for identification.
12 Sir, do you know what that is?

13 A No, sir, I don't know what is that.

14 Q You have never seen what appears to be in that
15 photograph before, sir?

16 A No, sir, I don't recall seeing that.

17 Q At any time at the safe house?

18 A It could be in the dark room, but I didn't see
19 it, sir.

20 Q Sir, did you bring on in a first night or before
21 that first night various timing devices or boxes with
22 circuits?

23 A I brought the light --

24 Q Sir, I am talking about a box with a circuit in
25 it.

6987

1 A A box with a -- show me the picture, sir, I can
2 tell you, please.

3 Q Showing you Abdelgani B for identification, do
4 you recognize that, sir?

5 A That's the timer, sir.

6 Q And, sir, that timer, did you bring that to the
7 safe house?

8 A No, sir, the FBI.

9 Q The FBI brought it to the safe house.

10 THE COURT: Mr. Bernstein, could you talk into
11 the microphone so the interpreters can hear.

12 MR. BERNSTEIN: Sorry, Judge.

13 THE COURT: Thank you.

14 Q What you have identified as a timer that the FBI
15 brought to the safe house, was that in the safe house before
16 anybody went there on May 27?

17 A I am not sure. Probably it was on the same day
18 it being put there, sir.

19 Q Sir, was there a similar device brought there by
20 the FBI which was in an orange box?

21 Sir, you have a quizzical look on your face. You
22 don't remember an orange similar device?

23 A Show me a picture I will tell you if I recognize
24 it, sir.

25 Q Sir, I am showing you what has been marked

6988

1 Abdelgani C for identification.

2 A That is another timer, sir.

3 Q Was that timer also in the safe house on May 27?

4 A I don't know about that, sir.

5 Q Who built that timer, sir?

6 A The FBI, as far as I know, sir.

7 Q They gave it to you?

8 A No, they did not give it to me.

9 Q They just put it in the safe house?

10 A Yes, they put it in the safe house and they ask
11 me to put it in a certain corner so they can observe it
12 constantly, sir.

13 Q On that first night there were also some tools in
14 the safe house, correct?

15 A Yes, sir.

16 Q Electric drill?

17 A Yes.

18 Q Was there an electric drill there?

19 A Yes, sir.

20 Q Did you bring that or did the FBI bring it?

21 A No, I brought that, sir.

22 Q Did the FBI give that to you or was that your own
23 personal electric drill?

24 A I believe that was my own person one, sir.

25 Q And there were drill bits that came with it?

6989

1 A Yes, sir.

2 Q Those were also your personal items?

3 A Yes, sir.

4 Q Some pliers were there?

5 A Yes, sir.

6 Q Those were your personal items?

7 A Yes, sir.

8 Q And there were drywall screws or something like
9 that?

10 A No, I did not bring that, sir.

11 Q There was an electric screwdriver, another
12 electric tool, a power tool at the beginning. Was that also
13 yours?

14 A Yes, sir.

15 Q That was your personal electric screwdriver that
16 you brought from your home?

17 A Yes, sir.

18 Q There were two hammers brought that first night
19 or before that first night. Was that also your personal
20 property?

21 A I believe Mr. Siddig brought one of them, sir.

22 Q And the other one was brought by you, you think?

23 A I believe, yes, sir.

24 Q You talked about something with a bulb before.

25 That would have been, I think you may have described

6990

1 something as a circuit board with bulb? Was that something
2 that the FBI gave you or was that yours?

3 A No, that was mine, sir.

4 Q And you had built that or originated that where,
5 in your home?

6 A No, I did not build it. That was being sold on
7 Canal Street for \$10, sir.

8 Q And I think there was something like a circuit
9 tester.

10 A That's mine, sir.

11 Q That's yours from your house?

12 A That's mine, yes, personally.

13 Q And there was a surveillance monitor. I think
14 the jury may have seen that in the videotape. There was a
15 black surveillance monitor looking like a television set
16 that was there, I think the first night.

17 A Yes.

18 Q Was that yours?

19 A No, sir.

20 Q The FBI had put that in the safe house before
21 anybody arrived, before the defendants arrived?

22 A Yes, sir.

23 Q At one point wasn't there a surveillance camera
24 that was supposed to be mounted or something?

25 A Yes.

6991

1 Q Have you seen that since the arrests on June 24?

2 A No, sir.

3 Q That surveillance camera, was that yours or the
4 FBI's?

5 A The FBI's, sir.

6 Q And there was a soldering gun.

7 A That's personal.

8 Q That was your personal property?

9 A Mine, yes.

10 Q And there was a wig of some sort that you
11 brought?

12 A A wig, yes, sir.

13 Q That was yours?

14 A That's mine, sir, yes.

15 Q These were all brought there on or about or
16 before May 27, correct?

17 A Some of them brought on the same day, some of
18 them brought a little later. I don't know the exact timing,
19 sir.

20 Q That first night that Amir Abdelgani came to the
21 safe house, he didn't bring anything with him, did he?

22 A No, sir.

23 Q And Fares Khallafalla didn't bring anything with
24 him, right?

25 A No, sir.

6992

1 Q The next night, May 28 or May 29, you came back,
2 I guess a day later or two days later, you, Siddig, and you
3 brought Amir Abdelgani, correct?

4 A Yes, sir.

5 Q On that occasion did you have some kind of clip
6 board, something to write on?

7 A Yes.

8 Q Was that something that you brought yourself?

9 A Yes, sir.

10 Q And that was your own personal property?

11 A Yes, sir.

12 Q Was there some kind of compass or something that
13 you brought?

14 A I beg your pardon.

15 Q A compass of some sort?

16 A Compass?

17 Q A compass, something that would show the
18 direction to Mecca or anything like that.

19 A This is always with me whenever I go, I see the
20 direction of the prayer, so we can do our prayers.

21 Q Didn't you show that to the defendants?

22 A I may.

23 Q Wasn't that to make them feel comfortable, they
24 could figure out where to pray, which direction to face in?

25 A Yes.

6993

1 Q You, if I remember, you said your wife was in the
2 jewelry business, correct?

3 A Yes.

4 Q That night, didn't you pull out a piece of
5 jewelry and display it to Siddig and Amir?

6 A I recall in the safe house came a time I showed
7 them jewelry but I don't recall when it was.

8 Q And you asked Amir how much he thought it was
9 worth and he said couple hundred dollars?

10 A Right.

11 Q And you told him it was worth \$45,000.

12 Q Was it worth \$45,000, sir?

13 A Of course not, sir.

14 Q It wasn't platinum, something of great value?

15 A It was silver and CZ's, sir.

16 Q So it was worth maybe a few hundred dollars?

17 A Yes, sir.

18 Q But you were trying to impress Amir Abdelgani
19 when you told him it was worth \$45,000, correct?

20 A Yes.

21 Q You knew he was a livery or car driver, somebody
22 who didn't make a lot of money, right?

23 MR. McCARTHY: Objection to form. I don't object
24 to the line.

25 MR. BERNSTEIN: I am sorry. I will take it step

6994

1 by step.

2 Q At the time that you showed and displayed this
3 item of jewelry, you knew that Mr. Abdelgani was not a
4 wealthy man, correct?

5 A I don't know his bank account, how much is there,
6 sir.

7 Q Did you know what he did for a living at that
8 time?

9 A I beg your pardon.

10 Q Didn't you know that he worked for a livery car
11 service?

12 A I know that he drive a van, sir.

13 Q Did you bring a 35 millimeter camera to the house
14 at one point?

15 A I believe I brought the video camera, sir, but --

16 Q Do you know if you --

17 A Yes, sir, I did.

18 Q Didn't you testify yesterday you never brought a
19 35 millimeter camera to the safe house?

20 MR. McCARTHY: Objection.

21 A No, sir. I did not bring 35 -- I am sorry, your
22 Honor.

23 THE COURT: The objection is sustained.

24 Q Sir, have you testified -- did you bring a 35
25 millimeter camera at any time to the safe house?

6995

1 A To the safe house, no, sir.

2 Q Did you bring any still camera equipment to the
3 safe house?

4 A Yes, sir.

5 Q Was that yours or the FBI's?

6 A Mine, sir.

7 Q That second night you came back to the safe
8 house, the second time you came and the second time Mr.
9 Abdelgani came, Mr. Abdelgani didn't bring any tools or any
10 equipment with him that night either, did he?

11 A No, sir.

12 Q In fact, the only thing he brought was some food
13 that may have been jointly purchased to eat in the safe
14 house, right?

15 A Yes, sir.

16 Q So that on that night you took Mr. Abdelgani back
17 with Mr. Siddig Ali in your car.

18 A Yes, sir.

19 Q And at that time in the safe house there was
20 still no detonators?

21 A No, sir.

22 Q No hand grenades?

23 A No, sir.

24 Q No C-4?

25 A No, sir.

6996

1 Q No guns?

2 A No, sir.

3 Q No dynamite?

4 A No, sir.

5 Q No ready-made bombs?

6 A No, sir.

7 Q And you had been for weeks seeking those kinds of
8 items from Siddig Ali for this project, right?

9 A Yes, sir.

10 Q For the weeks before?

11 A Yes, sir.

12 Q And up to that point in time he still had nothing
13 for you, right?

14 A Yes, sir.

15 Q A few days later you go back to the safe house
16 somewhere in the early part of June with Siddig and you
17 bring in a VCR and a television monitor, correct?

18 A No, sir.

19 Q Television and a VCR -- I will take it one by
20 one. You and Siddig Ali come to the safe house.

21 A Yes, sir.

22 Q You guys bring in the VCR together?

23 A Mr. Siddig.

24 Q It was his VCR, correct?

25 A Yes, sir.

6997

1 Q And was there also also a television brought with
2 it?

3 A That was the FBI, sir.

4 Q So you brought the television monitor, Siddig
5 brought the VCR?

6 A I did not bring anything. The FBI brought --

7 Q The second monitor?

8 A Yes.

9 Q Had that been brought in before Siddig came back
10 with you with the VCR?

11 A What happened, sir, the camera, surveillance
12 camera being hooked to monitor. The monitor, we did not
13 succeed to let it to play on the VCR. So I requested
14 another TV so we can hook it to the VCR. Mr. Siddig brought
15 the VCR and I asked the FBI to put a TV.

16 Q So there were now two monitor kinds of things,
17 two television kinds of items, correct?

18 A Yes, sir.

19 Q When Siddig walked in and saw the second
20 television -- correct?

21 A Yes, sir.

22 Q Did he ask you when it got there?

23 A I told him I brought it.

24 Q On an earlier occasion when he wasn't there?

25 A I told him that, yes.

6998

1 Q And he believed you?

2 A Yes, sir.

3 Q A couple weeks later you went shopping with
4 Mr. Khallafalla on Canal Street, correct?

5 MR. McCARTHY: Objection, form.

6 THE COURT: Sustained as to form.

7 Q Sir, June 13, you went with Mr. Khallafalla on
8 Canal Street, correct?

9 A I know I went to Canal Street, I don't --

10 Q Sometime in June?

11 A Yes, sir.

12 Q The night before you had been at the mosque in
13 New Jersey, correct?

14 A Yes, sir.

15 Q And you were also approached and spoke with Amir
16 Abdelgani that night, correct?

17 A Correct, sir.

18 Q That is also an occasion in which your taping
19 equipment failed, meaning in the mosque, correct?

20 A Yes --

21 Q You had some kind of computer chip equipment that
22 time?

23 A Yes, sir.

24 Q So the tape recording between you and Mr. Amir
25 Abdelgani now on June 12 doesn't exist?

6999

1 A I didn't, I never heard it, sir. I never heard
2 the output of it, or the coming out of it.

3 Q And you told Mr. Abdelgani you wanted him to meet
4 you the next day on Canal Street to go shopping, right?

5 A No, sir. He said that Siddig told him to go next
6 day to buy some stuff and he will meet with me on Canal
7 Street, sir.

8 Q And you tried to get him to go early in the
9 morning and he said he wouldn't go or couldn't go, and he
10 would meet you later, right?

11 A We tried to make the arrangement between
12 Mr. Khallafalla --

13 Q I am not trying to ask you if --

14 MR. McCARTHY: Objection

15 THE COURT: Sustained. Let him finish.

16 MR. BERNSTEIN: It is not responsive --

17 MS. AMSTERDAM: It is not responsive to the
18 question.

19 THE COURT: Ms. Amsterdam, keep your seat. It
20 was responsive. He was explaining the arrangements between
21 Khallafalla, Amir Abdelgani and himself.

22 MR. BERNSTEIN: Judge, that is another question.

23 THE COURT: Mr. Bernstein, don't argue.

24 Q Go ahead, sir.

25 A We tried to make arrangements, sir, between

7000

1 Mr. Amir Abdelgani and Mr. Fares Khallafalla, who will meet
2 me first and who will meet me second, sir.

3 Q Amir Abdelgani never met you the next day, did
4 he?

5 A No, sir.

6 Q He never showed up, right?

7 A No, he did not, sir.

8 Q You complained to Siddig about that, didn't you?

9 A Yes, sir.

10 Q And Siddig and you talked about you were waiting
11 in the heat, Amir never showed up, right?

12 A Yes, sir.

13 Q Mr. Siddig said, we will punish him, we will make
14 him do more errands, right?

15 A Yes, sir.

16 Q You don't know what Siddig Ali had been telling
17 Amir Abdelgani before May 27 about what was going to go on
18 when he came out to Queens that first night, right?

19 A No, I don't know, sir.

20 Q And you don't know what he told Amir Abdelgani
21 after the first two nights in the safe house, do you, as to
22 what he actually told Amir Abdelgani?

23 A I do know what he told Mr. Amir Abdelgani.

24 Q I am talking about when you were not present,
25 sir.

7001

1 A When I am not present, I don't know what they are
2 talking about.

3 Q Meaning if Amir and Siddig spoke between the end
4 of May and days of June when you did not meet Amir
5 Abdelgani, you don't know what they spoke about, correct?

6 A Of course not, sir.

7 Q And you don't know if Siddig had been telling
8 Amir this is training again like Pennsylvania, right?

9 A Possible, sir, that he said that, because in
10 front of me he told him --

11 Q About the three targets --

12 MR. McCARTHY: Objection.

13 THE COURT: Mr. Bernstein, you ask the question,
14 he answers the question. You don't interrupt every time he
15 starts doing something you don't like. Clear?

16 MR. BERNSTEIN: Yes, Judge.

17 Q Go ahead, sir.

18 A It's impossible, sir, because in front of me in
19 the safe house, and I was lying down on the cardboard and
20 Mr. Siddig sitting on my right, Mr. Amir on my left,
21 Mr. Amir and Fares sitting in front of Mr. Siddig,
22 Mr. Siddig told them that Lincoln Tunnel, Holland Tunnel,
23 and United Nations and that he wanted five minutes in
24 between each bombing, sir.

25 Q That's if it was real and not just a simulated

7002

1 exercise, correct?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q Sir, the location of Canal Street -- never mind,
5 withdrawn.

6 Sir, it's not until the very end of the case,
7 only a few days before the arrests, that the defendants
8 bring anything to the safe house, correct?

9 A I believe Mr. Siddig Ali, it came a time bought
10 some -- Mr. Amir Abdelgani bought some funnels. Mr. Siddig
11 Ali brought some wires --

12 THE COURT: He is asking you for the time, not
13 what they brought.

14 Q It was towards the very end, a few days before
15 the arrest, correct?

16 A I am not sure of the time frame, sir.

17 Q After the first two nights in the safe house,
18 nobody comes back to the safe house except you and Siddig,
19 where you bring the VCR -- I am sorry. Let me break it
20 down. There are the first nights in May.

21 A Yes, sir.

22 Q There is a day that you and Siddig go back on
23 June 3 when you bring the VCR with Siddig, right, just the
24 two of you?

25 A Yes, sir.

7003

1 Q And it is not till almost the days before the
2 arrest that people come back at all.

3 A Yes, sir.

4 Q Finally, on or around June 19, that's when some
5 small bags of fertilizer are brought in, correct?

6 A Yes, sir.

7 Q And you had explained what you needed, correct?

8 A Yes, sir.

9 Q And you had instructed Siddig to go outside and
10 get a small amount of diesel at some point, you picked the
11 night of June 19 or June 20.

12 A I cannot instruct Mr. Siddig, sir, because
13 Mr. Siddig, as per his talk, he said I am the boss, and he
14 said that he is being elected by Mr. Amir and Mr. Fares and
15 this group, that he is the emir. So I cannot instruct him,
16 sir.

17 Q Did you ask him to go out and get these things in
18 the neighborhood?

19 A I said we need some these oils, and Siddig said I
20 will go get it, sir.

21 Q So you said we need it, you didn't instruct him
22 to do so, right?

23 A No, I did not instruct him, sir.

24 Q And you mixed some of that in the demonstration
25 that night, correct? You mixed some of that fertilizer and

7004

1 the diesel in the demonstration --

2 MR. McCARTHY: Objection, form.

3 THE COURT: Did you? Overruled.

4 A I am not the one who mixed it, sir.

5 Q Did you bring a green fuse of some sort to the
6 safe house later on?

7 A Yes, sir.

8 Q Was that the same green fuse you had in your
9 house the year before?

10 A No, sir.

11 Q You had given that to the FBI and they gave it
12 back to you?

13 A No, sir.

14 Q That was more green fuse?

15 A Yes, sir.

16 Q Ultimately, on June 22 and June 23, that's when
17 the large shipments of diesel fuel come into the safe house,
18 right?

19 A I believe, yes, sir.

20 Q And the fuel oil was brought because you told
21 people you needed that, right?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q Did you tell people that's what you needed to do
25 your work?

7005

1 A Yes, sir.

2 Q More fertilizer was purchased with you and Siddig
3 that afternoon, correct?

4 A Yes, sir.

5 Q And you told Siddig what you needed and he went
6 into a fertilizer store?

7 A I was doing my part as a technician, sir.

8 Q Sir, you had told the jury earlier that Sheik
9 Rahman was the target of this investigation, correct, and
10 didn't you also have a separate target, that was the
11 Sudanese people?

12 A No, sir.

13 Q In fact, weren't you targeting the Sudanese here
14 in the United States on behalf of Egyptian intelligence?

15 A No, sir.

16 Q You testified about maintaining close contacts
17 with your Egyptian intelligence friends, correct?

18 A Yes, sir.

19 Q And you maintained fairly frequent contact with
20 them throughout the course of these investigations, right?

21 A Yes, sir.

22 Q And although you claim that you were not working
23 for the Egyptian intelligence --

24 MR. McCARTHY: Objection to form.

25 THE COURT: Sustained.

7006

1 Q Sir, didn't you in fact have phone conversations
2 with people in Egyptian intelligence that were coded
3 conversations over your telephone?

4 A Yes, sir.

5 Q You spoke by telephone with Egyptian intelligence
6 people sometimes about the Sudanese you were investigating,
7 correct?

8 A Yes, sir.

9 Q And you used code in those conversations,
10 correct?

11 A I am not sure, sir, code is the right word. This
12 is our way of talking.

13 Q Let me ask you, sir.

14 A Yes, sir.

15 Q You and your Egyptian counterpart on the
16 telephone --

17 A Yes, sir.

18 Q -- would refer to -- didn't use until the arrests
19 the word Sudanese, right?

20 A No, we did not use it, sir.

21 Q You used words like "from straight below us."

22 A Yes.

23 Q That meant the people who live in the country
24 below Egypt?

25 A Yes, sir.

7007

1 Q The Sudanese?

2 A Yes.

3 Q Or terms like "our neighbors below us"?

4 A Yes, sir.

5 Q Also meant Sudanese?

6 A Yes.

7 Q "Inhabitants straight below us" also meant
8 Sudanese?

9 A Yes, sir.

10 Q Sometimes referred to them as "the people from
11 the black countries," right?

12 A Yes, sir.

13 Q And that's because the Sudan is an African
14 country, correct?

15 A Yes, sir.

16 Q Sometimes you talk about them as people who had
17 to be peeled, correct?

18 A Yes, sir.

19 Q This was your way of letting the person you were
20 speaking with know you were speaking about somebody who was
21 Sudanese, right?

22 A That is correct.

23 Q And it was their way of letting you know that
24 they understood that you were talking about or that they
25 were talking about someone who was Sudanese, correct?

7008

1 A Yes.

2 Q You listened to some of these conversations at
3 our request last night, correct?

4 A Yes, sir.

5 Q In one of these conversations you warned the
6 Egyptian intelligence people that they should place their
7 air defenses on alert from the direction of the black
8 countries, correct?

9 A Yes, sir.

10 Q When you were saying that, you mean the Sudan?

11 A Correct, sir.

12 Q You are warning them that there is going to be an
13 air attack from the Sudan.

14 A The issue we talked -- yes. I am sorry. Excuse
15 me, sir. It's not a full air attack. Air attack, to my
16 information means lot of planes. It's one plane it's going
17 to take path, and I explained to him, sir.

18 Q And you talk about the fact that there is going
19 to be a great possibility that this attack will take place
20 in the president's house, right?

21 A That's what I was told by Mr. Siddig, sir.

22 Q And you are talking about this person Gilgal?

23 A Mr. Issam Gilgal.

24 Q The person you never met?

25 A I believe I saw him once but I wasn't being

7009

1 introduced. Mr. Siddig told me that's Issam.

2 Q According to the plan, you were going to meet him
3 and you were going to aid him regarding Egyptian radar
4 stuff. That was the plan that Siddig was talking about with
5 you.

6 A Yes, sir.

7 Q He was going to introduce you to this man. He
8 is?

9 A Yes, sir.

10 Q And you were then on this plan going to have him
11 picked up by your Egyptian contacts after he ejects from the
12 airplane after it crashes into the U.S. Embassy, right?

13 A That's correct, sir.

14 Q You had already alerted your Egyptian contacts
15 even before you ever met Issam Gilgal, right, met him in the
16 sense of meeting with him? You never met Gilgal and
17 discussed these things.

18 A Not yet at the time, sir.

19 Q All you knew was what Siddig was saying to you.

20 A That is correct, sir.

21 Q You knew this guy lived in the United States at
22 this time, right?

23 A Yes, sir.

24 Q You didn't know if he had a plane.

25 A Mr. Siddig told me that's one of the Sudanese air

7010

1 forces, sir.

2 Q And based upon what Siddig told you, you told the
3 Egyptians to close the gaps and to have their defenses on
4 alert regarding an attack by this one plane from the Sudan.

5 A There is a possibility, sir, that somebody else,
6 if this is the idea -- yes, I did that, sir.

7 THE COURT: The question is whether you told him
8 that. Did you?

9 THE WITNESS: Yes, sir.

10 Q Sir, did you ever learn that Mr. Gilgal was
11 working as a taxicab driver here in the United States?

12 THE COURT: That was asked and answered
13 yesterday. You may proceed.

14 Q Sir, when you were having these coded
15 conversations, you were speaking round about with each other
16 not directly. In other words, you didn't just say Sudanese,
17 right?

18 A Yes.

19 Q You were trying to code this so certain people
20 couldn't understand your telephone conversation, right?

21 A It is just our way of talking, sir.

22 Q The intelligence way?

23 A No, sir, it's not the intelligence way. It's
24 like every kind of people when they are close with each
25 other, which this friend was close to me, we have our way of

7011

1 talking.

2 Q So -- didn't you actually code these
3 conversations just in case somebody else might be bugging
4 either side of these conversations you had?

5 A Could be, sir.

6 Q Let me ask you, were you at that time concerned
7 that maybe somebody in Egypt was listening in on his phones?

8 A Not that much Egypt.

9 Q You were worried somebody might be listening in
10 here?

11 A Yes, sir.

12 Q Let me ask you this, sir: Any Egyptian listening
13 into these phone conversations would know exactly what you
14 guys were talking about.

15 A That's why I said I wasn't worrying about the
16 Egyptian side, sir.

17 Q Let me finish, sir. You knew in this coded
18 conversations that Egyptians would not be deceived by any of
19 this code. An Egyptian would understand what you two were
20 talking about.

21 A Yes.

22 Q And the Sudanese would understand what you two
23 were talking about.

24 A Yes.

25 Q The American FBI wouldn't probably have

7012

1 understood what you were talking about.

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q Isn't that who you were concerned about?

5 A No, sir.

6 Q Who would have been deceived by this
7 conversation?

8 A I was told one day by some of the American
9 Muslims that they have people in New York Telephone and they
10 will check me out and find out everything about me. So my
11 concern in that time, sir, that somebody is from the people
12 who is working in New York Telephone from the American
13 Muslims could listen for what I am saying and they could
14 understand what --

15 Q And they wouldn't have taken tapes and given it
16 to some of the Arabic guys to listen to and understand?

17 A I don't know what they would do, but that's just
18 our way of talking, sir.

19 Q In your testimony about the first seven or eight
20 months of the investigation, the first phase -- do you
21 remember the first phase?

22 A Yes, sir.

23 Q You talked about different people who claimed to
24 talk to you about bombs, right?

25 A Yes.

7013

1 Q None of those conversations, I think, were taped,
2 right?

3 A No, sir.

4 Q And you talked about El-Gabrownny, Nosair, Sattar,
5 Shinawy, Rashid, Hassan, all those people having fairly
6 straightforward conversations with you about bombs, right?

7 A Yes, sir.

8 Q Yet when you came back to the investigation in
9 1993, at least until you spoke about Siddig Ali to the
10 government, you claim no one you knew spoke about bombs in
11 those first couple of months, right?

12 A Yes.

13 Q So, sir, wasn't it a fact that what you really
14 were doing was waiting until you had a Sudanese that you
15 were working with on behalf of the Egyptians?

16 A No, sir.

17 Q Sir, when you got together with Siddig Ali, you
18 knew he was Sudanese, right?

19 A That's correct.

20 Q You knew that from way back in '91 or '92?

21 A Yes, sir.

22 Q And you knew that he hung out with other
23 Sudanese, correct?

24 A Yes, sir.

25 Q You had seen him at the victory party with

7014

1 Sudanese?

2 A Yes, some of them, yes.

3 Q And you knew of course that Sudanese immigrants
4 hang out with other Sudanese immigrants, right?

5 A Yes, sir.

6 Q The nature of the immigrant communities.

7 A Yes, sir.

8 Q In the safe house most of the people arrested
9 were also Sudanese, right?

10 A Some of them, yes.

11 Q When the arrests were made in this case, didn't
12 you brag to the Egyptians that you had gotten a bunch of
13 Sudanese?

14 A No, I did not brag about that. I said that the
15 persons who was arrested X number of Sudanese, X number of
16 Americans, X number of Egyptians. I reported what happened,
17 but was no bragging.

18 (Continued on next page)

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7015

1 Q Sir, after you were arrested --

2 MR. BERNSTEIN: I'm sorry, Judge.

3 Q Did you finish your answer, sir?

4 A That's all right. Go ahead, sir.

5 Q After you were arrested, you were taken back --

6 MR. McCARTHY: Objection.

7 THE COURT: Are you talking about the simulated
8 arrest?

9 MR. BERNSTEIN: I'm sorry, Judge?

10 THE COURT: Are you talking about the simulated
11 arrest?

12 MR. BERNSTEIN: I'm sorry. My apology. I
13 misspoke, Judge. My apologies.

14 Q After the arrest, you were taken back to your
15 home, weren't you?

16 A Yes.

17 Q For a brief --

18 A The hospital and then home, sir.

19 Q Briefly to your house?

20 A Yes, sir.

21 Q This was to gather up to belongings, I guess?

22 A My wife already gathered most of the things. I
23 made a couple of phone calls and we left right away, sir.

24 Q When you went back, were you escorted by agents?

25 A Yes, sir.

7016

1 Q You didn't give them any of the tapes in your
2 house at that time, did you?

3 A No, sir.

4 Q You didn't tell them you had tapes in your house
5 at that time?

6 A No, sir.

7 Q When you got home you called Egypt, correct?

8 A Yes, sir.

9 Q When you called Egypt, you spoke to somebody who
10 wasn't one of your regular contacts, correct?

11 A Correct.

12 Q You tried to leave a message for that person,
13 right?

14 A That is right, sir.

15 Q You told that person -- was that person with the
16 intelligence? Was that an office that you reached?

17 A Yes, sir.

18 Q You left a message, sir, and in that message you
19 told him that you wanted him to tell this other person that
20 six Sudanese had been arrested, correct?

21 A Yes, sir.

22 Q After telling him that, you then said, and one
23 Palestinian and one American?

24 A Yes, sir.

25 Q In that conversation you also told him, you told

7017

1 him you're under protection here, meaning the United States,
2 correct?

3 A Yes, sir.

4 Q You told that person that now so much they have
5 to keep an eye on the Sudan, correct?

6 A Yes, sir.

7 Q Sometime later, while you were still in your
8 house, you got a call back from your regular contact over
9 there, didn't you, the person who you were trying to reach?

10 A That's not true, sir.

11 Q Didn't somebody call you back a few minutes later
12 from Egypt?

13 A Not from Egypt, no. That was from New Jersey,
14 sir.

15 Q Was that an Egyptian you were speaking with?

16 A Yes, sir.

17 Q Is this a person who asked you whether you were
18 under Egyptian or American protection?

19 A Yes, sir.

20 Q Why would that person think you were under
21 Egyptian protection if you weren't an Egyptian agent, sir?

22 MR. McCARTHY: Objection.

23 THE COURT: Sustained.

24 Q Sir, that person you told the arrests included an
25 Egyptian, a Palestinian, and the rest were Sudanese,

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1 correct?

2 A Yes, sir.

3 Q That person responded: Sudanese?

4 A Yes, sir.

5 Q And then that person said: That's great, bravo,
6 Emad, correct?

7 A Yes, sir.

8 Q He congratulated you when he realized you had
9 gotten the Sudanese, correct?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q And you asked if they were pleased with you?

13 MR. McCARTHY: Objection.

14 THE COURT: I'm sorry.

15 I didn't hear the question.

16 Q And you were asked if that person was pleased
17 with you, correct?

18 THE COURT: He was asked?

19 MR. BERNSTEIN: He asked that person if that
20 person was pleased with him.

21 MR. McCARTHY: I withdraw the objection.

22 Q And that person gave you a response they were
23 pleased with you only, they love you, correct?

24 A Yes, sir.

25 Q And that was in the context of you bringing down

7019

1 this case, correct?

2 A The case, yes, sir.

3 Q Sir, Sudan is an Islamic country, isn't it?

4 A Yes, sir.

5 Q And it has an Islamic government?

6 A Yes, sir.

7 Q The Sudan is directly below your country, right?

8 A Correct, sir.

9 Q It's directly south of your entire southern
10 border of Egypt, your home country?

11 A Yes, sir.

12 Q Wasn't your government deeply concerned about the
13 political situation in the Sudan over these years?

14 A I don't know, sir.

15 Q You don't know -- withdrawn.

16 Sir, there wasn't a territorial dispute, amongst
17 other things, between Egypt and the Sudan about a city
18 called Hala'ib?

19 A Sir, I never been involved in politics according
20 to the rules, excuse me.

21 Q According to the rules?

22 A The rules in Egypt. Military people are not
23 allowed under any circumstances to involve in politics, sir.

24 Q That means you don't read newspapers?

25 A You --

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1 MR. McCARTHY: Objection.

2 THE COURT: Overruled.

3 Q Do you --

4 A We can read newspapers, sir.

5 Q You are not allowed to be actively involved in
6 politics?

7 A That's correct, sir.

8 Q That means you don't run for office?

9 A No, sir.

10 Q You don't give to political parties?

11 A We don't even vote, sir.

12 Q You know in Egypt there's been a civil war going
13 on with Islamic groups and your government so to speak, the
14 Mubarak government?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 Q Sir, don't you know that Egypt has been involved
18 in some kind of disruptive civil strife for several years?

19 MR. McCARTHY: Objection.

20 THE COURT: Sustained.

21 Q Sir, is it your testimony that you don't know
22 whether or not the Egyptian intelligence worry about the
23 Sudan at all?

24 A No, I have no idea, sir.

25 Q It is your testimony you weren't targeting the

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1 Sudanese, correct?

2 A Absolutely not, sir.

3 MR. BERNSTEIN: Your Honor, if I might have a
4 moment.

5 (Pause)

6 MR. BERNSTEIN: Judge, can we have access to the
7 easels. I just haven't used them. I just want to make sure
8 we have access.

9 THE COURT: You can use them. They are there.

10 Q Sir, I am showing you what's been marked
11 Abdelgani D for identification. Can you look at it and tell
12 me if you recognize it, sir.

13 A Yes, sir.

14 Q Can you tell the ladies and gentlemen of the jury
15 what it is, sir.

16 A It is a map, sir, for Egypt, Sudan, Libya, Chad,
17 Israel, Lebanon, Syria, sir.

18 Q It's the Middle East generally?

19 A Yes, sir.

20 Q Is it a fair and accurate representation of a map
21 of the Middle East, to the best of your knowledge?

22 A I will say, yes, sir.

23 MR. BERNSTEIN: Your Honor, I offer Abdelgani D.

24 MR. McCARTHY: No objection.

25 THE COURT: D is received without objection.

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1 (Defendant Abdelgani Exhibit D for identification
2 was received in evidence)

3 Q Sir, --

4 A Yes, sir.

5 Q -- in 1991, you had a debriefing with the FBI,
6 correct, about the Middle East and various countries, do you
7 remember?

8 A I don't recall that, sir.

9 Q Well, with Nancy Floyd, two days of discussing
10 different countries in the Middle East, you talked about
11 meeting Hussein, do you remember all that?

12 A Yes, sir.

13 Q Now, you testified that when you ultimately told
14 the FBI that you weren't an Egyptian military intelligence
15 person, you did that with Nancy Floyd in a restaurant,
16 right?

17 A Yes, sir.

18 Q You at that time told her very casually, very
19 lightly in a restaurant?

20 A Yes, sir.

21 Q When you had the original debriefing about your
22 military background and intelligence experience, that wasn't
23 at a restaurant, was it?

24 A I believe it was in a restaurant also, sir.

25 Q Over the course of two days?

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1 A The way we used to meet it's all, most of the
2 time, sir, it was restaurants.

3 Q Sir, when you met and discussed the various
4 countries in the Middle East --

5 A Yes.

6 Q -- that was over the course of a two-day
7 debriefing, wasn't it?

8 A It was not a debriefing. We were just talking
9 normal, sir.

10 Q And discussing one after another of the countries
11 in the Middle East?

12 A Yes, sir.

13 Q Now, that was in August of 1991, correct? About?
14 Is that -- summer of '91?

15 A Yes, sir, I would say yes.

16 Q And you and Ms. Floyd sat down and you talked
17 about the various countries that were running operations in
18 the United States, correct?

19 A No, sir.

20 Q You don't recall that, sir?

21 A I recall we talked about the Middle Eastern
22 countries, but not specifically the way you put it, running
23 operations against the United States, sir.

24 Q Sir, do me a favor, if you would. You have a
25 black book in front of you.

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1 Would you turn to what is marked 3534Z, sir.

2 Do you see that. It's probably -- I don't

3 know -- the next-to-last tab.

4 A 3534?

5 Q Z, yes.

6 A Z.

7 Q It should have some yellow markings on it, if I'm
8 correct.

9 A Yes, sir.

10 Q If you look at the second set of yellow markings
11 on the first page --

12 A Yes, sir.

13 Q -- does it refresh your recollection that you
14 told Agent Floyd that certain Middle East countries have or
15 are currently operating intelligence officers or operations
16 in the U.S. and a number of countries you then named for
17 her? Does that refresh your recollection?

18 A Yes, I did say that, sir.

19 Q At that time you told her about Iraq, Syria,
20 Libya, Lebanon, Israel, and Egypt, correct?

21 A Yes, sir.

22 Q You did not mention at all to her the Sudan at
23 that time regarding operations or intelligence officers in
24 the United States, correct?

25 A No, I did not, sir.

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1 Q Sometime later during the course of the
2 investigation, sir, didn't you believe that Ahmed Hussein --
3 or Hassan, Ahmed Hassan was a Sudanese intelligence officer
4 here in the United States?

5 A That's the impression he give to me, sir.

6 Q He told you he was a Sudanese intelligence
7 officer?

8 A He said that he have very strong connections with
9 the government, and he have a lot of contacts there and the
10 way he talked to me, I get the im --

11 Q Go ahead, sir.

12 A I get the impression that he could be an
13 intelligence officer, sir.

14 Q Sir, in that conversation, you can go back --
15 well, let me ask. You discussed with them Libya in more
16 detail, isn't you?

17 A Yes, sir.

18 Q You told them about the Soviet Union and how --

19 A I am sorry, sir. Told who?

20 Q Ms. Floyd in these debriefings.

21 A Yes. It was not a debriefing. In fact, what I
22 was saying at that time was not true, sir.

23 Q I didn't ask if it was true, did I, sir?

24 A I'm sorry. I apologize.

25 Q You told her about Libya?

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1 A Yes.

2 Q And about how the Soviet Union was using --

3 MR. McCARTHY: Objection.

4 Q Did you tell them --

5 MR. BERNSTEIN: I'm sorry.

6 THE COURT: Overruled.

7 Q Did you tell them about how Libya was using the
8 Soviet Union?

9 A Yes, sir.

10 Q And that that was because -- I'm sorry.

11 You told them that the Soviet Union was no longer
12 using Libya because --

13 MR. BERNSTEIN: I'm sorry. Withdrawn, Judge.

14 Q You spoke about Libya?

15 A Yes, sir.

16 Q You told them about some Soviet/Libyan relations,
17 correct?

18 A Yes, sir.

19 Q And Libya borders directly on your country,
20 correct?

21 A Yes, sir.

22 Q Now, sir, you told them about Iran?

23 A Yes, sir.

24 Q You told them about how Iran worked with Egypt in
25 the fight against Iraq, correct?

7027

1 A How?

2 Q How Egypt aided Iran in the war against Iraq
3 because Moslem countries help each other out?

4 A That's not true, sir.

5 Q You don't recall telling her that?

6 A I did not say that, sir.

7 Q Sir, you did not tell Nancy Floyd -- I'm sorry.
8 Was Egypt helping Iraq rather than Egypt helping
9 Iran?

10 A That's correct, sir.

11 Q So I had the countries mixed up?

12 A That's why I said no, sir.

13 Q You talked about whether Iran was currently
14 running operations against the U.S.?

15 A I'm sorry, sir?

16 Q You spoke about whether the Iranian people were
17 running operations in the U.S.?

18 A I may said that, yes.

19 Q When you talked about Iraq --

20 A Yes.

21 Q -- you spoke about Saddam Hussein and his views?

22 A Yes.

23 Q Right? You never met Saddam Hussein, though?

24 A No, I never, sir.

25 Q And you told them how you at one time had been in

7028

1 charge of shipping arms to Iraq?

2 A Yes, sir.

3 Q Was that true?

4 A Yes, sir.

5 Q And in these discussions or debriefings, you talk
6 about Saudi Arabia, correct?

7 A Yes, sir.

8 Q You spoke about how Saudi Arabians went and
9 looked to Egypt for intelligence information?

10 A Yes, sir.

11 Q While you were discussing Saudi Arabia, you spoke
12 about Kuwait?

13 A Yes, sir.

14 Q You spoke about Jordan?

15 A Yes, sir.

16 Q You told them about King Hussein. You hadn't met
17 him either, though?

18 A No, I did not.

19 Q But you told her you did?

20 A Yes, sir.

21 Q And lying to the FBI was easy at that point,
22 right?

23 A Yes, sir.

24 Q Nobody challenged what you were saying?

25 A No, sir.

7029

1 Q You then went on to discuss Israel?

2 A I'm sorry?

3 Q You went on to discuss Israel?

4 A Probably, yes.

5 Q Are you sure or not, sir?

6 A I'm not so sure, sir.

7 Q Sir, if it will refresh your recollection, would
8 you go to 3534Z, page 6, in the middle and yellow portion
9 and tell me if that refreshes your recollection as to
10 whether you discussed Israel.

11 (Pause)

12 A The bottom part or the upper part, sir?

13 Q You discussed Israel, correct, sir?

14 A I don't know where --

15 Q Are you looking at the middle of page 5, yellow
16 portion? Is there a highlighted portion in the middle of
17 page 5?

18 A I'm sorry. I was on page 6, sir.

19 Q Oh, my apologies, sir.

20 A Now I'm on 5.

21 Q If I misdirected you, I didn't mean to.

22 A Yes, sir.

23 Q You also spoke about Lebanon?

24 A Yes, sir.

25 Q You spoke about the PLO and Yasser Arafat and the

7030

1 Palestinian issues?

2 A Yes, sir.

3 Q So you gave details over those discussions about
4 the countries in the Middle East?

5 A It wasn't details, sir. It was general
6 knowledge.

7 Q Well, didn't you discuss their rulers and their
8 policies regarding their peoples?

9 A General knowledge, sir, also.

10 Q But you told them in the context of your
11 background as a military and intelligence military officer
12 in Egypt, correct?

13 A Yes, sir.

14 Q That's the way you described it to Nancy Floyd of
15 the FBI?

16 A Yes, sir.

17 Q You spoke to them about Egypt's intelligence
18 operations?

19 A I may, yes.

20 Q And how the intelligence operations don't work
21 together very well, right?

22 A Work together very well?

23 Q How the different agencies, the national didn't
24 work well with the other agencies in Egypt, correct?

25 A Did not work well?

7031

1 Q Did not work well.

2 A Yes, sir.

3 Q It's true, correct?

4 A That's true, sir.

5 Q That wasn't misinformation you gave her?

6 A No, sir.

7 Q In that debriefing, do you remember telling the
8 FBI that you --

9 THE COURT: May I see you at the side.

10 (Continued on next page)

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1 (At the side bar)

2 THE COURT: This witness on at least four or five
3 occasions has rejected the word "debriefing," and you keep
4 inserting it into the questions.

5 MR. BERNSTEIN: I will talk about discussions
6 with Ms. Floyd, if that is the way he wants it.

7 MR. McCARTHY: I don't want to continue to object
8 if the court's going to --

9 THE COURT: I don't understand the relevance of
10 any of this.

11 MR. McCARTHY: It is not just relevance, Judge.
12 He said that: I didn't ask you whether you lied or not. My
13 impression is, frankly, that some of this is being offered
14 for the truth. I am just going to let it go if it is being
15 offered to impeach him because he's lying, to bring out,
16 once again, how many times he lied to the FBI. But if this
17 is coming in for the truth, then it's pretty rank hearsay.

18 MR. BERNSTEIN: It is not coming in for the
19 truth, Judge. It is ultimately coming in to show that the
20 one country -- and that's what I am doing with the map. I
21 should be done in ten minutes. He said the one country he
22 did not tell her about -- I think intentionally -- is the
23 Sudan. He's misdirected the FBI that he is in fact an
24 agent. It's a position we have taken from the outset. I'm
25 not offering it for the truth of what is asserted.

7033

1 THE COURT: You are already established that he
2 discussed various countries and that he didn't discuss the
3 Sudan. Would you move on to something else.

4 MR. BERNSTEIN: I will be done in five minutes on
5 this. It's the end of it, literally the end of it.

6 THE COURT: Two minutes. You have already spent
7 15 minutes on it.

8 MR. BERNSTEIN: The reason the map is there is
9 for him to be able to show the jury the one country he does
10 not point out is the Sudan. It's only there for that
11 reason. I would just like to get through it.

12 (Continued on next page)

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7034

1 (In open court)

2 Q Mr. Salem --

3 A Yes, sir.

4 Q -- in those meetings and discussions, do you
5 remember telling Ms. Floyd that you had been directed and
6 instructed by Egyptian intelligence not to direct any
7 operations against the U.S. military or the U.S. government?

8 Isn't that what you told Ms. Floyd?

9 A I don't recall that, sir.

10 Q Sir, would you open 3534 to the top paragraph,
11 page 7 and read the highlighted portion to yourself, sir,
12 and tell me whether that refreshes your recollection as
13 to --

14 A What portion? This?

15 Q Let me take a look at yours and make sure it is.

16 MR. BERNSTEIN: May I approach?

17 THE COURT: Yes.

18 Q Yes, sir.

19 Sir, read it, and then I will ask you the
20 question again so you have it clearly.

21 (Pause)

22 Q Sir, let me ask you the question, OK?

23 A Yes, sir.

24 Q Does that refresh your recollection as to whether
25 or not you told Nancy Floyd of the FBI that you were told by

7035

1 Egyptian intelligence not to direct operations against the
2 U.S. military or U.S. government here in the United States?

3 Does that refresh your recollection as to whether
4 you told that to Nancy Floyd?

5 A I did not say that, sir.

6 Q So she must have gotten it wrong?

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained and stricken.

9 Q Sir, having read that does that --

10 MR. McCARTHY: Objection.

11 MR. BERNSTEIN: It is a separate question, Judge.
12 It is another matter that he's read under.

13 MR. McCARTHY: Objection to the form of the
14 question.

15 THE COURT: There's been no showing of lack of
16 recollection on whatever separate matter you are going to
17 ask him about.

18 MR. BERNSTEIN: OK.

19 Q Sir, do you remember telling Nancy Floyd of the
20 FBI that the reason that you were not to do operations
21 against the U.S. was because Egypt receives a lot of
22 financial aid from the U.S. and that Egypt didn't want that
23 jeopardized? Do you recall telling that to Nancy Floyd?

24 A I'm lost in the question because the question is
25 like two parts to me, sir.

7036

1 Q Do you recall telling Nancy Floyd that you were
2 told not to direct operations in the U.S. because Egypt
3 receives financial aid from the United States?

4 A No, sir.

5 Q It doesn't refresh your recollection?

6 A I did not say that, sir.

7 Q You didn't say it to her?

8 A I did not say it the way you are putting it, sir.

9 Q How --

10 A I am sorry. Or the way it's being put in the
11 report, sir.

12 Q How did you say it to her, sir?

13 A She asked me: Is there anybody asking you to
14 run, to do anything here or to deliver information?

15 I told her about the five officers.

16 Anything else, like any military targets?

17 I said: No.

18 Did anybody ask you to do anything here regarding
19 anything?

20 I said: No.

21 That was it, sir.

22 Q So it's your testimony that nobody gave you any
23 instructions in Egypt about what to do here in the United
24 States?

25 A Different than the five officers, no, sir.

7037

1 Q Now, sir, if you would be kind enough to step
2 down from the witness stand with that black pen. I would
3 like you to circle the country --

4 MR. BERNSTEIN: With the court's permission.

5 THE COURT: Go ahead.

6 (The witness stepped down from the stand)

7 Q If you can, sir, why don't we take them the way
8 we have discussed them. Would you circle the name Libya,
9 which is a country you've discussed.

10 Would you circle Iran, sir.

11 Would you circle Iraq.

12 Saudi Arabia.

13 Kuwait.

14 Jordan.

15 Lebanon.

16 Israel.

17 And Syria. You discussed Syria with them, didn't
18 you?

19 Thank you, sir. You can resume the witness
20 stand.

21 (The witness resumed the stand)

22 Q Sir, in looking at the map would it be fair to
23 say that you've circled every country that borders on Egypt,
24 your home country, except the Sudan?

25 A I believe Sudan, Chad, Yemen --

7038

1 Q Yemen touches on your country, sir?

2 A At the Red Sea, the bottom of the Red Sea.

3 Q But it's not bordering on your country, is it?

4 A All right.

5 Q For Yemen to invade Egypt they would have to come
6 by air or water, correct?

7 A Yes, sir.

8 Q But Sudan is the country that shares your entire
9 southern border of Egypt, correct?

10 A Yes, sir.

11 Q That's the one country you and Nancy Floyd never
12 spoke about?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q It's the one country that borders on Egypt that
16 you never spoke about, correct?

17 A I believe we did not talk about Chad as well,
18 sir.

19 Q You didn't tell them about Chad, did you?

20 A I don't recall, sir. We talked about a lot of
21 countries, a lot of things we talked about. Some of this
22 information she put it down, some of it, not. We may talked
23 about Sudan and she didn't put it down. I don't know, sir.

24 Q You don't recall telling her about the Sudan?

25 A No, sir, I don't recall.

7039

1 Q Sir, at the beginning of all this you told the
2 FBI you were with Egyptian intelligence, way back?

3 A Yes, sir.

4 Q And then later on you told them you were not with
5 Egyptian intelligence?

6 A Yes, sir.

7 Q Since that time, you've claimed that you were not
8 an intelligence officer, correct, since you told Nancy Floyd
9 this in the restaurant?

10 A Yes, sir.

11 Q And, if you now changed your testimony, you would
12 be violating your deal with the FBI, wouldn't you?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Well, sir, if you now admit that, in fact, you
16 were an Egyptian intelligence officer, wouldn't that mean --

17 THE COURT: Sustained.

18 Q Sir, does your deal with the FBI require you to
19 tell the truth?

20 A Absolutely, yes, sir.

21 Q And the million dollars is an important factor
22 for you, correct?

23 A I'm sorry?

24 Q The million dollars is an important factor for
25 you, correct?

7040

1 A Yes, sir.

2 Q And the FBI has the right not to give you the
3 million dollars if you lie, correct?

4 A Yes, sir.

5 Q So on the issue of whether you are an
6 intelligence agent or not, you are relying on the jury to
7 decide whether you're telling the truth or not, correct?

8 A Yes.

9 Q And you took an oath to tell the truth here?

10 A Yes, sir.

11 Q You also took an oath to tell the truth before
12 the last jury you testified before, correct?

13 A Yes, sir.

14 Q And in that trial you lied over and over and over
15 again, right?

16 A Yes, sir.

17 Q You didn't tell that jury you were lying to them,
18 right?

19 A No, I did not, sir.

20 Q You expect this jury to believe you here at this
21 time, right?

22 A It is up to them, sir.

23 Q Sir, you don't recall specifically speaking about
24 the Sudanese when you had these discussions about the
25 various Middle East countries with Ms. Floyd, right?

7041

1 A No, I don't recall, sir.

2 Q Do you know whether or not there's anything in
3 her report that indicates you did?

4 THE COURT: Sustained.

5 Q Is it your testimony, sir, that it is a
6 coincidence --

7 MR. McCARTHY: Objection.

8 THE COURT: Sustained.

9 Q When you hooked up with Siddig Ali, you knew he
10 was Sudanese, right, sir?

11 A Yes, sir.

12 Q And you really never told Ms. Floyd anything
13 about the Sudan way back when you discussed all those
14 countries, did you, sir?

15 A I don't recall, sir, again.

16 MR. BERNSTEIN: I have no further questions,
17 Judge.

18 THE COURT: Ms. London, can you come up just
19 briefly.

20 (Continued on next page)

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(At the side bar)

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THE COURT: Is there anything you can do for ten or 15 minutes to get a running start, or shall we take a break now?

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MS. LONDON: If you want me to take 10 or 15 minutes, I would be happy to.

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THE COURT: If there is some convenient subject you can deal with during that time that would not be interfered with if I call a recess.

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MS. LONDON: I will be happy to take 10 or 15 minutes, and we can break at any time.

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THE COURT: Good. Thank you.

(Continued on next page)

7043

1 (In open court)

2 THE COURT: Ms. London, representing Tarig

3 Elhassan. Go ahead.

4 CROSS-EXAMINATION

5 BY MS. LONDON:

6 Q Good morning, Mr. Salem.

7 A Good morning, ma'am.

8 Q Mr. Salem, in the course of your testimony this
9 morning, you were asked some questions about Egypt's
10 relationship with the Sudan. Do you recall those questions
11 from Mr. Bernstein?

12 A Yes, ma'am.

13 Q I believe it was your testimony, wasn't it, that
14 you have no knowledge at all as to whether Egypt has
15 political concerns with the Sudan, was that your testimony?

16 A It just general information from the newspaper,
17 but what's really going on, I -- I have no idea, ma'am.

18 Q You also told us this morning that you do not
19 know if there are any border disputes between Egypt and the
20 Sudan. That was your testimony, was it not?

21 A Only general information from newspaper, but
22 reality, I don't know, ma'am.

23 Q Now your testimony is that you --

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

7044

1 Q -- know general information, is that correct?

2 You have also testified here, earlier on your
3 direct examination with Mr. McCarthy, about a meeting that
4 you had at the home of Mr. Mohammed Saleh, do you recall
5 that testimony?

6 A Yes, ma'am.

7 Q Do you recall a transcript that was read into
8 evidence before the jury here about that meeting?

9 A Yes, ma'am.

10 Q Do you recall a certain conversation in that
11 transcript where the discussion about a relationship between
12 Egypt and the Sudan occurs?

13 A Yes, ma'am.

14 Q Isn't it a fact in that conversation with
15 Mr. Saleh and Mr. Ali, Siddig Ali, you comment that Egypt
16 has already mobilized their forces because of the border
17 dispute?

18 A Yes, ma'am.

19 Q Also, in your testimony here this morning in
20 describing the Sudanese people, one of the terms to describe
21 them that you used is people that you peel?

22 A Yes, ma'am.

23 Q What did you mean by that, Mr. Salem?

24 A "Sudani" has two meanings in Arabic. It means
25 peanuts, and it means Sudanese person.

7045

1 So instead of I tell him he's a person from
2 Sudan, I told him he is the person who you got to peel him
3 before you eat, so he can understand means "Sudani," which
4 is the same word used for that Sudanese individual, ma'am.

5 Q Would it be fair to say it is a pejorative term,
6 is that correct?

7 A Pardon me.

8 Q Do you know what the word "pejorative" means?

9 A No, ma'am.

10 Q Would it be fair to say that it is not a nice way
11 to refer to people, isn't that right?

12 A I did not try to insult nobody. I was giving the
13 information the way I -- from the best of my -- the way I
14 can describe it.

15 Q And the way you describe it that these are people
16 that you peel, is that right?

17 A No, that the Sudani itself, which is the nuts
18 being peeled, not the Sudani people themselves not to be
19 peeled. The nuts, when you eat it, you have to peel it,
20 ma'am.

21 Q Very early in your cross-examination here,
22 Mr. Salem, you testified about your arrival in this country,
23 do you recall that testimony?

24 A Yes, ma'am.

25 Q You told the jury that you were not planning to

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1 immigrate to the United States, do you recall that
2 testimony?

3 A Yes, ma'am.

4 Q In fact, you told them that you were planning to
5 make a trip starting in the United States, England, and
6 Denmark, and you told the jury you were planning to stay in
7 Denmark, is that correct?

8 A Yes, ma'am.

9 Q That was your testimony, isn't that right?

10 A Yes, ma'am.

11 Q Now, very shortly after your arrival in the
12 United States, you sent a tape recording to your ex-wife in
13 Egypt, isn't that correct?

14 A Yes, ma'am.

15 Q In that tape recording you describe your
16 experiences on the flight --

17 THE COURT: May I see counsel at the side
18 briefly.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I don't know where you are going with
3 this, but that was one of the conversations that I think I
4 mentioned earlier on. We are not getting into race, are we?

5 MS. LONDON: I have no intention of getting into
6 race whatsoever, your Honor. This all goes to credibility.
7 I do cover very briefly some of the questions Ms. Stewart
8 asked. I am trying to avoid them, but I want to get into
9 another area. I may have to repeat one or two of her
10 questions. I don't intend to focus on what she had
11 cross-examined on, but race is not an issue your Honor.

12 THE COURT: Or his comments about race in that
13 conversation?

14 MS. LONDON: No, your Honor. Coming after what I
15 had just said, you may have thought that. No. I am leading
16 into --

17 THE COURT: That is why I asked.

18 MS. LONDON: I am leading into another area, your
19 Honor.

20 THE COURT: Oh, good.

21 MS. LONDON: It should be.

22 THE COURT: Wait a second. Come back.

23 Misogynism? You are not talking about some
24 misogynistic attitude, are you?

25 MS. LONDON: No, your Honor. Everything I expect

7048

1 to go directly to credibility.

2 THE COURT: What I am telling you is that what we
3 may find to be unacceptable attitudes don't go to
4 credibility. Credibility goes to truth-telling.

5 MS. LONDON: That is as I understand credibility,
6 your Honor, truth-telling.

7 THE COURT: OK. Good.

8 (Continued on next page)

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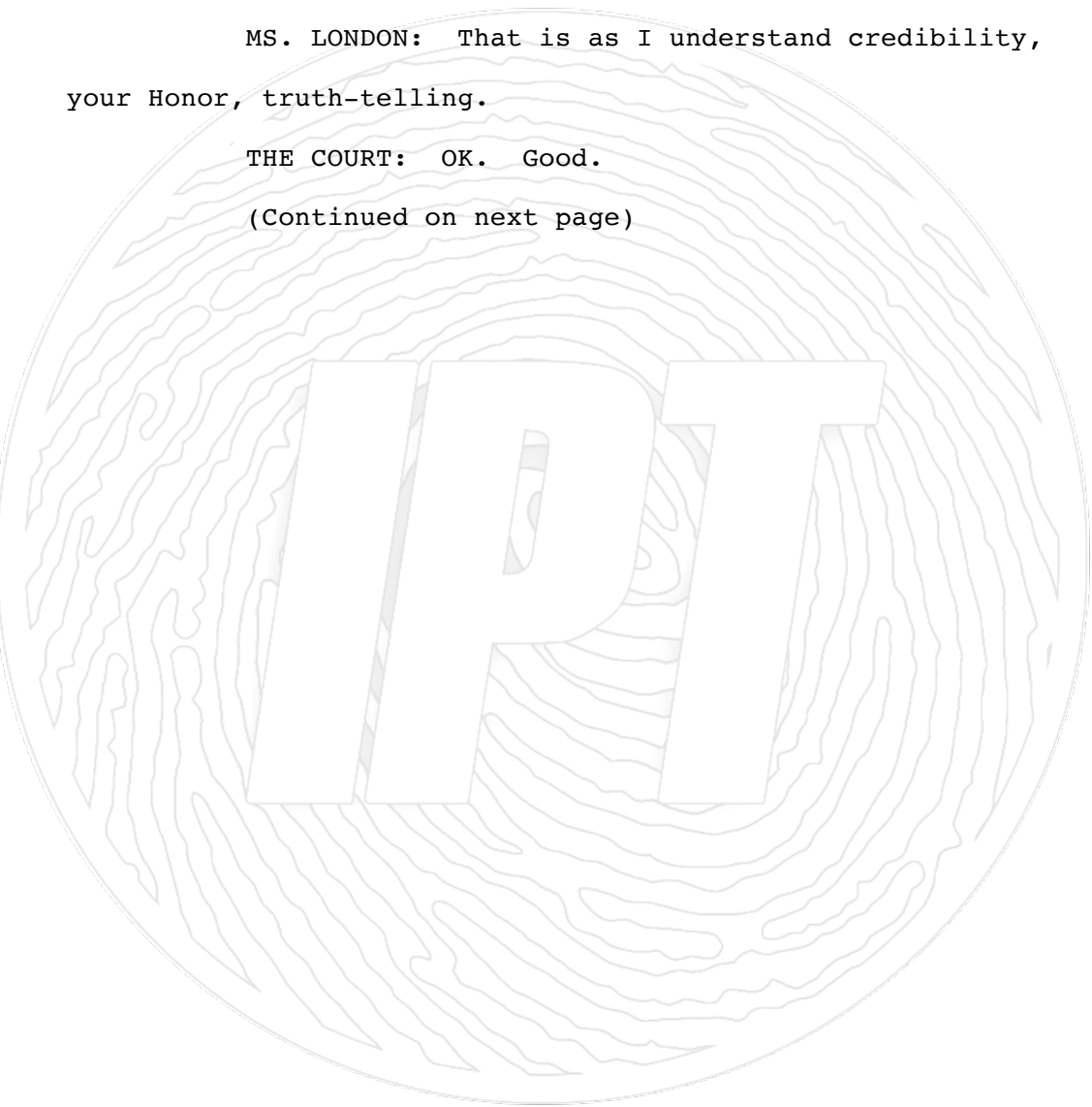
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7049

1 (In open court)

2 Q Mr. Salem, I believe I was asking about whether
3 you had described your experiences on the flight over from
4 Cairo to New York. In this tape recording that you sent to
5 your wife, you did describe those experiences, isn't that
6 correct?

7 A Yes, ma'am.

8 Q You described to her your arrival in the United
9 States when you landed in New York City, isn't that correct?

10 A Yes, ma'am.

11 Q In this tape you told her how American nationals
12 go through one door at the airport, correct?

13 A Yes, ma'am.

14 Q And that Americans with green cards go through
15 another door, second door, isn't that right?

16 A Yes, ma'am.

17 Q And that visitors -- which you qualified then in
18 the tape as the "trash" -- go through a third door, wasn't
19 that in your tape to your wife?

20 A Yes, ma'am.

21 Q In the tape recording that you sent to your
22 wife -- your ex-wife, I'm sorry -- you described to her how
23 on the flight coming over that you were shaking on the
24 airplane, isn't that right?

25 A Yes, that's what I said.

7050

1 Q You were shaking because you were afraid of what
2 you were going to tell the immigration officers when you
3 arrived in the airport, is that correct?

4 A Yes, I said that, ma'am.

5 Q How old were you when you were on that plane,
6 Mr. Salem?

7 A 37, ma'am.

8 Q Had you ever been out of Egypt before?

9 A No, ma'am.

10 Q Did you have an American visa?

11 A Yes, ma'am.

12 Q To enter the country?

13 A Yes, ma'am.

14 Q When you passed through immigration, the
15 immigration officer asked you how long you were intending to
16 stay in the country, isn't that correct?

17 A Yes, ma'am.

18 Q I believe you replied to her about a month,
19 right?

20 A Yes, ma'am.

21 Q She was very impressed by the fact that you were
22 an Egyptian commandant, is that right?

23 A Yes, ma'am.

24 Q And you told your wife you were looking very
25 elegant in your white suit, correct?

7051

1 A I think, yes, ma'am.

2 Q You received an immigration visa that permitted
3 you to stay here for six months, isn't that right?

4 A It was not immigration, ma'am. It was
5 visiting --

6 Q You received a visitor's visa permitting you to
7 stay here for six months?

8 A Yes, ma'am.

9 Q So it would be fair to say that when you told the
10 immigration officer that you were planning to stay for one
11 month, that was a lie, wasn't it, Mr. Salem?

12 A No, ma'am.

13 Q It is your testimony as you sit here today that
14 when you entered this country you were planning to stay here
15 for one month? That is your testimony?

16 A I wasn't even planning to stay the whole month.
17 I just said one month, and as long as I was going to stay,
18 and then I will follow up with the rest of my trip, ma'am.

19 Q Now, after you passed through immigration, you
20 then proceeded to customs, isn't that right?

21 A Yes, ma'am.

22 Q In this tape recording to your wife you told her
23 that you were very relieved because customs did not look in
24 your luggage, wasn't that what you told her?

25 A That's correct, ma'am.

7052

1 Q In fact, you said to her: God was with us. They
2 did not look in the luggage, you know, I was afraid about my
3 papers.

4 That's what you told her, right?

5 A Yes, ma'am.

6 Q What papers were you afraid of, Mr. Salem?

7 A I had my resume after I get retired from the
8 military --

9 Q I'm sorry. I didn't understand. You had your --

10 A Resume or --

11 Q Resume?

12 A Or experiences paper.

13 Q Yes.

14 A The discharge paper. I had it with me in the
15 suitcase, and I had a bad experiences with my cousin when
16 they -- he coming through the immigration, when they found
17 this paper with him, they thought that he's immigrating into
18 the country, and did not allow him in. So I thought that
19 they will do the same thing with me. And that what makes me
20 relieved that they did not complain about papers, ma'am.

21 Q So you were afraid that if they saw your resume
22 in your luggage, they might not believe you were just here
23 for a two-, three-week vacation?

24 A Yes, ma'am.

25 Q You didn't want them to think that, did you?

7053

1 A I beg your pardon?

2 Q You didn't want them to think that, correct?

3 A Yes --

4 Q Withdrawn.

5 THE COURT: Ms. London, could you come to a
6 convenient break point in the next five minutes or so.

7 Q Now, when you arrived, you stayed with a
8 relative, is that right?

9 A No, a friend of my relative, ma'am.

10 Q And had this relative visited you in Egypt
11 sometime before you came over?

12 A Yes, ma'am.

13 Q In Egypt you had had conversations with this
14 friend of the relative about the fact that you were going to
15 come to the United States as a tourist, as a visitor,
16 correct?

17 A Yes, ma'am.

18 Q You say in your letter to your wife, you know,
19 he -- meaning the friend of the relative -- had talked to me
20 about this redheaded girl when he was in Egypt.

21 A Yes, ma'am.

22 Q Her name is -- and he's referring to Barbara,
23 right? Barbara Rogers?

24 A Yes, ma'am.

25 Q He had also told you before you came here that

7054

1 she is anxious to meet you, correct?

2 A No, he did not say that, ma'am.

3 Q So would it be fair to say that before you ever
4 came to this country, you knew about a woman by the name of
5 Barbara Rogers, correct?

6 A We heard of her.

7 Q Very soon after you arrived in this country, as
8 you told us, you met Barbara Rogers, correct, through the
9 friend of your cousin?

10 A Yes, ma'am.

11 Q And in one of your very first meetings with
12 Barbara, you tell her you have no plans to return to Egypt,
13 isn't that right?

14 A Yes, ma'am.

15 (Continued on next page)

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7055

1 Q That then was a lie, wasn't it, Mr. Salem?

2 A No, it was not.

3 Q Would it be fair to say, Mr. Salem, that you came
4 to the United States to marry Barbara Rogers in a
5 prearranged marriage?

6 A No, ma'am.

7 Q That is absolutely not your testimony? That is
8 not your testimony?

9 A I am sorry.

10 Q You did not come here for an arranged marriage?

11 A No, ma'am.

12 Q In this letter to your exwife, you describe
13 Barbara to your exwife, isn't that correct? You describe
14 her physical appearance.

15 A Yes, ma'am.

16 Q The fact that he has long red hair, very long,
17 down to her calves, that she has blue eyes?

18 A Yes, ma'am.

19 Q It would also be fair to say that very quickly
20 after you get here, immediately after you get here as a
21 visitor, you are looking for work, correct?

22 A Yes, ma'am.

23 THE COURT: Ms. London, would this be a
24 convenient point to break?

25 MS. LONDON: This would be fine.

7056

1 THE COURT: Ladies and gentlemen, we are going to
2 take a break. Please leave your notes and other materials
3 behind. Please don't discuss the case, and we will resume
4 shortly.

5 (Recess)

6 THE COURT: Ms. London.

7 BY MS. LONDON:

8 Q Mr. Salem, the resume that you brought with you
9 in your luggage, was that resume in English or in Arabic?

10 A In Arabic, ma'am.

11 Q Going back to the tape recording that you sent to
12 your exwife very soon after you arrived in this country, in
13 that tape recording you also added at the end of the tape a
14 message that you wanted your exwife to relay to your mother,
15 isn't that right?

16 A Yes, ma'am.

17 Q In the message that you are sending to your
18 mother, you say to your mother that you wanted her to know
19 that you came here to make some money for your children,
20 yourself and your life, isn't that right?

21 A I said that, yes, ma'am.

22 Q And you also said in this message to your mother
23 that you hoped to marry quickly and get a green card, isn't
24 that right?

25 A Yes, ma'am.

7057

1 Q You testified here that very soon after you
2 arrived, in a matter of two weeks or so, you married Barbara
3 Rogers, correct?

4 A Yes, ma'am.

5 Q And that marriage was in an Islamic ceremony,
6 correct?

7 A Yes, ma'am.

8 Q Several months later, you had a second marriage
9 ceremony which was a Christian marriage ceremony, right?

10 A Yes, ma'am.

11 Q In between those two ceremonies, you applied for
12 your green card, correct?

13 A Yes, ma'am.

14 Q And Barbara Rogers submitted an affidavit in
15 support of your application for the green card, right?

16 A Yes, ma'am.

17 Q And you testified to us that the marriage with
18 Barbara Rogers was successful for a while, isn't that right?

19 A Yes, ma'am.

20 Q And in fact you did have a very close
21 relationship with her throughout the beginning part of your
22 marriage, didn't you?

23 A I am sorry.

24 Q You had a very close and pleasant relationship
25 with her in the early part of your marriage, didn't you?

7058

1 A Yes, ma'am.

2 Q There came a time when you obtained your green
3 card, correct?

4 A Yes, ma'am.

5 Q Do you remember when that was?

6 A No, ma'am.

7 Q Wouldn't it be fair to say that it was --
8 withdrawn. In 1990, you made a trip to Egypt and took
9 Barbara with you, correct?

10 A Yes, ma'am.

11 Q When you made that trip, you had fairly recently
12 obtained your green card, hadn't you?

13 A Yes, ma'am.

14 Q In fact that trip to Egypt was in a sense a
15 celebration of you having obtained your green card, right?

16 A No, ma'am.

17 Q The trip to Egypt occurred sometime in 1990,
18 isn't that correct?

19 A Yes, ma'am.

20 Q It was shortly after you obtained your green
21 card, correct?

22 A I think yes, ma'am.

23 Q And it was very soon after that that your
24 marriage fell apart, isn't that right?

25 A No, ma'am.

7059

1 Q Wouldn't it be fair to say that by October of
2 1990 you and Barbara had entered into some kind of a
3 separation agreement?

4 A We came to the separation in that time, yes,
5 ma'am.

6 Q In October of 1990, correct?

7 A That is correct, ma'am.

8 Q In the course of your marriage to Barbara --
9 withdrawn. When you arrived in this country, Mr. Salem, you
10 owned property in Egypt, didn't you?

11 A Yes, ma'am.

12 Q And you owned an apartment in Cairo --

13 MR. McCARTHY: Objection.

14 THE COURT: Do we need the location?

15 MS. LONDON: No, your Honor.

16 Q Do you understand the apartment that I am
17 referring to?

18 A I beg your pardon.

19 Q Do you know the apartment that I am referring to?

20 A Yes, ma'am.

21 Q There came a time in June of 1989 that you and
22 Barbara entered into a contract, a real estate contract,
23 isn't that right?

24 A No, ma'am.

25 Q It is your testimony that you did not enter into

7060

1 that contract?

2 A That's my testimony, ma'am, we did not do a
3 contract.

4 (Continued on next page)

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1 Q In June of 1989, there is a contract which states
2 that you --

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q In the contract that you have told us that you
6 did not sign --

7 MR. McCARTHY: Objection.

8 THE COURT: May I see you both.

9 (At the side bar)

10 THE COURT: What is this about?

11 MS. LONDON: Your Honor, there is a contract
12 provided in the 3500 material wherein the contract states
13 that Mr. Salem transfers certain property in Egypt to his
14 wife Barbara for the sum of \$23,000. It is signed by both
15 parties and it gives his sister in Egypt the power of
16 attorney over the property. Sometime later, this contract
17 gets faxed to Egypt, I believe by his wife, to two relatives
18 there in the course of marital disputes.

19 There is a history of documents, documents that
20 get submitted to courts, that go back and forth between
21 Barbara and Emad where each say the other has forged their
22 signature, where they ask each other to forge signatures. I
23 don't know that we can ever get to the actual truth of who
24 signed which document, who didn't sign which document, but
25 but there is a murky, very murky area where in every single

7062

1 court proceeding, be it family court -- there is an issue of
2 truth telling, coercing or appealing to others to submit
3 false affidavits, and I believe this is one of them.

4 MR. McCARTHY: This is completely collateral.
5 There is evidence that if we have to start going into this
6 we have to go into the whole domestic relations dispute.
7 There is what is purported to be an original contract that
8 Barbara Rogers got a fraudulent signature on by copying --

9 THE COURT: We are not going to get into that. I
10 suppose you can ask him in summary form about whether he
11 submitted false documents to courts or authorized the
12 submission of false documents to the courts and so on, but I
13 am not going to allow detailed exploration of the terms of a
14 contract that he claims he didn't sign.

15 MS. LONDON: Your Honor, he argues in divorce
16 court that she should pay him alimony because he transferred
17 all his property to her. So he uses the document that she
18 says he forged for his own benefit.

19 THE COURT: But there is a way of bringing that
20 out without getting into the -- I mean, you can ask him
21 about that. In point of fact, you had a divorce proceeding.
22 Yes. You argued in that divorce proceeding that Barbara
23 Rogers should pay your alimony, did you not? Presumably he
24 says yes. And the basis on which you argued was that you
25 signed your property over to her, isn't that correct? Isn't

7063

1 it a fact that you also claimed at another time that the
2 document that had been used to sign the property over was
3 forged and that you had never signed it? But all of this is
4 three or four questions.

5 MS. LONDON: Yes, your Honor. There are other
6 issues on this document. It is a notarized document that is
7 a phony notarization.

8 THE COURT: But he says he didn't sign it and it
9 is a collateral matter.

10 MS. LONDON: Then I can establish --

11 THE COURT: I don't say you have to cast it in
12 the fashion that I just articulated, but the only thing I
13 was trying to illustrate was that it can be done in summary
14 form.

15 (Continued on next page)

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(In open court)

2

BY MS. LONDON:

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Q Mr. Salem, it is your testimony, then, is it not,

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that you did not sign a contract transferring property to

5

your wife Barbara, is that correct?

6

A Yes, ma'am.

7

Q But you are aware that such a contract existed,

8

are you not?

9

MR. McCARTHY: Objection.

10

THE COURT: Sustained as to form.

11

Q In the course of your divorce proceedings,

12

Mr. Salem, you made telephone calls to relatives in Egypt,

13

did you not?

14

A I am always in touch with Egypt, ma'am.

15

Q In certain of these phone calls you asked your

16

relatives in Egypt to send you copies of a certain real

17

estate contract, didn't you?

18

A Yes, ma'am.

19

Q In the course of your divorce proceedings, you

20

argued to a family court judge, did you not, that you should

21

not be required to pay alimony to Barbara Rogers, correct?

22

A I think --

23

Q In fact you even sought alimony from her, did you

24

not?

25

A Yes, ma'am.

7065

1 Q And one of your arguments to the judge, wasn't
2 it, was that you had no assets and therefore she should help
3 support you, didn't you?

4 A Yes, ma'am.

5 Q But in fact you had assets then, didn't you?

6 A Yes, ma'am.

7 Q So you lied to the family court judge, didn't
8 you?

9 A We both were playing games against each other.

10 Q I am not asking about your games, Mr. Salem.

11 THE COURT: The question was whether you lied to
12 the family court judge. Did you?

13 THE WITNESS: Yes, your Honor.

14 Q So you have lied in a criminal court, correct?

15 A Yes, ma'am.

16 Q And you have lied in family court, correct?

17 A Yes, ma'am.

18 Q After the arrests went down in this case on June
19 24, you entered into witness security, isn't that correct?

20 A Yes, ma'am.

21 Q In the course of your stay in witness security
22 program, you had a number of telephone conversations with
23 Barbara Rogers, didn't you?

24 A Yes, ma'am.

25 Q She was no longer -- you were divorced at that

7066

1 time, correct?

2 A Yes, ma'am.

3 Q In those telephone conversations, you discuss a
4 real estate contract with her, don't you?

5 A Yes, ma'am.

6 Q And in fact in one of these telephone
7 conversations you want Barbara to write an affidavit for
8 you, don't you?

9 A Yes, ma'am.

10 Q And you tell Barbara that you want her to say in
11 the affidavit that she was mad at you and she made up the
12 contract, but that you did not take any money from her.
13 Isn't that what you asked her to do?

14 A No, that's not what I asked to her to do. I tell
15 her to say the truth and not to lie to the media and
16 everybody to write her book.

17 Q I am sorry. I didn't hear the last part.

18 A She told me that was offered three quarters of a
19 million dollars to write a book and she is trying to create
20 a story to the media, and I told her please stop these lies,
21 if you want to keep our relationship on a friendly basis,
22 write me an affidavit that you did lie about the contract
23 and you forged it, about the information you give it to the
24 attorneys, about the information you give it to the media,
25 ma'am.

1 Q In the course of that conversation, you do say to
2 her, do you not, you say that you were mad and you just made
3 up this contract and I did not take this money, isn't that
4 right?

5 A I am sorry.

6 Q You do say to her in the course of that
7 conversation, say that you was mad and you made up this
8 contract and I didn't take the money, didn't you?

9 A No, I did not say say that. I told her I want
10 you to say the truth, ma'am.

11 MS. LONDON: Your Honor, I would ask if the
12 witness would be permitted to listen to a tape recording,
13 G8, to see if that refreshes his recollection.

14 MR. McCARTHY: No objection. I just need to know
15 which one.

16 MS. LONDON: It is tape recording G8, page 6.
17 Your Honor, I would ask the witness instead to
18 look at the book that is labeled Elhassan.

19 THE COURT: Could you show him the place.

20 MS. LONDON: Under the tab that says G8. Let me
21 find it for you.

22 Mr. Salem, I would direct your attention to the
23 last two or three attributions on page 6. Read them to
24 yourself. I am sorry. The last two or three attributions
25 on page 6, and read them to yourself.

7068

1 A Yes, ma'am.

2 Q Does that refresh your recollection?

3 A One second. Can I read, please.

4 Q Absolutely.

5 (Pause)

6 A Yes, ma'am, I read it.

7 Q So, Mr. Salem, in addition to what you told us
8 about asking you to tell the truth, does that refresh your
9 recollection that you did say to her that she should say
10 that she was mad and she made up the contract and that you
11 didn't take the money? Does that refresh your recollection?

12 A I see I told her just say what happened, ma'am.

13 Q Correct.

14 A Yes.

15 Q And then you also say --

16 A Yes.

17 Q -- say that you was mad, correct?

18 A Say what happened, say that you was mad and you
19 made up this contract and I didn't take any money from you.

20 Q You also tell her that you don't want the court
21 to find out that this Middle Eastern guy took \$25,000 from
22 an American, a poor little girl, because it would make you
23 look bad. Didn't you say that?

24 A I said that, yes, ma'am.

25 Q Your image is very important to you, Mr. Salem,

7069

1 isn't it?

2 A Yes, ma'am.

3 Q In fact, it's so important to you, that you
4 created a false image for yourself, didn't you?

5 A Yes, ma'am.

6 Q In the course of this conversation, Barbara says
7 to you that the government has control over your life now,
8 doesn't she?

9 A Yes, ma'am.

10 Q In fact, she says that the FBI is your puppet
11 master, doesn't she?

12 A Yes, ma'am.

13 Q That's what she tells you.

14 A Yes, ma'am.

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained.

17 MR. McCARTHY: Move to strike.

18 THE COURT: That is stricken. Neither the
19 question nor the answer will be a basis for any decision in
20 this case. Go ahead.

21 Q After you separated from Barbara, you began a
22 relationship with your present wife or common-law wife,
23 isn't that correct?

24 A Yes, ma'am.

25 Q And you testified here that she is not your wife

7070

1 but that you have a private agreement with her, isn't that
2 right?

3 A I beg your pardon.

4 Q You testified that you have a private agreement
5 with her, isn't that right?

6 A Yes, ma'am.

7 Q Is that a written agreement?

8 A Yes, ma'am.

9 Q It is a written agreement?

10 A Yes, ma'am.

11 Q Your wife has a jewelry business, doesn't she,
12 Mr. Salem?

13 A She used to be, yes, ma'am.

14 Q At the time you met her she had a jewelry
15 business, correct?

16 A Yes, ma'am.

17 Q She was very successful in the jewelry business,
18 wasn't she?

19 A No, ma'am.

20 Q She did not have a successful jewelry business,
21 is that your testimony?

22 A Yes, ma'am.

23 Q After the time that you separated from Barbara
24 and you began your relationship with Karen, there was a
25 period of extreme unpleasantness in your life, was there

7071

1 not?

2 A Yes, ma'am.

3 Q And the relationship between you and Barbara
4 caused you a lot of grief, isn't that right?

5 A It's always up and down, ma'am.

6 Q And it caused Barbara a lot of grief, too, hasn't
7 it? Wouldn't that be fair to say?

8 A Yes, ma'am.

9 Q There were many phone calls that went back and
10 forth from your house to Karen's house to Barbara's house
11 and back and forth, correct?

12 A Yes, ma'am.

13 Q You testified that there came a time when you
14 sent a fax to Barbara Rogers, isn't that right?

15 A Yes, ma'am.

16 Q And it is a fax showing somebody being tortured
17 in Egypt, isn't that correct?

18 A Correct, ma'am.

19 Q Your testimony here was that at that time you
20 were on a friendly relationship with Barbara, and you bought
21 a fax machine and you were sending her the faxes, you were
22 setting up the fax machine and you were testing it out,
23 isn't that correct?

24 A That's what I said ma'am, yes.

25 Q Would it be fair to say that this fax was sent at

7072

1 a time when your relationship with Barbara was very
2 unpleasant; isn't that correct?

3 A That's not correct, ma'am.

4 Q In fact, around the time of sending this fax,
5 you, Karen and Barbara had a three-way telephone
6 conversation, isn't that correct?

7 A The same day?

8 Q A telephone conversation at the same time.

9 MR. McCARTHY: Objection to form.

10 THE COURT: Sustained as to form.

11 Q You had a telephone conversation with Barbara in
12 which you, Karen and Barbara were all speaking of the
13 telephone together, correct?

14 A Yes, ma'am.

15 Q And in fact Karen is very annoyed at Barbara
16 because --

17 MR. McCARTHY: To relevance.

18 THE COURT: Sustained.

19 Q In the course of this telephone conversation,
20 angry words were exchanged --

21 MR. McCARTHY: Objection, relevance.

22 THE COURT: Sustained.

23 Q In the course of this telephone conversation, the
24 fax that you have sent her is discussed, isn't that correct?

25 A No, I don't think so, ma'am.

7073

1 Q It is your testimony that you do not have a
2 telephone conversation in which you, Karen and Barbara
3 discuss this fax?

4 A I said I don't think so. I am not sure. We
5 talked three of us on the phone, yes. We were so angry,
6 yes. I don't recall what we discussed the fax or not,
7 ma'am.

8 Q Isn't it a fact that Barbara said --

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q Barbara asked you why you sent this fax to her,
12 doesn't she?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Isn't it a fact that you tell Barbara Rogers
16 around the time of sending this fax that you did not send
17 the fax as a threat but that you sent it as a piece of news;
18 isn't that correct?

19 A I am sorry. I am confused little.

20 (Continued on next page)

21

22

23

24

25

7074

1 Q Isn't it a fact that in a telephone conversation
2 between you, Karen and Barbara, you say you say -- Karen --
3 excuse me -- says to Barbara --

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained. May I see you at the
6 side.

7 (At the side bar)

8 THE COURT: This whole business, to the extent
9 there is anything relevant in it at all, was covered and I
10 am going to ask you to go on to something else.

11 MS. LONDON: Your Honor, it is my position that
12 he lied to miss Stewart in response to her questions, that
13 he lied to this jury. There are several telephone
14 conversations spanning a number of years which discuss this
15 fax, in which very soon after he sends it, he tells her it's
16 a piece of news. Later, when he realizes he is going to
17 testify he asks Barbara to write him an affidavit, and she
18 says to him what do you want me to say about this fax, and
19 then she suggests what she will say what it is, and he says
20 no, that's not good enough, I want you to say I was testing
21 my fax and I want you to write an affidavit.

22 THE COURT: No, I am not going to permit that to
23 be explored further. It is of tertiary relevance if that.
24 Let's move on to something else. You have your record.
25 Thank you.

7075

1

(In open court)

2

BY MS. LONDON:

3

Q Mr. Salem, does Barbara Rogers speak Arabic?

4

A No, ma'am.

5

Q Does she read Arabic?

6

A No, ma'am.

7

Q Would it be fair to say, Mr. Salem, that in the

8

months that have elapsed since the arrests in this case, you

9

told us before you had numerous conversations with Barbara

10

Rogers, isn't that correct?

11

A Yes, ma'am.

12

Q And in these conversations you have discussed

13

many issues that were on your mind with respect to

14

cross-examination, isn't that right?

15

A Yes, ma'am.

16

Q There came a time, Mr. Salem, did there not, when

17

a tax lien was placed on your bank account, was there not?

18

A Yes, ma'am.

19

Q You were unhappy about that, weren't you?

20

A Yes, ma'am.

21

Q And in fact you called the IRS, correct?

22

A Yes, ma'am.

23

Q And you told them that you had paid all of your

24

taxes, correct?

25

A Yes, ma'am.

1 Q And you told the IRS that these were Barbara's
2 taxes, that they should look to her to pay them, correct?

3 A Yes, ma'am.

4 Q And you told the IRS that she had signed a piece
5 of paper saying that for you, isn't that correct?

6 A Yes, ma'am.

7 Q Is that piece of paper an affidavit by Barbara?

8 A Yes, ma'am.

9 Q Did she send it to the IRS?

10 A Yes, ma'am.

11 Q On your behalf?

12 A Yes, ma'am. She apologized and she sent it to
13 them.

14 Q You also testified here, Mr. Salem, haven't you,
15 that you have been prone to temper outbursts, isn't that
16 correct?

17 A I beg your pardon --

18 Q To temper outbursts, to losing your temper?

19 A Yes, ma'am.

20 Q You have episodes where your temper is
21 uncontrolled, isn't that right?

22 A I did not say that, ma'am.

23 Q I am asking you that. Do you have episodes where
24 your temper is uncontrolled?

25 A No, ma'am.

7077

1 Q You just get angry and that's it, right?

2 A Yes.

3 Q You even called a psychic about it, didn't you?

4 A No, the psychic issue, I was making fun of the
5 psychic. It wasn't true, what I was saying, ma'am.

6 Q In the course of your relationship with Barbara,
7 you told her a lot of information about your fictional
8 background in Egypt, isn't that right?

9 A Fictional means what?

10 Q Fictional means made up, your made up background
11 in Egypt.

12 A Yes, ma'am.

13 Q You gave her your whole hero persona, correct?

14 A Yes, ma'am.

15 Q And you told her a lot about military interview
16 techniques in Egypt, isn't that right?

17 A Yes, ma'am.

18 Q In fact you told her that the three most
19 effective ways to get somebody to talk or to get somebody to
20 do what you want them to do, through cold and through hunger
21 and through nakedness.

22 A I don't recall that, ma'am.

23 Q There came a time, did there not, towards the end
24 of your relationship with Barbara when Barbara wrote an
25 affidavit for you stating that she had paid all your taxes,

7078

1 isn't that right?

2 A That's what she told me, yes.

3 Q That's what she wrote in the affidavit, isn't
4 that right?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q This is the affidavit that starts --

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q You have told us, Mr. Salem, that you have never
11 been involved in torture, isn't that right?

12 A Right, ma'am.

13 Q Even though you have had a photo album on your
14 coffee table with torture photos in it, isn't that right?

15 A That's right, ma'am.

16 Q It would be fair to say, Mr. Salem, that the
17 affidavit that was written for you --

18 MR. McCARTHY: Objection.

19 Q -- was tortured out of Barbara Rogers?

20 THE COURT: Sustained.

21 Q Barbara Rogers, you asked Barbara to state that
22 she had used your credit cards without your knowledge, isn't
23 that correct?

24 A She forged my signature, ma'am -- I am sorry.

25 What's the question? I am sorry.

7079

1 Q My question is, you asked her to state that she
2 had used your credit cards without your knowledge, isn't
3 that right?

4 A That's right, ma'am.

5 Q And you also asked her to state that she had
6 repaid the entire amount of money that she had spent, isn't
7 that right?

8 A That's right, ma'am.

9 Q And in fact you asked her to state that she
10 repaid it after you discovered her crime, isn't that right?

11 A That's right, ma'am.

12 Q And you asked her to state that she paid all of
13 your 1998 income taxes for the sum of \$2,800 -- you asked
14 her to state that she paid all of your 1988 income taxes,
15 isn't that right?

16 A No, ma'am, no, ma'am.

17 Q You asked her to state that she had paid your
18 Jack Lalanne bill of \$1,400, isn't that right?

19 A Not true, ma'am.

20 Q And you asked her to state that she paid your
21 telephone bills, isn't that right?

22 A That's not correct, ma'am.

23 Q And you asked her to state that she had paid a
24 joint loan that you had taken but that she had repaid it in
25 full, isn't that right?

7080

1 A That's not correct, ma'am.

2 Q Isn't it a fact that you argued to the family
3 court judge that Barbara Rogers had taken care of these
4 bills for you?

5 A I said that to the court?

6 Q That Barbara Rogers had supported you.

7 A Supported me?

8 Q Correct, supported you.

9 A No, ma'am.

10 Q Barbara made a lot more money than you did,
11 didn't she, Mr. Salem?

12 A Yes, ma'am.

13 Q And you called Egypt a lot during the marriage to
14 her, didn't you?

15 A Yes, ma'am.

16 Q Phone calls to Egypt are not cheap, are they?

17 A No, ma'am.

18 Q In fact your phone bills to Egypt in the course
19 of a year could come to several thousand dollars, right?

20 A I never figured it out, ma'am.

21 (Continued on next page)

22

23

24

25

7081

1 THE COURT: May I see counsel at the side.

2 (At the side bar)

3 THE COURT: Either we are going to get to
4 something relevance or we are going to stop.

5 MS. LONDON: I don't have too much more on this,
6 your Honor. I have a little bit more that I would like to
7 do.

8 THE COURT: I know you would like to do it.

9 MS. LONDON: Are you telling me that I cannot do
10 any more --

11 THE COURT: You may not, of this sort of thing.

12 MS. LONDON: Your Honor, I would like to do, if
13 the court's permission I would respectfully ask to do --

14 THE COURT: And you will try to do it without my
15 permission. What is it you want to do with it?

16 MS. LONDON: I would like to do one more segment
17 in which he gets angry at his sister-in-law because she has
18 admitted that he asked his wife -- it's phony in-court
19 papers, your Honor, and he asked for court papers to be
20 phoned, and I think it goes directly to what we are talking
21 about here. I can do it quickly, but he makes it very clear
22 that he devised a plan whereby phony documents could be
23 submitted to a court.

24 THE COURT: He has already admitted that.

25 MS. LONDON: Your Honor, I think the extent to

7082

1 which he does it is unbelievable. This is a man in this
2 country for seven years who every single time he has contact
3 with a judicial system --

4 THE COURT: Miss London, don't give me your
5 summation.

6 MS. LONDON: Your Honor, if I can't put it before
7 them I can't sum up on it.

8 THE COURT: Sure you can. There is plenty before
9 them. You can ask two or three questions as you did on the
10 other thing that I suggested -- which, by the way, worked,
11 right?

12 MS. LONDON: Yes, your Honor.

13 THE COURT: Why don't we do it the same way.

14 MR. McCARTHY: Your Honor, I think this is
15 collateral and that it is all nonsense but it is a fact --

16 THE COURT: I notice you haven't been objecting.

17 MS. LONDON: Your Honor, respectfully, lying to
18 courts and lying in court documents is not nonsense and I
19 will not back off that.

20 MR. McCARTHY: I haven't objected to that but we
21 all know that Barbara Rogers --

22 THE COURT: Let's get on with it. I am not going
23 to get into a discussion about Barbara Rogers.

24 (Continued on next page)

25

7083

1 Q Mr. Salem, in the course of your marriage to
2 Barbara, you became acquainted with her family, correct?

3 A I'm sorry?

4 Q Barbara's family, correct?

5 A Yes, yes.

6 Q In the course of your marriage with Barbara,
7 Barbara's sister went through a divorce proceeding with her
8 husband, correct?

9 A Yes, ma'am.

10 Q And she came to you --

11 A I'm sorry. Which one?

12 Q Marylou.

13 A Yes.

14 Q And Marylou came to you and Barbara very upset
15 when the divorce action was started by her husband, isn't
16 that right?

17 MR. McCARTHY: Objection, relevance.

18 THE COURT: Sustained.

19 Q Isn't it a fact that you suggested to Marylou in
20 order to delay the divorce action that Barbara should sign
21 the acceptance of the divorce papers and -- the papers that
22 had to be signed, that Barbara should sign them instead of
23 Marylou? That was your suggestion, wasn't it?

24 A Ma'am, that's not my suggestion. That's what
25 Barbara did. She forged --

7084

1 Q I am asking if that was your suggestion.

2 A No.

3 THE COURT: She is asking whether that was your
4 suggestion. The answer is?

5 THE WITNESS: No, ma'am.

6 THE COURT: Go ahead.

7 Q And Barbara signed Marylou's name, isn't that
8 right?

9 MR. McCARTHY: Objection, relevance.

10 THE COURT: Sustained.

11 Q There came a time when Marylou called you, isn't
12 that right?

13 MR. McCARTHY: Objection, relevance.

14 THE COURT: Sustained.

15 Q Marylou became annoyed at you, did she not,
16 Mr. Salem?

17 MR. McCARTHY: Objection, relevance.

18 THE COURT: Sustained.

19 Q There came a time when you told Marylou that she
20 should not have told the truth to her husband about the
21 signature on the document, isn't that right?

22 A That's not right, ma'am.

23 Q There came a time when you said to Marylou:
24 Barbara Louise did what I told her to do. That's what you
25 said to Marylou, didn't you?

7085

1 A No, ma'am.

2 Q Let me --

3 THE COURT: Ms. London -- all right. Go ahead.

4 MS. LONDON: This will take two minutes, your
5 Honor.

6 THE COURT: Fine.

7 Q I would ask the witness to look at the Elhassan
8 Exhibit book, 38-6, page 3. I would ask you to read the
9 last segment of page 3 and ask if that refreshes your
10 recollection.

11 (Pause)

12 Q You can stop at the end of the first attribution
13 on page 4.

14 A But it's cutting out of the subject. I don't
15 know what we talking about, ma'am. I told Barbara what to
16 do about what?

17 Q About signing Marylou's name on Marylou's papers
18 so that Marylou could then claim: I didn't sign these
19 papers. You, Frank, have forged my name. You set up a lie
20 for papers to be submitted to court, Mr. Salem, that's what
21 I'm talking about, and that's what you did, did you not?

22 MR. McCARTHY: Is that a question, Judge?

23 THE COURT: The question is: Did you do that?

24 THE WITNESS: No, sir.

25 Q And then --

7086

1 MR. McCARTHY: Objection to form.

2 Q -- Mr. Salem --

3 THE COURT: Sustained.

4 Q -- you tell Marylou --

5 MR. McCARTHY: Objection, relevance.

6 Q -- that telling Frank the truth was the wrong
7 thing to do, don't you?

8 THE COURT: Sustained.

9 Please move on to something else, Ms. London.

10 Q Mr. Salem, you testified here that the first
11 time that you saw my client, Mr. Tarig Elhassan, the man who
12 is sitting over there in the white galabia, was at the El
13 Salaam mosque in New Jersey, do you recall that testimony?

14 A Yes, ma'am.

15 Q You testified that he was there to attend a
16 dispute between Sheik Omar and the board of directors at the
17 El Salaam mosque, correct?

18 A Yes, ma'am.

19 Q Now, you attended the El Salaam mosque fairly
20 regularly in the course of your involvement with this
21 investigation, did you not?

22 A It wasn't regular, but from time to time, yes,
23 ma'am.

24 Q That was the first time that you had seen
25 Mr. Elhassan there, correct?

7087

1 A The first time I know that his name is Tariq,
2 Ma'am.

3 Q You had a conversation with Tariq that evening,
4 did you not, a brief conversation?

5 A Yes, ma'am.

6 Q It was a casual conversation where you asked him
7 where he was from, didn't you?

8 A No, ma'am.

9 Q You asked him where he lived?

10 A No, ma'am.

11 Q You portrayed yourself as an educated Egyptian
12 man, correct?

13 A I'm sorry?

14 Q You portrayed yourself, your image that you give
15 to him is that of an educated Egyptian man?

16 A I didn't talk about myself in that night, ma'am.

17 Q I'm asking that the image that you desired to
18 portray is that of an educated --

19 A Yes, ma'am.

20 Q -- Egyptian man?

21 A Yes, ma'am. Yes, ma'am.

22 Q An intelligent man, correct?

23 A Yes, ma'am.

24 Q And successful, correct?

25 A Yes, ma'am.

7088

1 Q You learned that night that Mr. Elhassan is
2 Sudanese, isn't that right?

3 A Yes, ma'am.

4 Q You told Mr. Elhassan that night in this casual
5 conversation that you liked his ideas, didn't you?

6 A No, ma'am.

7 Q You told him that you wanted him to work with
8 you, didn't you?

9 A No, ma'am.

10 Q You wanted him as part of your group, you didn't
11 say that to him?

12 A In that time I don't know that he's one of
13 Siddig's group, ma'am.

14 Q You also told Siddig, did you not, that you liked
15 the way Tarig spoke, isn't that correct?

16 A Tarig?

17 Q That you liked the way that Mr. Elhassan spoke,
18 isn't that correct?

19 A I may said that, yes.

20 Q And you encouraged Mr. Siddig Ali to make
21 Mr. Elhassan part of the group, did you not?

22 A No, ma'am.

23 Q In conversations with Mr. Ali, you say to
24 Mr. Ali: I admire Tarig.

25 MS. LONDON: I'm reading from CM48, transcript

7089

1 page 36, Mr. McCarthy.

2 Q You say to Mr. Salem: I admire Tarig when I saw
3 him last at the mosque he's an enthusiastic man. He's
4 enthusiastic. He sat beside the sheik.

5 And Mr. Ali says: Yes, he's no question about
6 him. Correct?

7 A Yes, ma'am.

8 Q You make this comment about seeing Mr. Elhassan
9 with the sheik on several occasions, don't you?

10 A Probably.

11 Q On each occasion you say how much you admire him,
12 isn't that correct?

13 A Yes, ma'am.

14 Q On each occasion you are saying it to Mr. Ali,
15 aren't you?

16 A Yes, ma'am.

17 Q Would it be fair to say that in your relationship
18 with Mr. Ali throughout April and May, Mr. Ali is
19 suggestable, is he not?

20 MR. McCARTHY: Objection.

21 MS. LONDON: I will withdraw it.

22 Q It was your experience with Mr. Ali, was it not,
23 that he was suggestable?

24 A No, ma'am.

25 Q It was not your experience?

7090

1 A No, ma'am.

2 THE COURT: Ms. London, could you come to a
3 convenient break point in the next five minutes.

4 MS. LONDON: Actually, your Honor, this would be
5 good.

6 THE COURT: Good.

7 Ladies and gentlemen, we are going to break for
8 lunch. Please leave your notes and other materials behind.
9 Please don't discuss the case. Have a pleasant lunch and we
10 will see you at 2 o'clock or a little after.

11 (The jury was excused)

12 (Continued on next page)

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(Jury not present)

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(Witness excused)

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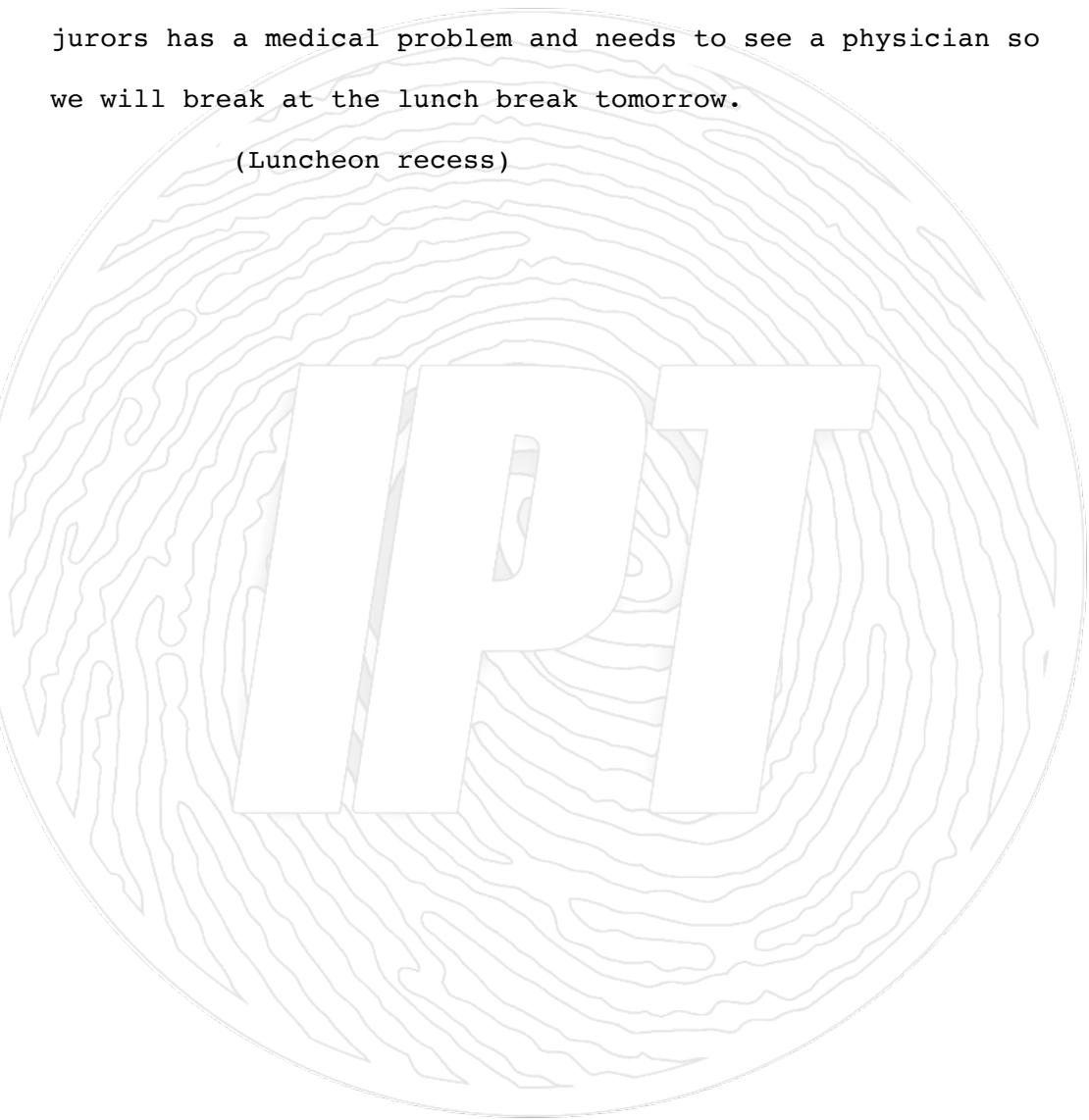
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THE COURT: Just for counsel's planning purposes,
we are not going to sit tomorrow afternoon. One of the
jurors has a medical problem and needs to see a physician so
we will break at the lunch break tomorrow.

(Luncheon recess)



7092

1 AFTERNOON SESSION

2 2:00 p.m.

3 MR. NOOTER: Your Honor, before the jury comes
4 in, my client has asked to be excused for the afternoon. I
5 have no objection.

6 THE COURT: Mr. Saleh, you want to voluntarily
7 absent yourself from the trial this afternoon?

8 DEFENDANT WAHID SALEH: I want to what?

9 THE COURT: You want to voluntarily absent
10 yourself from the trial this afternoon?

11 DEFENDANT WAHID SALEH: Yes, I want to leave.

12 MR. MCCARTHY: No objection.

13 THE COURT: This has been explained to you
14 before. Do you understand that you have a right to be here?

15 DEFENDANT WAHID SALEH: I don't understand.

16 THE COURT: Do you understand that you have a
17 right to be here?

18 DEFENDANT WAHID SALEH: Yes, sure.

19 THE COURT: Go ahead.

20 (Defendant Wahid Saleh excused)

21 THE COURT: Mr. Nooter, do you want the jury
22 informed that your client is absent with the permission of
23 the court at his request?

24 MR. NOOTER: I think probably they won't notice
25 that he is not here.

7093

1 EMAD SALEM, resumed.

2 (jury present)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 JURORS: Good afternoon.

5 THE COURT: Go ahead, Ms. London.

6 MS. LONDON: Thank you, your Honor.

7 CROSS-EXAMINATION continued

8 BY MS. LONDON:

9 Q Mr. Salem, to clarify briefly a matter that we
10 had spoken about earlier, you testified that your wife Karen
11 did not make that much money from her business, is that
12 correct?

13 A Not that much.

14 Q In connection with this case you were interviewed
15 extensively by the FBI about your financial assets, correct?
16 You had to give the FBI information on your finances,
17 correct?

18 A I don't, I don't -- when? I am sorry.

19 Q During the course of interviews with the FBI.

20 A I don't --

21 Q Did the FBI ever ask you how much money your wife
22 Karen made?

23 A I think it came a time, yes.

24 Q Isn't it a fact that you told them that she made
25 \$80,000 a year in her business?

7094

1 A Yes.

2 Q Isn't it a fact that she receives \$2,000 a month
3 outside of what you receive for loss of her income?

4 A Not outside what I receive. It's included,
5 ma'am.

6 Q It is included in the amount that you receive
7 from the FBI?

8 A That is correct, ma'am.

9 Q And \$2,000 is for her loss of income?

10 A Yes, ma'am.

11 Q You testified yesterday in response to questions
12 by Miss Amsterdam that there came a time when you and
13 Mr. Ali discussed the workers that you would need. Do you
14 recall that testimony?

15 A The what, ma'am?

16 Q The workers, the people that you would need --

17 A Yes, ma'am.

18 Q Mr. Ali gave you a list of names, which were
19 mentioned yesterday. Do you recall being asked about those
20 names?

21 A He did not give me list of names, no.

22 Q Mr. Ali mentioned the names Abu Mohammed, Abu
23 Jalil, Abu Aiysha, Abdallah, correct?

24 A Yes, ma'am.

25 Q At that time he didn't give you the real names.

7095

1 A No, ma'am.

2 Q In fact, at that time you didn't know the real
3 names, is that correct?

4 A No, ma'am.

5 Q At that time, you told Mr. Ali that you would
6 need about five or six people to help you, isn't that right?

7 A I started with two, three, he brought two, three.
8 I asked for more, he brought more. I was trying always to
9 ask for more and more, to bring me everybody who is willing
10 to, or who was participating with him before, ma'am.

11 Q And it is your testimony that you never gave
12 Mr. Ali instructions as to what to do, isn't that correct?

13 A The things I talked to Mr. Siddig about, the
14 technical things, that my role in this thing to give him
15 that technical advices. That's it, ma'am.

16 Q But isn't it a fact that you repeatedly told
17 Mr. Ali that he was to give the instructions? Isn't that a
18 fact?

19 A I told him that he should give the instructions?

20 Q Yes.

21 A Yes, ma'am. He told me he is the emir.

22 Q And you ordered him to instruct the people below
23 him, isn't that correct?

24 MR. McCARTHY: Objection. Withdrawn.

25 A No, ma'am.

7096

1 MS. LONDON: Your Honor, I would ask the court
2 and the witness and the jurors to open their, what has been
3 marked as Defendant Elhassan's Exhibit A.

4 Q Do you see a copy before you, Mr. Salem?

5 THE COURT: Which recording are we dealing with?

6 MS. LONDON: CM 10, at the page number at the
7 bottom of the page is 39, and it is about the sixth page in.

8 MR. McCARTHY: Your Honor, CM 10 is Government's
9 Exhibit 311.

10 MS. LONDON: I am sorry.

11 THE COURT: 311T. In any event, the page is
12 there. Go ahead.

13 MS. LONDON: At the bottom it is marked page 39
14 on CM 10, and I believe some of the copies have two page
15 39's, but they are identical. The first attribution on the
16 page.

17 Q Halfway down the page, Mr. Salem, in your
18 conversation with Mr. Ali, you say to Mr. Ali: And you sit
19 and give your instructions to these people.

20 Mr. Ali responds: Yes.

21 You say to Mr. Ali: Gentlemen, the situation is
22 one, two, three.

23 Mr. Ali says: Yes.

24 You say to Mr. Ali: I don't need many people to
25 talk.

7097

1 You are there telling Mr. Ali how he is to
2 instruct his people, are you not, Mr. Salem?

3 A No, ma'am.

4 Q Going down the page, continuing down the page,
5 Mr. Ali responds to you: No, no, no.

6 And you say: I mean I will not say anything,
7 I'll tell you, OK? I'm tasked to do so and so.

8 Mr. Ali responds: Only this.

9 And then, Mr. Salem, you say: This is it. You
10 give orders, distribute your work among people.

11 Mr. Ali responds: Yeah.

12 You are instructing Mr. Ali there to give the
13 orders, are you not, Mr. Salem?

14 A No, ma'am, I am not instructing him to give
15 orders.

16 Q At the last attribution on that page you say to
17 Mr. Ali: As for me, whenever I need someone to hold with me
18 because there are pipes to be installed --

19 Mr. Ali says: Of course.

20 And you continue: In the frame.

21 Mr. Ali says: Yes.

22 You say to Mr. Ali: I need people to tie the
23 pipes with me. I need people.

24 Mr. Ali says: Whatever you need.

25 You respond: Huh?

7098

1 Mr. Ali says: Whatever you order.

2 May God keep you, you respond.

3 He will do it.

4 You say: That's all. I want people to help me.

5 Mr. Ali says: Whatever you order. Hadduta.

6 THE COURT: Is there a question?

7 Q Do you recall that conversation, Mr. Salem?

8 A Yes, ma'am, I recall.

9 Q You testified here, Mr. Salem, in your direct
10 testimony that your second meeting with Mr. Elhassan
11 occurred at the Masjid Medina at First Avenue and 11th
12 Street. Do you recall that?

13 A Yes, ma'am.

14 Q You told us at that time that you went there to
15 pray the evening prayer with Mr. Ali. Do you remember that?

16 A Yes, ma'am.

17 Q You told us on that occasion that you didn't talk
18 to Mr. Elhassan but Mr. Elhassan and Mr. Ali spoke together
19 in a corner of the back of the Masjid a long time. Do you
20 recall that testimony?

21 A Yes, ma'am.

22 Q You recognized, did you not, Mr. Elhassan as
23 being a person that you had seen beside the sheik at the El
24 Salaam Mosque sometime earlier, correct?

25 A Correct, ma'am.

7099

1 Q On the way to that meeting, Mr. Ali told you that
2 he wanted to stop to talk to someone, isn't that right?

3 A I don't recall.

4 Q If you turn to CM 27 in the exhibit book, and it
5 is the second page in CM 27 which has the numerical number,
6 small numerical number 7 at the bottom. At the eighth
7 attribution down on the page by Mr. Siddig Ali, he says:
8 No, we wanted to pray, unintelligible. I wanted to talk to
9 someone here.

10 You say: Where?

11 Mr. Ali says: In the city, in the city,
12 straight.

13 A little bit further down the page Mr. Ali says:
14 This will be good. Should we pray the evening prayer?

15 You respond: Yes.

16 And then Mr. Ali gives you directions how to go
17 there and you ask Mr. Ali for information on the person he
18 wants to talk to, and you say to him: Is he one of our
19 brothers?

20 Do you see that, the third --

21 A Yes, ma'am.

22 Q Mr. Ali responds to you: Yes, but he is not, I
23 never did talk with him about the details. You see how, and
24 I don't want to talk with him about the details. I want to
25 say hello to him -- which is an underlined passage.

7100

1 And you respond: To feel him out -- which is
2 also an underlined passage, indicating part of the passage
3 in dispute.

4 Continuing on the next page, Mr. Ali says: If
5 you ask me if he is one of our brothers I will say yes to
6 you, but I mean as I told you before.

7 THE COURT: Is there a question?

8 Q Do you recall that conversation, Mr. Salem?

9 A I recall he asked to go to talk to somebody, but
10 I am not sure if that's here we talking about Mr. Tarig
11 Elhassan, ma'am.

12 MS. LONDON: Would the government stipulate that
13 I have read the transcript accurately?

14 MR. McCARTHY: I do. So stipulated, your Honor.

15 Q When you arrived at the -- you did not speak to
16 Mr. Elhassan at the mosque that evening, did you?

17 A The first time I saw him there?

18 Q Correct.

19 A In 11th Street mosque, no.

20 Q And you were given no introduction to him, is
21 that correct?

22 A No, ma'am.

23 Q When you leave the mosque you get back into the
24 car with Mr. Ali, correct?

25 A Yes.

7101

1 Q And you ask Mr. Ali who this brother is, what is
2 his name. Do you recall that?

3 A Yes.

4 Q Mr. Ali responds to you that the name of the new
5 brother is Abu Aiysha. Do you recall that?

6 A Yes, ma'am.

7 Q And he goes on to tell you that his other name is
8 Tarig, is that correct?

9 A I beg your pardon.

10 Q And then he tells you that his other name is
11 Tarig, isn't that correct?

12 A Yes, ma'am.

13 Q What did you understand by Abu Aiysha?

14 A I understood that this is his alias name or
15 undercover name.

16 Q You have testified before that Abu means father
17 of, isn't that right?

18 A Yes, ma'am.

19 Q So by the name Abu Aiysha, you would understand
20 that to mean the father of Aiysha, isn't that correct?

21 A Yes, ma'am.

22 Q In fact, Aiysha is an Arabic name, isn't it?

23 A Yes, ma'am.

24 Q Do you know, Mr. Salem, if Mr. Elhassan has a
25 daughter named Aiysha?

7102

1 A No, I don't know that, ma'am.

2 Q After you leave the mosque, you tell Mr. Ali that
3 you want him to give Mr. Elhassan, to give Tarig a task,
4 isn't that correct?

5 A I may said it.

6 Q And Mr. Ali responds to you, leave him alone,
7 isn't that correct?

8 A Probably, yes.

9 Q But you continue to push, don't you?

10 A No, I did not push, ma'am.

11 Q Did you tell Mr. Ali that you want him to be
12 given a list of pipes to get, don't you?

13 A To who, ma'am?

14 Q You tell Mr. Ali that Tarig should be given a
15 list of pipes to bring to the safe house, isn't that
16 correct?

17 A That's after he agreed to bring him, after he
18 said that he will bring him, ma'am.

19 Q When did he tell you that he will bring him?

20 A In the course of the conversation.

21 Q That conversation is recorded, is it not?

22 A I am not sure, ma'am. There is a lot of
23 recordings, ma'am.

24 Q So it is your testimony that there is possibly in
25 this conversation -- withdrawn.

7103

1 Did you turn on or off the switch during the
2 drive after you left the mosque?

3 A No, ma'am, I don't think I did that.

4 Q You never gave Mr. Elhassan a list of pipes?

5 A I beg your pardon.

6 Q You never gave Mr. Elhassan a list of pipes to
7 bring to the garage in Queens, did you?

8 A No, ma'am.

9 Q In fact, he never brought pipes to the garage in
10 Queens, did he?

11 A No, ma'am.

12 Q In fact no pipes were ever brought to the garage
13 in Queens, were they?

14 A No, ma'am.

15 (Continued on next page)

16

17

18

19

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24

25

7104

1 Q In fact, Mr. Ali tells you that Mr. Elhassan
2 could not buy pipes because he is in bad financial
3 circumstances, isn't that right?

4 A Yes, ma'am.

5 Q You also testified at trial that there did come
6 an opportunity where you spoke to Mr. Elhassan in person,
7 correct?

8 A Yes, ma'am.

9 Q According to your testimony, it was a few days
10 later, and it was on an evening when Mr. Elhassan was
11 picking up a garbage pale from the street after you had met
12 him at Masjid Medina, do you recall that testimony?

13 A Yes, ma'am.

14 Q It would be fair to say that was not your next
15 conversation with Mr. Elhassan, correct?

16 A I am not sure, ma'am.

17 Q Do you recall meeting Mr. Elhassan with others on
18 the corner of Atlantic and 4th Avenue in Brooklyn?

19 A Yes, ma'am.

20 Q And on an occasion when you drove him to the safe
21 house, isn't that correct?

22 A Yes, ma'am.

23 Q The evening that you had seen but not spoken to
24 Mr. Elhassan at the Masjid Medina occurred on June 3, 1993.
25 You do not recall that date, do you?

7105

1 A No.

2 MS. LONDON: Mr. McCarthy --

3 MR. McCARTHY: Yes.

4 MS. LONDON: I'm sorry. I would ask if you would
5 stipulate that CM 27, which we read from a few minutes ago,
6 was recorded on June 3.

7 MR. McCARTHY: Yes. I will stipulate.

8 Q As you told us, you did not speak to Mr. Elhassan
9 that night, correct?

10 A Which?

11 Q On June 3 at Masjid Medina?

12 A No, I did not speak to him in the mosque, ma'am.

13 Q It would be fair to -- withdrawn.

14 Between that sighting on June 3 and the time when
15 you see Mr. Elhassan later at Atlantic Avenue, you have many
16 conversations with Siddig, correct?

17 A I'm sorry. Could you please --

18 Q You had conversations --

19 A Between what and what?

20 Q Between the 3rd of June and the next time you see
21 Mr. Elhassan, correct, you have many conversations with
22 Mr. Siddig Ali, correct?

23 A Yes, ma'am.

24 Q As you've told us, as you sit here today you
25 don't recall on what days specific conversations occurred,

7106

1 right?

2 A Yes, ma'am.

3 Q But it is also your -- withdrawn.

4 MS. LONDON: Mr. McCarthy, I would ask if you
5 would stipulate that CM37 is recorded on June 13.

6 MR. McCARTHY: Yes, I will stipulate.

7 MS. LONDON: Thank you.

8 Q On June 13 you have a discussion with Mr. Ali
9 about certain items that you wanted to bring to the safe
10 house that you were unable to buy, do you recall that
11 conversation?

12 A We talked a lot about things like that, ma'am.

13 Q Do you recall you speak to him about items which
14 you refer to as groceries, correct?

15 A Yes.

16 Q And then "groceries" you told us was a code word,
17 right?

18 A Yes, ma'am.

19 Q You tell him in this conversation that Tarig had
20 spoken with you and Tarig was going to go with you, and
21 Mr. Ali corrects you, isn't that right?

22 A And Mr.?

23 Q Mr. Siddig Ali corrects you and says to you,
24 "What is that?" because you're saying that Tarig was meant
25 to go with you to buy groceries?

7107

1 A Yes.

2 Q Mr. Ali is puzzled when you say that, and he says
3 to you: Tarig? Isn't that right?

4 A Ma'am, it's just --

5 Q OK. I would ask you --

6 A It's pieces. I --

7 Q All right. I would ask you to turn to CM37, page
8 2. In the third attribution on the page --

9 A Yes, ma'am.

10 Q -- which is your attribution towards the end of
11 what you're saying where you are discussing getting things
12 the next day, he said -- you say: He said at 10 in the
13 morning. Where? At such an such a location, I said OK.
14 I'll go there. Who came with me. Tarig? That is a
15 question.

16 A I'm sorry. I'm not following you, ma'am. I said
17 OK. Start from here.

18 Q I'm sorry?

19 A Start from I said OK.

20 Q Actually, go up two lines.

21 A To the beginning of the page, ma'am?

22 Q I see where you are looking. At the beginning of
23 that attribution you say: I said OK. That's the third
24 attribution, correct?

25 A Yes.

7108

1 Q Go down seven lines.

2 A Yes.

3 Q I told him good -- you say this: I told him
4 good, and asked what time. He said at 10 in the morning.
5 Where? At such and such a location. I said, OK. I'll go
6 there. Who came with me? Tarig?

7 You ask that as a question, correct?

8 A Yes.

9 Q Mr. Ali says to you: In his place?

10 You respond: No, Tarig came and sat with me.
11 This was at the mosque when we were talking about it last
12 night. What's new? He said, thanks be to the God. He
13 said, I did not bring the thing that Siddig asked for. I
14 told him you are.

15 Mr. Ali questioned you: Who is that?

16 You respond: Tarig.

17 Mr. Ali says: I did not tell him anything. What
18 is this?

19 You respond: I don't know, not Tarig. What's
20 his name? I am mixed up with the names.

21 A Yes.

22 Q Now, Mr. Salem, you have not yet been formally
23 introduced to Mr. Elhassan, have you?

24 A No, ma'am.

25 Q Yet you are using his name in conversations as

7109

1 having been with you the night before, isn't that correct?

2 MR. McCARTHY: Your Honor --

3 A No, ma'am, that's not --

4 MR. McCARTHY: -- I object. In light of the last
5 question, she has to go down at least another three or four
6 attributions.

7 THE COURT: Do you want to proceed?

8 MS. LONDON: Yes, your Honor.

9 Q Mr. Ali says: Mohammed, Amir?

10 You respond: Amir, Amir, yes, Amir. I am saying
11 Tarig. It is Amir, Sheik. How did it happen that I said
12 Tarig? Important thing it is Amir.

13 Mr. Ali: Amir. You call him Tarig?

14 You say: Tarig also. Good, God willing. And he
15 told me I will meet you at 12 o'clock for I have work to do.

16 A Yes.

17 Q Do you recall that conversation?

18 A Yes, ma'am. I was --

19 Q Would it be fair to say that you mixed up names?

20 A At the beginning of before he get introduced to
21 me I get mixed up, yes.

22 Q You are including the name of a man that you have
23 never met, are you not, Mr. Salem?

24 A No, I saw him, but we did not get introduced to
25 each other, ma'am.

7110

1 Q You wanted him as part of your group, didn't you,
2 Mr. Salem?

3 A No, ma'am. I don't want him to be part.

4 Q You knew, did you not, Mr. Salem, that a criminal
5 case could ensue from your investigation, didn't you?

6 A I'm sorry, ma'am?

7 Q You were aware that there could be a criminal
8 case out of your investigation, weren't you?

9 MR. McCARTHY: Objection, unless it's clarified
10 when.

11 MS. LONDON: At the time of this conversation,
12 you were aware that this was an ongoing criminal
13 investigation, were you not?

14 A Yes, ma'am.

15 Q Didn't you feel that it was important to be
16 accurate with names?

17 A I did the best of my ability, ma'am.

18 Q Are you able to write, Mr. Salem?

19 A Write?

20 Q Do you know how to write?

21 A Yes, ma'am.

22 Q If you are bad with names, Mr. Salem, don't you
23 think it might be important to write down the names of the
24 people that you meet with --

25 THE COURT: Sustained.

7111

1 Q -- as opposed to --

2 THE COURT: Sustained.

3 Q You had other conversations with Mr. Ali about
4 fund raising for the World Trade Center prisoners, did you
5 not, Mr. Salem?

6 A Yes, ma'am.

7 Q And fund raising for Mr. Mahmud Abouhalima's
8 family also, did you not?

9 A Yes, ma'am.

10 Q And in fact you met Mr. Mohammed Abouhalima on
11 several occasions, didn't you?

12 A Yes, ma'am.

13 Q You were aware, were you not, that that Mohammed
14 Abouhalima was helping to support Mahmud, his brother, his
15 brother's family, were you not?

16 A Yes, ma'am.

17 Q You were aware that Mohammed Abouhalima was
18 actively trying to help raise money for his brother's
19 family, weren't you?

20 A Yes, ma'am.

21 Q In fact, in one conversation between you, Mr. Ali
22 and Mohammed Abouhalima, you comment that a dispute between
23 Haggag and Mr. Ali is making the Muslim groups forget their
24 priorities, do you recall that comment?

25 A Yes, ma'am.

7112

1 Q In fact, you attended during this period of time
2 a number of different mosques, didn't you?

3 A Yes, ma'am.

4 Q The El Salaam mosque in New Jersey, correct?

5 A Yes, ma'am.

6 Q The Abu Bakr mosque in Brooklyn, correct?

7 A Yes, ma'am.

8 Q El Taqwa in Brooklyn, correct?

9 A Yes, ma'am.

10 Q And the Al Farooq mosque, correct?

11 A Yes, ma'am.

12 Q And even, as you told us, the Masjid Medina in
13 Manhattan, correct?

14 A Yes, ma'am.

15 Q It would be fair to say that there were various
16 people in these mosques who were collecting money or asking
17 for donations to help the Abouhalima family, isn't that
18 right?

19 A It was very specific mosques who was doing that,
20 ma'am.

21 Q But it was happening, isn't that right?

22 A In specific mosques, yes, ma'am.

23 MS. LONDON: May I have a moment, your Honor. I
24 just broke my pen.

25 THE COURT: Yes.

7113

1 Q In fact, Mr. Salem, you gave a contribution for
2 Mr. -- you gave a contribution to Mohammed Abouhalima for
3 Mahmud's family yourself, didn't you?

4 A Yes, ma'am.

5 Q You gave him a \$25 check, isn't that right?

6 A I don't recall how much. I remember I give
7 him --

8 Q You gave it to him as a check, isn't that
9 correct?

10 A Yes, ma'am.

11 Q That check bounced, didn't it, Mr. Salem?

12 A Yes, ma'am.

13 MS. LONDON: Mr. McCarthy --

14 MR. McCARTHY: Yes.

15 MS. LONDON: -- I would like to ask you again for
16 a stipulation that tape CM48 is recorded on June 19, 1993.

17 MR. McCARTHY: Yes.

18 Q There comes a time several days before the
19 arrests in this case, Mr. Salem, that you go to Mr. Siddig
20 Ali's house and meet with other people there on June 19.

21 A Which other people, ma'am?

22 Q Mr. Amir Abdelgani was present at the beginning
23 part of that meeting on June 19, which is recorded in CM48.

24 A Yes.

25 Q In that meeting, there is a conversation about

7114

1 looking for drivers, is that correct?

2 Do you recall having a conversation with Mr. Ali
3 about looking for drivers to place bombs in tunnels?

4 A Yes, ma'am.

5 Q Mr. Ali asks if Siddig -- excuse me, withdrawn.

6 Mr. Ali asks if Tarig can drive, and Mr. Amir
7 Abdelgani responds that he can. Do you recall that
8 conversation?

9 A Yes, ma'am.

10 Q Mr. Ali then comments: Oh, they are all clever
11 drivers. Do you recall that?

12 A He may said it.

13 Q He didn't know if Mr. Elhassan could drive or
14 not, did he?

15 A Mr. Siddig?

16 Q Right.

17 A If he asked that question apparently he doesn't
18 know.

19 Q It would be fair to say that Mr. Ali makes random
20 comments based on information that he doesn't know anything
21 about, isn't that correct?

22 MR. McCARTHY: Objection.

23 THE COURT: I will allow it.

24 Do you mean as a general matter, Ms. London?

25 A No, ma'am.

7115

1 Q In a general manner?

2 A No, ma'am.

3 Q In this conversation he asks in your presence if
4 Mr. Elhassan can drive, correct?

5 A Yes, ma'am.

6 Q When he hears the answer, that Mr. Elhassan can
7 drive, he responds he's a very clever driver. That was the
8 conversation, was it not?

9 A Yes, ma'am.

10 Q Didn't it occur to you that there is something
11 abnormal on the brain of Mr. Ali?

12 MR. MCCARTHY: Objection.

13 THE COURT: Sustained.

14 Q In this conversation, Mr. Ali tells you, as he
15 has told you on a number of other occasions, that the people
16 who will participate in this do not know because of the
17 secrecy of the subject, do you recall that?

18 A At the beginning, yes, ma'am.

19 Q And even as late as June 19, 1993, he is still
20 saying that the people who participate will not know because
21 of the secrecy of the subject, isn't that correct?

22 A Yes, ma'am.

23 Q At this time he counts Tarig Elhassan as one of
24 the people who will participate, correct?

25 A I think, yes, ma'am.

7116

1 Q At this point you still have not met Tarig
2 Elhassan, correct?

3 A I just heard about him, ma'am.

4 Q As this meeting continues, other people arrive,
5 Mr. Alvarez arrives, I believe Mr. Khallafalla arrives at
6 Siddig Ali's house, correct?

7 A Yes, ma'am.

8 Q There comes a time when a call is placed to
9 Mr. Elhassan to tell him to come over, isn't that correct?

10 A Could be, ma'am.

11 Q Mr. Elhassan is asked if he has a way to come
12 over to Siddig's with the car or if there was someone at the
13 mosque who could bring him there, do you recall that a call
14 was made to him?

15 A Yes, ma'am.

16 Q In fact, Mr. Amir Abdelgani, who spoke to
17 Mr. Elhassan on the phone, responds to you that he has not
18 left yet, do you recall that?

19 A Yes, ma'am.

20 Q And you respond to Mr. Abdelgani: Tell him to
21 come for a half hour and he will leave immediately.

22 Do you recall that?

23 A I'm sorry. Say it again, please.

24 Q When you're told that he has not left yet, you
25 respond to Mr. Abdelgani: Tell him to come for a half hour,

7117

1 and he will leave immediately.

2 Do you recall that?

3 A I may said it, ma'am.

4 Q I refer you, for convenience, to CM48 in the
5 transcript book at page No. 83 of the transcript. CM48,
6 four eight, and the page number at the bottom of the
7 transcript is page 43.

8 THE COURT: 43 or 83?

9 MS. LONDON: I'm sorry. 83. CM48, page 83.

10 Q Looking at the bottom five attributions, where
11 you say: Tell him to come for a half hour and he will leave
12 immediately, Mr. Ali responds: No (unintelligible).

13 You say: Tell him.

14 You are, in fact, ordering him to come over, are
15 you not, Mr. Salem?

16 A No, ma'am.

17 Q Do you see the word "please" there?

18 THE COURT: Sustained.

19 Q Is "please" a word that exists in Arabic?

20 A The way we speak Arabic is different than
21 English. In English "please" is always being placed. In
22 Arabic it's not being placed, ma'am.

23 Q Continuing on the next page, Mr. Ali then says:
24 His wife gets off work at 3 o'clock (unintelligible) for
25 sure together.

7118

1 Then there's mixed voices.

2 You say: Thank you.

3 Mr. Ali says: Three, three.

4 Mr. Abdelgani says: The telephone so he can
5 (unintelligible).

6 Mr. Ali says: Yeah (unintelligible).

7 And then you say: He is missing. He doesn't
8 know what it is?

9 Mr. Ali responds: He is setting a bad example.
10 All this is extremely important (unintelligible). Each
11 (unintelligible) has a different importance or, anyone else
12 could have been able to drive home to this errand. Anyone
13 else could have brought it over there.

14 Do you recall that conversation?

15 A No, ma'am.

16 MR. McCARTHY: Mr. McCarthy, would you stipulate
17 that I read from the transcript accurately.

18 MR. McCARTHY: I do.

19 Q It would be fair to say, would it not, Mr. Salem,
20 that Mr. Elhassan did not arrive that afternoon while you
21 were at Mr. Ali's house, correct?

22 A Yes, ma'am.

23 Q It's been your testimony, has it not, Mr. Salem,
24 that before you record a tape recording you sometimes make a
25 little introduction on the tape as to the time and the date,

7119

1 who you're going to record or where you're going, isn't that
2 correct?

3 A Yes, ma'am.

4 Q In the introduction to the tape which has been
5 marked as CM49, you refer to two individuals who are going
6 to purchase stolen cars and you name one of those
7 individuals as Tarig, do you not, in that introduction?

8 A I may -- I may said it, yes.

9 MS. LONDON: Mr. McCarthy, would you stipulate
10 that CM49 was recorded on June 19?

11 MR. McCARTHY: I'm sorry. I just need a moment.
12 Yes, I will stipulate to that.

13 Q And you again use Tarig's name at a time when you
14 still have not met him, isn't that correct, Mr. Salem?

15 A As a mistake, yes, ma'am.

16 MR. McCARTHY: Your Honor, may I just have one
17 moment with Ms. London.

18 THE COURT: Yes.

19 (Counsel conferred)

20 MS. LONDON: Your Honor, Mr. McCarthy has just
21 asked me to point out to the jury that the first page of
22 CM49 has the date of June 19, that isn't an accurate date.

23 THE COURT: June 18.

24 MS. LONDON: June 18. The correct date is June
25 19.

7120

1 THE COURT: June 19.

2 MR. McCARTHY: Thank you.

3 Q After you leave Mr. Ali's house, later that
4 evening you drive over to Atlantic Avenue and 4th Avenue in
5 Brooklyn, isn't that correct?

6 A Yes, ma'am.

7 Q Would it be fair to say that when you are over
8 there you again you meet Mr. Ali again, isn't that correct?

9 A Yes, ma'am.

10 Q It would be over there at Atlantic Avenue and 4th
11 Avenue in Brooklyn that you meet Mr. Elhassan for the first
12 time, correct?

13 A Not the first time. I saw him before, but that's
14 the first time he come to my car, yes, ma'am.

15 Q That is actually the first time that you have
16 personal contact with him in connection with what you
17 consider this investigation, isn't that correct?

18 A I will say yes, ma'am.

19 Q Over Atlantic Avenue, you and Mr. Ali decide that
20 Mr. Elhassan, that Tarig will drive in your car with you and
21 Mr. Ali over to the safe house, isn't that correct?

22 A Yes, ma'am.

23 Q You and Mr. Ali are sitting in your car and
24 you're waiting for him, correct?

25 A Yes, ma'am.

7121

1 Q And he's further up the street talking to friends
2 on the street, correct?

3 A Yes, ma'am.

4 Q And he keeps you waiting. He keeps on talking,
5 correct?

6 A Yes, ma'am.

7 Q And you wait and you wait, correct?

8 A Yes, ma'am.

9 Q He knows you're waiting for him, right?

10 A I beg your pardon?

11 Q He knows that you're there, isn't that right?

12 A Yes, ma'am.

13 Q He doesn't come to the car, correct?

14 A Yes, ma'am.

15 Q Mr. Ali tells you about how Tarig is -- wants to
16 go to Jerusalem, isn't that right?

17 A There came a time he said that, yes, ma'am.

18 Q You responded to him that he wants to go to
19 Jerusalem: Tell him to cool it down and listen. That's
20 your response, isn't it, Mr. Salem?

21 A Yes, ma'am.

22 Q After that conversation you continue to wait for
23 him, don't you?

24 A Could be.

25 Q Finally, finally, you say in exasperation: Do

7122

1 you want me to beat Tarig when he comes? Do you want me to
2 beat the hell out of him? I'm going to beat the hell out of
3 him. Isn't that what you say, Mr. Salem?

4 A Yes, ma'am.

5 Q But Mr. Elhassan eventually does arrive to your
6 car, isn't that right?

7 A Yes, ma'am.

8 Q And you drive Mr. Ali and Mr. Elhassan to Queens
9 to the garage, correct?

10 A Yes, ma'am.

11 Q On this drive you are recounting to Mr. Ali a
12 conversation that you have had with Mr. Alvarez, correct?

13 A Yes, ma'am.

14 Q You are explaining to Mr. Ali that you, Emad
15 Salem, are not allowed to give out any information about the
16 project, correct?

17 A Yes, ma'am.

18 Q And you explain to Mr. Ali that he is the leader,
19 that you have told Mr. Alvarez that Mr. Ali, Siddig is the
20 leader and all questions are to go to Siddig, correct?

21 A Yes, ma'am.

22 Q At the end of this explanation you call out to
23 Tarig, who's sitting in the back seat, isn't that correct,
24 to ask him if he is awake, correct?

25 A If he --

7123

1 Q You asked Tarig --

2 A Yes, ma'am.

3 Q -- "Are you awake?" Correct?

4 A Yes, ma'am.

5 Q Because you wanted him to hear this explanation
6 of Siddig is the leader, correct?

7 A I want to make sure that he is listening, ma'am.

8 Q This is Mr. Elhassan's first visit to the safe
9 house, is it not?

10 A Yes, ma'am.

11 Q And you tell him in the car on the way over that
12 when you arrive there that he is to make tea for you when
13 you get to the safe house, isn't that right?

14 A I asked him to make tea for me?

15 Q That he is to make tea for everyone when you get
16 there, correct?

17 A I never drink tea, ma'am.

18 Q You asked him to make it for the others, is that
19 correct?

20 A I don't think that I asked him to do tea or to
21 make tea, ma'am.

22 Q You also tell -- withdrawn.

23 On this evening Tarig is wearing his galabia,
24 correct?

25 A Yes, ma'am.

7124

1 Q And you tell him on the way over there that this
2 is the last time he is allowed to wear his galabia,
3 correct?

4 A Yes, ma'am.

5 Q And you're telling us that you are not the boss,
6 are you?

7 A No, ma'am.

8 Q Didn't matter what he wore, did it, Mr. Salem?

9 A It matter because I supposedly in that -- I
10 supposed to show them that I am concerned about the secrecy,
11 and if he come to the safe house with the galabia and
12 bearded, as per Mr. Siddig's comments before, we'll uncover
13 ourself as a group of Muslim people gathered in that place.

14 So I got to make myself that don't wear galabia
15 anymore because that will -- I'm following the path was
16 given me before by Mr. Siddig Ali, ma'am.

17 Q But you also know that it would sound good on the
18 tape, didn't you? It would sound good on the tape recorder
19 that is running in your briefcase, right?

20 A In which effect, ma'am?

21 Q I'm sorry?

22 A It sounds good in which effect?

23 Q It will sound good if it is played to this jury,
24 correct?

25 A Which part?

7125

1 Q "Don't wear your galabia, we don't want anyone to
2 notice you."

3 A Of course he's under the video camera, ma'am.

4 Q After you ordered him not to wear his galabia
5 anymore, Mr. Ali --

6 MR. McCARTHY: Objection.

7 Q -- makes excuses for him --

8 THE COURT: Sustained.

9 Q Mr. Ali makes excuses for the fact that he is
10 wearing his galabia, correct?

11 A Yes, ma'am.

12 Q He says he wasn't prepared to come today,
13 correct?

14 A Yes, ma'am.

15 Q I brought him with me from the mosque, right?

16 A Yes, ma'am.

17 Q He came before he went home, right?

18 A Yes, ma'am.

19 Q Before you get to the safe house, the three of
20 you stop at McDonald's, right? There is a McDonald's near
21 the safe house, right, and you stop there, correct?

22 A Yes, ma'am.

23 Q And you order coffee and you order French fries,
24 right?

25 A Yes, ma'am.

7126

1 Q The bill comes to \$14, isn't that right?

2 A Pardon me?

3 Q The bill came to around \$14?

4 A Around?

5 Q The bill came to around \$14?

6 A Could be, ma'am.

7 Q And you had to pay the bill, didn't you?

8 A Yes, I did.

9 Q Tarig had no money, correct?

10 A I don't know if he has in that time or not.

11 Q In fact, it was later that evening, wasn't it,
12 that Tarig gave you a little bag of change, correct, that
13 you testified about yesterday?

14 A He gave me a plastic bag full of change, yes,
15 ma'am.

16 Q There were no dollar bills in it, were there?

17 A No. It was all change, ma'am.

18 Q And on this ride you make a point of flattering
19 Tarig, isn't that correct?

20 A I --

21 Q You tell him how impressed you were by Sheik
22 Tarig the day he was at the mosque and sat by Sheik Omar,
23 isn't that correct?

24 A Yes, ma'am.

25 Q It would be fair to say that you wanted Tarig to

7127

1 believe that you were sophisticated?

2 A Sophisticated?

3 Q Sophisticated.

4 A I want him to believe that I liked him.

5 Q Also in that conversation Mr. Ali tells Tarig
6 that you have rented the garage under a different name, do
7 you recall that?

8 A Yes, ma'am.

9 Q And Tarig is surprised because you have a fake
10 ID, isn't that right?

11 A Yes, ma'am.

12 Q And in your dealings with Tarig would it be fair
13 to say that in many things, such as possessing a fake ID,
14 he's very naive, isn't that correct?

15 A He's very smart, ma'am.

16 Q He's also very naive, isn't that correct?

17 A He's very smart, ma'am.

18 Q He was very surprised that you had a fake ID,
19 isn't that right?

20 A When he saw it he said he was surprised, yes.

21 Q When you go to the safe house, would it be fair
22 to say that when you first get there it is snack time, you
23 eat, you drink your coffee, you have your French fries and
24 you sit around, correct?

25 A Yes, ma'am.

7128

1 Q In fact, Siddig Ali has a newspaper there, and
2 you are commenting on the headline in the newspaper, how
3 these Islamic groups are sympathizing with Bosnia, correct?

4 A Yes, ma'am.

5 Q You were aware at this time that the garage in
6 Queens was wired for video recordings, isn't that correct?

7 A Yes, ma'am.

8 Q Have you reviewed the video recordings of these
9 meetings at the garage in Queens?

10 A No, ma'am.

11 Q You have not seen any of the video recordings?

12 A After the case?

13 Q After the case.

14 A Yes, I did.

15 Q You have reviewed the video recordings that were
16 made at the various meetings that were held in this garage,
17 is that correct?

18 A After the case taken down.

19 Q After the case came down, correct?

20 A Yes.

21 Q So it would be fair to say that when Tarig gets
22 to the safe house he doesn't really know what to do with
23 himself there, isn't that right?

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

7129

1 Q He picks up a coffee pot and he looks at it and
2 he puts it down, right?

3 A Yes.

4 Q And he picks up a glass and he looks at it, he
5 walks around in a circle and he puts it down, right?

6 A Yes.

7 Q Finally, you tell him to go sweep a floor, isn't
8 that right, you asked him to sweep a floor?

9 A Absolutely not.

10 Q Absolutely not?

11 A Absolutely not, ma'am.

12 I asked him another question, ma'am.

13 Q You asked him to wash a bucket as well, didn't
14 you?

15 A No, ma'am. That's not what I asked him. What I
16 asked him: Did Siddig tell you what is the project? And he
17 said: Yes.

18 I asked him: Did you --

19 THE COURT: That is stricken.

20 THE WITNESS: I'm sorry.

21 THE COURT: She didn't ask you what you asked
22 him.

23 THE WITNESS: I apologize.

24 THE COURT: She asked you whether you asked him
25 to do something. If the answer is no, it is no.

7130

1 Q You asked him to wash a bucket, but you didn't
2 ask him to sweep a floor?

3 A I did not ask him to sweep a floor, definitely
4 not.

5 Q In fact, you and Siddig sit and eat together, and
6 after Tarig has done a few things, he goes down to the other
7 end of the safe house and stands there alone reading his
8 Koran, isn't that right?

9 A I don't recall that, ma'am. He may did it. I
10 remember he led the prayer that night.

11 Q I'm sorry?

12 A I remember that he was the leader of the prayer
13 in that night, ma'am.

14 Q You don't recall that you and Mr. Ali were
15 sitting together eating and he was alone at the other end of
16 the safe house reading his Koran?

17 A Could happen, ma'am. I mean, I'm not denying it.
18 MS. LONDON: Your Honor, may we approach for a
19 moment.

20 THE COURT: Yes.

21 (Continued on next page)

22

23

24

25

7131

1 (At the side bar)

2 THE COURT: Yes.

3 MS. LONDON: Yes, your Honor. I have a number of
4 short segments of the videotape that takes place on this
5 evening, one of them being the segment where Mr. Ali and
6 Mr. Salem are sitting eating and Mr. Elhassan is at the
7 other end of the room with his prayer book.

8 The videotapes are not in evidence. If there is
9 no objection from Mr. McCarthy that is sustained by the
10 court, I would like to play that segment. I just didn't
11 want to put him in a position of asking him to agree to have
12 them played.

13 THE COURT: He's already testified that, yes, he
14 did certain things and then sat down. I don't understand
15 what the point is.

16 MS. LONDON: I guess that would be something that
17 I will have to do on my direct case.

18 THE COURT: I would think. If you want to play a
19 segment on your direct case, you can play it on your direct
20 case.

21 MS. LONDON: OK.

22 THE COURT: Is there anything else?

23 MS. LONDON: There will be other segments that I
24 do want to play that may go more directly to impeachment.

25 THE COURT: Well, I mean --

7132

1 MS. LONDON: I can't ask Mr. McCarthy to agree to
2 them now, because I don't think he knows the context.

3 MR. McCARTHY: Judge, I don't want the defense
4 case done during the government's case. I mean, I think we
5 have had that position pretty consistently. On the other
6 hand, if this is going to be a couple of minutes and it is
7 going to be the difference between Ms. London calling Salem
8 back or not, I don't want to stop her from doing that.

9 THE COURT: I don't have the sense that it is a
10 couple of minutes. You said you had some other things that
11 you wanted --

12 MS. LONDON: There is a couple of minutes of
13 this; there is a couple of minutes of something else. I
14 mean there are various segments of two, three minutes
15 apiece.

16 MR. McCARTHY: I think that if you can't
17 articulate a reason why it is impeachment, there is not any
18 reason at all to --

19 THE COURT: He's testified, yes, that there was
20 this sort of desultory activity. That is already in the
21 record. I don't see what's to be gained by playing the tape
22 so let's go.

23 (Continued on next page)

24

25

7133

1 (In open court)

2 Q You have testified that you have a VCR, a
3 video -- a withdrawn.

4 You have a VCR at the safe house, correct?

5 A We had?

6 Q A videocassette recorder that plays cassettes,
7 correct?

8 A Yes, ma'am.

9 Q After Mr. Elhassan finishes reading his Koran, he
10 comes back over to where you and Mr. Ali are sitting and you
11 put a tape on the VCR for him, isn't that right?

12 A I put it, yes.

13 Q Yes?

14 A Yes.

15 Q And it's a tape about Gamal Badawi, correct?

16 A Yes, ma'am.

17 Q Entitled "Science and the Koran," is that right?

18 A Yes, ma'am.

19 Q Who is Gamal Badawi?

20 A He is one of the scholars who give preaching
21 about Islam, ma'am.

22 Q In your opinion, is he a well-respected Islamic
23 scholar?

24 A I didn't listen to his tapes that much, ma'am.

25 Q Had you ever heard of his name before?

7134

1 A I beg your pardon?

2 Q Had you heard his name before?

3 A Yes, ma'am.

4 Q Sometime after this Mr. Elhassan asks you if you
5 are -- if you, meaning you, Mr. Ali and he are going to pray
6 the evening prayer there, isn't that right?

7 A Yes, ma'am.

8 Q What time is the evening prayer?

9 A We have the -- it depends on the time of the moon
10 down and what time the prayer of -- we have five prayers,
11 and it's different from time to time according to the timing
12 differences.

13 Q Approximately what time did you think the prayer
14 was that he was referring to?

15 A Eight, nine.

16 Q So did you understand by that question that he
17 didn't expect to be there very long?

18 A I beg your pardon?

19 Q Did you understand by his question, his question
20 being: "Are we going to pray the evening prayer here or
21 there?" meaning that he didn't expect to be at the safe
22 house for very long?

23 A No, ma'am.

24 Q You then proceed, do you not, Mr. Salem, to give
25 Mr. Elhassan a very long lecture on how a hand grenade

7135

1 works, isn't that right?

2 A Yes, ma'am.

3 Q In fact, you described to him where the firing
4 pin is, isn't that right?

5 A Yes, ma'am.

6 Q And that there's a capsule and there is a spring
7 and there's an arm and there's a safety pin, correct?

8 A Yes, ma'am.

9 Q And when you hold the arm, there's no problem,
10 and then you have to release the arm and the spring extends,
11 correct?

12 A Yes, ma'am.

13 Q As you are giving him this explanation, you are
14 sitting next to him, right?

15 A Yes, ma'am.

16 Q You have a pad in front of you, isn't that right?

17 A Yes, ma'am.

18 Q You are making all kinds of diagrams, isn't that
19 right?

20 A Yes, ma'am.

21 Q You tell him that the fuse will ignite and it
22 will reach the exploding charge, which is the powder, and
23 then "boom," right?

24 A Yes, ma'am.

25 Q He sits there and he is just listening to you,

7136

1 isn't that right?

2 A Yes, ma'am.

3 Q At this point he makes no response to you,
4 correct?

5 A Yes, ma'am.

6 Q Then you go on to tell him that you have to hold
7 it a certain way if it is damp or leaking, isn't that
8 correct?

9 A I'm sorry, ma'am?

10 Q You explain to him that you have to hold the hand
11 grenade in a certain way in case it is leaking, correct?

12 A That's correct, ma'am.

13 Q And you say that, you know, it has a cap and a
14 thread and the powder might melt, and it will leak through
15 and the leak will turn to crystals and you can't even see
16 the crystals with the naked eye, correct?

17 A Yes, ma'am.

18 Q And the crystals are very sensitive, and if you
19 touch them by your hand they will explode, correct?

20 A Yes, ma'am.

21 Q And Mr. Elhassan looks at you and said, "It would
22 explode?" Correct?

23 A Yes, ma'am.

24 Q Isn't your testimony that the explosive charge in
25 a grenade is a nitroglycerine-containing explosive?

7137

1 A Could you say it, please, again?

2 Q Is it your testimony that the kind of explosive
3 charge in a hand grenade is an explosive that contains
4 nitroglycerine?

5 A No, ma'am.

6 Q It would be fair to -- what do you believe that
7 the charge is? Do you believe -- withdrawn.

8 MR. McCARTHY: Objection, relevance.

9 THE COURT: Sustained.

10 Q Do you believe that the charge is gelignite?

11 MR. McCARTHY: Objection, relevance.

12 THE COURT: Sustained.

13 Q It would be fair to say, would it not, that that
14 explanation of the leaking and the crystals is nonsense,
15 isn't it, Mr. Salem?

16 A It's completely sense and science, ma'am.

17 Q That's your testimony, correct?

18 A Yes, ma'am.

19 Q You then go on to explain to Mr. Salem that
20 anybody who is going to hold this --

21 MR. McCARTHY: Objection to the form.

22 (Counsel conferred)

23 Q Mr. Salem --

24 A Yes, ma'am.

25 Q -- you then go on to explain to Mr. Elhassan that

7138

1 hand grenades have to be held very carefully, correct?

2 A Yes, ma'am.

3 Q That if any of the residue gets on your fingers,
4 your hands have to be washed with vinegar, that was what you
5 said, isn't that right?

6 A Yes, ma'am.

7 Q You give a very long explanation about hand
8 washing with vinegar, isn't that correct?

9 A Yes, ma'am.

10 Q Isn't it a fact that hand washing with vinegar is
11 totally unnecessary and that plain soap and water would wash
12 off any residue?

13 A I believe vinegar will affect the chemistry of
14 the hands more than regular water, ma'am, but anyhow, it
15 wasn't something I want them to do. I want them to believe
16 that that will fool the FBI if they held explosive in their
17 hand, so I'm trying to impress him that if you will do that,
18 you will be safe when you get to the touch with the
19 explosives, ma'am.

20 (Continued on next page)

21

22

23

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7139

1 Q And you also tell him that if fertilizer is used,
2 anybody who uses the fertilizer must also wash their hands
3 in vinegar. Isn't that also what you tell them?

4 A Yes, ma'am.

5 Q That is also nonsense, isn't it?

6 A Nonsense, yes, ma'am.

7 Q In fact, anyone who uses fertilizer washes their
8 hands in soap and water, isn't that right?

9 A Yes, ma'am.

10 Q You were trying to impress Mr. Elhassan, correct?

11 A It was two things here. I am trying impress him
12 with information, and I was trying to make him believe that
13 I am concerned about his safety when he use the fertilizer
14 or the explosives, ma'am.

15 Q Soon after that, you tell Mr. Elhassan that you
16 made a timer, isn't that right?

17 A Yes, ma'am.

18 Q You didn't make it, did you?

19 A No, ma'am.

20 Q And you tell him that this is going to be used in
21 the bomb, the hadduta, the fairy tale that you are making,
22 correct?

23 A Yes, ma'am.

24 THE COURT: Would you come to a convenient break
25 point in the next five minutes, please.

7140

1 MS. LONDON: Yes, sir.

2 Q And Mr. Elhassan's response to you, does every
3 hadduta have a timer, correct?

4 A Yes, ma'am.

5 Q And you say: Yes, yes, of course.

6 And he says: Completely for it.

7 Correct?

8 A Yes, ma'am.

9 Q And it is still your testimony that Mr. Elhassan
10 is not naive?

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 MS. LONDON: Your Honor, this would be a good
14 time.

15 THE COURT: Ladies and gentlemen, we are going to
16 take a break. Please leave your notes and other materials
17 behind. Please don't discuss the case. We will resume
18 shortly.

19 (Recess)

20 THE COURT: All right, Miss London.

21 MS. LONDON: Thank you, your Honor.

22 BY MS. LONDON:

23 Q Before the break, Mr. Salem, we were discussing
24 the night of June 19 in a conversation you were having with
25 Mr. Elhassan, in which you were describing the hand grenade

7141

1 and the timer. Do you recall that?

2 A Yes, ma'am.

3 Q In the same conversation you give Mr. Elhassan an
4 explanation of the World Trade Center bombing, isn't that
5 correct?

6 A Yes, ma'am.

7 Q In fact, you tell him that if the person gets
8 shot in the arm they don't die, correct?

9 A Yes.

10 Q If they get shot in the head they will die,
11 correct?

12 A Yes, ma'am.

13 Q In the World Trade Center case, the bomb was put
14 in the arm of the building, correct?

15 A Yes, ma'am.

16 Q If they had put it in the head of the building,
17 the building would have all come down. That is what you
18 told them, correct?

19 A Yes, ma'am.

20 Q And you went into this in detail, didn't you,
21 Mr. Salem?

22 A Yes, ma'am.

23 Q In fact, as you are describing this, you were
24 physically pulling and pushing Tarig around, weren't you?

25 A I was explaining to him, yes, ma'am.

7142

1 Q But you heaved him off his feet, correct?

2 A I beg your pardon.

3 Q You were pulling him towards you and pushing him
4 away from you, correct?

5 A Not the way you are showing, ma'am. With two
6 fingers I was showing him like this and like that, ma'am.

7 Q It is your testimony that you didn't push him so
8 he is stumbling?

9 A I showed him -- I did pushed him, ma'am.

10 Q And he was stumbling in the room, is that
11 correct?

12 A Yes, ma'am.

13 Q And when you had finished, he just sat down by
14 himself, didn't he?

15 A Yes, ma'am.

16 Q Then, Mr. Salem, you proceeded with a timer
17 demonstration, isn't that right?

18 A Yes, ma'am.

19 Q And you took out your timer and you set it for
20 one minute and explained to Mr. Elhassan that a light will
21 go on at one minute, correct?

22 A Yes, ma'am.

23 Q And you methodically count in Arabic, correct, 1,
24 2, 3, etc., correct?

25 A Yes, ma'am.

7143

1 Q And the light goes on at a minute 5 seconds,
2 correct, at 65 seconds, correct?

3 A Yes, ma'am.

4 Q And Mr. Ali asked you to reset the timer for a
5 minute, so you give a second demonstration, isn't that
6 correct?

7 A Yes, ma'am.

8 Q And this time the timer goes off at 55 seconds,
9 right?

10 A Yes, ma'am.

11 Q And you try a third time, correct, and it still
12 does not go off at a minute, correct?

13 A Yes, ma'am.

14 Q And you give a fourth demonstration, and the
15 timer still does not go off at the time that Mr. Siddig Ali
16 had asked you to set it off, isn't that correct?

17 A Yes, ma'am.

18 Q And with each of these demonstrations, you
19 methodically count in Arabic for second by second by second,
20 isn't that correct?

21 A Yes, ma'am.

22 Q At the end of your demonstration, Mr. Elhassan
23 says to you, would you please please put Gamal Badawi on the
24 VCR.

25 A I am sorry, ma'am.

7144

1 Q At the end of your demonstration, Mr. Elhassan
2 asks if he can watch Gamal Badawi on the VCR, doesn't he?

3 A Yes, ma'am.

4 Q Gamal Badawi is not a terrorist tape, is it,
5 Mr. Salem?

6 A No, ma'am.

7 Q It is not a tape for terrorist training?

8 A No, ma'am.

9 Q And it is not a tape about landmarks, is it?

10 A No, ma'am.

11 Q In fact, it's a very detailed, philosophical,
12 religious, educational tape, isn't it?

13 A Yes, ma'am.

14 Q Dealing with Islamic teachings, correct?

15 A That is correct, ma'am.

16 Q You then tell Mr. Ali, you promised Mr. Ali you
17 will have the timer working by next week, isn't that right?

18 A Yes, ma'am.

19 Q In fact Mr. Ali responds to you that maybe we
20 won't even use it, doesn't he, there is a possibility we
21 will do away with it, isn't that right?

22 A I am sorry, ma'am.

23 Q Mr. Ali, when you tell Mr. Ali that you will have
24 the timer working by next week --

25 A Mr. Siddig Ali?

7145

1 Q Mr. Siddig Ali, yes. He says there is a
2 possibility we just won't use it, correct?

3 A No, ma'am.

4 Q I would ask you to open your transcript book at
5 CM 52 -- and the jurors may open their books, CM 52, at the
6 page numbered 10. In the tenth attribution in the middle of
7 the page, you say, Mr. Salem: It is too much --

8 Is this noise coming from my machine?

9 THE COURT: I don't think so. Try to go ahead.

10 Q It is too much. Decrease it a little. It needs
11 some adjustments and it could be very simply done. Every
12 day.

13 Mr. Ali says: Every day is better.

14 You respond: Yes, of course.

15 Mr. Ali: Then there is a possibility that we
16 will do away with the first one. Understand?

17 You respond: Do away with what?

18 Mr. Ali says: The first one.

19 You say: No, the first one is working fine, this
20 one is working well. Why should we do away with it?

21 A Do away means what, please? I am sorry.

22 Q Why should we do away with it?

23 A Do away means what?

24 Q Get rid of, not use.

25 A I am not sure that is the right word we used,

7146

1 ma'am.

2 MS. LONDON: Would the government stipulate that
3 I have read the transcript accurately?

4 MR. McCARTHY: I stipulate that it was accurately
5 read.

6 Q Mr. Salem, isn't it a fact that whenever Mr. Ali
7 agreed with you on a plan he would very soon after totally
8 ignore it and suggest something else? Isn't that how it
9 happened?

10 MR. McCARTHY: Objection.

11 THE COURT: Are you talking about a specific
12 period of time?

13 Q During the period of time from June 19 to June
14 23.

15 A The second phase of the investigation?

16 Q Yes.

17 A He did not agree with me on a plan. He is the
18 one who put and draw and suggested the plans, ma'am.

19 Q And after he suggested a plan and discussed it
20 with you, he would then change his mind, correct, many
21 times?

22 A Not the second phase, ma'am.

23 Q And it is very soon after this, on the evening of
24 June 19, that Mr. Ali leaves to buy a bottle of diesel fuel,
25 isn't that correct?

7147

1 A Yes, ma'am.

2 Q And you have a conversation alone with
3 Mr. Elhassan, correct?

4 A Yes, ma'am.

5 Q And Tarig asks you, and I direct your attention
6 to page 11 of CM 52, starting at around one third of the
7 page -- Mr. Elhassan asks: Have you been here for a long
8 time?

9 You answer: Yeah.

10 Mr. Elhassan asks: What do you do?

11 You answer: We are working. The time came that
12 we need your help. Siddig said that Tarig must come and
13 help.

14 Mr. Elhassan responded: Of course, God willing.

15 And you ask Mr. Elhassan: Do you know the plan
16 or not?

17 And he responds: No, he told me a general thing.

18 And you ask him: About what?

19 And he responds: He told me about his well
20 studied plan in the tunnel.

21 You say: The tunnel?

22 He says: Yeah, unintelligible. We would like to
23 know.

24 Do you recall that conversation?

25 A Yes, ma'am.

7148

1 Q You then ask Mr. Elhassan: The plan itself, ask
2 Siddig. He will explain it for you. Did Siddig tell you
3 about the Lincoln or Holland Tunnel?

4 Elhassan responds: Both.

5 You did not ask him which tunnel. You told him
6 Lincoln and Holland Tunnel, isn't that correct?

7 A Yes, ma'am.

8 Q Soon after this, there are other defendants who
9 are here in the courtroom today who arrive at the safe
10 house, isn't that correct?

11 A Yes, ma'am.

12 Q In the correspondence of the conversation there
13 is a discussion about getting fuel oil. Do you recall that
14 conversation?

15 A Yes, ma'am.

16 Q Mr. Ali, Siddig Ali suggests punching a hole in a
17 fuel tank in the bottom of an apartment building to let the
18 fuel drain out as the kegs are being filled, isn't that
19 correct?

20 A Yes, ma'am.

21 Q Did you really ask yourself what kind of a
22 hare-brained suggestion that was?

23 MR. McCARTHY: Objection.

24 THE COURT: Sustained and stricken.

25 Q Mr. Ali returned with a bucket of diesel fuel,

7149

1 correct?

2 A Who, ma'am?

3 Q Ali returned with a bucket of diesel fuel?

4 A Yes, ma'am.

5 Q When you left that night, everybody left together
6 at the same time, didn't they?

7 A I am not so sure, ma'am.

8 Q Didn't you drive people back to the city?

9 A Yes, ma'am.

10 Q And certainly you would have been the last to
11 leave, correct, since you had the keys?

12 A Yes, ma'am.

13 Q It would be fair to say that you didn't take that
14 bucket of diesel fuel with you when you left, did you?

15 A No, I did not, ma'am.

16 Q The next day you made a trip to Connecticut with
17 Mr. Ali, correct?

18 A Yes, ma'am.

19 Q In between leaving the safe house that night and
20 going to Connecticut, did you not return to the safe house,
21 correct?

22 A I don't think so, ma'am.

23 Q After you get brought back from Connecticut the
24 next day, which would be June 20, you drop off Mr. Siddig
25 Ali in the afternoon, correct, after you return from

7150

1 Connecticut?

2 A Yes, ma'am.

3 Q And in the afternoon you spend time with Barbara
4 Rogers, correct?

5 A Could be. I don't recall.

6 Q And later in the evening you go over to the safe
7 house by yourself, correct?

8 A Could be.

9 Q And you wait there for approximately maybe two
10 hours before anybody else arrives, correct?

11 A Could be, ma'am.

12 Q That evening you decide that there should be a
13 beeper and code system, correct?

14 A That was Mr. Siddig's instructions, ma'am.

15 Q And the beeper and code system is such that
16 anybody who is arriving should make a phone call to the
17 beeper. Whose beeper were they going to call?

18 A My beeper, ma'am.

19 Q Make a phone call to your beeper, correct?

20 A Yes, ma'am.

21 Q And you would give them your beeper number,
22 correct?

23 A Yes, ma'am.

24 Q And then you would also assign everybody a code
25 number, a personal code number, correct?

7151

1 A No, that is not correct. Mr. Siddig did, ma'am.

2 Q Did Siddig assigned a code number personal code
3 number to each person, correct?

4 A Yes, ma'am.

5 Q And there was also a second code of, I believe,
6 three numbers, which would signify I am coming in, or a set
7 of numbers to signify I am not coming, correct?

8 A That was Mr. Siddig's also, ma'am.

9 Q And this was discussed that evening, correct?

10 A Yes, ma'am.

11 Q And it was reviewed very carefully that evening,
12 correct?

13 A Yes, ma'am.

14 Q And it would be fair to say that Mr. Elhassan
15 never used the code, did he? He never called you on the
16 beeper, correct?

17 A I don't think so.

18 Q And it would be fair to say that in the course of
19 the next few days, that these defendants couldn't remember
20 their code numbers, correct?

21 A I didn't ask him, ma'am.

22 Q They couldn't remember the message numbers,
23 correct?

24 A I didn't ask him, ma'am.

25 Q Isn't it fair to say that the beeper system never

7152

1 worked, correct?

2 A Sometimes worked, sometimes not, ma'am.

3 Q And there were numerous conversations about how
4 you've got to remember how to use the code, correct?

5 A Yes, ma'am.

6 Q You testified that there was a time when you met
7 Mr. Elhassan and others at Masjid Medina and he picked up a
8 garbage can on the street, correct?

9 A Yes, ma'am.

10 Q And in the course of the conversation with you
11 and others in the car, you, meaning you all in the car, said
12 that Tarig is pretending that he is homeless, correct?

13 A Yes, ma'am.

14 Q And that he looks like a homeless person,
15 correct?

16 A Yes, ma'am.

17 Q And I think Mr. Siddig Ali said that he looks
18 among the homeless, correct?

19 A He looks like living among the homeless.

20 Q And that the homeless people are his friends,
21 correct?

22 A Yes, ma'am.

23 Q And that he knows them all by name, correct?

24 A Yes, ma'am.

25 (Continued on next page)

7153

1 Q After you left the Masjid Medina that evening,
2 you drove with Mr. Ali, Mr. Elhassan and others over to the
3 garage in Queens, correct?

4 A Yes, ma'am.

5 Q In the course of this drive, Mr. Elhassan has a
6 discussion with you and Mr. Ali about the George Washington
7 Bridge, isn't that right?

8 A Yes, ma'am.

9 Q In fact, Mr. Elhassan says to you that the
10 operation of blowing it up would do nothing because the
11 bridge is a suspended bridge, correct?

12 A Yes, ma'am. I think something like -- I'm not
13 sure of the details of this conversation. I know we talked
14 about blowing up the Washington Bridge.

15 Q I would ask you to look at CM59 on page 14, the
16 sixth attribution down, Mr. Elhassan says the operation of
17 blowing it up would do nothing because the bridge is a
18 suspended bridge. Do you recall him saying that, the sixth
19 attribution?

20 A Yes, one second.

21 It's being written here, ma'am, but I don't have
22 a recollection for it.

23 MS. LONDON: Mr. McCarthy, would you stipulate
24 that I read that attribution correctly?

25 MR. MCCARTHY: Yes, I do stipulate.

7154

1 Q Then there is a further conversation about how
2 the cables that connect it are strong and that a center
3 column would have to be demolished, do you recall that
4 conversation? Then Mr. Elhassan talks to you about somebody
5 that he knows who is an engineer who will show him about it.

6 You testified to us about that, correct?

7 A Yes, ma'am. But the discussion of the engineer,
8 I testified about it, it was inside the safe house, not this
9 one, ma'am.

10 Q There is a conversation here about an engineer
11 where Mr. Ali asks Mr. Elhassan if you made an appointment
12 for Monday, too, meaning an appointment with this engineer
13 for Monday, isn't that correct?

14 A Yes, ma'am.

15 Q Mr. Elhassan says: I did not take him over
16 there. He told me these things (unintelligible). He told
17 me, why do you want these things? I told him I don't need
18 them (unintelligible) but I know if there is something for
19 the future after five or six months or even after two years,
20 if we ask him for something, he will do it because he knows
21 these things. He has blueprints and plans. Correct?

22 A Yes, ma'am.

23 Q Then the conversation turns more to gossip,
24 correct, about how this person's father is a doctor in Port
25 Sudan, and the father --

7155

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q Did you really believe that Tarig Elhassan, this
4 man, my client sitting over there --

5 MR. McCARTHY: Objection, relevance.

6 THE COURT: Sustained.

7 Q Did you believe that Mr. Elhassan --

8 MR. McCARTHY: Objection.

9 Q -- had a friend who was an engineer?

10 THE COURT: Sustained.

11 Q Also, in the course of this drive to the safe
12 house, there is a discussion again about going to the
13 Philippines, correct?

14 A Yes, ma'am.

15 Q Mr. Elhassan again, Mr. Elhassan says again,
16 there is nothing more important than Jerusalem, isn't that
17 correct, he talks again about going to Jerusalem, correct?

18 A Yes, that was his focus from the beginning.

19 Q After you arrive at the safe house, it would be
20 fair to say that you have another discussion about the
21 engineer who is going to do a study, isn't that right?

22 A Yes, ma'am.

23 Q In fact, Mr. Elhassan tells you and Mr. Ali that
24 the engineer has said to him that he can prepare a study on
25 all of this -- I'm reading from CM58 on page 1, the longest

7156

1 attribution on the page, which is four up from the bottom.
2 Mr. Elhassan says: He told me I could prepare a study of
3 all of this -- withdrawn. He told me, "I could prepare a
4 study on all this."

5 I told him, "If I want from you, for example, to
6 prepare a study for me to all to the canals and to things in
7 America."

8 You respond: (Unintelligible).

9 He told me, "It takes time."

10 Do you recall that conversation?

11 A Yes, ma'am.

12 Q Mr. Elhassan goes on to say that he told this
13 person the studies are for fun. I want you to give me the
14 study, and I'll send it to the Sudan because those are our
15 enemies, and he, the engineer, said it will take a very long
16 time.

17 A I'm sorry, I'm lost here, ma'am.

18 Q On the top of page 2.

19 A Yes. Mr. Elhassan here told me?

20 Q Right. It will take some time to prepare the
21 studies. Mr. Elhassan told him he wanted the studies for
22 fun for the people with us, I want you to give me the study.
23 I will send it Sudan because those are our enemies. He said
24 it will take a very long time.

25 You say: Yeah.

7157

1 Mr. Elhassan goes on: Any country is possible to
2 do these things and use it. I told him the study is only
3 for fun and to serve Muslims in the far future.

4 Then you ask him what other countries you thought
5 he might send it to.

6 And Mr. Elhassan goes on to list a list of
7 countries, and he lists the Fatah Organization, Sudan,
8 Palestinians inside Hamas, possible to Pakistan and
9 Afghanistan.

10 You ask him: How long will it take to do this,
11 because today is the 1st, isn't that correct? We're now on
12 page 3.

13 A Yes, ma'am.

14 Q You recall that conversation?

15 A Yes, ma'am.

16 Q In the course of this conversation Mr. Elhassan
17 says that this engineer is not willing to participate in the
18 work, he does not know the purpose, correct?

19 Do you recall that?

20 A He said that he is suspecting what we doing, but
21 he doesn't know in fact, ma'am.

22 Q Mr. Elhassan, continuing to talk about this
23 engineer says, he then told the engineer, you take care of
24 the study part when it takes care on to money I can take
25 care of that part as well.

7158

1 MS. LONDON: Reading from page 7, Mr. McCarthy.

2 Q You respond: Um.

3 Mr. Elhassan says: I told him we'll work with my
4 money. We're not going to work with your money.

5 You respond: Um.

6 Did you believe that Mr. Elhassan had money to
7 work with?

8 A Yes, ma'am.

9 Q You went to the Masjid Medina, isn't that
10 correct?

11 A I beg your pardon.

12 Q You went to Masjid Medina, isn't that correct?

13 A Yes, ma'am.

14 Q Mr. Ali had told you in the prior conversation
15 with him that Mr. Elhassan spends a lot of time at the
16 mosque and even sleeps there, correct?

17 A Yes, ma'am.

18 Q It would be fair to say that the Masjid Medina is
19 not a rich-looking building, isn't that correct?

20 A No, it is not, ma'am.

21 Q That's not the correct assessment of the Masjid
22 Medina?

23 A It's not a rich-looking building, ma'am.

24 Q In fact, it is in a poor neighborhood, isn't it,
25 Mr. Salem?

7159

1 A It's normal.

2 Q I'm sorry?

3 A I mean, no, it's not poor -- it's a regular
4 neighborhood, ma'am.

5 Q Would you say that it is -- it is at 11th Street
6 and First Avenue, correct?

7 A That's it, yes, ma'am.

8 Q In your association with Mr. Elhassan, did he
9 ever buy you a meal?

10 A I beg your pardon?

11 Q In your brief association with Mr. Elhassan, did
12 he ever buy you a meal?

13 A No, ma'am.

14 Q He never even bought you a cup of coffee, did he?

15 A No, ma'am.

16 Q He never ever bought, he never even bought a cup
17 of coffee for the group, did he?

18 A No, ma'am.

19 Q Continuing in CM58 on page 7, Mr. Elhassan says,
20 continuing the engineer discussion: He told me --

21 A Page, please?

22 Q We are one, two, three four, five, six, seven
23 eight, nine attributions from the bottom.

24 MR. McCARTHY: I think he asked for the page.

25 MS. LONDON: I'm sorry?

7160

1 MR. McCARTHY: The page.

2 Q Page 7, Mr. Salem, I'm sorry.

3 Mr. Elhassan says: He told me on Monday I will
4 gather all the books and bring them to you. I will come
5 this coming Monday.

6 And you respond: Very good.

7 Correct?

8 A Yes, ma'am.

9 Q And Mr. Elhassan then adds: (Unintelligible) I
10 will get them from the library. Correct?

11 A Yes, ma'am.

12 Q The books that the engineer was bringing were
13 library books, correct?

14 A Yes, ma'am.

15 Q This engineer never came to the safe house,
16 correct?

17 A There was no time for him to come, ma'am.

18 Q The question is if he ever came to the safe
19 house.

20 A No. No, ma'am. I'm sorry, he did not.

21 Q You also said in the course of this evening that
22 you had requested of Mr. Ali and Mr. Elhassan old T-shirts,
23 isn't that correct?

24 A Yes, ma'am.

25 Q You complained to them that they're not here yet,

7161

1 correct?

2 A Could be, ma'am.

3 Q Mr. Elhassan never brought you old T-shirts, did
4 he?

5 A I believe it was some piece of cloth over there,
6 and we used it, ma'am.

7 Q Mr. Elhassan never brought you an old T-shirt,
8 did he?

9 A No, ma'am.

10 Q Continuing in the discussion that evening,
11 Mr. Ali then tells you that he has bad news about the "big
12 house," the United Nations, correct?

13 A Yes, ma'am.

14 Q He tells you that the parking is not underneath,
15 correct?

16 A Yes, ma'am.

17 Q He proposes that he will go in and rent a car and
18 go into one of the United Nations garages, correct?

19 A Yes, ma'am.

20 Q He says, in fact, to you that he will wear his
21 best suit, like a flower, like a rose he will enter by
22 himself and park, isn't that correct?

23 A He will -- I'm sorry, the first?

24 Q He will wear his best suit --

25 A Yes, ma'am.

7162

1 Q -- like a flower, like a rose, he will enter by
2 himself and park, isn't that correct?

3 A Yes, ma'am.

4 Q It is still your testimony that Mr. Siddig Ali is
5 a normal man?

6 A Normal in which manner, in which effect, ma'am?

7 Q Normal in terms of mental stability, Mr. Ali?

8 A He's not normal like regular people, but he have
9 different abnormality in the directions he want to go to,
10 ma'am.

11 Q As that conversation continues there is a
12 discussion about the water level, correct --

13 A Yes.

14 Q -- of the river?

15 A Yes.

16 Q This conversation is in relation to the fact that
17 the parking garage of the United Nations is close to the
18 river?

19 A No, I believe that was regarding to the tunnel,
20 when the water level -- when the bomb goes off and the water
21 get into the tunnel, it will drown the city because the
22 tunnel beneath the level of the water, ma'am.

23 Q Then there is a long discussion, is there not,
24 about whether the riverbanks are above the street level or
25 whether the water level is below the street level and which

7163

1 way it will go and how it will occur, and this becomes --
2 this is a lengthy discussion, is it not?

3 A Yes, ma'am.

4 Q Finally, you get annoyed and you say, simply say
5 the tunnel will be filled with water, correct?

6 A Yes, ma'am.

7 Q Then the discussion continues with Mr. Ali
8 talking about how long it takes to drive through the tunnel,
9 isn't that right?

10 A Yes, ma'am.

11 Q And whether it will be two minutes or three
12 minutes or four minutes, depending on the time of day, isn't
13 that correct?

14 A Yes, ma'am.

15 Q How many minutes that he will need, isn't that
16 right?

17 A Yes, ma'am.

18 Q Then the discussion turns to what time of day the
19 drive through the tunnel should occur, isn't that right?

20 A Yes, ma'am.

21 Q Mr. Ali decides that it should be at night, isn't
22 that right?

23 A Yes, ma'am.

24 Q The first suggestion is that it would be at 3
25 o'clock in the morning, isn't that right?

7164

1 A I think, yes, ma'am.

2 Q Then right after that it's 2 o'clock in the
3 morning, correct?

4 A Yes, ma'am.

5 Q And then changes in the course of the same
6 conversation to 3:30 in the morning, correct?

7 A Yes, ma'am.

8 Q And straight-away Mr. Ali says: No, let's make
9 it four o'clock, right?

10 A Yes, ma'am.

11 Q Because the only people awake at that time would
12 be Muslims, right?

13 A Yes, ma'am.

14 Q Then Mr. Ali says: Well, no, for example, maybe
15 we'll make it 2:30, correct?

16 A We talked a lot about the time frame. I am not
17 sure exactly -- that's the sequence, but, yes, we did
18 discuss the time --

19 Q And in discussing the sequence, the time just
20 goes back and forth -- 2:30, no, 3, no, 4, no 2 -- correct,
21 with everybody just saying numbers at random, right?

22 A No, it was not random. Everybody is saying his
23 opinion, what's the best time to blow the bomb in the
24 tunnel.

25 Q Finally, Mr. Ali says: For example, for example,

7165

1 say 2:30. Right?

2 Mr. Elhassan responds to him: That's fine.
3 That's a good time because calling God at that time will be
4 effective. Do you recall him saying that?

5 A Yes, ma'am.

6 Q It's still your testimony that he is not naive,
7 but very intelligent?

8 A I think he's radical. I think he's very
9 extremist in his belief.

10 Q I'm asking you if you still thought he was
11 intelligent?

12 A Very intelligent, ma'am.

13 Q When he said that calling God at that time would
14 be very effective --

15 A Yes, ma'am.

16 Q -- did you think he was going to ask to borrow
17 your mobile phone so the call would go through?

18 A To God?

19 Q Yes, to God, yes.

20 A I don't get it, ma'am.

21 Q Mr. Elhassan says: That's a fine good time
22 because calling God at that time will be effective.

23 Do you recall him saying that?

24 A Yes, ma'am.

25 Q Do you believe he was going to ask to borrow your

7166

1 mobile phone and hope the call goes through?

2 A No. You see, that's the translation. It's not
3 giving the meaning. "Calling God" here means praying to God
4 will be effective to enhance the bombing, ma'am.

5 Q At 2:30 in the morning it would be more effective
6 to pray to God than to pray to God at 1:30 in the morning,
7 is that your testimony?

8 A That's the Islamic way, that when you wake up at
9 night --

10 Q My question is --

11 A I'm sorry.

12 Q -- is it more effective --

13 A Yes.

14 Q -- to pray to God at 2:30 than it is at 1:30?

15 A Not 1:30 and 2:30. During the night it's more
16 effective than during the day, ma'am.

17 Q Allah has other concerns during the day, is that
18 what you are trying to say to us?

19 A I'm sorry, ma'am?

20 Q Are you trying to insinuate to us that Allah has
21 other concerns during the day?

22 A I did not say that, ma'am.

23 Q There is then a discussion about disguises, is
24 there not?

25 A Yes, ma'am.

7167

1 Q And Mr. Ali suggests that the person who is going
2 to drive in the tunnel should be well disguised, does he
3 not?

4 A Yes, ma'am.

5 Q He said that he should dress American with a
6 hundred percent chains, correct?

7 A Yes, ma'am.

8 Q Meaning a lot of jewelry, right?

9 A No, ma'am.

10 Q What did you understand "a hundred percent
11 chains" to mean?

12 A "Chains" he was suggesting at that time that he
13 wear like very funky, a lot of chains and handcuffs hanging
14 here and -- you know how these people put leather jackets,
15 so that will deceive the cameras in the tunnel, ma'am.

16 Q There were discussions of whether the hair should
17 be long or the head should be shaved, is that right?

18 A Yes, ma'am.

19 Q And Mr. Siddig and Mr. Ali -- withdrawn.

20 Mr. Elhassan suggests that he should disguise
21 himself as a black person, correct?

22 A I'm sorry, say that again?

23 Q Mr. Elhassan suggests that he should be disguised
24 as a black person, correct?

25 A No, ma'am.

7168

1 Q Mr. Elhassan: My looks will be changed close to
2 blacks. Isn't that what he says to you?

3 And Siddig laughs and says: That way you'd look
4 as no different, as not that different.

5 And you all laugh at him, isn't that right?

6 A Maybe happened, yes.

7 Q As this disguise discussion continues, there is a
8 discussion about dressing up to look like Sikhs S-I-K-H-S,
9 Indian Sikhs, isn't that correct?

10 A Yes, ma'am.

11 Q That hair should be braided, correct, and the
12 beard should be braided, correct?

13 A Yes, ma'am.

14 Q And that the Sikh dress is a western suit with
15 the braided hair and the turban, correct?

16 A Yes, ma'am.

17 Q Mr. Elhassan interjects: Oh, I will be like a
18 Sikh. I know one. I know one of the Sudanese group in
19 Qatar.

20 Do you recall him saying that he knew one Sikh?

21 A I mean, it was a long conversation, ma'am.

22 Q No disguise is agreed upon, is there, Mr. Salem?

23 A Yes, there is, ma'am.

24 I believe, if I recollect correctly, that

25 Mr. Amir Abdelgani, he the one who will dress up as a Sikh

7169

1 because he will drive into Manhattan where he lives, ma'am.

2 Q So it is your testimony that the Sikh is a
3 disguise that is agreed upon?

4 A Yes, the person in the tunnel will be Sikh, yes.

5 Q There is also a discussion about a method of
6 communication, is there not?

7 A Yes, ma'am.

8 Q It is Mr. Ali's suggestion that those involved
9 should communicate from inside the tunnel to outside the
10 tunnel by walkie-talkies, that's his first suggestion, isn't
11 that right?

12 A Yes, ma'am.

13 Q He doesn't want there to be any voices going over
14 the walkie-talkies, correct?

15 A Yes, ma'am.

16 Q So it's his suggestion that people outside the
17 tunnel communicate with the person inside the tunnel by
18 tapping into a walkie-talkie, correct?

19 A Making certain sounds.

20 Q Or alternatively by whistling into a
21 walkie-talkie, correct?

22 A Yes, ma'am.

23 Q And then he comes up with a third idea: To go to
24 a toy store and buy toy birds that go queek so that
25 everybody can queek into a walkie-talkie from outside the

7170

1 tunnel to inside the tunnel, isn't that right?

2 A Yes, ma'am.

3 Q Would it be fair to say that there can be a lot
4 of static noise on communications from outside the tunnel to
5 within the tunnel, isn't there, Mr. Salem?

6 A It depends on the type of the walkie-talkie,
7 ma'am.

8 Q The more expensive the walkie-talkie, the better
9 it receives and transmits, right?

10 A That's correct, ma'am.

11 Q This was a group of people that were sorely
12 lacking in finances, weren't they, Mr. Salem?

13 A Yes, ma'am.

14 Q Didn't you believe when Siddig Ali starts talking
15 about queeking into walkie-talkies that you were dealing
16 with a raving lunatic?

17 A No. I believed I was dealing with somebody who
18 is very dedicated and trying to take any avenue to
19 accomplish his thoughts, ma'am, with his group.

20 Q This entire discussion didn't give you the
21 impression that this is a bunch of young men sitting around
22 with coffee letting a discussion go wherever it basically
23 amused them?

24 A No, ma'am.

25 Q And you took queeks in walkie-talkies seriously?

7171

1 A Absolutely, ma'am. It works.

2 Q You bought a toy bird, Mr. Salem?

3 A No, we did not, ma'am.

4 Q Have you queeked into the Lincoln Tunnel?

5 A No, not really.

6 Q Have you received queeks from the Lincoln Tunnel?

7 A No, ma'am.

8 Q How about whistling?

9 Have you ever been whistled at from inside the
10 Lincoln Tunnel through a walkie-talkie?

11 A No, ma'am.

12 Q Have you ever received whistles in the Lincoln
13 Tunnel from a walkie-talkie?

14 A No, ma'am.

15 Q What about clapping? If I asked you those
16 questions, would you give me the same answers?

17 A Yes, ma'am.

18 Q He never suggested communicating by fax, did he?

19 A Yes, he did.

20 Q Into the Lincoln Tunnel I'm talking about.

21 A No, ma'am.

22 Q It was soon after this conversation that
23 Mr. Alvarez arrived at the safe house, isn't that correct,
24 at the garage in Queens?

25 A Yes, ma'am.

7172

1 Q And he was unable to remember the right beeper
2 number, isn't that right?

3 A Yes, ma'am.

4 Q And Mr. Khallafalla arrived soon after the
5 conversation we have been describing, isn't that right?

6 A I'm sorry. Mister?

7 Q Khallafalla.

8 A Yes, ma'am.

9 Q And he was unable to get the beeper code. He did
10 not beep you before he came in, did he?

11 A I'm not sure, ma'am.

12 Q Your recorder was going on that evening, was it
13 not? The conversations were recorded, weren't they?

14 A My briefcase?

15 Q Yes.

16 A Could be.

17 Q You have reviewed tape recordings from that
18 evening, have you not?

19 A Yes, ma'am.

20 Q It would be fair to say that there were no coded
21 beeps whatsoever to you on that evening, were there,
22 Mr. Salem?

23 A No. There is some code beeping on my beeper, but
24 I'm not sure if it was in this evening or different evening,
25 ma'am.

7173

1 Q It would be fair to say that in your dealings
2 with Mr. Elhassan between June 19 of 1993 and June 24 of
3 1993, from the first time he came to the safe house with
4 you, that he is a deeply religious man, isn't that right?

5 A Yes, ma'am.

6 Q In fact, his advice on this evening, was it not,
7 was that those present should go home, take the Koran and
8 read the whole Al Bakr, correct?

9 A Yes, ma'am.

10 Q And it should be read in one prostration,
11 correct?

12 A Yes, ma'am.

13 Q You're familiar with the Koran, are you not,
14 Mr. Salem?

15 A Yes, ma'am.

16 Q This is a very long portion of the Koran, is it
17 not?

18 A Yes, ma'am.

19 Q It recounts the history of Israel, correct?

20 A Yes, ma'am.

21 Q It places Ibrahim within the Islamic religious
22 tradition, correct?

23 A Yes, ma'am.

24 Q Details the lives of Moses and Jesus, correct?

25 A Yes, ma'am.

7174

1 Q Sets out various ordinances on a number of
2 topics, like food and drink, correct?

3 A Yes.

4 Q Bequests?

5 A Yes, ma'am.

6 Q Treatment of women and orphans, correct?

7 A Yes, ma'am.

8 Q This is his recommended jihad material?

9 A I beg your pardon?

10 Q This is what he is recommending as material to
11 read?

12 A That's what he recommended to read so can God
13 bless us in our operation, ma'am.

14 Q Now, this section of the Koran contains
15 references to jihad, doesn't it?

16 A I'm not sure about that, ma'am.

17 Q In the Koran, it counsels prospective mujahideen
18 not to transgress limits. That is in the Koran, is it not?

19 A Not to?

20 Q Transgress limits that are set by the Koran,
21 correct?

22 A Yes, ma'am.

23 Q And that war should be conducted only in
24 self-defense, correct?

25 A Yes, ma'am.

7175

1 Q And that war should be conducted only within very
2 carefully demarcated limits, correct?

3 A Yes, ma'am.

4 Q On this night at the safe house it would be fair
5 to say there are no barrels of fuel there, correct?

6 MR. McCARTHY: Can we make clear which night?

7 MS. LONDON: We are talking about the night of
8 June 21/June 22, Mr. McCarthy.

9 MR. McCARTHY: Thank you.

10 A Yes, ma'am.

11 Q Would it be fair to say that the large bags of
12 fertilizer are not at the safe house either, is that
13 correct?

14 A I'm not sure about the date, ma'am.

15 Q This is June 21 -- June 20 -- I'm sorry. June 21
16 and June 22 there are no bags of fertilizer there either,
17 are there, Mr. Salem?

18 A No, ma'am.

19 Q In fact, during the conversation in which the
20 group was present, there comes a time when you actually go
21 to sleep on the floor, isn't that right?

22 A Yes, ma'am.

23 Q There is no work done there that night, is there?

24 A There was discussions, ma'am.

25 Q Yes. People sitting around in a group talking,

7176

1 talking, talking, correct?

2 A Yes, ma'am.

3 Q Have you reviewed the videotape of this evening?

4 A Yes, ma'am.

5 Q It would be fair to say that in the course of
6 this evening or during the last hour at the safe house that
7 Tarig makes coffee, correct?

8 A I'm not sure. Coffee or tea, yes, he made
9 something, yes, ma'am.

10 Q Coffee or tea, correct?

11 A Yes, ma'am.

12 Q But your testimony still is that you don't drink
13 tea?

14 A Me?

15 Q Yes.

16 A No, ma'am.

17 Q Tarig washes the floor, correct?

18 A Washes the floor?

19 Q Washes the floor, correct?

20 A No, ma'am.

21 Q He serves coffee to the others, correct?

22 A Yes, ma'am.

23 Q He picks up the tea bags, plugs in the hot water
24 heater, isn't that right?

25 A Yes, ma'am.

7177

1 Q And he makes and serves tea to everybody or to
2 those who drink tea, correct?

3 A Yes, ma'am.

4 Q And then he washes the floor some more, isn't
5 that right?

6 A He never washes the floor, ma'am.

7 THE COURT: Ms. London, if you could come to a
8 convenient break point in the next five minutes.

9 MS. LONDON: Yes, your Honor.

10 Q And he again watches the Gamal Badawi tapes on
11 the VCR that night, doesn't he?

12 A Probably.

13 Q In fact, every opportunity he got he would go
14 over and watch these tapes on the VCR, isn't that right?

15 A Yes, ma'am.

16 Q You testified here and the jury saw here the
17 Lincoln Tunnel video. Do you recall seeing that video here
18 with the jury?

19 A Yes, ma'am.

20 Q You didn't tell Mr. Elhassan that you were making
21 this video, did you?

22 A No, ma'am.

23 Q You had a VCR at the garage, didn't you?

24 A I beg your pardon?

25 Q As you told us, you had a VCR at the garage,

7178

1 correct?

2 A Yes, ma'am.

3 Q You never showed Tarig this video, did you?

4 A No, ma'am.

5 Q He wasn't in the car with you when you and Siddig
6 made the video?

7 A No, ma'am.

8 Q In fact, would it be fair to say that the only
9 time Mr. Elhassan was ever in a car with you was when you
10 picked him up to bring him to the garage in Queens, correct?

11 A I believe when I picked him up from Atlantic
12 Avenue --

13 Q Correct.

14 A -- and when I picked up him up from the 11th
15 Street mosque, when he stole -- he picked up the buckets.
16 That's what I recall right now, ma'am.

17 Q Now, on the evening of June 23, the evening of
18 June 23 going the into the early morning of June 24, the
19 night of the arrests, were you wearing a body wire on that
20 evening?

21 A Yes, ma'am.

22 Q That was the body wire that was in the special
23 pants that the FBI gave you?

24 A Yes, ma'am.

25 Q Have you listened to any tape recordings of that

7179

1 evening?

2 A Yes, ma'am.

3 Q You have?

4 A Yes, ma'am.

5 Q You have listened to tape recordings of the
6 evening of June 23/June 24, the final night at the safe
7 house?

8 A Yes, I listened to some of it, yes.

9 Q Who provided you with the tape recordings?

10 A The cassettes or the pants?

11 Q No. The cassettes, Mr. Salem.

12 A The government.

13 Q The tape recordings that you listened to from
14 that evening are tape recordings that were made from those
15 pants?

16 A I'm not sure if it's from the pants or from the
17 safe house or from the briefcase. It was three -- more than
18 one device.

19 Q Did you have your briefcase with you that
20 evening?

21 A Yes, ma'am.

22 Q To your knowledge, did you turn on your recorder
23 in the briefcase that evening?

24 A I am not sure, ma'am.

25 Q Isn't it a fact, Mr. Salem, that there are no

7180

1 tape recordings for this final night, the night of June
2 23/June 24?

3 MR. McCARTHY: Objection.

4 THE COURT: He can answer it, if he's heard.

5 A There is tape recording, ma'am, and I heard it
6 and watched it, also.

7 Q You testified, Mr. Salem, that on this evening
8 that Tarig was at the safe house when Mr. Wahid Saleh
9 arrived at the safe house, wasn't that your testimony?

10 A I'm not sure if he was there or Mr. Wahid came
11 and then he left, I don't recall exactly. I recall that
12 Mr. Amir in that time was there -- all right. That's it. I
13 don't recall this -- I don't want to continue.

14 (Continued on next page)

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7181

1 Q So it is your testimony now that Mr. Tarig was
2 not at the safe house --

3 A I did not say he was not. I said I'm not sure
4 that he was in the safe house the minute Mr. Wahid was there
5 or not. I recall Mr. Tarig -- or Mr. -- I'm sorry.

6 THE COURT: Don't tell us what you do recall.

7 THE WITNESS: I'm sorry.

8 THE COURT: She asked you only about whether he
9 was there when Mr. Wahid Saleh was.

10 All right. Go ahead.

11 THE WITNESS: I'm sorry.

12 MS. LONDON: One moment, your Honor.

13 Your Honor, may we approach for a minute.

14 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Yes.

3 MS. LONDON: Your Honor, I probably have about
4 another ten minutes to go. Do you want to continue or do
5 you want me to just --

6 THE COURT: I will leave it to you. I mean, I
7 guess we can continue. I think they have had a long day.
8 If you think that you could, without compromising the
9 integrity of what you are doing, do it tomorrow and finish
10 tomorrow, then fine. If you tell me you can't, then we will
11 continue.

12 MS. LONDON: No, I can.

13 THE COURT: Can you do that?

14 MS. LONDON: I could easily finish tomorrow very
15 briefly.

16 THE COURT: All right. Then let's do that
17 because they have been sitting here for a long day, and I
18 have a call that I have to make. So we will break for the
19 day, and you will finish up with your ten minutes tomorrow.

20 MS. LONDON: Yes, your Honor. Off the record?

21 THE COURT: Off the record.

22 (Discussion off the record)

23 (In open court)

24 THE COURT: Ladies and gentlemen, we are going to
25 break for the day. Please don't discuss the case or see or

7183

1 hear or read anything about the case and we will resume
2 tomorrow. I should tell you for your own planning purposes
3 that we are going to break tomorrow at midday. We will not
4 sit in the afternoon. So you can make whatever plans you
5 have to make for the afternoon. We are going to sit half a
6 day tomorrow. Have a pleasant evening, good night.

7 (The jury was excused)

8 (Proceedings adjourned to Thursday, April 6, 1995
9 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

April 6, 1995
9:40 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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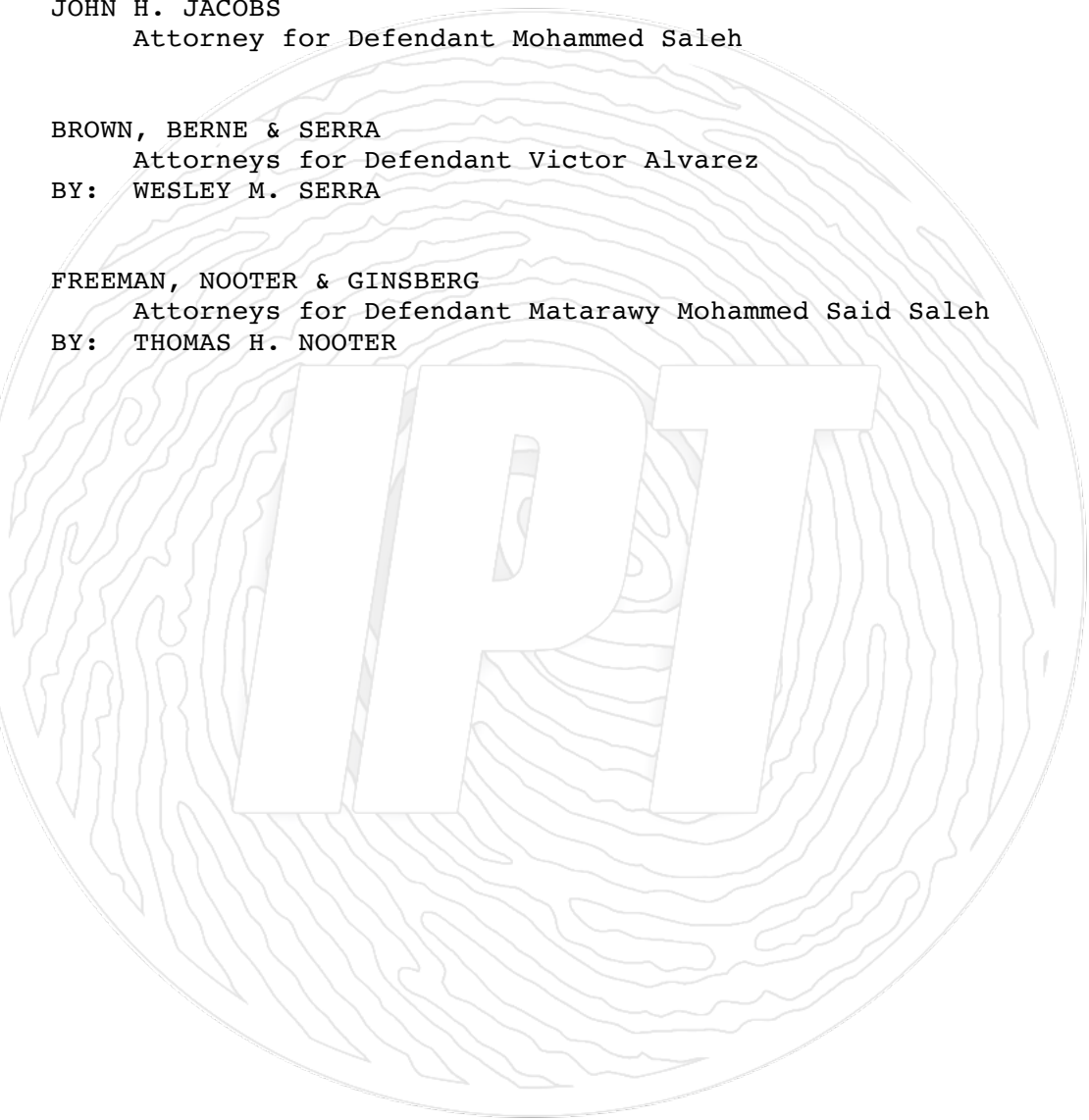
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1 (Trial resumed)

2 EMAD SALEM, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 THE JURY: Good morning.

6 THE COURT: Mr. Salem, you are still under oath.

7 THE WITNESS: Yes, sir.

8 THE COURT: Ms. London?

9 ROSS-EXAMINATION (Continued)

10 BY MS. LONDON:

11 Q. Good morning, Mr. Salem.

12 A. Good morning, ma'am.

13 Q. Towards the end of the day yesterday, I asked you
14 questions about tape recordings of conversations on the last
15 night, the night of June 23/June 24 at the Queens garage, do
16 you recall that?

17 A. Yes, ma'am.

18 Q. Would it be fair to say that the tape recordings
19 that you listened to were the audio segments of the
20 videotapes that were recorded?

21 A. Yes, ma'am.

22 Q. In fact, would it be fair to say that there were
23 no body wire recordings of the entire conversations of that
24 night, correct?

25 A. I was wearing the body wire recorder.

1 Q. I'm sorry. I didn't understand you.

2 A. I was wearing the body wire recorder. I
3 activated it, but I don't know what happened to it.

4 Q. There were no recordings obtained from it,
5 correct?

6 A. I don't know if there is recording came out of
7 this microchip or not, but I heard the audio, which is came
8 out of the videotapes, ma'am.

9 Q. Again, at the end of the day I was asking you
10 about the time when Mr. Saleh was brought to the safe house
11 on the night of June 23/June 24, do you recall that?

12 A. Yes, ma'am.

13 Q. About two weeks ago in your direct testimony you
14 testified that on that night Siddig Ali, Amir Abdelgani and
15 Tarig Elhassan were also present at the discussion, do you
16 recall that testimony?

17 A. No, I don't.

18 Q. At that time, Mr. Salem, were you asked this
19 question and did you give this answer --

20 MR. McCARTHY: May I have a citation?

21 MS. LONDON: I'm sorry, Mr. McCarthy. The
22 citation is page 5665 at the very top of the page.

23 MR. McCARTHY: I just need one moment.

24 (Pause)

25 MS. LONDON: Do you have it?

1 MR. McCARTHY: Yes, I do. Thank you.

2 Q. (Reading)

3 "Q. When you say Mr. Wahid, that is the
4 defendant Wahid Saleh that you identified earlier?

5 "A. Yes, sir. And Mr. Amir was present in
6 these discussions; Mr. Tarig Elhassan was present in these
7 discussions; Mr. Siddig was present, and myself, sir."

8 Do you recall being asked that question and
9 giving that answer?

10 A. Yes, ma'am.

11 Q. At that time Mr. McCarthy showed you a videotape,
12 which was labeled --

13 MR. McCARTHY: Objection. Your Honor, I think
14 under the circumstances it should go back to 5664 at line 19
15 to clarify what the conversations were.

16 MS. LONDON: I'm sorry, Mr. McCarthy? Which
17 page?

18 MR. McCARTHY: The previous page, line 19.

19 MS. LONDON: Your Honor, may we approach on this
20 for relevance?

21 THE COURT: May I see the page?

22 MR. McCARTHY: Yes, your Honor.

23 THE COURT: Simply to indicate the topic of the
24 discussions?

25 MR. McCARTHY: Yes, your Honor.

1 THE COURT: All right.

2 As opposed to the timing? The point you are
3 trying to make is that somebody was present at a particular
4 time?

5 MR. McCARTHY: Right.

6 MS. LONDON: Yes. That Mr. Elhassan was not in
7 fact present.

8 MR. McCARTHY: The suggestion I think, your
9 Honor, was that it was one conversation, which I think
10 should be clarified.

11 THE COURT: Sustained.

12 Q. At the time of that testimony, Mr. Salem,
13 Mr. McCarthy showed you -- in your hand, not on the
14 television -- a videotape that was marked Government Exhibit
15 382 for identification, a videotape of that meeting.

16 Do you recall --

17 MR. McCARTHY: Objection.

18 Q. -- being shown that videotape?

19 A. Yes, ma'am.

20 Q. And he asked you at the time if you had reviewed
21 that videotape, isn't that right?

22 THE COURT: May I see counsel at the side.

23 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Is this a videotape of the same
3 meeting?

4 MR. McCARTHY: Your Honor, it is not one meeting.
5 That is the point. The setup in the questioning suggests
6 that what we did was we put Elhassan at the meeting with
7 Wahid, which the previous page makes clear there is a course
8 of discussions about stolen cars, which is what my
9 questioning is about, that Ms. London is suggesting is
10 inconsistent.

11 MS. LONDON: Mr. McCarthy, maybe I can clarify
12 this for you. I want to establish that Mr. Elhassan was not
13 present at the meetings when Mr. Wahid Saleh was there. I
14 am going to get into the fact that he later arrived that
15 evening and that he was present. That evening he arrived at
16 close to 1 o'clock in the morning.

17 MR. McCARTHY: I will stipulate to that.

18 THE COURT: Fine.

19 MR. McCARTHY: I just don't like the suggestion
20 that we put him in a meeting he wasn't at.

21 (Continued on next page)

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1 (In open court)

2 MS. LONDON: Your Honor, the government will
3 stipulate that Mr. Tarig Elhassan was not present in the
4 safe house at the meeting where Mr. Wahid Saleh was present.

5 THE COURT: That is, during the conversation that
6 was the subject of that videotape?

7 MS. LONDON: That's correct, your Honor.

8 MR. McCARTHY: That's correct, your Honor.

9 THE COURT: OK.

10 Q. On the last evening, the night of June 23/June
11 24, Mr. Salem, you were complaining that evening, were you
12 not, that the operation was unorganized, isn't that right?

13 A. Which operation, ma'am?

14 Q. The operation that you were carrying out at the
15 safe house. Correct?

16 A. I may said that.

17 Q. You were complaining that nobody was there, isn't
18 that right?

19 A. Yes, ma'am.

20 Q. And that they were supposed to be working and
21 time is running, isn't that right?

22 A. Yes, ma'am.

23 Q. There came a time that evening when you told
24 Mr. Siddig Ali to call Mr. Elhassan and arrange to pick him
25 up, isn't that right?

1 A. Yes, ma'am.

2 Q. In fact, you took out your mobile phone and you
3 placed the call to Mr. Elhassan, isn't that right?

4 A. No, ma'am. I never know Mr. Tarig Elhassan's
5 phone number, ma'am.

6 Q. Then you handed your phone to Mr. Siddig Ali, who
7 talked to him?

8 A. Yes, I handed it to him, yes.

9 Q. Because you wanted Mr. Elhassan to be there at
10 the safe house that night, didn't you?

11 A. I want everybody to be present, ma'am.

12 Q. You wanted Mr. Elhassan was my question.

13 A. Yes, ma'am.

14 Q. It was not until early in the morning of June 24
15 that Mr. Elhassan arrived at the safe house, isn't that
16 right?

17 A. I don't recall what time he came in, ma'am.

18 Q. But it was shortly before the arrests took place,
19 isn't that right?

20 A. Could be, yes.

21 Q. In fact, you sent Mr. Fadil Abdelgani to pick him
22 up and bring him over, isn't that right?

23 A. I did not send -- that was Mr. Siddig who sent
24 Mr. Fadil Abdelgani.

25 Q. When Mr. Elhassan arrives in the morning of June

1 24, there are now barrels present, isn't that right?

2 A. Yes, ma'am.

3 Q. And there is fertilizer present, isn't that
4 right?

5 A. Yes, ma'am.

6 Q. Shortly after his arrival, the arrests take
7 place, correct?

8 A. Yes, ma'am.

9 Q. Mr. Salem, do you believe in the American system
10 of justice?

11 A. Yes, ma'am.

12 Q. You didn't believe in it when you lied to a state
13 court judge, did you?

14 A. I was mistaken, ma'am.

15 Q. You didn't believe in it when you lied to
16 Immigration, did you?

17 A. My lie to Immigration, it's not really a lie,
18 because, like I told you, Barbara in that time was living
19 with me partially. And, as a matter of fact, I have an
20 affidavit from her submitted to court that she resumed
21 living with me in 204, which is where I was living, and on
22 this basis I told them, yes, she was living with me, and I'm
23 being extremely frank, I'm spelling it out, yes, I said that
24 she was living with me, partially that's what I said.

25 Q. Was she naked, cold and hungry when she wrote

1 that affidavit?

2 A. I beg your pardon?

3 Q. I said, was she naked, cold and hungry when she
4 wrote that affidavit?

5 A. No, ma'am. She was not.

6 Q. You came to this country for the purpose of
7 making money, didn't you?

8 A. No. My purpose to come here to visit, but to go
9 to Denmark to reside there and stay there and make money,
10 ma'am.

11 Q. You expect to receive a million dollars at the
12 end of your visit here, isn't that right? Around a million
13 dollars, right?

14 A. Since I came?

15 Q. As a result of your participation in this
16 investigation, isn't that right, around a million dollars?

17 A. Yes, ma'am.

18 Q. You are negotiating with an agent to sell your
19 life story, too, you've told us that, haven't you?

20 A. Yes, ma'am.

21 Q. It would be fair to say, Mr. Salem, that your
22 life story in America is a hadduta, isn't it?

23 A. Could be, ma'am.

24 MS. LONDON: I have no further questions.

25 THE COURT: Mr. Jacobs, representing Mr. Mohammed

1 Saleh.

2 CROSS-EXAMINATION

3 BY MR. JACOBS:

4 Q. Mr. Salem, --

5 A. Yes, sir.

6 Q. -- February 26, 1993, 12:17 in the afternoon,
7 where were you, sir?

8 A. I believe in the union clinic, sir.

9 Q. What time did you get to the union clinic, sir?

10 THE COURT: Mr. Jacobs.

11 MR. JACOBS: I'm sorry.

12 THE COURT: May I see you at the side.

13 MR. JACOBS: Sure.

14 (Continued on next page)

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1 (At the side bar)

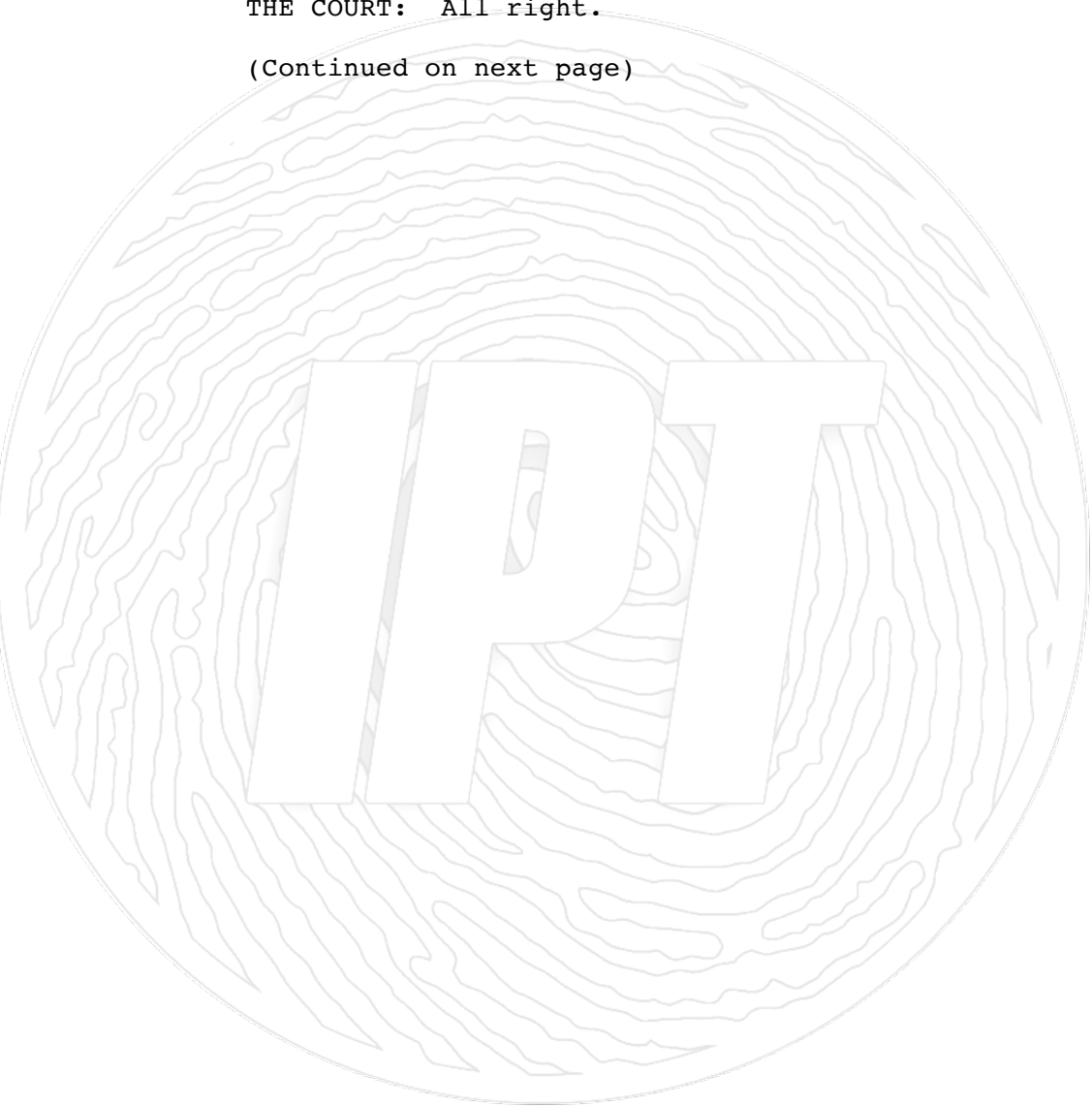
2 THE COURT: I told you before, keep your eyes off
3 the jury.

4 MR. JACOBS: I'm sorry. OK.

5 THE COURT: All right.

6 (Continued on next page)

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1 (In open court)

2 Q. What time did you get to the clinic?

3 A. Around 11, 11:30, sir.

4 Q. Do you know any of the following people: William
5 Macko, Stephen Knapp, Monica Smith, Robert Kirkpatrick, John
6 DiGiovanni or Wilfredo Mercado?

7 Do you know any of those people?

8 A. No, sir.

9 Q. Have you come to learn that these people are the
10 victims of the World Trade Center bombing?

11 Do you know that, sir, as you sit there now?

12 A. I don't recall their names. I know that there
13 are six people and one of them pregnant, but I don't recall
14 the names, sir.

15 Q. Did you help build the bomb that killed the six
16 people in the World Trade Center? Yes or no.

17 A. No, sir.

18 Q. You were, therefore, not in any way responsible
19 for their deaths, is that your testimony, sir?

20 A. Yes, sir.

21 Q. Was the bomb that built, or the bomb that went
22 off in the World Trade Center built under the supervision of
23 the FBI? Yes or no.

24 A. No, sir.

25 Q. Mr. Salem, did you ever tell Special Agent John

1 Anticev that you built the bomb?

2 MR. McCARTHY: Objection.

3 MR. JACOBS: May I finish the question, your
4 Honor?

5 THE COURT: No.

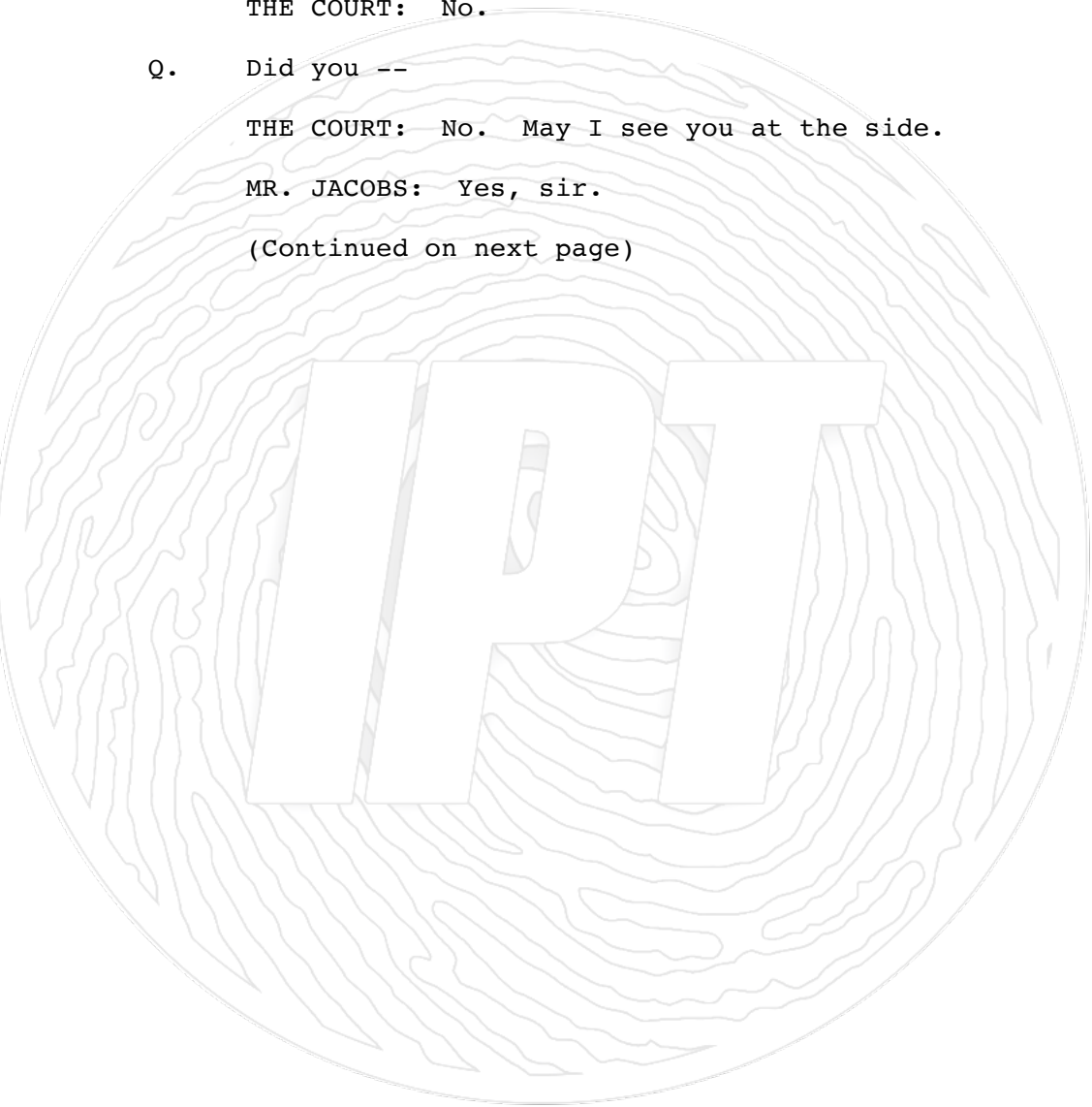
6 Q. Did you --

7 THE COURT: No. May I see you at the side.

8 MR. JACOBS: Yes, sir.

9 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Is there some sort of umbilical cord
3 that attaches people in this case? I ask to see a lawyer at
4 the side and I always get two. Do you understand about
5 having a good-faith basis for asking questions on
6 cross-examination?

7 MR. JACOBS: Absolutely.

8 THE COURT: What is it you are talking about?
9 The conversation where he says that he would tell people
10 that the bomb was built under the auspices of --

11 MR. JACOBS: 34-3, and this was the question and
12 answer that Mr. Ricco asked previously:

13 "Q. Didn't you tell Agent Anticev, 'If that's
14 what you guys think, fine, but I don't think -- because we
15 already started building the bomb which is went off in the
16 World Trade Center'? You told Agent Anticev, didn't you, it
17 was built by the supervision from the Bureau? You told
18 Agent Anticev that, didn't you?

19 "A. Yes."

20 THE COURT: In that case, it's been asked and
21 answered.

22 MR. JACOBS: I would like to go into it now, your
23 Honor.

24 MR. McCARTHY: This witness doesn't have one
25 shred of competent knowledge about anything that happened

1 from July of 1992 until March of 1993. The fact that he
2 made a statement out of frustration which indicated that
3 they had an ongoing investigation is no indication that he
4 has any knowledge of the bombing of the World Trade Center.

5 THE COURT: Of course.

6 MR. RICCO: That's an argument -- I'm sorry.

7 THE COURT: Sit down. I don't want to see you
8 here. I really don't.

9 MR. RICCO: Why?

10 THE COURT: I will talk to one lawyer about his
11 cross-examination. I do not want to get team argument. I
12 made that clear before, I am making that clear now.

13 MR. RICCO: I don't appreciate the attitude that
14 the court has with me when the court yells at me to sit
15 down.

16 THE COURT: I didn't yell at you here now at the
17 side bar out of the hearing of the jury. Let the record
18 reflect that.

19 MR. RICCO: The jury is paying attention. They
20 know that --

21 THE COURT: This conference is at an end.

22 MR. JACOBS: Your Honor, may I just --

23 THE COURT: You may not.

24 (Continued on next page)

25

1 (In open court)

2 THE COURT: Go ahead, Mr. Jacobs.

3 MR. JACOBS: I'm sorry.

4 Q. Do you remember being asked this question and
5 answer at page 6317, March 29, 1995:

6 MR. McCARTHY: May I have a moment, Mr. Jacobs?

7 MR. JACOBS: Sure, Mr. McCarthy.

8 MR. McCARTHY: 63?

9 MR. JACOBS: I'm sorry. 6317. Do you have it
10 Mr. McCarthy? Let me know when you do.

11 MR. McCARTHY: I have no objection.

12 MR. JACOBS: Thank you.

13 May I proceed, your Honor?

14 THE COURT: Go ahead.

15 Q. This is by Mr. Ricco on cross-examination:

16 "Q. Didn't you tell Agent Anticev, 'If that's
17 what you guys think, fine, but I don't think -- because we
18 already started building the bomb which is went off in the
19 World Trade Center'? You told Agent Anticev, didn't you,
20 'It was built by the supervisor, supervision from the
21 Bureau'? You told Agent Anticev that, didn't you?

22 "A. Yes.

23 "Q. You told him and the DA, right?

24 "A. I believe something to that effect."

25 Do you remember being asked those questions by

1 Mr. Ricco and giving those answers?

2 A. Yes, sir.

3 Q. And would I be correct in stating that at one
4 time you made that statement to Agent Anticev, is that
5 correct?

6 A. Yes, sir.

7 Q. Is it now your testimony --

8 MR. McCARTHY: Objection.

9 THE COURT: Do you want to leave out the "now"?

10 Q. Is it your testimony that that statement was not
11 truthful, you did not build the bomb?

12 A. No, I did not build the bomb which is went off in
13 the World Trade Center, sir.

14 Q. And that was something you just said at the time
15 because you were angry and mad, fair to state, sir?

16 A. No, sir.

17 Q. Were you threatening the FBI when you made that
18 statement, sir?

19 A. No, sir.

20 Q. Do you have any knowledge, sir, whatsoever of how
21 the bomb was built, the actual bomb that went off, sir?

22 A. What's being written in the newspaper only, sir.

23 Q. Or in books, correct, sir?

24 A. Yes, sir.

25 Q. At 5 o'clock in the morning on February 26, 1993,

1 can you tell us where you were, sir?

2 A. Sleeping in my home, sir.

3 Q. Was that with Barbara Rogers, sir?

4 A. No, sir. I believe with my wife.

5 Q. With your wife?

6 A. Yes, sir.

7 Q. You weren't in the vicinity of a gas station at
8 Kennedy Avenue and Route 440 filling up a yellow van, were
9 you, sir?

10 A. No, sir.

11 Q. Do you have any knowledge of any activities on
12 that morning at 5 a.m.?

13 A. Only what's being written in the newspapers, sir.

14 Q. In connection with your hospital stay you went to
15 the union clinic, to your knowledge, before the World Trade
16 Center bomb went off, is that your testimony, sir?

17 A. Yes, sir.

18 Q. Am I correct that you had no prior knowledge that
19 on February 26, 1993 a bomb was going to go off in the World
20 Trade Center? Is that your testimony, sir?

21 A. Yes, sir.

22 Q. You got to the clinic and you complained about
23 having an ear problem, correct?

24 A. Yes, sir.

25 Q. Vertigo, correct?

1 A. Yes, sir.

2 Q. You spoke to doctors and nurses, correct, sir?

3 A. Yes, sir.

4 Q. As a result of speaking to those people, they
5 sent you to St. Claire's Hospital which is in the 50s, I
6 think, is that correct, sir, Manhattan?

7 A. They have a door connected, connecting between
8 both of them, sir.

9 Q. So the clinic connects right into St. Claire's,
10 is that your testimony, sir?

11 A. Yes.

12 Q. Would I be correct that you were admitted to St.
13 Claire's at about 3:10 in the afternoon, is that fair to
14 state, sir?

15 A. Around that time, yes, sir.

16 Q. Before you were admitted, did you meet with
17 doctors and tell them about your problems?

18 A. Yes, sir.

19 Q. When you met with the doctors and the nurses, did
20 you go over your past medical history?

21 A. Yes, sir.

22 Q. Did you tell them that you had been shot in 1971
23 in Egypt? Did you tell them you had been shot in 1980? Did
24 you describe to the doctors where you were shot, how you
25 were shot? Did you do that, sir?

1 A. I don't recall what kind of questions they asked
2 me, but specifically I told them that this is not the first
3 time I have this problem, and I had it once before, sir.

4 Q. The question to you, sir, is: When you met with
5 the doctors and the nurses at the clinic and at St.
6 Claire's, did you tell them that you had been shot on
7 several occasions and go into detail about where you were
8 shot, when you were shot, and how you were shot? Yes or no.

9 A. I don't recall, sir.

10 Q. Did you tell them that you had been shot in the
11 stomach in 1971 and you were confined to a military hospital
12 in Egypt, Cairo, Egypt? Did you say that, sir? Yes or no.

13 A. I may said it, sir.

14 Q. Did you tell them that you had been shot in the
15 knees in 1974? Did you indicate that, sir?

16 A. I may said it, yes.

17 Q. This is not the first time I think you have
18 had -- I'm not going to go back over it, this is not the
19 first time when you have been treated that you informed
20 doctors of these phony gunshots, is that correct, sir?

21 A. Correct, sir.

22 Q. I think in some of your other hospital stays you
23 did the same thing, told them about war wounds that you had
24 that were totally made up, correct, sir?

25 A. Yes, sir.

1 Q. In the hospital that day at St. Claire's, would
2 you tell the jury what reason you had to make up these
3 gunshot wounds.

4 A. Like I said before, sir, it's a lie. I started
5 it when I came over here to make myself big shot, and
6 maintained it all the way until I admitted, sir.

7 Q. I'm not asking you to tell us exactly, but I
8 assume at some point you took your clothes off and were
9 examined by a doctor, weren't you, sir?

10 A. Yes, sir.

11 Q. I am not going to ask you to disrobe here. I
12 assume your body does not reveal any gunshots, correct, if
13 one looked at your physical body, correct, sir?

14 A. There is wounds, but it's not from gunshots, and
15 I said that it was from gunshots, sir.

16 Q. You had no medical purpose in making up these
17 gunshot wounds, correct, sir?

18 A. No, sir.

19 Q. You didn't think that that would help your
20 treatment of vertigo, did you, sir?

21 A. No, sir.

22 Q. Did you think that it might help you get admitted
23 to the hospital if you told them that?

24 A. Old wounds, no, sir.

25 Q. You really didn't think much about telling those

1 lies to the doctors, it really didn't enter your mind?

2 A. No, sir, I just maintained what I said, sir.

3 Q. It was part of your routine?

4 A. Yes, sir.

5 Q. Over a period of 20 some odd years, you
6 maintained this story about the phony injuries to anybody
7 that asked you, correct?

8 A. Along --

9 Q. For 20 years -- 1971, 1991, that's 20 years,
10 right -- you told people you got shot in 1971 in Cairo,
11 Egypt, so for 20 years you told this story, right?

12 MR. McCARTHY: Objection to form.

13 A. No, sir.

14 Q. I'll rephrase it. The story went on for many
15 years, sir?

16 A. I beg your pardon?

17 Q. The story about the lies in Cairo, Egypt, being
18 shot, went on for a long time?

19 A. That's since I came to the United States, sir.

20 Q. So from '87 until '93 you told these stories to
21 people, correct?

22 A. Yes, sir.

23 Q. In fact, when you met my client, Mohammed, on
24 June 4, 1993, when you were introduced to him, you told him
25 a little bit about your background and you told him you had

1 been shot and your war history, correct, sir?

2 A. Yes, sir.

3 Q. You had never met Mohammed before, correct, sir?

4 A. No, sir.

5 Q. I'm correct you never met him after June 4?

6 Correct, sir?

7 A. No, sir.

8 Q. So when you met Mohammed, Siddig introduced you,
9 correct, sir?

10 A. Yes, sir.

11 Q. You told him about your background in the
12 military, correct, sir?

13 A. Yes, sir.

14 Q. You told him about your training in weapons,
15 correct, sir?

16 A. Yes, sir.

17 Q. You told him about all the war injuries and the
18 dates and the years, correct, sir?

19 A. Yes, sir.

20 Q. If we looked at CM32, we're not going to see any
21 of that, are we, sir, because that's not on tape, correct,
22 sir?

23 A. What's not on tape?

24 Q. All the war wounds and the history and your
25 background doesn't appear because you didn't start the tape

1 until the middle of some conversation, correct, sir?

2 A. I believe, if I recollect correctly, that there
3 is some conversation about my background on the tape, sir.

4 Q. We'll look at 32 a little bit later.

5 What I am saying to you, sir, is when you turned
6 on the tape in CM32, you had already discussed your
7 background --

8 MR. JACOBS: I'm sorry, your Honor. The click
9 went on, and I jumped back when I heard the click.

10 Q. You did tell them all about your background and
11 your war injuries, correct, though, at some point?

12 A. I maintained what I said, like I said, sir.

13 Q. Do you remember telling the doctors and the
14 nurses who took your pedigree that you were working at the
15 Best Western hotel, sir?

16 A. Yes, sir.

17 Q. That wasn't correct, was it, sir?

18 A. It was correct, sir.

19 Q. You were working on February -- in that period of
20 time at the Best Western? Hadn't you been fired?

21 A. That's what I said, sir, that I had a case in
22 front of the union and the hotel for they fired me with an
23 illegal way, sir.

24 Q. The question was: Were you working at the Best
25 Western -- you put down Best Western as where you worked,

1 that wasn't true?

2 A. It was true, sir.

3 Q. OK.

4 A. According to the case it still existed, sir.

5 Q. Do you know what the word "alibi" means?

6 A. Yes, sir.

7 Q. What is an alibi?

8 A. Alibi, to try to prove that you are in someplace
9 and the crime being committed in another place, so you get
10 yourself something to cover up under, something to that
11 effect, sir.

12 Q. Was your stay in the hospital a form of an alibi
13 for you, sir?

14 A. No, sir.

15 Q. You were concerned after the World Trade Center
16 explosion about what the FBI would think about you, isn't
17 that fair to say, sir?

18 A. Yes, sir.

19 Q. It's been gone into by a number of lawyers, you
20 were upset, correct? Correct?

21 A. Yes, sir.

22 Q. And you thought you might be a suspect, correct?

23 A. That's what came to my mind, sir.

24 Q. You thought you might even get arrested or
25 charged, correct, sir?

1 A. Yes, sir.

2 Q. The reason why you thought that you might get
3 arrested or charged is because you say you told them about
4 some firecracker several months before, isn't that fair to
5 say, sir?

6 MR. McCARTHY: Objection. Objection to form. I
7 don't object to the area.

8 MR. JACOBS: I'm sorry.

9 THE COURT: Is it possible to rephrase it?

10 MR. JACOBS: Sure.

11 Q. You told them, according to you, several months
12 before that you were in the process of building bombs,
13 correct?

14 A. Yes, sir.

15 Q. I think you told us that you went and you got a
16 firecracker on Canal Street, correct?

17 A. Yes, sir.

18 Q. You thought that on February 26, '93 somehow the
19 FBI would link you, the firecracker, with the World Trade
20 Center, correct, sir?

21 MR. McCARTHY: Objection to form.

22 THE COURT: Sustained as to form.

23 Q. Did you believe that your earlier conversations
24 with the Bureau about building bombs would somehow link you
25 to the World Trade Center, is that fair to say?

1 A. That somehow will make them think that I
2 participated, yes, sir.

3 Q. You've testified about that previously, correct,
4 this going to Canal Street and buying a firecracker,
5 correct?

6 A. Yes, sir.

7 Q. I think --

8 MR. JACOBS: Can I have this marked as
9 Defendant's H for identification. It is not real.

10 Q. Take a look at that, Mr. Salem --

11 A. Yes, sir.

12 Q. -- and tell me if that looks about the size of an
13 M80, if you know.

14 A. No. The other one was bigger, a little bit.

15 Q. Bigger a little bit?

16 A. Yes, sir.

17 MR. JACOBS: I for identification.

18 Q. About that big or smaller?

19 A. Smaller, sir.

20 Q. And you went and bought this firecracker and you
21 went -- did you give it to the FBI?

22 A. I showed it to them.

23 Q. The actual bomb that went off in the World Trade
24 Center, if I were to ask you to write down the components,
25 what it was made of, other than reading newspapers and

1 books, you wouldn't know, am I correct, sir?

2 A. No, I wouldn't know, sir.

3 Q. You were also concerned, would I be correct, that
4 you had lied to the FBI in the past, isn't that true, sir,
5 you were concerned about some of those lies that you had
6 told them?

7 A. When, sir?

8 Q. Well, you have now admitted, am I correct, that
9 your whole background or at least -- I will withdraw it.
10 Part of your background that you told the Bureau
11 was just a lie, correct?

12 A. Yes, sir.

13 Q. We have talked about it before, I think
14 Mr. Bernstein asked you some questions, or some of the other
15 lawyers. You met with Nancy Floyd for a few days and told
16 her all sorts of things about a lot of countries which was
17 really not true, most of it, correct?

18 A. No, sir.

19 Q. Did it concern you that the FBI might catch you
20 in these lies?

21 A. In that time, no, sir.

22 Q. The bomb was more of a concern for you at that
23 moment, correct?

24 A. Well, when the relationship started to develop
25 with them more and things start to get serious, I start to

1 be concerned about people getting hurt, sir.

2 Q. At the time that the bomb went off, your official
3 work with the FBI had stopped, correct?

4 A. Yes, sir.

5 Q. The lawyers have gone into that so I am not going
6 to go over that with you, but you no longer had any kind of
7 contract or agreement with the Bureau at that point,
8 correct?

9 A. I never had any contract or agreement with the
10 FBI prior to that, sir.

11 Q. But you were getting a monthly stipend and things
12 like that, and that wasn't in existence anymore, correct?

13 A. I'm sorry. Say it again, please?

14 Q. I'm sorry. You were getting monthly money and
15 weekly money. You weren't getting that anymore?

16 A. No, sir.

17 Q. I think you told us whenever you felt like it you
18 would call up Agent Floyd or Agent Anticev and pass on some
19 information, correct, after you -- I will withdraw it.

20 After I think July '92 and September '92 you no
21 longer were working for the Bureau, but you would call them
22 on occasion, correct?

23 A. Yes, sir.

24 Q. And Nancy Floyd was your friend, correct?

25 A. Yes, sir.

1 Q. And you would call her and pass on information to
2 her, correct?

3 A. Only on two occasions or three occasions, I
4 believe, sir.

5 Q. From August of '91, up until the time that you
6 left your former relationship with the Bureau in July of
7 '92, about a year, correct?

8 A. Could be, yes.

9 Q. Forgetting for the moment the Immigration
10 questions, was anybody arrested as a result of your
11 cooperation?

12 MR. McCARTHY: Objection.

13 THE COURT: Sustained.

14 Q. Did you testify against anybody in that year,
15 sir?

16 MR. McCARTHY: Objection. May we approach on
17 this?

18 THE COURT: Yes.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I am not kidding. I want one lawyer
3 up here.

4 MS. AMSTERDAM: Your Honor, I worked with
5 Mr. Jacobs on this cross.

6 THE COURT: On this part of the cross?

7 MS. AMSTERDAM: Yes, I did.

8 MR. McCARTHY: I made an application before
9 cross-examination started about questioning on persons not
10 arrested. The court directed counsel that there was going
11 to be no questioning about persons not arrested as a result
12 of this individual's information. I did not, as all counsel
13 know, precisely because I didn't want to be put in a
14 position of having to object to that kind of nonsense in
15 front of the jury, and that is precisely the position I'm in
16 now.

17 MR. JACOBS: I assumed, your Honor -- maybe I am
18 incorrect on that -- that we were talking about people like
19 in the World Trade Center who hadn't been arrested. I am
20 not talking about whether he made cases for the Bureau. Did
21 anybody get locked up in cases that he made. I don't think
22 that is the same.

23 THE COURT: It is not the same. You are talking
24 about a period of time earlier on?

25 MR. JACOBS: Yes. That is all. I am not

1 implicating --

2 THE COURT: There may very well be people who are
3 still under investigation who may be arrested.

4 MR. JACOBS: The government can bring that out.

5 THE COURT: That is precisely what they can't and
6 shouldn't be obligated to do.

7 MR. McCARTHY: It is also not relevant to this
8 witness's credibility whether the Bureau or anyone else went
9 out and arrested anybody on that basis, and that was the
10 basis of my application in the first place.

11 THE COURT: The objection is sustained. Move on
12 to something else.

13 MR. JACOBS: OK.

14 (Continued on next page)

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1 (In open court)

2 BY MR. JACOBS:

3 Q. How many people at the Best Westin Hotel did you
4 tell the FBI were illegal immigrants? How many?

5 A. I don't recall how many, sir.

6 Q. More than 10?

7 A. More than 10.

8 Q. Were some of these people the people that cleaned
9 the rooms? Fair to say?

10 A. Yes, sir.

11 Q. Janitors, correct?

12 A. I am sorry.

13 Q. Janitors, correct?

14 A. What does that mean, janitors?

15 Q. I am sorry, people that clean up in the hotel.
16 Is that fair to say?

17 A. Yes, sir.

18 Q. People that worked in the kitchen, correct?

19 A. There is no kitchen there, sir.

20 Q. Were these people that you knew personally?

21 A. I know that they work there, sir.

22 Q. Getting back to the hospitalization on February
23 26, were you told that you were supposed to go to Beekman
24 Downtown Hospital but you couldn't be taken because people
25 had been taken there from the World Trade Center? Did that

1 happen, sir?

2 A. No, sir.

3 Q. You were in the hospital for how long?

4 A. As far as I recall, three, four days.

5 Q. Did any FBI agent visit you in the hospital?

6 A. No, sir.

7 Q. Did you speak to any FBI agent while you were in
8 the hospital?

9 A. No, sir, don't recall doing that.

10 Q. Nancy Floyd called you after you got released,
11 correct?

12 A. Excuse me.

13 Q. I am sorry. Special Agent Nancy Floyd of the FBI
14 called you after you were released, sir?

15 A. I am not sure she called me or I called her, sir.

16 Q. You had heard a conversation, correct, about the
17 World Trade Center, a bit?

18 A. Yes, sir.

19 Q. And you said you were concerned about what would
20 happen to you, correct?

21 A. Yes, sir.

22 Q. As a result of the call she said at the end of
23 the conversation, anything happens, page me, or beep me,
24 correct?

25 A. Yes, sir.

1 Q. I think one of the lawyers asked you about it --
2 maybe it was Mr. Ricco -- before, correct, sir?

3 A. Yes, sir.

4 Q. The FBI didn't come and bring you to FBI
5 headquarters to debrief you on your knowledge after February
6 26, you just had a phone call from Nancy, correct?

7 A. I believe I am the one who called her, sir.

8 Q. There came a point after your phone call with
9 Special Agent Nancy Floyd that you show up, I think probably
10 down at 26 Federal Plaza, correct, sir?

11 A. Yes, sir.

12 Q. And you come in and there's your picture on the
13 suspect wall, correct?

14 A. No, sir.

15 Q. You thought you saw your picture on the suspect
16 wall?

17 A. No, it's not like you said, sir.

18 Q. Your picture wasn't on a wall?

19 A. No, it was not.

20 Q. Your name wasn't on the wall?

21 A. No, sir.

22 Q. I thought you testified that when you walked into
23 FBI headquarters, your picture was on the wall as the main
24 suspect. That didn't happen?

25 A. No, sir, it was not on the wall.

1 Q. Go ahead, please, tell us.

2 A. It was few card boards have lot of pictures
3 tacked on it and the top board when I was walking beside it,
4 I saw my picture on it, sir.

5 Q. And you thought, I'm a suspect, correct?

6 A. That's what I thought, sir.

7 Q. And the agents explained to you that you were
8 really wrong, correct?

9 A. Yes, sir.

10 Q. But didn't you tell people that you were
11 surveilled by the FBI after the World Trade Center?

12 A. I may said it.

13 Q. Was that the truth?

14 A. No, sir.

15 MR. McCARTHY: Your Honor, could we clarify what
16 people?

17 THE COURT: That's up to him.

18 MR. JACOBS: Thank you, your Honor.

19 THE COURT: If he doesn't want to clarify, he
20 doesn't have to.

21 MR. JACOBS: It's OK.

22 Q. Do you remember who you said that to?

23 A. People in the mosque, people in subject of the
24 investigation, sir.

25 Q. So you just went around telling everybody, the

1 FBI's looking for me, correct? They're surveilling me?

2 A. Yes.

3 Q. Did you tell people in the mosques that the FBI
4 came and searched your house with dogs? Did you say that?

5 A. Yes.

6 Q. To the people in the mosque?

7 A. Yes, sir.

8 Q. That was a lie, correct?

9 A. Yes, sir.

10 Q. Did you tell people in the mosque that they came
11 and took your papers? Did you say that, sir?

12 A. Yes, sir.

13 Q. That was a lie?

14 A. Yes, sir.

15 Q. Did you tell people that they cleaned your house
16 out? Did you say that to people in the mosque?

17 A. Cleaned my house out?

18 Q. Yes.

19 A. I may said it, yes.

20 Q. When you did all these things, you were playing a
21 role, sir?

22 A. Yes, sir.

23 Q. And the role that you were playing was, you were
24 an FBI informant, correct?

25 A. The role I was playing, sir?

1 Q. Right.

2 A. That I want them to believe that I am one of
3 them, the FBI looking for me like they are looking for them,
4 sir.

5 Q. But in fact you thought in the beginning that the
6 FBI really was looking for you, correct?

7 A. The minute I saw the pictures there, I thought
8 so, sir.

9 Q. But as you have told us this morning, in point of
10 fact, as to the actual bombing of the World Trade Center,
11 you know nothing, is that correct, sir?

12 A. Nothing about what, sir?

13 Q. The actual bombing on February 26, 1993 of the
14 World Trade Center. You know nothing, correct?

15 A. Correct, sir.

16 Q. Let me ask you if you have ever met and spoken
17 with any of the following seven people, and let me read the
18 whole list first and we will go back over them. OK?

19 A. Yes, sir.

20 Q. If I am not pronouncing anything, if you don't
21 understand, let me know and I will repeat the names to you.

22 A. Yes, sir.

23 Q. Muhammed Salameh, Ahmed Haggag, Bilal Alkaisi,
24 Nidal Ayyad, Ramzi Yousef, Abdul Yasin, and Mohammed Mahmoud
25 Abouhalima. Let's go over the list.

1 Muhammed Salameh, have you ever met and spoken to
2 that person?

3 A. I met him, yes, but I did not spoke to him, sir.

4 Q. How about someone by the name of Ahmed Haggag?

5 A. No, sir.

6 Q. Bilal Alkaisi, A-L-K-A-I-S-I?

7 A. No, sir.

8 Q. Nidal Ayyad?

9 A. No, sir.

10 Q. Ramzi Yousef?

11 A. I am sorry. Nidal Ayyad, I met him, yes, I saw
12 him, yes, but we did not get introduced to each other, sir.

13 Q. Ramzi Yousef?

14 A. No, sir.

15 Q. Abdul Yasin, Y-A-S-I-N.

16 A. No, sir.

17 Q. And I think you have testified before that
18 Mahmoud Abouhalima is someone you know and someone who you
19 have spoken with, correct, sir?

20 A. Yes.

21 Q. And I am not going to go back over that.

22 With respect to Mahmoud Abouhalima, am I
23 summarizing your statements that you hadn't spoken with him
24 for at least five or six months before the World Trade
25 Center, but he had beeped you? Is that correct? Correct me

1 if I am wrong. Is that fair to say?

2 A. You are wrong, sir.

3 Q. When before February 26 is the last time you had
4 spoken with Mahmoud Abouhalima? About. I am not going to
5 ask you the exact date.

6 A. It is somewhere around December, sir.

7 Q. Two months, three months?

8 A. Somewhere in December, sir.

9 Q. December, OK. I think you said he beeped you at
10 one point.

11 A. No, sir.

12 Q. That was when you spoke to him?

13 A. I did not speak to him, sir. He left message on
14 my answering machine, sir.

15 Q. That was in December?

16 A. That's as far as I recall, yes.

17 Q. But before December, when was the last time you
18 had actually met and spoken with Mahmoud Abouhalima?

19 A. Long time ago, sir.

20 Q. Six months?

21 A. Could be.

22 Q. I think you said something about Nidal Ayyad,
23 that you had met him but never spoke with him, correct?

24 A. Yes, sir.

25 MR. JACOBS: May I refer the government, Mr.

1 McCarthy, to CM 12, page 14, Mr. McCarthy.

2 MR. McCARTHY: I am sorry, Mr. Jacobs. Page 14?

3 MR. JACOBS: Yes, I have it as 14.

4 Q. Do you remember having a conversation on or about
5 May 23, 1993, in something called CM 12, with a guy named
6 Constantine? Who is Constantine, by the way?

7 A. He is one of the sheik's followers and close
8 contacts, Sheik Omar Abdel Rahman.

9 Q. Constantine asked you: Ayyad? Question mark.
10 Does he have any connection with this?

11 And you said: God only knows, I have never seen
12 Ayyad.

13 Do you remember making that statement to
14 Mr. Constantine on that date, sir?

15 A. Yes, sir.

16 Q. Was that a correct statement? Because I think
17 you just told the jury you hadn't met --

18 A. Yes, sir, that was not a correct statement to
19 Mr. --

20 Q. Constantine.

21 A. In that time it was correct, my belief, sir --
22 one second.

23 Q. Sure.

24 A. My belief in that time that I never met him but
25 later on I find out that we have been together, when I saw

1 his pictures I realize that I saw him few times but we did
2 not talk, sir.

3 Q. So when you made the statement on May 23 I had
4 never seen Ayyad, that was an error because sometime since
5 you were cooperating you had a chance to see some of the
6 pictures of these people and you said yeah, I did see this
7 guy. Correct?

8 A. Yes, sir.

9 Q. With that in mind, J for identification, let me
10 show you these pictures of some of the World Trade Center
11 individuals -- can I stand up here, your Honor? Is that all
12 right just so we can move it along?

13 THE COURT: That's fine.

14 Q. Let me ask you, sir, showing you pictures of the
15 seven people that I just previously identified, am I correct
16 that in the lower right corner is Mahmoud Abouhalima?
17 Correct, sir?

18 A. Yes, sir.

19 Q. Do you recognize Ayyad in any of these pictures,
20 sir?

21 A. Yes, sir.

22 Q. Why don't you mark it, rather than me. Could I
23 get a pen? You have one, thank you, sir.

24 Put your initials next to Mahmoud Abouhalima.

25 Put an MA, maybe.

1 Q. How about Mr. Ayyad, if you would put the
2 initials there, sir. And Salameh, do you recognize him in
3 the photographs?

4 A. And how about this picture over here of, I
5 believe, Alkaisi. Do you recognize him, sir?

6 A. No, sir.

7 Q. You never saw this man in the top left?

8 A. No, sir.

9 Q. How about this man identified as Ramzi Yousef in
10 the lower left? Have you ever seen him before? In person?

11 Q. Yes, sir?

12 A. No, sir.

13 Q. You saw him in the newspapers?

14 A. Yes, sir.

15 Q. Put his initials over there. How about the
16 individual here?

17 A. I can't say seen?

18 Q. Yasin.

19 A. Yes, sir.

20 Q. Is that from the newspapers, too?

21 A. Yes, sir.

22 Q. And I think Haggag is the last one?

23 A. Yes, sir.

24 Q. Seen him in the newspapers?

25 A. Yes, sir.

1 MR. JACOBS: I have shown this previously to the
2 government, your Honor. I would offer this in evidence as
3 defendant's J.

4 MR. McCARTHY: No objection, your Honor. I said
5 I am sorry, I don't want to interfere with your
6 conversation.

7 MR. McCARTHY: No objection, your Honor.

8 THE COURT: J is received.

9 (Defendant Mohammed Saleh Exhibit J was received
10 in evidence)

11 Q. In connection with your --

12 MR. JACOBS: Could I pass this out to the jury
13 while I am doing this, your Honor -- do you want to wait
14 or -- I will save it.

15 THE COURT: You have initialed what, photographs
16 of people he has either seen in person or in the newspapers?

17 MR. JACOBS: Correct, and I think the records
18 indicate which ones he has seen and which he hasn't.

19 THE COURT: But the exhibit doesn't indicate
20 that. All the exhibit indicates is people he has initialed.

21 MR. JACOBS: Perhaps we should --

22 THE COURT: Perhaps you shouldn't. Why don't you
23 save it for later.

24 MR. JACOBS: All right.

25 Q. In connection with your testimony here, did you

1 read the book about the World Trade Center, Two Seconds
2 Under the World, before you testified here, sir?

3 A. I let my daughter read like two, three chapters
4 from it.

5 Q. You are in the book, sir?

6 A. Pardon me.

7 Q. You are in the book, correct?

8 MR. McCARTHY: Objection, relevance.

9 THE COURT: Sustained.

10 Q. When you say you have no knowledge of the bombing
11 of the World Trade Center, that would include things like
12 the locker in the space station in New Jersey, in Jersey
13 City locker room 4344 --

14 MR. McCARTHY: Objection.

15 MR. JACOBS: I am sorry. Let me rephrase the
16 question.

17 Q. Do you have any knowledge of locker room 4344 in
18 a space called the Space Station in Jersey City? Yes or no.

19 A. No, only newspapers, sir.

20 Q. Or books, right?

21 A. No, sir. No books.

22 Q. Newspapers. And how about the Ryder Rental
23 truck, a yellow Ryder Rental truck? Do you have any
24 knowledge about that, that may have been used to carry
25 explosives?

1 A. No personal knowledge except --

2 Q. Newspapers?

3 A. Yes, sir.

4 Q. And I think I asked you about the -- and you have
5 no personal knowledge about airline tickets that Ramzi
6 Yousef had and used, you have no knowledge of that, correct,
7 sir?

8 A. No, sir.

9 Q. In your conversations with the FBI, beginning in
10 late February or early March, did you threaten the FBI by
11 saying you would expose their role in the World Trade Center
12 bombing? Yes or no.

13 A. I said it, sir.

14 Q. Was that a threat? Yes or no.

15 A. Yes, if they -- yes, sir.

16 Q. And I believe in fact that question had been
17 previously asked by Mr. Ricco and you said probably yes
18 data. Now it's a definite yes, correct?

19 A. I wouldn't put it as a threat, sir, because I am
20 not powerful as the FBI, but I am trying to protect myself,
21 and I said if you deny that I told you information about
22 bombing going to take place, I will do something about it,
23 and we going to have surprises, things in that effect, sir.

24 Q. So you were blackmailing the FBI.

25 A. Why? What for, sir?

1 Q. Money, power?

2 A. No, sir. Protecting myself, sir.

3 Q. And that's when you took -- is that when you took
4 your hundreds of bootleg tapes --

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. Is that when you took your tapes and said to the
8 FBI, if you don't do certain things I'm going to give the
9 tapes to CNN? Is that the time that you did that, sir?

10 A. No, sir.

11 Q. Did you ever make that statement to the FBI?

12 A. No, sir.

13 Q. Never said to the FBI that if they don't take
14 care of you used give the tapes to CNN? Never said it?

15 A. No, sir.

16 Q. The question is, did you tell the FBI that you
17 had turned over tapes to your family in Cairo, that if
18 something happens to you that they were going to release the
19 tapes? Did you say that?

20 A. Yes.

21 Q. And you were threatening the FBI again, correct,
22 sir?

23 A. If you want to call it threatening, OK.

24 Q. In fact, you had hundreds of tapes that you
25 didn't turn over to the Bureau in March --

1 MR. McCARTHY: Objection.

2 THE COURT: Mr. Jacobs.

3 MR. JACOBS: I am sorry.

4 Q. Did you have some hundred tapes in March or April
5 1993 that the Bureau didn't have?

6 A. No, sir.

7 Q. The Bureau, FBI, in March and in April 1993 had
8 every tape that you had ever made in connection with all
9 your work with the Bureau, is that your testimony, sir?

10 MR. McCARTHY: Objection.

11 MR. JACOBS: I will rephrase it again.

12 Q. Mr. Salem.

13 A. Yes, sir.

14 Q. You had been making tapes since August of 1991,
15 correct, sir?

16 A. Yes, sir.

17 Q. You had been recording people like Mr.
18 El-Gabrowny from 1991, correct, sir? Correct?

19 A. I don't recall since when but I was recording
20 him, taping him, yes, sir.

21 Q. And you were taping other people, correct?

22 A. Yes, sir.

23 Q. And you were taping agents, correct?

24 A. Every phone call came to my house was being
25 recorded, sir, in that time.

1 Q. The question is, in March of 1993, in April of
2 1993, in May of 1993, did you have private tapes that the
3 Bureau didn't have? Yes or no.

4 A. Yes, sir.

5 Q. And you were withholding those tapes from the
6 Bureau, correct?

7 A. Correct, sir.

8 Q. And there came a point where you told the Bureau,
9 if I'm threatened I will release my tapes publicly, correct?

10 A. If something wrong happen to me I will release
11 the tapes to the public, yes, sir.

12 Q. And in fact you were very mad at the Bureau in
13 March of 1993, because they laughed at you when you asked
14 for \$200,000 concerning Mahmoud Abouhalima's arrest,
15 correct, sir?

16 A. No, sir.

17 (Continued on next page)

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1 Q. Did that happen, sir?

2 THE COURT: Mr. Jacobs, may I see you at the
3 side.

4 MR. JACOBS: Yes, sir.

5 (At the side bar)

6 THE COURT: I am not going to allow repetitive
7 cross. I am not going to allow a reprise of other people's
8 cross.

9 MR. JACOBS: I understand, your Honor. However,
10 the other cross that was done, sometimes, while I do admit
11 some of these questions have been asked --

12 THE COURT: Many, many, many of them.

13 MR. JACOBS: I understand and I am mindful of
14 your Honor's instructions, but it is important for me to
15 develop the motivation of this witness --

16 THE COURT: You will not repeat cross.

17 MR. JACOBS: He has now denied what he previously
18 testified to.

19 THE COURT: Then you will live with it and you
20 will use it for your summation, because I am not going to
21 have people asking him whether he said something yesterday
22 and he is giving another answer here and developing what was
23 said yesterday. Otherwise we will be here forever.

24 MR. JACOBS: I understand.

25 (In open court)

1 BY MR. JACOBS:

2 Q. Did you ask for money from the FBI in March and
3 in April of 1993? Yes or no.

4 A. Yes, sir.

5 Q. What did you ask for?

6 A. It was a conversation with Agent John Anticev.
7 He said that when you supply information we will evaluate it
8 and pay you. And I told him no, I'm not going to do that
9 because last time I lost my job because of the FBI and you
10 dropped me on the street, this time I'm not going to allow
11 you to do that. You want to give me a permanent salary I
12 will continue with you, I'm not going to destroy the jewelry
13 work I established and just drop it again and lose my job
14 again and work for you and then when you finish with me you
15 drop me like last time, sir.

16 Q. Did you ask for any other money other than a
17 particular monthly salary?

18 A. When Agent John Anticev told me that's not the
19 way it going to work, I told him all right, if that's the
20 way you want to work it I deliver to you, I disclose to you
21 a fugitive, please, and you arrested him, and you announce
22 \$200,000, so I deserve it.

23 Q. And that's when they laughed at you?

24 A. He laughed at me, yes, sir.

25 Q. In connection with Nancy Floyd after you came out

1 of the hospital, she called to see how you were feeling, is
2 that correct?

3 A. I believe I am the one who called her, sir.

4 MR. JACOBS: May I approach the witness?

5 THE COURT: Yes.

6 Q. Let me show you this transcript and just take a
7 look at the first couple of lines.

8 MR. JACOBS: May I just question him from over
9 here, your Honor, for a minute?

10 Q. Read the first couple of lines.

11 A. From the beginning?

12 Q. Just to about here, and then I will ask you
13 something.

14 Does that refresh your recollection as to who
15 called whom?

16 I am sorry, take some more time, please.

17 (Pause)

18 A. Yes, sir.

19 Q. Mr. Salem, after you got out of the hospital,
20 would I be correct that Nancy called you to see how you were
21 feeling?

22 A. I believe, sir, that I am the one who called her.

23 Q. In any event, you told Special Agent Floyd that
24 nobody had listened to you, right?

25 A. Yes, sir.

1 Q. And you told her that if somebody had listened to
2 you you wouldn't have had the World Trade Center bomb,
3 correct?

4 A. I beg your pardon.

5 Q. The bomb wouldn't have happened if somebody had
6 listened to you, correct?

7 A. Yes, sir.

8 Q. And you told her that you had always told the
9 Bureau about the bomb that was built, correct? You
10 mentioned that to her. You said, you know, I gave you the
11 information about the bomb. You told her that, correct?

12 A. Yes, sir.

13 Q. As a result of that, she didn't set up a meeting
14 with you, did she, in that first conversation on the phone?
15 She said anything happens page me, correct?

16 A. Yes, sir.

17 Q. And you then began to talk to Anticev and Napoli,
18 correct?

19 A. I believe, yes, sir.

20 Q. And I am not going to repeat it again. That's
21 when you had these kind of tough conversations about your
22 relationship with the Bureau and how you had been treated
23 and you weren't going to take that again, correct?

24 A. No, sir.

25 Q. Did you tell Anticev and Napoli if they don't

1 listen to you the World Trade Center wouldn't have happened?

2 Did you repeat that to them?

3 A. It's not Agent John Anticev or Agent Louis
4 Napoli, because my complaint was about their supervision,
5 sir, not themselves, because they did very good job with me,
6 sir.

7 Q. It was the supervisors who after you brought them
8 the firecracker said you're out, correct?

9 A. No, sir.

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. Did you tell Anticev and Napoli that if Emad
13 Salem had been on the job that they would have been making
14 the bomb with phony powder? Did you say that to those
15 agents?

16 A. Yes, sir.

17 Q. And did you say that the price of the Bureau's
18 mistakes was the World Trade Center bomb? Did you say that
19 to the agents?

20 A. I may said it, sir.

21 Q. Because you told them you had been pulled off of
22 working on the bomb before it happened. You told them that
23 too, sir, didn't you, words to that effect?

24 A. Something that effect, that we stopped the
25 investigation in a certain time, yes, sir.

1 Q. Did you say I want to talk to the head of the FBI
2 because the information I supplied, it was expensive and
3 valuable enough to save the country's ass from this bomb?
4 Did you say that, sir?

5 A. Yes, sir.

6 Q. And that was to Agent Anticev, correct?

7 A. Yes, sir.

8 Q. Did you say that they were playing shit games in
9 this country and you got to imagine how many disasters would
10 be created if the World Trade Centers collapse out of some
11 stupid assholes trying to play Muslims? Did you say that to
12 Agent Anticev?

13 A. Yes, sir, I said it.

14 Q. And it was at this time that you renegotiated a
15 new agreement with the FBI then, in the spring of 1993,
16 correct, sir?

17 MR. McCARTHY: Objection to form.

18 THE COURT: Sustained.

19 Q. You started a new relationship with the Bureau
20 where you would be working on another investigation,
21 correct?

22 A. Yes, sir.

23 Q. At the time that you went back with the Bureau
24 in, I will say March and in April and in May, were you
25 actually working for a living at that time? Did you have a

1 job?

2 A. I am sorry. Say it again.

3 Q. Sure. In the spring of 1993, did you have a job?

4 A. I was helping my wife with the jewelry business
5 and it start to pick up, yes, sir.

6 Q. Did you go every day to the jewelry store?

7 A. Not on a regular basis sometimes -- no, not every
8 day.

9 Q. Did you have debts at the time?

10 A. Probably, yes.

11 Q. As a result of these meetings, the FBI agreed to
12 allow you to come back to work, correct?

13 A. To allow me?

14 Q. Yes.

15 A. No, sir. They are the one who asked me to go
16 back to work for them, and I allowed them to take me back.

17 Q. And you were given very specific instructions
18 about what to do and what not to do, correct?

19 A. Yes, sir.

20 Q. Things like you were told don't tape people
21 without our permission and authority. Were you told that by
22 the FBI in the spring of 1993?

23 A. No, sir.

24 Q. Is it your testimony that no agent in the spring
25 of 1993 ever discussed the manner of making tape recordings?

1 MR. McCARTHY: Objection. Different question.

2 Q. Did you understand the second question I just
3 asked you?

4 A. I understand the question that you telling me did
5 you ever discuss taping World Trade Center FBI. I did
6 discuss taping, but they did not -- the first question is
7 different, sir.

8 Q. So let's see. Did you have a conversation with
9 Anticev, Floyd or Napoli, where they said to you in the
10 spring of 1993, Emad, when you work for us there is no
11 private taping? Did you ever have that conversation with
12 any of those three people in the spring of 1993?

13 MR. McCARTHY: Objection to form, unless he
14 removes "did you ever."

15 Q. In the spring of 1993 did you have such a
16 conversation?

17 A. I had conversations about tapes because that's
18 when we start to make tapes, but they told me don't make
19 private tapes, nobody specified that to me, sir.

20 Q. And in fact Floyd, Napoli and Anticev knew you
21 were making private tapes all along, didn't they?

22 A. I don't read their minds, sir.

23 Q. Did you tell Floyd -- let's take them one at a
24 time. Did you ever tell Nancy Floyd before June 23, 1993,
25 that you were making tape recordings on your own? Yes or

1 no.

2 A. Yes, sir -- I am sorry. I don't recall exactly
3 but it came a time that I told Nancy Floyd I am making
4 tapes, yes, sir.

5 Q. Before the arrest of most of the defendants,
6 correct, sir?

7 A. Correct, sir.

8 Q. Did you have a conversation with Police Officer
9 Detective Louis Napoli before June 23, 1993, where you and
10 Napoli discussed the fact that you were making private
11 tapes? Yes or no.

12 A. I believe yes, but I am not sure that was in the
13 first phase or the second phase of the investigation. But I
14 did requested some blank tapes from Detective Louis Napoli,
15 sir.

16 Q. The question, sir, was, did you discuss, either
17 first phase or second phase, with Louis Napoli -- not that
18 you needed tapes -- that you were making private tapes? Yes
19 or no.

20 A. I don't think that he knows about 2 it, sir.

21 Q. How about Special Agent John Anticev? Did you
22 discuss with him the making of private tapes before June 23,
23 1993?

24 A. I recall it came a time, I don't know what was
25 the incident, and he told me, well, if you can throw one of

1 your gadgets and get this on tape, can do it, and I said I
2 will try or I said something in that effect. It was that
3 kind of discussion, sir.

4 Q. And that's when Anticev said that that tape
5 wouldn't be used in evidence, correct, sir?

6 A. I don't know, sir. I don't remember that.

7 THE COURT: Mr. Jacobs, would you come to a
8 convenient break point in the next five minutes.

9 MR. JACOBS: Yes, sir.

10 Q. Did you ever tell anybody that the World Trade
11 Center bombing and the deaths of six people were the best
12 thing that ever happened to you? Did you ever say that,
13 sir?

14 A. No, sir.

15 Q. Since your work with the FBI in June 23 and the
16 arrests in this case, has your name appeared in the
17 newspapers a lot?

18 A. Yes, sir.

19 Q. Your picture has appeared in many, many
20 newspapers, correct, sir?

21 A. Yes.

22 Q. You have been on national TV?

23 A. Yes, sir.

24 Q. Many stations?

25 A. Yes, sir.

1 Q. Do you watch yourself on TV, sir?

2 A. I am doing my best to see.

3 Q. Do you tape it?

4 A. Yes, sir.

5 Q. Do you make copies of the articles where your
6 name appears in the newspapers, sir?

7 A. I keep the articles.

8 Q. Cut them out?

9 A. Yes, sir.

10 Q. Send them to your agent?

11 A. No, sir.

12 Q. When you went back to work -- could I have a
13 couple minutes, your Honor, just to finish up, two minutes?

14 When you went back to work with the Bureau,
15 didn't Louis Napoli search you for a secret recorder?

16 A. It came a time he was patting my back with a
17 certain way, I didn't like it, and I thought that he is
18 trying to search me, sir.

19 Q. Did you ever tell Agent Anticev, we came back to
20 the first, the first meeting, Louis was searching my back,
21 thinking I'm carrying a bugging device on him? Did you ever
22 say that to Anticev?

23 A. That's what I just said, sir.

24 Q. Is that what you meant?

25 A. Yes, sir.

1 Q. And Louis Napoli was suspicious of you and you
2 told that to Nancy Floyd, didn't you, sir?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q. Did you ever tell Special Agent Nancy Floyd and
6 Special Agent John Anticev that Louis Napoli was suspicious
7 of you? Did you say that to the other agents?

8 A. I recall that I said that Louis Napoli was
9 patting my back with a funny way, looking for device or
10 something like that, sir.

11 Q. Did you ever have a conversation with Nancy Floyd
12 where you said, oh nothing, Louis is always suspicious? Did
13 you ever have a conversation with Nancy Floyd where you used
14 those words, sir?

15 A. Yes, sir.

16 Q. Did you ever tell Agent antiAnticev that Louis
17 Napoli had Middle East mistrust and that he was angry and he
18 thought that you were supplying false information? Did you
19 ever have that conversation with John Anticev, sir?

20 A. I recall at the beginning of the introduction
21 with Detective Louis Napoli, I didn't like the way he
22 handled me, sir.

23 Q. And was it at that time, sir, that you told
24 Anticev, you know, Louis thinks I'm giving you guys false
25 information? Did you say that to Agent Anticev?

1 A. I may said it, sir.

2 MR. JACOBS: This would be a convenient time,
3 your Honor.

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, and we
7 will resume in a few minutes.

8 (Recess)

9 (Continued on next page)

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1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Go ahead, Mr. Jacobs.

4 Q. Mr. Salem, so phase two begins in March of 1993,
5 correct, sir?

6 A. Yes, sir.

7 Q. When phase two begins, would I be correct in
8 stating in March of 1993 you had never met Siddig Ali,
9 correct?

10 A. That's incorrect, sir.

11 Q. When had you met him for the first time?

12 A. I met him in the courtroom. I believe I saw him
13 once giving a lecture in Warren Street mosque, sir.

14 Q. Please correct me if I'm wrong, in March of 1993,
15 when you go to the Bureau and you have these conversations
16 about going back, you had not discussed any illegal
17 activities with Siddig Ali, is that fair to say?

18 A. Yes, sir.

19 Q. So then in March of 1993, would I be correct in
20 stating that the Federal Bureau of Investigation was totally
21 immersed and interested in the World Trade Center bombing,
22 is that correct?

23 A. I never know the strategy of the bureau, sir.

24 Q. You had conversations --

25 MR. JACOBS: Am I doing something wrong?

1 THE COURT: I don't know whether you are or
2 whether the microphone simply doesn't work.

3 MR. JACOBS: It doesn't seem to be working.

4 MR. McCARTHY: I can hear you.

5 MR. JACOBS: Is it the bag?

6 (Pause)

7 MR. JACOBS: Am I finished?

8 (Pause)

9 MR. JACOBS: I'm back?

10 THE COURT: You are on the air, Mr. Jacobs.
11 Go ahead.

12 MR. JACOBS: OK. Thank you, Mr. Fitzgerald.

13 Q. We were talking about when you went back to work
14 with the Bureau there were some objectives that the FBI
15 wanted from you, correct?

16 They wanted you to do something, correct?

17 A. Yes, sir.

18 Q. Back then you were dealing with Anticev and
19 Floyd, correct?

20 A. No, sir.

21 Q. Anticev and Napoli?

22 A. Yes, sir.

23 Q. Agent Floyd was not on the Terrorist Task Force
24 at the time, to your knowledge?

25 A. To my knowledge, she was not, sir.

1 Q. Would I be correct in stating they wanted you to
2 go back into the Muslim community and see what was cooking
3 with the World Trade Center, correct, about the World Trade
4 Center?

5 A. See what's cooking, yes.

6 Q. Would I be correct in stating it was during that
7 period of time in March that some arrests were being made in
8 the World Trade Center case, correct?

9 A. Yes, sir.

10 Q. And the FBI, I assume, were discussing with you
11 what you knew and what you didn't know, correct?

12 A. What do I know? Yes.

13 Q. Yes. I mean, you had worked with them in phase
14 one?

15 A. Yes.

16 Q. You actually knew and had spoken with at least
17 one of the -- I will call them suspects in the case,
18 correct, sir?

19 A. Which case, sir?

20 Q. The World Trade Center. I'm sorry.

21 A. Yes, sir.

22 Q. So you knew Mahmud Abouhalima, correct?

23 A. Yes, sir.

24 Q. I assume they sat with you and asked you
25 everything you knew or didn't know, correct?

1 A. About Mahmud Abouhalima?

2 Q. Sure.

3 A. Yes.

4 Q. Correct?

5 And they asked you about other names, I assume
6 they may have asked you about some of the names on the
7 photographs that are in evidence, correct?

8 A. Yes, sir.

9 Q. Did they show you -- I don't doubt if they showed
10 you these -- but did they show you some of the people on
11 this board, some of the seven people and say to you, "Emad,
12 what do you know about Ramzi Yusef?"

13 MR. JACOBS: I'm sorry. I got to go back.

14 Q. Did they say these kind of things to you, sir?

15 A. No, they did not say that.

16 Q. Did they run names by you and ask you what you
17 knew about people?

18 A. No, sir, they did not do that.

19 Q. You tried to be as honest as you could in March
20 of 1993 about what you knew about the bombing on February
21 26, didn't you, sir?

22 A. I did my best, sir.

23 Q. Because that was an opportunity for you to go
24 back to work with the Bureau in phase two, correct?

25 A. That's not correct, sir.

1 Q. Well, you did this voluntarily, correct?

2 A. Did what?

3 Q. I'm sorry.

4 You went to phase two because you wanted to,
5 correct?

6 A. No, sir.

7 Q. Well -- I'm sorry.

8 A. Not because I wanted to.

9 Q. Well, you had no case pending, right, you weren't
10 a defendant in a case, were you, sir?

11 A. No.

12 Q. They didn't give you a subpoena, did they?

13 A. No, sir.

14 Q. So --

15 A. I'm sorry. They did give me subpoena in a time
16 but --

17 Q. That was this phony subpoena that they created.
18 But I'm talking about when you went back in
19 March --

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 MR. JACOBS: I'm sorry.

23 THE COURT: The statement in the air, "That was
24 this phony subpoena they created."

25 Q. You got a subpoena to go give fingerprints, palm

1 prints and things like that, right?

2 A. Yes, sir.

3 Q. You never gave them, did you?

4 A. I did, yes, sir.

5 Q. You did give them?

6 A. I give them fingerprints, and they took shots and
7 they did everything.

8 Q. That was created by the Bureau as a cover,
9 correct?

10 A. Again, sir, I don't know the strategy of the
11 Bureau, sir.

12 Q. You weren't the suspect in anything when you gave
13 those palm prints and fingerprints, were you?

14 A. No, sir.

15 Q. They knew that, correct?

16 A. I don't know what they know, sir.

17 Q. They created the subpoena as some sort of gimmick
18 to get you to explain things about yourself, right?

19 A. Again, sir --

20 Q. All right.

21 A. I don't know if they created to do that, I cannot
22 testify for what they had been doing, sir.

23 Q. All right. Let's get back to phase two when you
24 began.

25 When I say it was voluntary, you decided -- the

1 Bureau asked you to come back to work, you asked to go back
2 to work, and you did, correct?

3 A. Yes, sir.

4 Q. Did anybody force you to?

5 A. No, sir.

6 Q. You understand what I mean by "force." I mean,
7 the Bureau didn't say, "Emad, unless you go back and go out
8 and go meet El-Gabrownny and people like that, you're getting
9 locked up."

10 They didn't say that, did they, to you?

11 A. No, sir.

12 Q. And they didn't tell you, "Mr. Salem, unless you
13 go back to work, we're going to throw you out of the
14 country." They didn't say that to you, did they?

15 A. No, sir.

16 Q. So you reached an agreement with the FBI where
17 you would go back into the Muslim community and give them
18 information about what was going on, correct?

19 A. Yes, sir.

20 Q. It is clear at this point that you knew nothing
21 about the seven people who were so-called involved in the
22 World Trade Center, is that correct, sir?

23 MR. McCARTHY: Objection.

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

25 THE COURT: Thank you.

1 Q. You had never spoken with anybody other than
2 Mahmud Abouhalima, correct, other than to say "hello" maybe?

3 A. Yes, sir.

4 Q. Without going into it, because I don't want the
5 judge to get mad at me, you knew none of the details to the
6 actual bombing, correct?

7 A. No, sir.

8 Q. So you are sitting there in March with having
9 spoke to Mahmud Abouhalima months before, correct?

10 A. Yes, sir.

11 Q. But you told the Bureau something different,
12 didn't you?

13 A. Which is, sir? I'm sorry.

14 Q. Which is you helped to build the bomb. "And If I
15 don't go back to work, I'll tell CNN and the press and the
16 'New York Times' that you built it."

17 Isn't that what you said?

18 A. No, sir.

19 Q. So you didn't blackmail the Bureau to go back to
20 work, it was just some gentleman's agreement that it would
21 be best for all parties for you to go back to work, correct?

22 A. I'm sorry.

23 Could you rephrase it? Can you just ask the
24 question?

25 Q. Sure. It was just something that was mutually

1 decided that it would help law enforcement for Emad Salem to
2 go back to work, correct?

3 A. Not correct, sir.

4 Q. Well, if you weren't forced to go back to work
5 and it wasn't voluntary, how come you went back to work?

6 A. In this point, sir, I felt obligation. I felt --

7 Q. I don't want to interrupt you. Please continue.

8 A. I felt either I keep the boosted image I created
9 on lies and not to testify and not to take the stand, or
10 smash this image and go work again with the FBI and take the
11 stand and take the risk and lose everything I had lost and
12 be in this situation today.

13 I felt that I am obligated to smash this image
14 and admit my sins in front of everybody here and go back
15 because I know that's not the last bombing. And I went back
16 and I did my job, sir.

17 Q. Well, when you say you know it's not the last
18 bombing, has there been some other bombing that I missed
19 here in the United States that we haven't heard about yet?

20 A. I believe, yes, sir.

21 Q. You believe yes. OK.

22 Of course, you helped build that bomb, too,
23 correct?

24 A. No, sir.

25 Q. So you were forced by your moral conscience to go

1 back to work with the FBI because you were going to lose
2 your job and your family, correct, sir?

3 A. Yes, sir.

4 Q. And money never entered into Emad Salem's mind in
5 March of 1993? It was just so that the six people who had
6 died in the World Trade Center could be avenged by you, fair
7 to say?

8 A. That's not true, sir. Money took part, of
9 course.

10 Q. Of course, money wasn't really important to you,
11 right?

12 A. Well, when you have kids, money is important,
13 sir.

14 Q. When you went back to work in March of 1993, did
15 you bring out your box of tapes and say, "You know, I have
16 all these tapes. Somebody ought to listen to them because
17 maybe Mahmud Abouhalima might be on the tapes."

18 Did you say that to the FBI in March of 1993,
19 sir?

20 A. No, I did not, sir.

21 Q. You sat, sitting on your chair with the tapes in
22 your chair, correct, sir?

23 A. It was not in the chair in that time, sir.

24 Q. And on those tapes, you didn't remember even what
25 was on most of those tapes, correct, sir?

1 A. No, sir, I don't.

2 Q. And you felt you had some obligation in March of
3 1993 to clear your name? Did I hear you correctly? I mean,
4 you thought you had some problem; you had to clear your
5 name. Maybe I misunderstood.

6 I will withdraw the question.

7 So in March of 1993 you decided that it was time
8 for the real Emad to come forward, raise your right hand and
9 to testify against the World Trade Center bombers, correct,
10 sir?

11 A. If I was asked to do so, I will have done it,
12 sir.

13 Q. When the people went to trial here, did you
14 testify, sir?

15 MR. McCARTHY: Objection.

16 THE COURT: Sustained and stricken.

17 Q. Have you ever testified in a United States
18 District Court before?

19 MR. McCARTHY: Objection, relevance.

20 THE COURT: Sustained.

21 Q. The very first official tape you made in this
22 case, May 7 -- I hope I'm right, May 7 -- May 7, 1993, CM1,
23 you and Siddig, the subject was the World Trade Center
24 bombing, correct, sir?

25 A. We discussed various things, sir.

1 Q. I think we have had it --

2 MR. JACOBS: Your Honor, I am going to apologize
3 because we had it in voir dire, but I want to ask him again.

4 Q. Read what you wrote on the envelope.

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 MR. JACOBS: It is in evidence. It says,
8 "Subject, The World Trade Center" --

9 MR. McCARTHY: Objection to form.

10 MR. JACOBS: Pardon me?

11 THE COURT: Sustained.

12 MR. McCARTHY: I withdraw the objection.

13 MR. JACOBS: I'm sorry.

14 THE COURT: Ask it again.

15 Q. Am I correct, sir, that after you had the meeting
16 with Siddig Ali, May 7, you wrote down that the subject was
17 the World Trade Center, correct? Do you want to see it?

18 I'm sorry.

19 A. That's correct, sir.

20 Q. Now, before you made this first official tape for
21 the Bureau --

22 MR. JACOBS: This is -- 301A-1 I think is the
23 envelope, your Honor. And the tape I think is 301A.

24 Is that what your Honor wanted me to do, have the
25 exhibit? I'm not sure.

1 THE COURT: I didn't want you to do anything --

2 MR. JACOBS: I'm sorry.

3 THE COURT: -- other than ask proper questions.

4 MR. JACOBS: I am trying, your Honor.

5 MR. McCARTHY: 301 I believe is the tape.

6 Q. So this is the first official tape that you made

7 in connection with this case and the subject was the World

8 Trade Center, correct?

9 A. That's what I wrote, sir.

10 Q. Would I be correct in stating that before you

11 made this tape some agent and you discussed what you were

12 going to do that day, correct?

13 A. No, sir.

14 Q. You just went out and you made a tape and nobody

15 told you what you should be doing?

16 A. CM1?

17 Q. Sure, CM1.

18 A. Yes, I'm sorry. I apologize, sir.

19 Yes, they gave me the briefcase, they told me how

20 to operate it and they told me how to -- yes, they did.

21 Q. Didn't Anticev and Napoli say, "Hey, go talk to

22 Siddig about the World Trade Center, see what the man

23 knows"? Didn't they tell you that?

24 A. No, sir.

25 Q. So you just figured out yourself, "I'm going to

1 go out and see Siddig and I'll figure out on my own what I
2 want to talk about," nobody told you?

3 A. No, sir.

4 Q. OK. In the months before May of 1993 when you
5 went into the Muslim community, did you discuss with the FBI
6 what you were going to be doing in the Muslim community?

7 A. Not really. They did not specify anything. All
8 what I recall, they told me stay away of the lawyers. And
9 they really framed that very specifically with me and I
10 followed the instructions in this regard, sir.

11 Q. I'm sorry. I understand.

12 With respect to that, you just decided on your
13 own to travel around the New York City area, going from
14 mosque to mosque with your little tape recorder going to see
15 what the Muslim brothers were saying, is that your story?

16 A. No, sir.

17 Q. Did you go from mosque to mosque in March and
18 April seeing what the brothers had to say?

19 A. It did not happen that way, sir.

20 Q. Did you go to various mosques? Yes or no.

21 A. Yes, sir.

22 Q. You were interested in hearing what people had to
23 say, correct?

24 A. Yes, sir.

25 Q. Did you make recordings March and April, 1993,

1 sir?

2 A. Yes, sir.

3 Q. Where are those recordings?

4 A. Where?

5 Q. Yes.

6 A. Here it is, sir.

7 Q. It's not the official recordings, because the
8 first one here is May 7.

9 MR. McCARTHY: Objection.

10 MR. JACOBS: I'm sorry, Mr. McCarthy. I will
11 withdraw it.

12 Q. Assume that the first official recording is May
13 7, CM1, these tapes in March and April are unofficial
14 recordings, correct?

15 A. I'm sorry. You trapped me here. I'm sorry, sir.
16 Again, the dates is very screwed up with me.

17 Q. OK.

18 A. I'm sorry. I did not -- that's the first
19 official tape, sir, I made to the FBI. Prior to that, I
20 made one tape with my own taping when Siddig Ali asked me to
21 help him building bombs and next day come to my house to
22 sweep it, I took my own device, sir.

23 Q. OK. So in March and in April, you're going
24 around to the mosques speaking to brothers, finding out
25 information, correct?

1 A. Yes.

2 Q. One of the things you're doing?

3 A. Yes, sir.

4 Q. You also got in the middle of Mr. Gabrowny's
5 arrest, didn't you, and his hiring of lawyers, didn't you,
6 sir?

7 MR. McCARTHY: Objection to form.

8 THE COURT: Sustained.

9 MR. JACOBS: I'm sorry.

10 I will rephrase the question.

11 Q. Mr. Gabrowny got arrested in early March of 1993,
12 correct?

13 A. Yes, sir.

14 Q. At least you were pretending to be his friend,
15 correct?

16 THE COURT: Mr. Jacobs.

17 MR. JACOBS: I'm sorry. I keep forgetting there
18 are microphones here.

19 Q. You were pretending to be his friend, correct?

20 A. Yes, sir.

21 Q. You weren't his friend really, you didn't like
22 the man, did you?

23 A. I liked certain parts in the man, but I hated the
24 person who want to build bombs to kill innocent people, sir.

25 Q. Of course you and he built bombs, right?

1 A. Pardon me.

2 Q. You and he built bombs together?

3 A. He asked me to, sir.

4 Q. Did you build bombs with Mr. Gabrownny? Yes or
5 no.

6 A. No.

7 Q. Now, you played a role with Mr. Gabrownny
8 pretending that you were his buddy when you were really
9 working for the FBI looking for information, correct, sir?

10 A. That's correct, sir.

11 Q. You took it upon yourself with Mr. Gabrownny to
12 become a family advisor, correct?

13 A. A family advisor?

14 Q. Yes. To him and his family, his brother, you got
15 in the middle of his case, didn't you?

16 A. Yes, sir.

17 Q. You were telling the FBI what you were doing
18 concerning his case, correct?

19 A. Yes, sir.

20 Q. Did you have anything to do with hiring William
21 Kunstler as his lawyer, sir?

22 A. No, sir. I was instructed not to contact -- I
23 made one phone call to Mr. William Kunstler, and the agent
24 was so mad at me, and they told me that's no-no, don't do it
25 anymore.

1 Q. You called a lawyer to come represent Mr.
2 Gabrownny, is that your testimony, sir?

3 A. Yes, I did, sir.

4 Q. Did he tell you to do that?

5 A. No, sir. His brother did, sir.

6 Q. His brother.

7 So you called William Kunstler and said, "Bill,
8 we'd like you to come represent Mr. Gabrownny." Did you say
9 words to that effect, sir?

10 A. I said that we are interested for you to
11 represent Ibrahim El-Gabrownny, yes, sir.

12 Q. Did you ever have an argument with Mr. Gabrownny's
13 family about who the lawyer should be to represent him?

14 A. It wasn't Mr. El-Gabrownny's family; it was
15 Mr. Sattar. He wants to bring different lawyer, and the
16 family needs different lawyer, stuff like that, yes, sir.

17 Q. They wanted a lawyer by the name of Michael
18 Warren and you wanted Bill Kunstler, correct?

19 A. Yes, sir.

20 Q. You argued with people over who should represent
21 Mr. Gabrownny, didn't you?

22 A. That was my role, to make them believe that I am
23 really concerned about their defense and I'm really
24 concerned about their innocence, sir.

25 Q. So the family or somebody or a brother or

1 somebody wanted one lawyer and you, FBI informant, are
2 recommending another lawyer, correct?

3 A. No, that's not correct, sir.

4 Q. You weren't an FBI informant at that time?

5 A. I was FBI informant.

6 Q. Were you telling people that he should hire
7 William Kunstler? Yes or no.

8 A. Yes, sir.

9 Q. Did you tell people, "Michael Warren's a son of a
10 bitch you should hire Bill Kunstler"?

11 Did you ever say that, sir?

12 A. I may said it, sir.

13 Q. The FBI knew that you were doing that,
14 interjecting yourself into somebody's defense, didn't they,
15 sir?

16 A. No, sir, they did not know. Once they saw a
17 picture of me with Mr. Mohammed Abouhalima and the lawyer,
18 they had a big discussion with me, do not approach the
19 lawyers, period.

20 Q. It was at the time where you were calling Michael
21 Warren a son of a bitch that you were holding press
22 conferences on Mr. El-Gabrowny's behalf, is that correct,
23 sir?

24 A. Yeah. I did arrange some press conferences for
25 his brother, sir.

1 Q. You didn't appear on TV anywhere?

2 A. I did, sir.

3 Q. Did you appear on TV on his behalf,
4 Mr. El-Gabrownny's behalf?

5 A. Yes, sir.

6 Q. You told people on TV that there was some
7 innocent man involved, correct?

8 A. I think I used every trick to convince the
9 people, subject of the investigation that I am working on
10 their behalf, sir.

11 Q. Would I be correct in stating the FBI was not
12 happy with you doing that, were they, sir?

13 A. Doing what, sir?

14 Q. Getting on TV on behalf of Mr. Gabrownny and
15 saying the man is innocent. They weren't too happy with
16 that, were they?

17 A. The thing they --

18 Q. They yelled -- I'm sorry. Please continue.

19 A. The thing they wasn't happy about it -- actually,
20 they were mad at me, excuse me, that I talked to the lawyers
21 without any instructions or without their knowledge, sir.

22 Q. So you are telling people publicly that Mr.
23 Gabrownny is being framed by the FBI, didn't you use those
24 words, sir?

25 A. I may did, yes, sir.

1 Q. Secretly inside you believed he was a terrorist,
2 is that what you're saying, sir?

3 A. I won't use any names, sir, because I am here to
4 say --

5 Q. I will let you. Did you think he was a
6 terrorist, sir?

7 THE COURT: I sort of let people do or not do
8 things. Thanks.

9 MR. JACOBS: I'm sorry. My apologies.

10 THE COURT: That is all right.

11 MR. JACOBS: I got carried away.

12 Q. Did you think he was a terrorist, sir?

13 A. Anyone who build bombs and had have no remorse in
14 his heart and his brain to blow bombs, I believe that he is
15 a terrorist, sir.

16 Q. Tell us the bomb he built.

17 A. He did his best to bring detonators from
18 Afghanistan; he did his best to let me use my capacity and
19 technical capacity to build high-explosive bombs, not even
20 Molotov cocktails; he used his ability to discuss breaking
21 Mr. Sayyid Nosair out of jail, sir; he did his ability to
22 get phony -- I'm sorry. I don't know if I should say that
23 or not, sir.

24 THE COURT: No.

25 A. I will stop.

1 Q. Where are the bombs that he built?

2 Where are the explosives? Or are we going to see
3 more firecrackers?

4 THE COURT: Mr. Jacobs, the only person who
5 introduced fire crackers here physically was you.

6 MR. JACOBS: I'm sorry.

7 THE COURT: And would you calm down.

8 MR. JACOBS: OK. I will.

9 THE COURT: Thank you.

10 Q. You got on TV and you lied to everybody in the
11 world that an innocent man is being framed, correct?

12 A. Correct, sir.

13 Q. Another role that you were playing, correct?

14 A. Correct, sir.

15 Q. At the time that you were doing this, you were
16 trying to find information on the World Trade Center
17 bombing, correct?

18 A. About anything could harm the American streets,
19 sir.

20 Q. Well --

21 MR. JACOBS: I was going to walk over.

22 Q. -- did you make a recording with El-Gabrowny
23 where he told you about all the bombs that he had built?

24 Did you ever make that recording, sir?

25 A. No, I did not, sir.

1 Q. Did you ever have conversations with people in
2 the Muslim community where it was told to you that Mr.
3 Gabrownny had no money, he was going to use a public
4 defender? Did you ever have such a conversation?

5 A. No, sir. I know that -- no, sir.

6 Q. Do you know someone by the name of Dr. Mehdi?

7 A. Yes, sir.

8 Q. Did you ever have a conversation with Dr. Mehdi
9 where Dr. Mehdi suggested that Mr. El-Gabrownny use a public
10 defender? Did you ever have such a conversation, sir?

11 A. I had so many conversations with Dr. Mehdi, but
12 specifically that Mr. El-Gabrownny -- Mr. El-Gabrownny give me
13 a magazine, sir, that he is -- I'm sorry. No.

14 THE COURT: His question was simply did you have
15 a conversation with Dr. Mehdi in which Dr. Mehdi suggested
16 that he use a public defender.

17 THE WITNESS: I don't recall this conversation,
18 sir.

19 Q. Did you ever express the view to Mr. Gabrownny and
20 other members of the Muslim community that William Kunstler
21 would be very good because he was high profile and would get
22 on TV? Did you ever suggest that, sir?

23 A. I may said it, yes.

24 Q. Getting on TV and being high profile is something
25 that you embraced, correct, sir?

1 A. Something?

2 Q. That you embraced, you did yourself, you joined
3 him on TV, didn't you?

4 A. Enjoyed who?

5 Q. I am sorry.

6 You with were with him on TV, Mr. Kunstler?

7 A. I don't think that I came with Mr. Kunstler on
8 TV, sir.

9 Q. But in your role you went on TV yourself,
10 correct?

11 A. Yes.

12 Q. You weren't concerned about your safety as an FBI
13 informant because you put your face right on TV for
14 everybody to see you, correct?

15 A. I'm sorry. I didn't get the question.

16 Q. Let me rephrase it.

17 A. Yes, sir.

18 Q. The FBI didn't tell you you have to go on TV,
19 correct?

20 A. No, they did not.

21 Q. In fact they were not happy with you going on TV,
22 correct?

23 A. I don't think anybody told me don't do that, sir.

24 Q. You've told us over the last -- I'm not sure how
25 many weeks it is now, months, weeks -- about how concerned

1 you are about your safety, correct?

2 A. Yes, sir.

3 Q. But you went on TV so everybody could see your
4 face, correct?

5 A. Correct, sir.

6 Q. As a result of your efforts, did Mr. El-Gabrownny
7 hire Mr. Kunstler?

8 A. As a result of?

9 Q. Did he hire Mr. Kunstler?

10 MR. McCARTHY: Objection to form.

11 MR. JACOBS: I will withdraw it.

12 Q. Did he hire Mr. Kunstler?

13 A. I don't think so, sir -- I'm sorry. I think he
14 did, sir. I think he did, yes.

15 Q. In March and in April you continued to work on
16 Mr. Gabrownny's behalf because he was under arrest, correct?

17 A. Work on his behalf?

18 Q. Yes. I mean, you pretended to be working on his
19 behalf, correct?

20 A. Working in --

21 Q. Getting lawyers --

22 A. No, no, no. No lawyers. Since the FBI told me
23 no lawyers, I cut completely, sir.

24 Q. Coming into late March -- I'm sorry, into April
25 and then into May you sort of dropped dealing with Mr.

1 Gabrownny because the FBI told you it wasn't a good idea,
2 correct, because he was involved with lawyers?

3 A. Dropped -- one second. Dropped with the lawyers,
4 sir, but --

5 Q. You -- I'm sorry, please.

6 A. But in different, other avenues, no, sir.

7 Q. You continued to speak to Mr. Gabrownny?

8 A. I attended his trials, "hello," "hello," that was
9 all, sir.

10 Q. Continued to tape him when he called you at home?

11 A. He did not call me after the arrest, sir.

12 Q. During this period of time you got into -- I'm
13 not sure of the day. Late April or early May you met Siddig
14 Ali, correct?

15 A. Yes, sir.

16 Q. You told us that you met him and you had this
17 conversation, that you had a personal private recorder on,
18 641 in evidence, correct?

19 A. Yes, sir.

20 Q. And didn't tell the FBI about the tape, correct?

21 A. I told them about what happened, but not the
22 tape, sir.

23 Q. Not the tape.

24 Then you went out and made the first official
25 tape, CM1, correct?

1 A. Yes, sir.

2 Q. During this period of time, who were the agents
3 working with you?

4 A. John Anticev and Detective Louis Napoli, sir.

5 Q. What about Special Agent Nancy Floyd? What did
6 she have to do with the criminal investigation, phase two,
7 if anything, sir?

8 A. I think that she has no role in it, sir.

9 Q. Well, didn't you continue to talk with her and
10 meet with her during that period of time, sir?

11 A. Yes, sir.

12 Q. And she had no official position with this Joint
13 Terrorist Task Force operation, did she, sir?

14 MR. McCARTHY: Objection.

15 Q. If you know.

16 A. I don't know what's the FBI's strategy, sir.

17 Q. Were you meeting with her in an official capacity
18 or were you meeting with her on a personal basis?

19 MR. McCARTHY: Objection to form.

20 MR. JACOBS: I will rephrase the question.

21 Q. You met Special Agent Nancy Floyd in August of
22 1991, correct, sir? About then?

23 A. Yes, sir.

24 Q. You did some work on some unrelated investigation
25 with her, correct, sir?

1 A. Yes, sir.

2 Q. You did some work in some unrelated
3 investigation.

4 And she was with a unit of the FBI called Foreign
5 Counterintelligence, the FBI calls it FCI, correct, sir?

6 A. Yes, sir.

7 MR. JACOBS: Your Honor, I promise I am not going
8 to repeat all of it.

9 Q. You meet with her in those two days in the
10 beginning of August and fed her a bunch of lies, correct?

11 A. It was not two days. It was around six to seven
12 months --

13 Q. I'm sorry.

14 A. -- I helped her --

15 Q. OK.

16 A. -- in that time, sir.

17 Q. Perhaps you didn't understand me.
18 When you had the meeting with --

19 THE COURT: Move it along.

20 MR. JACOBS: I am.

21 THE COURT: Past that.

22 MR. JACOBS: I would like to be heard, your
23 Honor. I will not repeat any of the matters that have been
24 previously questioned upon.

25 THE COURT: Thank you.

1 Q. You met with Floyd for two days, about, in August
2 1991 about all the foreign business, correct?

3 A. It was not two days. It was --

4 Q. A day?

5 A. -- six to seven months, sir.

6 (Continued on next page)

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1 Q. You never had a meeting with her in August 7,
2 1991, where you discussed all sorts of foreign countries and
3 things?

4 A. I don't recall dates. We discussed foreign
5 countries, yes, sir.

6 Q. And did you discuss with her which countries had
7 atomic power -- atom bombs?

8 A. Yes, sir.

9 Q. Did you have any personal knowledge of which
10 countries in the Middle East had atom bombs?

11 A. Just general information, sir.

12 Q. So you read the New York Times and you told her
13 what you read in the New York Times, correct?

14 A. No, it was not the New York Times, sir.

15 Q. Some other magazine?

16 A. Yes.

17 Q. You sat with her, she is a foreign
18 counterintelligence agent, and you said Israel has the bomb,
19 Iraq doesn't have the bomb, Syria's got the bomb, Sudan
20 doesn't have the bomb, they would like the bomb. Egypt will
21 get the bomb, maybe they will get the bomb,

22 A. Something like that, sir.

23 Q. And you were feeding her a bunch of nonsense that
24 you had read about the bomb, who had the bomb and who didn't
25 have the bomb.

1 A. Yes, sir.

2 Q. And you gave her some information on the KGB,
3 correct?

4 A. I don't recall that, sir. I don't think so.

5 Q. Were you actually -- did you tell her you were a
6 weapons specialist?

7 A. Yes, sir.

8 Q. Were you a weapons specialist?

9 A. It was part of my job, sir.

10 Q. In other words, when you were in the Egyptian
11 army you took general weapons training, correct?

12 A. Yes, sir.

13 Q. Would I be correct in stating that most of the
14 line officers had to go through basic training with weapons,
15 correct, sir? Is that what you mean by that?

16 A. No, I have little bit more advanced studies about
17 that, sir.

18 (Continued on next page)

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1 MR. JACOBS: Your Honor, I have to go through to
2 get something. May I?

3 THE COURT: Go ahead.

4 MR. JACOBS: May I approach the witness, your
5 Honor?

6 THE COURT: Yes.

7 MR. McCARTHY: Your Honor, I am going to object
8 to the relevance of this.

9 THE COURT: Do you know what it is?

10 MR. McCARTHY: Yes.

11 THE COURT: Then I will hear you at the side.

12 (At the side bar)

13 THE COURT: Maybe I have seen them and maybe I
14 haven't. They didn't stand out in my mind, whatever they
15 are. Are they pictures of weapons?

16 MR. JACOBS: No, they are pictures of training
17 for weapons. We have photographs from Egypt.

18 MR. McCARTHY: How does that --

19 THE COURT: Sustained.

20 (Continued on next page)

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1 (In open court)

2 BY MR. JACOBS:

3 Q. Without going back into the all the things that
4 you misled her about, you wanted to make yourself a big
5 shot, as you said, correct?

6 A. Yes, sir.

7 Q. As a result of all these things that you told
8 her, some of which were lies, some of which were truth, she
9 went to the FBI in August, September of 1991, and got you an
10 assignment, correct?

11 A. I don't know what she did with the FBI.

12 Q. But you got officially approved to work for the
13 Federal Bureau of Investigation as an informant, correct?

14 A. I don't know as a result of what, but she
15 introduced me to Agent John Anticev from the terrorist
16 squad, sir.

17 Q. And you got money back then, right, '91?

18 A. Yes.

19 Q. Would it be fair to state that you weren't
20 working privately with Nancy Floyd, you started working for
21 the FBI, giving them information, correct?

22 A. After I lost my job, yes, sir.

23 Q. And you were doing the best of your ability to
24 convince her that everything you said was the truth,
25 correct? Nancy Floyd, you wanted her to believe you, didn't

1 you?

2 A. When I said these lies, yes, sir.

3 Q. And as a result or at least partially as a result
4 of things you said, they started giving you money to go out
5 in the Muslim community and get information, correct, sir?

6 MR. McCARTHY: Objection.

7 THE COURT: Sustained.

8 Q. Would I be correct in stating that you developed
9 a friendly relationship with Nancy Floyd, correct, sir?

10 A. I believe that I developed friendly relationship
11 with most of the agents I worked --

12 THE COURT: He didn't ask you about most of the
13 agents, he asked you about Nancy Floyd. Did you develop a
14 friendly relationship with her? I am.

15 THE WITNESS: I am sorry. Yes, sir.

16 Q. After you had these meetings in early August of
17 1991, did you buy her a gift?

18 A. Yes, sir.

19 Q. Would you tell the jury, was that a brass
20 business holder with her name engraved on it, sir?

21 MR. McCARTHY: Objection.

22 THE COURT: Business cardholder?

23 MR. JACOBS: Thank you, your Honor. What did

24 I -- I am sorry.

25 Q. A brass business cardholder with her name on it,

1 did you buy her that, sir?

2 A. That was part of our project, sir.

3 Q. Was it a gift or not?

4 A. It was a gift, sir.

5 Q. Did you give her the gift because you wanted to
6 impress her, sir?

7 A. No, sir.

8 Q. You liked Agent Nancy Floyd, correct, sir?

9 A. I respect her, sir.

10 Q. And was it at this time with Nancy Floyd that you
11 were turning in the cooks and the janitors at that time,
12 sir?

13 A. What's cooks -- I am sorry.

14 Q. At the hotel, were you turning in those people at
15 that time that you gave her the business cardholder?

16 A. I don't recall dates --

17 Q. You don't recall the dates.

18 And during the time that you gave Special Agent
19 Nancy Floyd a gift, were you also secretly recording her,
20 sir? Yes or no.

21 A. No.

22 Q. When for the first time did you start secretly
23 recording Nancy Floyd?

24 A. I did not intend to secretly record Nancy Floyd.

25 A. All of my phone conversations was being recorded,

1 sir, including everybody.

2 Q. When Nancy called, did you hit --

3 THE COURT: Stay at the microphone. Thank you.

4 Q. When Nancy called, did you hit the stop button so
5 her voice would not be recorded? Did you ever do that, sir?

6 A. No, I did not, sir.

7 Q. Would it be fair to say that your tape machine
8 had a stop button?

9 A. Yes, of course, sir.

10 Q. So you, according to you, unintentionally started
11 to record your conversations with Nancy Floyd, correct, sir?

12 A. Sometimes unintentionally, sometimes it was
13 intentionally, sir.

14 Q. During this period of time, phase one, you were
15 not making any official recordings for the FBI, correct?

16 A. No, sir.

17 Q. And of course you had no obligation to record
18 anybody at that time, correct?

19 A. No, sir.

20 Q. And in fact, that was part of the big dispute you
21 had in '92, whether you should make recordings or not,
22 correct?

23 A. Yes, sir.

24 Q. Did you ever refer to Nancy Floyd as your friend?
25 Yes or no.

- 1 A. Yes, sir. I am sorry, I am sorry. Can you say
2 that again? I may not understood the question.
- 3 Q. Sure. Did you ever refer to Nancy Floyd as your
4 friend? Yes or no.
- 5 A. I said that she is my friend?
- 6 Q. Yes.
- 7 A. Yes.
- 8 Q. Did she ever say to you you're my friend?
- 9 A. Yes, sir.
- 10 Q. You trusted her, correct?
- 11 A. Yes, sir.
- 12 Q. She trusted you, correct?
- 13 A. I don't know what she think.
- 14 Q. Did you ever state to her -- Mr. McCarthy, 611,
15 page 12 -- I trust you, that's what I told John Anticev?
16 Did you ever say that?
- 17 A. I may said that, sir.
- 18 Q. Did she ever tell you that she admired you?
- 19 A. She may say I respect you. She could have said
20 something that effect, sir.
- 21 Q. Did she ever state to you that besides the fact
22 that we had a very professional relationship and admiration
23 for each other? Did she ever use words like that, sir?
- 24 A. Probably, yes, sir.
- 25 Q. Did you ever say that you were concerned about

1 each other's feelings? Did you ever say that, sir?

2 A. Each other's feelings?

3 Q. Yes, sir.

4 A. I am not sure, sir.

5 Q. Did she ever apologize for hurting your feelings
6 and did you ever apologize to her to hurt his feelings? Did
7 you ever speak like that to her?

8 A. Yes, sir.

9 Q. Did you work alone with her in phase one at times
10 in 1991?

11 A. I am sorry, sir.

12 Q. Did you ever work alone with her in August and
13 September and through phase one in 1991?

14 A. I am sorry, I am not getting the question. What
15 do you mean alone?

16 Q. Did you meet with her alone without any other
17 agents of the FBI, in phase one?

18 A. Yes, sir.

19 Q. And you met with her regularly, is that correct,
20 sir?

21 A. Yes, sir.

22 Q. And you met with her frequently, correct?

23 A. Yes, sir.

24 Q. And in fact you had a regular meeting place, is
25 that correct?

1 A. More than one place, sir.

2 Q. And am I correct that some of these meetings
3 occurred when she was not working, she was off duty?

4 A. I never know when she is on duty or off duty.

5 Q. Did she ever tell you that she would drive all
6 night if she had to meet with you? Did she ever use words
7 like that, sir?

8 A. Not to meet with me. She will drive the whole
9 night to go to Attica, jail at Attica.

10 Q. Never happened the way I just said it?

11 A. I beg your pardon.

12 Q. Did it ever occur where she said that she would
13 drive all night if she had to pleat with you? Did she ever
14 say that?

15 A. Not to meet with me, to drive all the way to
16 Attica, the time I ask her specific thing, sir.

17 MR. McCARTHY: Mr. McCarthy, 21-3, page 6, page
18 7, Mr. McCarthy.

19 MR. McCARTHY: No objection, your Honor.

20 Q. Do you recall saying the following? Agent Floyd
21 said: OK, but, you know, I just want you to know, Emad, you
22 know, you did not hurt my feelings and I apologize if I hurt
23 yours in any way and I did not mean whatsoever, but you
24 know, Emad, I do want to listen to, to it. I mean, do you
25 have a certain time you want to try and get together or, ah.

1 You said: As soon as I come back I will call you
2 right away.

3 Agent Floyd said: OK.

4 You said: No matter what time I am I will --

5 Agent Floyd said: Yeah, please do.

6 And Emad said: Please call me, I'll be there if
7 I have to drive all night.

8 Do you recall Agent Floyd saying that, sir?

9 A. Yes, sir.

10 Q. Did you ever have lunch with Agent Floyd?

11 A. I beg your pardon.

12 Q. Did you ever have lunch with Agent Floyd?

13 A. Always, yes.

14 Q. Did you ever go up to her apartment?

15 A. Yes, sir, I went once.

16 Q. Did she ever come up to your apartment?

17 A. Yes, in so many occasions she came and -- yes.

18 Q. Was she alone when she came up to your apartment?

19 A. Sometimes I believe Agent John Anticev came with
20 her, sometimes her partner Agent Raia came with her,
21 sometimes she came alone, sir.

22 Q. Did you ever go shopping with Agent Floyd?

23 A. Yes, sir.

24 Q. Did she buy you a watch for your birthday?

25 A. Yes, sir.

1 Q. Did you ever have a conversation with her about a
2 bathing suit that you were buying and how it looked on
3 you?

4 A. Yes, sir.

5 Q. Did you ever have a conversation with her where
6 she said that she was going to take a shower and be ready
7 for you when you got there? Did you ever have such a
8 conversation?

9 A. She may said it, sir.

10 Q. Did you help her on personal matters? The rings,
11 she had some rings she was looking to buy or something. Did
12 you help her on personal matters like a ring?

13 A. That's what my wife made for her, sir.

14 Q. Did you ever help her hang curtains?

15 A. No, sir.

16 Q. Did she help you on personal matters?

17 A. Yes, sir.

18 Q. She went to bat for you at the IRS, correct?

19 A. Yes, sir.

20 Q. She went down to the IRS and tried to straighten
21 out some problems that you had, correct?

22 A. Yes, sir.

23 Q. Do you know if she had FBI permission to do that?
24 Do you know as you sit there now?

25 A. I don't know, sir.

1 Q. And in fact, she used to feed you information
2 behind Anticev and Napoli's back, didn't she?

3 A. I asked her some questions, she answered it yes,
4 sir.

5 Q. And she told you what was going on in the Bureau
6 behind Anticev and Napoli's back, didn't she?

7 A. I don't know if it's behind their back or they
8 know about it. They have their strategy, sir.

9 Q. Did she give you information that you were then
10 going to relate to Anticev and Napoli that they didn't know
11 that she was feeding it to you? Right?

12 A. Yes, sir.

13 Q. And she was telling you what was going on with
14 the supervisors and what she were thinking, behind their
15 backs, correct?

16 A. Correct, sir.

17 Q. And in fact she was coaching you how to deceive
18 the FBI supervisors, wasn't she?

19 A. No, sir.

20 Q. She was coaching you to deceive Napoli and
21 Anticev, correct?

22 A. No, sir.

23 Q. You continued to talk with her during the course
24 of this investigation, phase two?

25 A. Yes, sir.

1 Q. And when you had problems in the FBI, you went
2 and talked to her about your problems, correct?

3 A. Yes, sir.

4 Q. And she tried to help you at times, correct?

5 A. She always tried to help me, yes, sir.

6 Q. And didn't she say I'll stand by you, Emad, no
7 matter what happens? Did she say words like that, sir?

8 A. Yes, sir.

9 Q. And she told you what to say to the supervisors
10 concerning polygraphs, money, and things like that, correct?

11 A. No, I don't think so, sir.

12 Q. She told you at times that she might even lose
13 her job the way she was dealing with you. Did she tell you
14 that, sir?

15 A. I don't think so, sir.

16 Q. Did she tell you that the FBI suspected that you
17 had a romantic relationship with her? Did she tell you
18 that, sir?

19 A. No, she didn't say --

20 Q. Never said that to you?

21 A. She said some of the agents trying to make
22 comments, but not the way you phrased it, sir.

23 Q. Did she tell you that agents of the FBI believed
24 that you had a romantic relationship? Did she tell you
25 that?

1 A. I don't recall this way of phrasing it. Probably
2 something in that effect, sir.

3 Q. Did you have a romantic relationship with her?

4 A. Absolutely not, sir.

5 Q. Absolutely not?

6 A. Absolutely not, sir.

7 MR. JACOBS: Mr. McCarthy, 33-19, page 3.

8 MR. McCARTHY: Object. It is not inconsistent.

9 THE COURT: May I see it.

10 Sustained.

11 Q. And during these times that you were exchanging
12 gifts, you were --

13 MR. McCARTHY: Objection to form.

14 THE COURT: Sustained.

15 Q. In '91, '92, '93, the tape recorder was going
16 when you spoke to Nancy Floyd on the telephone, right, your
17 house?

18 A. No, sir, that's not right.

19 Q. You weren't making these tapes of Nancy Floyd to
20 blackmail her, were you, sir?

21 A. No, sir.

22 Q. Because you would never use the fact that you had
23 secretly recorded tapes to blackmail anybody, would you,
24 sir?

25 A. Not to blackmail, no, sir.

1 Q. Threaten.

2 A. To defend myself, sir.

3 Q. Against false allegations that the FBI might
4 have.

5 A. Could be.

6 THE COURT: Would you come to a convenient break
7 point in the next five --

8 MR. JACOBS: Another minute or so, yes, sir,
9 couple.

10 Q. You even let her, or offered to let her -- I
11 rephrase it -- hear Louis Napoli's voice on tape that you
12 had secretly recorded Detective Napoli, didn't you?

13 A. Yes, sir.

14 A. Yes.

15 Q. Do you know if she went to the FBI and reported
16 the fact that you were taping other agents? Do you know if
17 she did that, sir?

18 A. I have no idea, sir.

19 Q. Did she tell you, Emad, you can't tape the other
20 agents, that's not right? Did she say that to you?

21 A. No, sir.

22 Q. Did you ask Nancy Floyd to sneak a bugging device
23 into the FBI so that you could record the supervisor? Did
24 you ask her to do that?

25 A. No, sir.

1 Q. Never did?

2 A. Never did, sir.

3 Q. Never asked her to stick a bugging device into
4 the FBI?

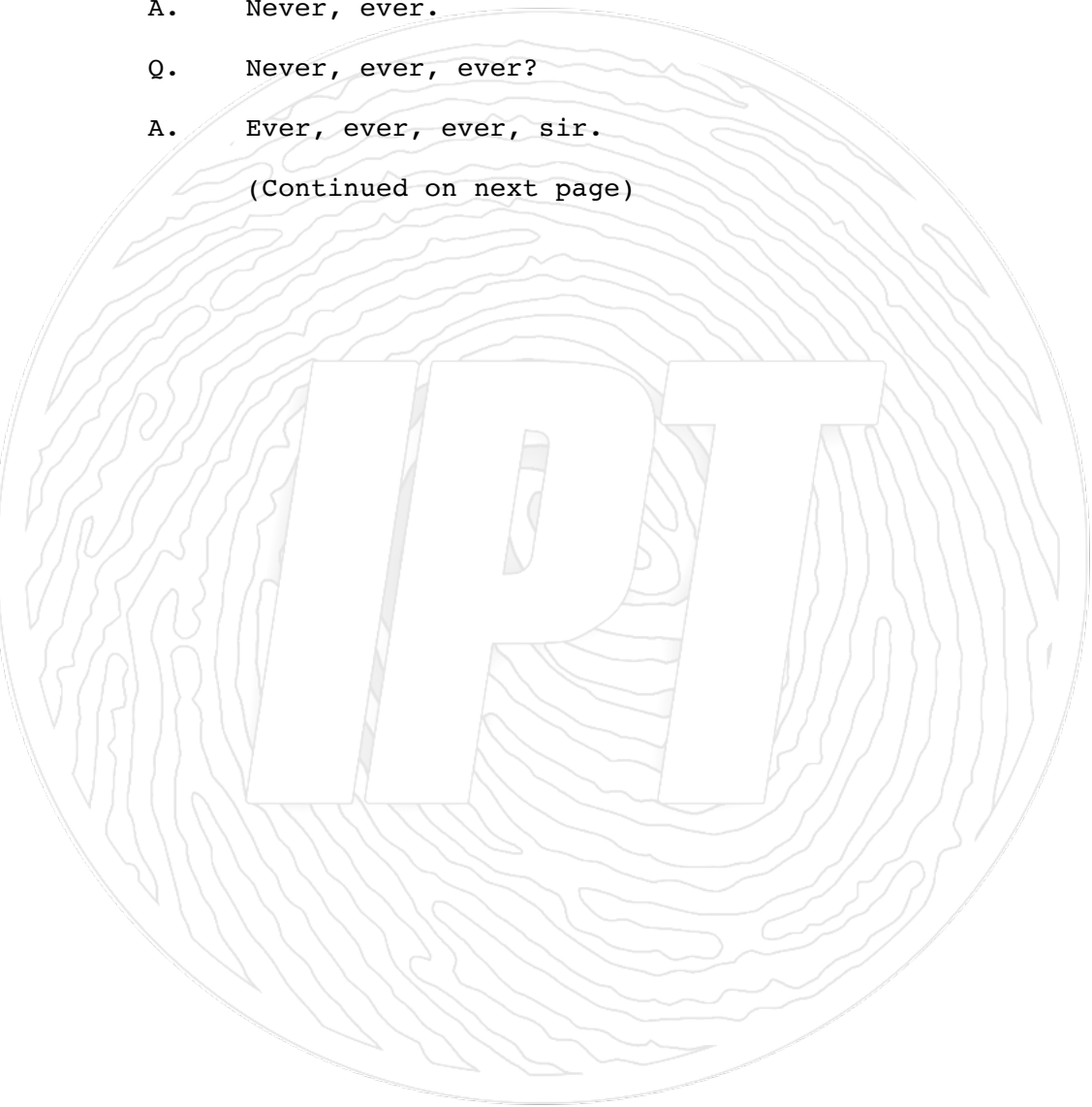
5 A. Never, ever.

6 Q. Never, ever, ever?

7 A. Ever, ever, ever, sir.

8 (Continued on next page)

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1 MR. JACOBS: This is the last one, your Honor,
2 for today.

3 MR. McCARTHY: Object. It is not inconsistent.

4 MR. JACOBS: I would like to be heard on that,
5 your Honor.

6 THE COURT: I will hear you at the side.

7 (At the side bar)

8 THE COURT: Part of the problem is, I am reading
9 a bracketed segment that starts in the middle and I can't
10 tell what the subject is. You are both more familiar with
11 this than I am, so why don't you tell me.

12 MR. JACOBS: Your Honor, the question was, did
13 you ask Agent Floyd to bring in a bugging device to the FBI.
14 That was the question. He said absolutely not. This says
15 he did. The government certainly hundred percent if they
16 want on redirect to explain it, do what they want, the
17 question is specifically did you ask her to do that and he
18 said specifically not. It is clear he did. It may be
19 subject to whatever redirect, whatever the government wants
20 to do --

21 THE COURT: It is nice that you are giving them
22 redirect. I am sure they appreciate it.

23 MR. McCARTHY: The problem is that this is
24 getting a listening agent into Attica which she could do but
25 he could not do --

1 MR. JACOBS: It is FBI headquarters. He wants to
2 bug the agents. This has nothing to do with Attica. That's
3 my position, your Honor.

4 THE COURT: You can ask him.

5 (In open court)

6 MR. JACOBS: Can I just have one moment, your
7 Honor?

8 I will withdraw the last question, your Honor.

9 THE COURT: Since the last one got withdrawn, can
10 we stop here?

11 MR. JACOBS: Can you give me just one second -- I
12 will quit now. I heard a sigh. I will quit.

13 THE COURT: Ladies and gentlemen, we are going to
14 break for the day. Please leave your notes and other
15 materials behind. Please don't discuss the case, and we
16 will resume on Monday.

17 (Jury excused)

18 (Witness excused)

19 MR. JACOBS: Your Honor, after the defendants are
20 excused may I see you in the back with Mr. McCarthy for a
21 moment?

22 THE COURT: I actually want to see some counsel
23 in the back to talk about something administrative.

24 MR. JACOBS: I want to see you on a matter that
25 we discussed the other day.

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(Pages 7298 and 7299 sealed)

(Proceedings adjourned until 9:30 a.m., Monday,
April 10, 1995)



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)

April 10, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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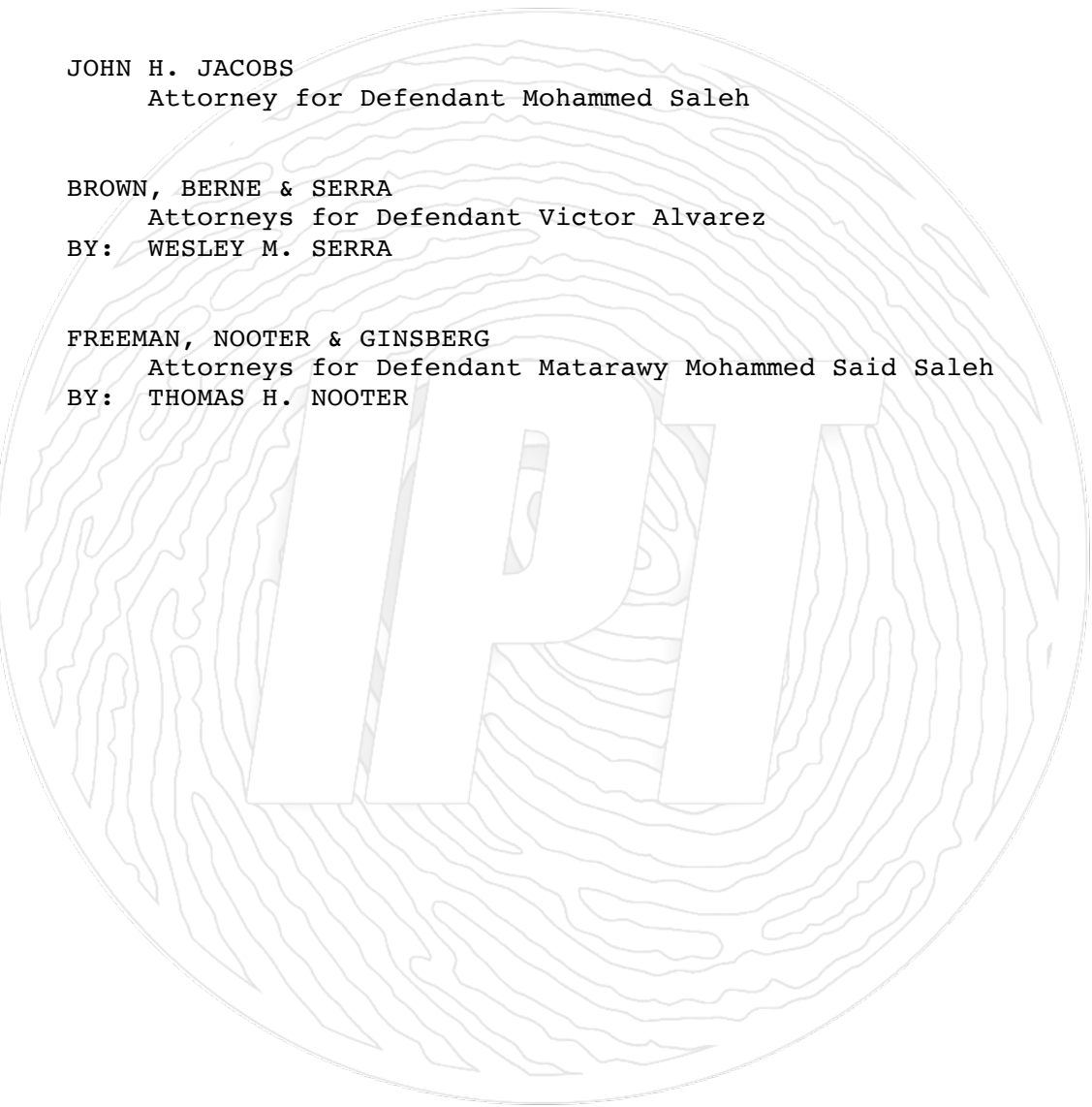
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1 (Trial resumed)

2 (In open court; jury not present)

3 MR. PATEL: Your Honor, Mr. Nosair is not feeling
4 well today and he wishes to waive his presence and prefers
5 that we proceed without him.

6 THE COURT: Mr. Nosair, is that correct?

7 DEFENDANT NOSAIR: Yes, your Honor.

8 THE COURT: You understand that you have a right
9 to be here and have us delay the proceedings?

10 DEFENDANT NOSAIR: Yes, I understand.

11 THE COURT: Thank you very much. He can be
12 excused.

13 Mr. Patel, what if anything do you want me to
14 tell the jury?

15 MR. PATEL: In the past, I think, when Mr. Saleh
16 has excused himself, nothing has been said?

17 THE COURT: Once we did and once we didn't.

18 MR. PATEL: I tend to believe less said the
19 better.

20 THE COURT: Me too, but it is your option.

21 MR. PATEL: Plan A.

22 THE COURT: We won't.

23 EMAD SALEM, resumed.

24 (Jury present)

25 THE COURT: Good morning, ladies and gentlemen.

1 JURORS: Good morning.

2 THE COURT: Mr. Jacobs.

3 MR. JACOBS: May I approach the witness, your
4 Honor?

5 THE COURT: Yes.

6 CROSS-EXAMINATION continued

7 BY MR. JACOBS:

8 Q. Mr. Salem, let me show you Defendant's K for
9 identification and ask you, is that a copy in some redacted
10 form of your contract with your agent? Take a look at it,
11 please.

12 A. Yes, sir.

13 Q. I am sorry, in redacted form. There are some
14 portions that have been excised out by agreement between the
15 parties. But is that basically a copy of your agent's
16 contract?

17 A. Yes, sir.

18 MR. JACOBS: I would offer it into evidence at
19 this time.

20 MR. McCARTHY: Your Honor, I have no objection in
21 principle. I just want to have an opportunity to check the
22 redactions for personal information. But in principle I
23 have no objection.

24 THE COURT: The document in some redacted form
25 will be received as defendant's K without objection.

1 (Defendant Nosair's Exhibit K was received in
2 evidence)

3 Q. Mr. Salem, in connection with this agent's
4 contract, it was your understanding that you would be
5 selling your life story, correct, sir?

6 A. Yes, sir.

7 Q. And in connection with that, you signed this
8 document, is that correct?

9 A. Yes, sir.

10 Q. Is it your understanding that this would be for a
11 book and/or a movie? Is that correct, or a TV story?

12 A. Yes, sir.

13 Q. In addition to that, is it your understanding
14 that your agent would become involved with putting you on
15 talk shows on TV? Is that your understanding as well, sir?

16 A. I don't think so, sir.

17 Q. I am not interested in his name, but in
18 connection with this contract, did you prepare any
19 documentation or any outline of your life?

20 A. No, sir.

21 Q. Do you know if he prepared any document or
22 outline of your life or your work with the FBI?

23 A. No, sir.

24 Q. So as you sit there now today, other than this
25 document, which is now in evidence, have you seen anything

1 else in writing -- I am sorry. Let me withdraw it. Did you
2 give your agent anything?

3 A. No, sir.

4 Q. Did you give him any tapes?

5 A. No, sir.

6 Q. Did you give him any documents?

7 A. No, sir.

8 Q. Did he prepare any documents for you to review?

9 A. No, sir.

10 Q. In other words, other than talking with him, you
11 have no further documents in connection with this contract?

12 A. No, sir.

13 Q. Do you know whether he signed any agreements with
14 any publishing house or any movie company, to your
15 knowledge?

16 A. Not yet, sir.

17 Q. How did you find this particular agent?

18 A. He used to be my attorney, sir.

19 Q. He used to be your attorney, and he prepared the
20 document which is in evidence?

21 A. Yes, sir.

22 Q. I am not asking what it was, but you had certain
23 legal matters you had been working with him in the past on,
24 is that correct?

25 A. Yes, sir.

1 Q. About when did that begin? Approximately. I
2 don't need the exact month, but what year? '87, '88?

3 A. Long time ago, sir.

4 Q. Did you negotiate with any other agents or
5 lawyers or is this the only gentleman?

6 A. That's the only gentleman, sir.

7 Q. Have you appeared or received any money from
8 anyone since June 23, 1993, concerning your work with the
9 FBI, besides the FBI money, which we have had?

10 A. No, sir.

11 Q. You got no checks, no cash, nobody has given you
12 a dollar other than the Witness Protection Program or the
13 FBI, is that fair to say?

14 A. Yes.

15 MR. JACOBS: Your Honor, I will reserve
16 publishing the document until I have had a chance with Mr.
17 McCarthy to go over it.

18 Q. Concerning your life back in Egypt, were you a
19 member of the Egyptian army at the time that they fought the
20 Israelis?

21 A. I was a cadet, sir.

22 Q. Pardon me.

23 A. I was a cadet, sir.

24 Q. You actually didn't see any battle against the
25 Israelis back in any of those cars in the seventies, isn't

1 it correct is that correct?

2 A. No, sir.

3 Q. Have you ever stated to anyone that you don't
4 like Jews?

5 A. Yes, sir.

6 Q. Did you ever tell anyone that you hated Jews?
7 Yes or no.

8 A. Yes, sir.

9 Q. Did you ever discuss with Nancy Floyd the fact
10 that you hated Jews? Yes or no.

11 MR. McCARTHY: Objection to form.

12 THE COURT: Sustained as to form.

13 Q. Did you ever have a conversation with Nancy Floyd
14 where you stated that you hated Jews?

15 A. No, sir.

16 Q. Did you ever discuss with the FBI, concerning
17 phase two so we have a frame of reference, the fact that you
18 were going to state to people that the Jews should be blamed
19 for the phase two bombing conspiracy? Did you ever have
20 such a conversation with the FBI?

21 A. No, sir.

22 Q. Am I correct that -- and I mean before the
23 Witness Protection Program. I am not interested in any
24 identities you have had since June 23. But before June 23,
25 you had identification that purported you to be someone of

1 the Jewish faith, isn't that correct, sir?

2 A. I beg your pardon.

3 Q. I am sorry. Before June 23.

4 A. Yes.

5 Q. During the phase two of this case -- you know
6 what I mean by phase two, correct?

7 A. Yes, sir.

8 Q. You had identification stating that you were
9 someone of the Jewish faith, is that correct?

10 A. Yes, sir.

11 Q. And I think you have given that person's name as
12 Yahood Arrad, correct?

13 A. I did not give that name, Mr. Siddig Ali give me
14 the name, sir.

15 Q. Did you purport to be someone named Yahood Arrad?
16 Did you do it?

17 A. Did did I what, sir.

18 Q. Pretend to be someone named Yahood Arrad?

19 A. Yes, sir.

20 Q. That is something that you volunteered, correct?

21 A. I was told by Mr. Siddig, sir.

22 Q. I don't care who told you. You had a
23 conversation with somebody and then you adopted somebody's
24 name, correct?

25 A. Yes, sir.

1 Q. In fact, this so-called safe house is rented in
2 this person's name, isn't that correct, Yahooo Arrad?

3 A. I don't know, sir.

4 Q. You don't know. Did you have more than one
5 identification -- I am talking about in phase two, I am not
6 interested in names you might have used since you have been
7 in the program. But before June 23, did you use other names
8 besides Arrad?

9 A. No, that's the only name, sir, that I recall that
10 being used.

11 Q. It is your testimony that this person Siddig Ali
12 gave you this identification?

13 A. Did not give me the identification itself but he
14 give me the name, sir.

15 Q. What about the identification? Did you have
16 documents or papers? I am sorry. Do you understand what I
17 mean?

18 A. I have the card, sir, the card itself, the ID
19 itself.

20 Q. Where did you get that from?

21 A. One of the ID stores sir.

22 Q. Did you discuss that with the Federal Bureau of
23 Investigation before you did that, sir?

24 A. Before?

25 Q. Yes.

1 A. I am not sure, sir.

2 Q. You just had one piece of identification?

3 A. I believe two, sir.

4 Q. Tell us what the two pieces of identification
5 were.

6 A. The same name, the same information, but one of
7 them I took it with my regular features, the other one, it
8 was with a disguise, sir.

9 Q. As part of this disguise, you would actually wear
10 a yarmulke, someone of the orthodox faith, sir?

11 A. No, sir.

12 Q. You never wore one?

13 A. No, sir.

14 Q. You know what a yarmulke is?

15 A. Yes, sir.

16 Q. And you never put that on your head?

17 A. I put it in one of my Jewish friend's son's bar
18 mitzvah, sir.

19 Q. I am sorry.

20 A. I have a friend of mine who is Jewish.

21 Q. Right.

22 A. He have a bar mitzvah for his son.

23 A. I went to his son's bar mitzvah.

24 Q. And you wore it then?

25 A. We put it there, sir.

1 Q. I understand. In connection with your work with
2 the FBI in phase two, did you ever walk around the streets
3 wearing a yarmulke, pretending that you were someone who was
4 Jewish? Yes or no.

5 A. No, sir.

6 Q. Did you ever tell Siddig Ali that you were in
7 battles, took a bullet in my head, two bullets in my leg
8 from the Jews? Did you ever say that to Siddig Ali?

9 A. I may said it, yes, sir.

10 Q. And that of course was a lie, correct?

11 A. Yes, sir.

12 Q. Did you ever make references that somehow you
13 were in June one of the Jewish camps after you had finished
14 killing off Jews? Did you ever tell that to Siddig Ali?

15 A. I am sorry.

16 Q. Sure. Did you ever tell Siddig Ali that you had
17 a picture of yourself in one of the Jewish camps after you
18 had finished them off? Did you ever say words like that?

19 A. Yes, sir.

20 Q. All a lie?

21 A. Yes, sir.

22 Q. And you told Siddig Ali that you had the rank of
23 captain during the war, which was a lie, because you said
24 you were a cadet, right?

25 A. That is correct, sir.

1 Q. Did you ever have a conversation with Siddig Ali
2 where you said that the Jews and the Christians were the
3 enemies of the Muslim religion? Did you ever say that, sir?

4 A. I may said it.

5 Q. This was part of your role that you were playing?

6 A. That's correct, sir.

7 Q. Did you discuss having these kinds of
8 conversations with the FBI before you engaged in them? Is
9 that correct?

10 A. No, sir.

11 Q. Let me ask you this: Would I be correct in
12 stating -- some of the things that I just mentioned, for
13 example, where you made a reference to the fact that Jews
14 and Christians, anybody who is not of the Muslim religion is
15 an enemy of God, that is on one of the FBI tapes, correct?

16 A. Yes.

17 Q. And you knew when you made those tapes that they
18 would somehow be played in a courtroom, correct, sir?

19 A. Yes, sir.

20 Q. My question to you is, at any time from May 7
21 until June 23, did you discuss with the FBI the fact that
22 you were making remarks about Jews on tape? Did you ever
23 discuss that?

24 A. No, sir.

25 Q. Did the FBI -- I don't mean the FBI. Any

1 particular agents, any prosecutors tell you Mr. Salem, it's
2 not a good idea to make these kinds of ethnic references on
3 the tape? Did anybody tell you that, sir?

4 A. No, sir.

5 Q. You felt it was appropriate to do that on the
6 tapes, correct? Yes or no.

7 A. Yes, sir.

8 MR. McCARTHY: Objection.

9 THE COURT: I will allow it. The answer was yes.
10 Go ahead.

11 Q. Did you ever have a conversation with Mr.
12 El-Gabrownny where you referred to Jews as son of a bitches?

13 A. I may said it, sir.

14 Q. Again part of your role?

15 A. That is correct, sir.

16 Q. Did there ever come a time where you remember
17 discussing with Mr. Siddig Ali getting a car that was going
18 to be used in this safe house? You discussed that many
19 times, is that correct, sir, getting a car that was going to
20 be used in the plot? Am I correct? You have discussed that
21 with Siddig Ali, correct, sir?

22 A. It was more than one car, sir.

23 Q. Did you ever suggest that the car that could be
24 used in this could be bought from a Jew? Did you ever make
25 that reference?

1 A. No, sir.

2 Q. Never did?

3 A. Never did, sir.

4 Q. Did you ever say we should buy the car from a
5 Jew? Never made those references?

6 A. No, sir.

7 Q. Did you ever make a reference to the fact that
8 phase two, which involves the defendants in this case, that
9 at the conclusion of this the Jews would be blamed for it?
10 Did you ever make that reference, sir?

11 A. Sir, we talked a lot, and that's the way they
12 talk. They always cursing, they always saying things --

13 THE COURT: The question is whether you made that
14 reference. Did you?

15 A. Will you repeat the question, sir.

16 THE COURT: When you do, could you stay by the
17 microphone because otherwise the interpreters can't hear
18 you.

19 MR. JACOBS: Sure. My apologies.

20 Q. The question, sir, is, did you ever have a
21 conversation with Siddig Ali concerning this so-called plot
22 where you said the Jews would be blamed for it? Yes or no.

23 A. I am not sure, sir.

24 MR. JACOBS: Mr. McCarthy, can I refer to CM 48,
25 June 19, 1993.

1 MR. McCARTHY: Do you have a page?

2 MR. JACOBS: 66, Mr. McCarthy. I am sorry.

3 MR. McCARTHY: May I have a moment with Mr.

4 Jacobs?

5 MR. JACOBS: Sure.

6 THE COURT: Yes.

7 (Pause)

8 Q. Did you ever have the following conversation
9 where Amir Abdelgani said: And how is he going to buy from
10 a Jew?

11 You said: Yes, yes, this is a good one, hit two
12 birds with one stone.

13 Siddig Ali: Huh?

14 Salem: He said buy it from a Jew.

15 Siddig Ali: What is it?

16 Amir Abdelgani: Buy from a Jew? Question mark.

17 Siddig: Unintelligible.

18 Salem: Yes.

19 Siddig Ali: We buy from Jews?

20 Salem: They will be blamed for it at the end.

21 Siddig Ali: What?

22 Salem: They will be charged for it.

23 Siddig Ali: Yeah, I really wish by God.

24 Semi: After all what they did.

25 Do you recall having that conversation, sir?

1 A. We may said that, yes.

2 Q. So when you said they will be blamed for it at
3 the end, you were the one suggesting that the Jews be blamed
4 for this plot, correct?

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained.

7 Q. When you stated they will be charged for it, what
8 did you mean, if anything?

9 A. I meant if Mr. Amir Abdelgani bought the car from
10 the Jews as he suggested, they will be blamed for it, but
11 that was part of my role, sir.

12 Q. And how about when you said after all what they
13 did? Is that referring to Jews?

14 A. Yes, sir.

15 Q. Did you ever discuss the fact with the FBI, the
16 fact that Jews would be blamed for this plot?

17 A. No, sir.

18 MR. McCARTHY: Objection.

19 THE COURT: He has answered it. Go ahead.

20 Q. Yes or no? Did you ever discuss it?

21 A. No, sir.

22 Q. Mr. Salem, if we can, let's discuss taping, and
23 can you tell us the month and the year you first made a tape
24 in connection with any of these investigations, about when?

25 A. I am sorry, sir.

1 THE COURT: When you say in connection with any
2 of these investigations --

3 MR. JACOBS: Phase one, phase two, your Honor, as
4 he described it.

5 THE COURT: You mean his own?

6 MR. JACOBS: His own, your Honor, yes.

7 Q. When is the first time you tape recorded
8 anything?

9 A. I recall that earlier in the investigation I may
10 did some tapes, but I forgot about it. But early in the
11 investigation I think I start making some tapes, sir, yes.

12 Q. I think we have some reference to the fact that
13 you were dealing with Nancy Floyd back in August of 1991.
14 Did you start making tapes back then, sir?

15 A. I am not sure when, sir.

16 Q. You testified, a couple weeks ago by now, almost
17 a month ago, that some of the tapes you made were, I think
18 you described them as dictation tapes, or memorizing tapes.
19 Do you remember that?

20 A. Yes, sir.

21 Q. These were some tapes that you made so that you
22 could remember certain facts, correct, sir?

23 A. Yes, sir.

24 Q. When did you first start making these dictating
25 tapes, I will call them?

1 A. It was the time when I meet with the subject of
2 the investigation six, seven days a week, and I meet with
3 the agent once or twice a week, and I got to refresh what we
4 said here, what happened there.

5 Q. So that we have some reference, I will call it
6 phase one and phase two, and adopt your expression.

7 A. Yes, sir.

8 Q. Did these dictation tapes, were they made in
9 phase one or phase two?

10 A. Phase one, sir.

11 Q. Phase one?

12 A. Yes, sir.

13 Q. Did you ever make the dictation tapes in phase
14 two?

15 A. No, I don't think so, sir.

16 Q. So that the dictation tapes were made in the
17 phase one part of the case, correct?

18 A. Yes.

19 Q. You wanted to make these tapes so that you could
20 keep the information straight in your own mind?

21 A. I go out six, seven hours a day, sometimes more,
22 and six, seven days, so I cannot recall everything happen,
23 sir.

24 Q. Did the agents -- so we understand, this is phase
25 one now. Did the agents know you were making these

1 dictation tapes?

2 A. I am not so sure, sir.

3 Q. Didn't Napoli give you boxes of tapes --

4 MR. McCARTHY: Objection.

5 THE COURT: Overruled. Did he give you boxes of
6 tapes?

7 A. I requested box of tapes from him, sir, yes.

8 Q. These dictation tapes, what kind of machine did
9 you make them on, if you can remember?

10 A. It's a regular machine, like a regular size
11 cassette, sir.

12 Q. Regular size cassette, you mean the big standard
13 ones?

14 A. Yes, sir.

15 Q. Not the micro ones?

16 A. No, sir.

17 Q. You know the smaller ones?

18 A. Yes, I know the micro.

19 Q. Did you make them in your home? Did you walk
20 around dictating? How did you do it?

21 A. In my home, sir.

22 Q. How many of these tapes did you make?

23 Approximately. Five, ten?

24 A. I believe it wasn't that much, because once I
25 taped the information and I went out with the agent, I told

1 him what happened, I go back and I tape over it again,
2 because there is no reason for me to keep it, sir.

3 Q. The question still is, how many tapes did you
4 actually make? Was it just one that you kept reusing?

5 A. I believe it could be one tape, that's all.

6 Q. It could be one tape that you used to make these
7 dictation notes and you kept erasing over it as you would
8 report to the agents, is that your testimony?

9 A. Yes, sir.

10 Q. Did you ever keep any written record of this one
11 dictation tape?

12 A. No, sir.

13 Q. Just so we clarify it, you are not sure if you
14 told the agents? What is your best recollection?

15 A. What is the question, please, sir?

16 Q. I am sorry. The question is, did you tell the
17 agents that you made this dictation tape or you didn't tell
18 them, back in phase one?

19 A. I may said to Detective Louis Napoli I would like
20 to have some tapes to put notes on it. That's as far as I
21 recall, sir.

22 Q. Back in phase one you were told not to record any
23 tapes with any of the suspects, correct?

24 A. Yes, sir.

25 Q. As you sit there now, are you sure it is just one

1 tape, Mr. Salem?

2 A. I believe, yes, sir.

3 MR. JACOBS: Mr. McCarthy, referring you back to
4 your testimony March 13, page 4949 -- I will start, Mr.
5 McCarthy, if it is OK with you, 4948, the last question and
6 answer, going through to line 3 good.

7 MR. McCARTHY: No objection.

8 Q. I think this is Mr. McCarthy's examination, is
9 that correct?

10 MR. McCARTHY: It's me, yes.

11 Q. It's the government asking you the following
12 questions. This is referring to these memorizing tapes.
13 Question at the bottom of 4948:

14 "Q. Did you have some conversation with any of
15 the agents about what kind of tapes you were making?

16 "A. Just to memorize myself, dictate some
17 reports for myself, what's happened today, who did I talk
18 to, who did I call, and that related to them later on.

19 "Q. Did you actually make tapes like that?

20 "A. A couple of types times, yes."

21 Is it now your recollection that you think it is
22 just the one tape that you kept rerecording?

23 A. For couple of times or more than couple of times,
24 yes, something that effect, sir.

25 Q. And you are saying that at least Detective Napoli

1 knew about this, correct?

2 A. Knew about --

3 Q. That you were making these dictation tapes,
4 correct?

5 A. Yes, sir.

6 Q. And in fact I think you said it was more than
7 Detective Napoli.

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained.

10 Q. In any event, did Detective Napoli ever ask for
11 this tape?

12 A. No, sir.

13 Q. Did you ever turn this tape over to the FBI?

14 A. No, sir.

15 Q. Do you know where that tape is at the present
16 time?

17 A. Could be taped over it, music, songs, could be
18 somewhere. I don't know, sir.

19 Q. When you say it could be somewhere, would you
20 tell us where that could be somewhere is?

21 A. Sir, I have been moved until now last week was
22 the 15th time with the family. So I don't know where is
23 anything in my life any more, sir.

24 Q. On or about June 24 and June 23, 1993, your life
25 was in one apartment, isn't that correct, sir?

1 A. Yes, sir.

2 Q. Is that where all the tapes were that you had in
3 your possession that day?

4 A. Yes, sir.

5 Q. Sure about that?

6 A. Positive, sir.

7 Q. All the tapes were in your house on or about June
8 23 or June 24, 1993, is that your testimony, sir?

9 A. Yes, sir.

10 Q. There were no other tapes in any other place on
11 June 24, 1993 -- I am not talking about the CM's that you
12 gave, the Nagras. There is no other place that any tapes
13 were other than in your home on or about June 24, 1993?

14 A. Correct, sir.

15 Q. In connection with the -- did you ever see this
16 dictation tape? Did anybody ever show it to you in the last
17 year or so?

18 A. No, sir.

19 Q. Did the FBI ever come to you and ask you about
20 where the dictation tape is or was?

21 A. No, sir.

22 Q. Did any of the three prosecutors here come to you
23 and say, Mr. Salem, we can't find the dictation tape, do you
24 want to help us out? Did they say that to you?

25 A. No, sir.

1 Q. You never had a conversation with Mr. McCarthy
2 about the location or whereabouts of the dictation tape, is
3 that your testimony, sir?

4 A. As far as I recall, that Mr. McCarthy requested
5 any tape, any tape in connection with the case, I find it in
6 any time during my moves, I must be obligated by the law to
7 turn to the government, which I did, sir.

8 Q. Let's talk about the bootleg tapes that you made,
9 your private tapes. So in addition to the dictation tape,
10 where you dictated your notes, you also started to record
11 conversations with people, correct?

12 A. Yes, sir.

13 Q. And I think you have told us that the first
14 method that you did that with was some machine in your home
15 that could record off the telephone, correct?

16 A. Yes, sir.

17 Q. So this was a second type of tape that you made.
18 One was a dictation tape and the second is the phone call,
19 stuff from the phone, correct?

20 A. Yes, sir.

21 Q. In connection with that, when did you first begin
22 to do that?

23 A. The first phase, sir.

24 Q. Pardon me? First phase?

25 A. Yes, sir.

1 Q. And I assume that was not with the permission of
2 the FBI, correct?

3 A. Nobody tell me do it, sir.

4 Q. And in fact you were told not to tape at that
5 time, correct, sir? Did the supervisors and everybody tell
6 you -- I am sorry to interrupt you. Did you want to finish
7 saying something?

8 A. Not to tape the defendants, sir.

9 Q. Isn't it a fact that you were getting phone
10 calls, either making phone calls or getting phone calls from
11 people like Mr. El-Gabrownny in the first phase, and you were
12 taping them?

13 A. Yes, sir.

14 Q. He was a target, correct?

15 A. He was a subject.

16 Q. Right, so you were doing something the FBI said
17 not to do. Yes or no?

18 A. Yes, sir.

19 Q. And without going into a lot of details -- I
20 think we have discussed it -- you had the ability to turn
21 the machine on and off, correct?

22 A. Yes, sir.

23 Q. To stop and start it, correct?

24 A. Yes, sir.

25 Q. Move it back, correct, erase it, start it again,

1 correct?

2 A. Yes, sir.

3 Q. No recordkeeping, correct?

4 A. Yes, sir.

5 Q. Agents were calling and you would tape them,
6 correct?

7 A. Every conversation came to my house or went out
8 of my house, it's being recorded, sir.

9 Q. And you made the voluntary decision to let the
10 machine keep running, for example, when El-Gabrownny called,
11 correct?

12 A. It was going on right after, you pick up the hand
13 set, it came a time when I already forgot there was a
14 recording machine, sir.

15 Q. You had to, even though you were forgetting that
16 it was recording, you had to change the tapes, correct?

17 A. When I hear the click that the tape is finished,
18 then I remember, I change the tape, sir, or I flip it over,
19 sir.

20 (Continued on next page)

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1 Q. Right. When the agents called, Agent Floyd, you
2 didn't hit the stop button, did you?

3 You let them be recorded, correct?

4 A. I wasn't sure that I'm recording her in that
5 time. I mean, it was just running and I did not do that
6 intentionally, sir.

7 Q. Whether you did or not, you had the ability to
8 play back this and listen to the calls, correct?

9 A. If I want, I will, yes, sir.

10 Q. Many of these calls were erased, correct?

11 A. Could be, yes, sir.

12 Q. As you sit there now, can you tell us whether you
13 can state that any call that you had with Ibrahim
14 El-Gabrowny was erased? Yes or no.

15 A. Yes, sir.

16 Q. It was erased, correct?

17 A. Some of them, yes, sir.

18 Q. Initially, you didn't tell the agents that you
19 were making these tapes, did you, sir?

20 A. I did not report that. I didn't think that
21 that's something serious I should report.

22 Q. I'm sorry. Please, I didn't mean to cut your
23 answer off. You didn't think it was something serious?

24 A. I thought that's for my own reminding thing, sir,
25 and I didn't feel that that's something I must report it,

1 sir.

2 Q. You were having conversations with FBI
3 supervisors about whether you should make tapes or not,
4 didn't you, sir?

5 MR. McCARTHY: Objection, unless he clarifies
6 when.

7 MR. JACOBS: Sure.

8 Q. In 1992, wasn't that part of your whole
9 negotiations about whether you were going to be a witness or
10 not, and that if you made tapes they had to be turned over
11 and you had to testify, wasn't that all going on?

12 A. That's why, sir, I did not turn the tapes to
13 anybody, sir.

14 Q. So you, on your own, made tapes with the targets,
15 erased some of them and didn't tell the FBI that you were
16 doing it?

17 A. Yes, sir.

18 Q. You know that that was an important part of your
19 problems with the Bureau at that time, in phase one, isn't
20 that correct?

21 MR. McCARTHY: Objection to form.

22 THE COURT: Sustained as to form.

23 MR. JACOBS: OK.

24 Q. You were having arguments with the FBI about what
25 your status was going to be?

1 A. Yes, sir.

2 Q. The argument was they wanted you to go to tape
3 and be a witness, correct?

4 A. It came a time they asked me to be a witness and
5 I refused, sir.

6 Q. All along you kept the tapes that you had of the
7 targets and other people in your home, correct, sir?

8 MR. McCARTHY: Objection.

9 MR. JACOBS: I will withdraw it.

10 MR. McCARTHY: "Targets."

11 Q. I think you told Mr. McCarthy that at first you
12 just accidentally recorded the agents and then you
13 intentionally did it, correct?

14 A. I'm sorry, sir?

15 Q. I'm sorry. Sure.

16 I think you told Mr. McCarthy that you began
17 accidentally recording the agents and then you intentionally
18 did it, correct?

19 A. Yeah, it came a time I intentionally recorded
20 them, sir.

21 Q. When you spoke to Napoli at one point about this
22 box of tapes, when you said you needed a box of tapes, you
23 lied to Detective Napoli when you told him it was for
24 dictation, didn't you?

25 A. I don't think so, sir.

1 Q. Well, you were making all these recordings at
2 home on these cassettes, isn't that why you needed the box
3 of tapes?

4 MR. McCARTHY: Objection, unless he clarifies
5 when.

6 MR. JACOBS: At any time.

7 Q. You were --

8 MR. McCARTHY: Objection to form.

9 MR. JACOBS: I'm sorry. I will withdraw it.

10 Q. You were recording in your home phase one and
11 phase two, correct.

12 MR. McCARTHY: Objection unless he clarifies
13 when, if it is in relation to the last question before this.

14 Q. '91, '92 and '93 the tapes are always going,
15 weren't they?

16 THE COURT: Mr. Jacobs --

17 MR. JACOBS: I'm sorry.

18 THE COURT: -- you asked whether he had asked for
19 tapes because I was "always making tapes."

20 That is the connection he is talking about.

21 MR. JACOBS: My apologies. Let's step back.

22 Q. When you asked Napoli for the box of tapes, did
23 you misrepresent to Napoli what you needed the tapes for?

24 A. I don't think so, sir.

25 Q. In any event, Napoli gave you a box of 120s, that

1 is these, right, the big ones?

2 A. Yes, sir.

3 Q. You took those and you used them on your taping
4 machine at home, correct, sir?

5 Yes or no.

6 A. I used them for all purposes, sir.

7 Q. And didn't give them back to Napoli, correct?

8 A. No, I did not, sir.

9 Q. When you started to intentionally recording the
10 agents, you tried to get the agents to say certain things as
11 your insurance policy, correct, sir?

12 A. Certain things happened, yes, sir.

13 Q. The question to you, sir, is: Did you try to get
14 the agents to say things while you were being recorded
15 because you wanted an insurance policy? Yes or no.

16 MR. McCARTHY: Objection to form.

17 THE COURT: Sustained.

18 Q. Did you attempt to get the agents to say certain
19 things on tape? Yes or no.

20 A. Yes, sir.

21 Q. That was going to be your insurance policy,
22 correct, sir?

23 A. I'm not sure what you mean, sir, by "insurance
24 policy."

25 Q. Well, you had these tapes in your chair at home,

1 and you were going to hold them as your insurance policy if
2 problems came up at the Bureau, correct?

3 Didn't you testify to that previously?

4 A. Yes.

5 Q. You were trying to get the agents to make certain
6 statements about what you had done in the World Trade Center
7 as your insurance policy, correct?

8 Didn't you testify to that?

9 MR. McCARTHY: Objection to form.

10 THE COURT: Sustained.

11 Q. Did you try to get the agents to say certain
12 things to protect yourself?

13 A. Yes, sir.

14 Q. You tried to get the defendants to say certain
15 things, correct?

16 A. I'm sorry?

17 Q. You tried to get some of the defendants in this
18 case to say certain things, correct?

19 A. That -- what they doing, yes, sir.

20 Q. You tried to steer conversations with the agents
21 in certain areas, correct?

22 A. Yes, sir.

23 Q. I think you've gone into that you were trying to
24 get them to say, you had given them the World Trade Center
25 information, that was one of your objectives, right, in

1 early March, 1993?

2 A. Yes, sir.

3 Q. You did that because you thought it would benefit
4 you, correct?

5 A. It would protect me, sir, yes.

6 Q. Protection is a benefit, isn't it?

7 MR. McCARTHY: Objection.

8 MR. JACOBS: I'm sorry. I will withdraw it.

9 Q. You didn't want to get arrested, correct?

10 A. Of course not, sir.

11 Q. And you wanted money, correct?

12 A. No, sir, that wasn't my purpose.

13 Q. One of the other things you said you wanted to do
14 was to --

15 (Pause)

16 Q. One of the things you wanted to do was smash the
17 image and admit your sins, isn't that correct?

18 A. I'm sorry, sir?

19 Q. One of the things you were trying to do was to
20 smash your image, this previous image and admit your sins,
21 wasn't that correct? You told the jury that last week when
22 I was examining you?

23 A. I did --

24 MR. McCARTHY: Objection to form.

25 THE COURT: May I see counsel at the side.

1 (At the side bar)

2 THE COURT: Even bearing in mind reasonable
3 latitude, this is getting very repetitive.

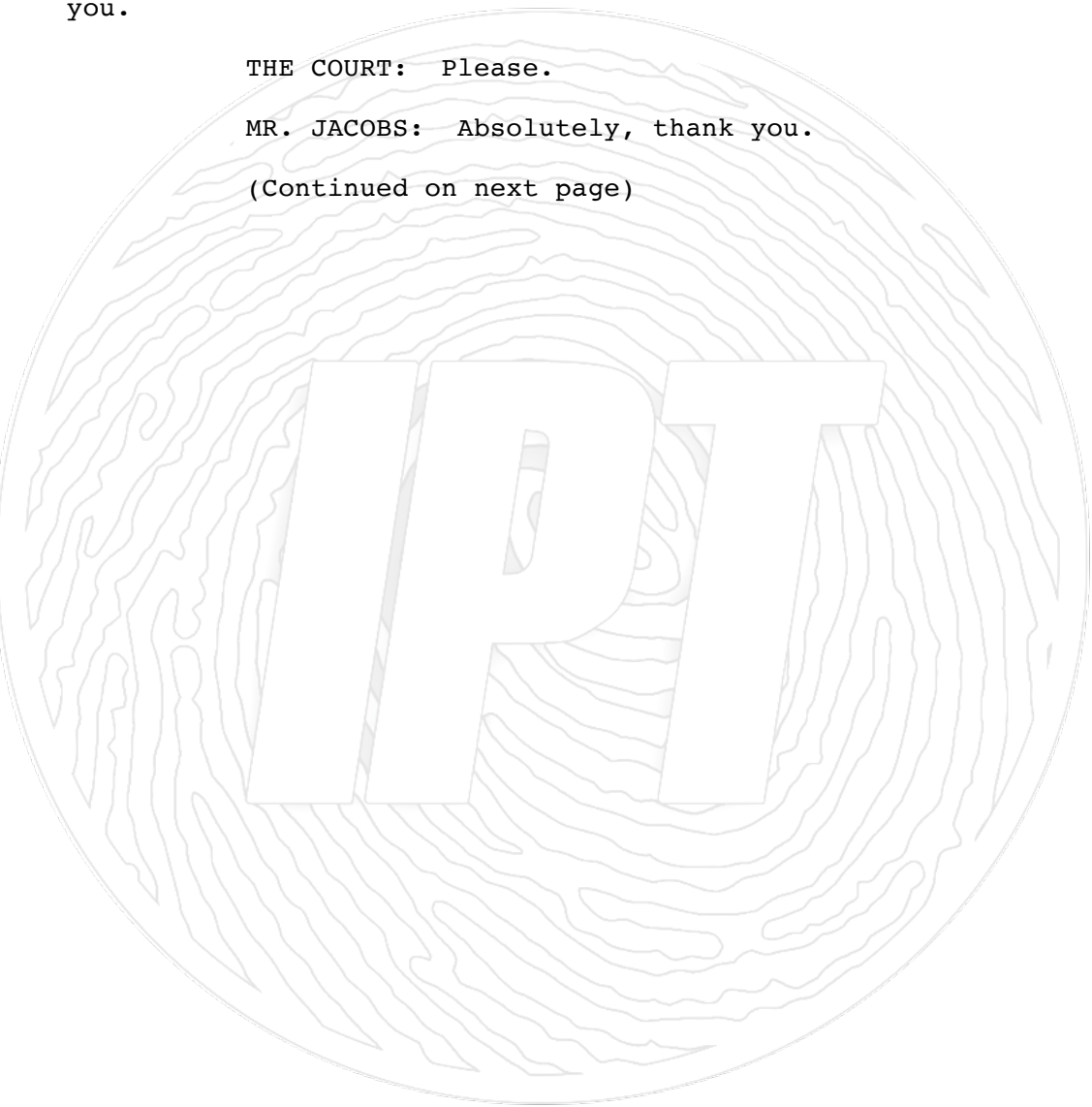
4 MR. JACOBS: I will move it along, Judge. Thank
5 you.

6 THE COURT: Please.

7 MR. JACOBS: Absolutely, thank you.

8 (Continued on next page)

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1 (In open court)

2 Q. At one point you actually told each one of the
3 agents that you had tapes of them, correct?

4 We've gone over this. I don't want to repeat it.

5 Isn't that correct, sir? The agents knew you
6 were taping the agents, correct?

7 A. I think, yes, sir.

8 Q. You told Nancy Floyd at one point you were going
9 to play the Napoli conversations, correct?

10 A. Yes, sir.

11 Q. OK.

12 A. Yes, sir.

13 Q. You told Anticev that you had turned tapes over
14 to CNN, correct, whether you were going to do it or not, you
15 told him that, correct?

16 A. I think I did, sir.

17 Q. Even at that point the agents never asked you for
18 the tapes, correct?

19 A. Nobody asked me for the tapes until the
20 government did, sir.

21 Q. Throughout this entire period you never told
22 anybody you had targets on tape, correct?

23 MR. McCARTHY: Objection to "targets."

24 THE COURT: Sustained.

25 MR. JACOBS: All right.

1 Q. Did you ever tell Nancy Floyd that you had the
2 Egyptian consul on tape?

3 A. No, sir.

4 Q. Never did?

5 A. I'm not so sure.

6 Q. You may have?

7 A. I'm not so sure, sir.

8 Q. If you did she never asked you for the tape,
9 correct?

10 A. No, she did not, sir.

11 Q. Did there come a time when Agent John Anticev
12 specifically told you to make tapes that were not going to
13 be entered into evidence?

14 A. I don't know what his thoughts, either to be
15 entered or not, sir.

16 Q. Did he ever use those words, and say to you,
17 "Mr. Salem, if you turn on one of your gadgets, your tape
18 gadgets, and you make a tape, it won't be in evidence"?

19 Did he ever use words like that, sir?

20 A. I don't recall, sir. Oh --

21 Q. I'm sorry, please.

22 A. I recall the time -- there is a time when they
23 were surveilling Agent John Anticev and they requested his
24 address. So he told me, you can -- if you will turn one of
25 your gadgets to this conversation, then it will be a good

1 idea or something in that effect, sir.

2 MR. JACOBS: Mr. McCarthy, can I read -- let me
3 show you, 33-1, page 7. I will read it from here over to
4 here.

5 MR. McCARTHY: Give me a moment.

6 MR. JACOBS: Sure.

7 MR. McCARTHY: It is OK.

8 MR. JACOBS: Sure. Start right up there? Sure.

9 Q. Let me read this to you.

10 A. Yes, sir.

11 Q. From source tape 33-1, page 7, reading from,
12 Mr. McCarthy, from where you indicated:

13 Salem: Yeah, Mohammed Hassan supposedly he will
14 contact me this week and to come to check the electricity.
15 I think that the weather prevented him from doing that.

16 Anticev: Yeah, and ahh if the opportunity
17 arises --

18 Salem: Uh-huh.

19 Anticev: Ah, you know, if you want to bring my
20 name up with him -- cause he was the one that was interested
21 in my name, right?

22 Salem: That's great. The one who -- he said
23 that -- we was looking for his house.

24 Anticev: Ask what, ah, you know, if, if the
25 opportunity presents itself, ah --

1 Salem: Well, that's why, ah --

2 Anticev: Bring that up.

3 Salem: That's why I invited him to my place.

4 Anticev: Oh, he's going to come to your place?

5 I think there is --

6 Salem: That's right, to check the, the wiring
7 things.

8 Anticev: Oh, uh-huh.

9 Salem: So I didn't try to contact him until --
10 see what is he going on, so if, so I will call. I will give
11 him a call and say please come over, make a check and to
12 make, give me estimate price for what you are going to do.
13 And of course when we will come, we'll sit and talk a little
14 bit.

15 MR. McCARTHY: "He will come."

16 MR. JACOBS: I'm sorry?

17 MR. McCARTHY: "When he will come."

18 MR. JACOBS: When he will come. I am sorry,
19 Mr. McCarthy.

20 We'll sit and talk a little bit, so I'll bring
21 your --

22 Anticev: You have all your little gadgets over
23 there to record things.

24 Salem: Definitely.

25 Anticev: OK, ah, this is not, you know --

1 Salem: That's confi --

2 Anticev: This is not official, me telling you
3 this. I'm not allowed without headquarters' authority.

4 Salem: I understand.

5 Anticev: But if you happen to turn on one of the
6 little gadgets.

7 Salem: Yeah.

8 Anticev: We'll keep it on the side. It's not
9 going to be ever entered into any kind of evidence.

10 Salem: I understand. That's something
11 personally, I took it personally because I called your
12 friend and I meant it when I said it, when I feel any
13 dangerous against you, I willing to defend you completely.

14 Anticev: Oh, I appreciate that.

15 Salem: That's why if something, God forbid, like
16 this I'll be informing you on the spot.

17 Anticev: Yeah.

18 Salem: Absolutely. That's why I'm trying to
19 keep close to the people who can be active these things.

20 Anticev: Uh-huh.

21 Salem: Which is Ahmed Hassan, Hamid Hassil
22 Shinawy.

23 Do you recall having that conversation with
24 Anticev?

25 A. Yes, sir.

1 Q. Was Anticev telling you to make a tape that the
2 FBI was going to know about that wasn't going to be entered
3 into evidence? Yes or no.

4 A. Yes, sir.

5 Q. Now, in addition to the dictation tapes and the
6 telephone tapes, you made a third kind of tape yourself,
7 which was the body wires, correct?

8 A. Yes, sir.

9 Q. And so we get the dates, I am --

10 A. I'm sorry.

11 Q. I'm sorry.

12 A. When?

13 Q. I'm just about to give you the dates.

14 A. OK.

15 Q. Thank you.

16 We know that the first CM1, which is May 7,
17 correct?

18 A. Yes.

19 Q. An audiotape with Siddig Ali shortly before that,
20 that's 641 in evidence, correct, the tape --

21 A. Yes.

22 Q. -- with Siddig?

23 A. Yes, sir.

24 Q. You had the tape with Sheik Rahman sometime at
25 that period of time in May, correct?

1 THE COURT: Mr. Jacobs.

2 MR. JACOBS: I'm sorry.

3 Q. Some period of time, correct, that was your own
4 private tape, correct?

5 A. Which one, sir?

6 Q. Sure. I think it's 639, which is in evidence,
7 that's been played to the jury. That's the tape I think you
8 made in the mosque that you were wearing your own private
9 wire?

10 A. Yes, sir.

11 Q. So that's two.

12 I think you had one with Dr. Rashid, at the same
13 time, three, correct?

14 A. Yes, sir.

15 Q. And these were all unofficial tapes, correct?

16 A. Yes, sir.

17 Q. So we have three types of unofficial tapes: A
18 dictation tape, telephone tapes and a body recorder,
19 correct, three different kinds?

20 A. Yes, sir.

21 Q. The FBI didn't give you that body equipment, did
22 it? That's your own personal stuff?

23 A. That's my personal, yes.

24 Q. Never told the FBI about those tapes until after
25 June 24, correct, sir?

1 A. I believe, yes.

2 THE COURT: Mr. Jacobs.

3 MR. JACOBS: I will move it along.

4 Q. Hadn't you had instructions from the FBI in March
5 and in April not to make private tapes, 1993?

6 A. I said yes, sir.

7 Q. And you went out and did them anyway, correct?

8 A. Yes, sir.

9 Q. Now, one of the reasons you said that you became
10 involved in phase two was to smash the lies about yourself,
11 correct, isn't that what you told the jury last week?

12 A. I'm sorry. The question, sir, please?

13 Q. Didn't you tell the jury one of your motivating
14 factors in coming forward on phase two was to smash the
15 lies?

16 A. That wasn't the motive, sir. I accepted to smash
17 my image, which I boosted and I built.

18 I accepted to admit my sins in front of everybody
19 and to come to say the truth and to say what happened to
20 prevent people from getting bombed and killed.

21 Q. In doing all those things, you never told the
22 Bureau about these secret tapes, did you, until after the
23 arrests?

24 A. Yes, sir.

25 Q. When did you tell the FBI for the first time

1 about all the lies about your background? When was the
2 first time you sat with an FBI agent and said, "You know, my
3 background is a bunch of baloney."

4 When did you say that for the first time?

5 A. I didn't say it that way, sir.

6 Q. Well, I'm sorry.

7 Did there come a time that you had a conversation
8 with the FBI and said, "My military background, my war
9 history, my knowledge of all this Middle East stuff is all
10 made up."

11 When did you have that conversation for the first
12 time?

13 A. I did not say it --

14 Q. OK.

15 A. I did not count every and each one.

16 Q. Let's take it step by step.

17 A. It came --

18 Q. I'm sorry. When for the first time did you tell
19 them that your war wounds were baloney?

20 A. I did not say it separate individual things like
21 you are portraying it, sir.

22 Q. Let's step back. I am sorry.

23 Did you tell them before June 23, 1993, when most
24 of these defendants were arrested, that your war record was
25 baloney? Did you say that to them before June 23?

1 A. No, I did not say that, sir.

2 Q. Did you tell them your secret agent stuff was
3 baloney before June 23?

4 A. I recall I told Agent Nancy Floyd in one of our
5 meetings that I am not really an intelligence officer and I
6 assumed that everything being built under that image she
7 will understand that it's not true, sir.

8 Q. When did you have that conversation with Agent
9 Floyd?

10 A. I don't recall the date, sir.

11 Q. Before June 23 or after?

12 A. In the first phase, sir.

13 Q. So she knew that your whole intelligence
14 background was a lie, or most of it, correct?

15 A. I don't know how is her perception to it, sir.

16 Q. And these lies about your war record, you told it
17 to all the people that you met, didn't you, every one of
18 these defendants who you had a chance to meet you lied about
19 your background, didn't you?

20 A. Yes, sir.

21 Q. I asked you a question, probably about a half
22 hour ago, whether on June 24 all the tapes are in your home,
23 do you remember that, sir?

24 A. Yes, sir.

25 Q. You said absolutely they were in your home,

1 correct?

2 A. Yes, sir.

3 MR. JACOBS: I need 4958.

4 (Pause)

5 Q. Do you recall being asked this question by me on
6 voir dire examination, March 13, 1995.

7 MR. JACOBS: Mr. McCarthy, 4958.

8 MR. McCARTHY: Line?

9 MR. JACOBS: I am just going to read from line
10 16. I can read -- tell me what you'd like.

11 MR. McCARTHY: No objection.

12 Q. This is voir dire examination by me, 4958,
13 Mr. Salem:

14 "Q. What was in your house that you authorized
15 in that document?"

16 That was the consent to search document that I
17 showed you during the voir dire examination.

18 "Answer:" By you --

19 A. I don't understand what you mean, sir.

20 Q. I'm sorry. Just to take you back, on March 13, I
21 was conducting an examination --

22 MR. JACOBS: Is that all right, your Honor?

23 THE COURT: No, it's not.

24 MR. JACOBS: I shouldn't do that, OK. I'll stop.

25 Q. I will just read the question and answer:

1 "Q. What was in your house that you authorized
2 in that document?

3 "A. I authorized them to go to my house to
4 take the tapes.

5 "Q. Were there other places there were tapes?

6 "A. Yes.

7 "Q. Did you tell them about that on June 29?

8 "A. No, I did not."

9 Do you recall being asked those questions by me
10 and giving those answers, March 13, 1995, sir?

11 A. Yes, sir.

12 Q. You told this jury this morning all the tapes
13 were in your house, correct, sir?

14 A. Correct, sir.

15 Q. What did you mean when you told me under oath:

16 "Q. Were there other places there were tapes?

17 "A. Yes."

18 Were there other places on or about June 23, June
19 24, 1993? Yes or no.

20 A. What I meant, sir, I told the FBI to take the
21 tapes in the chair. My answer there is another places has
22 tapes, yes, on my desk, in the front room and my daughter's
23 room. There is other places have tapes, yes.

24 Q. Let me read it again to you, sir.

25 A. Yes, sir.

1 MR. McCARTHY: This time under Rule 106 I would
2 ask that 4959 be read at least from line 16 forward.

3 MR. JACOBS: Fine. Absolutely. No problem.
4 I'm sorry, Mr. McCarthy. What lines did you
5 want?

6 MR. McCARTHY: From line 16 forward.

7 MR. JACOBS: OK.

8 Q. So your testimony now, sir, is that --

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q. Let's read it again:

12 "Q. What was in your house that you authorized
13 in that document?

14 "A. I authorized them to go to my house to
15 take the tapes.

16 "Q. Were there other places there were tapes?

17 "A. Yes.

18 "Q. Did you tell them about that on June 29?

19 "A. No, I did not."

20 Do you remember being asked those --

21 MR. McCARTHY: Objection.

22 Q. Do you remember being asked those questions and
23 giving those answers?

24 MR. McCARTHY: Your Honor, I made an application
25 that the --

1 MR. JACOBS: I'm sorry, Mr. McCarthy.

2 My apologies, you're correct. I'm sorry.

3 Q. Line 16, 4959:

4 "Q. Were there additional tapes in your home
5 besides the home taping system? Answer yes or no.

6 "A. Yes.

7 "Q. What were those?

8 "A. Some music some tapes for songs and some
9 other tapes.

10 "Q. When you say 'some other tapes,' were they
11 tapes of the defendants in this case that were not recorded
12 on the home taping system?

13 "A. No, sir, it was not."

14 I'm asking you, sir, on or about June 24, 1993,
15 were all the tapes -- bootleg tapes, tapes of the
16 defendants, dictation tapes -- were they all in your home?

17 A. Yes, sir.

18 Q. Is it your testimony that in addition to the
19 chair that had a box in it there were other locations in
20 your house where there were tapes?

21 A. There is tapes all over, sir, but the tapes where
22 is the subject of the investigation, which is in the box,
23 sir, it was in the chair and I told the FBI about it, sir.

24 Q. So there came a point after June 24 when you had
25 a meeting with the FBI when you told them you had tapes in

1 your home, correct, sir?

2 MR. McCARTHY: Objection to form.

3 Q. Did there come a time when you told somebody in
4 law enforcement there were tapes in your home? Yes or no.

5 A. Yes, sir.

6 Q. Who was that?

7 A. Mr. McCarthy, sir, and others was present in that
8 time, sir.

9 Q. You told Mr. McCarthy that there were tapes in
10 your chair in a box? Yes or no.

11 A. Yes, sir.

12 Q. Did you tell Mr. McCarthy that there were other
13 tapes around your house?

14 A. I'm not so sure how I phrased it, sir. But I
15 said, "I have some tapes of the defendants talking about
16 things."

17 He said, "These tapes must be turned to the
18 government by the law."

19 I said, "Fine. I'll go get it."

20 Q. Well, the question was: Did you tell
21 Mr. McCarthy sometime after June 4, "Mr. McCarthy, there are
22 tapes all over my house. You have to go through all of my
23 belongings"?

24 Did you tell him that? Yes or no.

25 A. No, sir.

1 Q. Did you intentionally withhold any tapes from the
2 FBI on or about June 24 that you were holding in other
3 locations? Yes or no.

4 A. I'm sorry. I didn't hear the --

5 Q. I'm asking you, sir, did you intentionally
6 withhold any tapes from the FBI when you had your
7 conversation with Mr. McCarthy that were in other places?

8 A. Absolutely not, sir.

9 Q. You went to your home on or about June 24, didn't
10 you, sir?

11 A. Yes, sir.

12 Q. You were there with your -- I'm not going to ask
13 who you were there with -- members of your family?

14 A. Yes, sir.

15 Q. Agents were there, correct?

16 A. Yes, sir.

17 Q. You had access to your tapes? Yes or no.

18 A. No, sir. I'm sorry. One second.

19 Q. Do you understand what I mean?

20 A. When you say "had access" --

21 Q. Yes.

22 A. -- that means I handled the tapes?

23 Q. I didn't ask you that. I said you had access to
24 your chair with your box of tapes. Yes or no.

25 A. I'm not getting the question again.

1 Q. Sure. I will rephrase the question.

2 A. Thank you, sir.

3 Q. Nobody told you to not go near your chair, did
4 they?

5 A. Nobody told me.

6 Q. Did you take any tapes out of your house on June
7 24, 1993, yes or no?

8 A. No, sir.

9 Q. Did you have anybody else take any tapes out of
10 your house on June 24, 1993?

11 A. No, sir.

12 Q. Did you direct anybody on any date to go to your
13 house and take out tapes, yes or no --

14 A. Yes, sir.

15 Q. -- other than the Bureau?

16 A. OK. No, sir.

17 Q. Let me show you these 18 tapes. These are 18
18 tapes the FBI got from you on or about July 15. Take a look
19 at them.

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 (Continued on next page)

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1 Q. Did you hand those to some FBI agent, John
2 Anticev, on or about July 18, those 18 tapes?

3 A. I am sorry, sir. I didn't get the question.

4 Q. The question is, did you give Agent John Anticev
5 those 18 tapes on or about July 18, 1993?

6 A. I am missing one word. Honor, you said what?

7 Q. On or about --

8 A. On or about.

9 Q. July 15?

10 A. What does that mean, sir, please?

11 THE COURT: Around July 15, approximately July
12 15.

13 Q. Approximately on July 15 -- by the way, let me
14 withdraw the question. I am not interested in where you
15 were relocated or your address or anything like that. I am
16 asking you, did you meet Agent John Anticev and physically
17 hand him 18 of those tapes that are in front of you on July
18 15, 1993? Yes or no.

19 A. No, sir.

20 Q. Do you know where John Anticev got those tapes --

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q. Did you have a conversation with Mr. McCarthy or
24 any agent about those tapes?

25 THE COURT: When?

1 Q. At any time. Do you know how the Bureau --

2 THE COURT: Mr. Jacobs, may I see you up at the
3 side.

4 (At the side bar)

5 THE COURT: I am sure you have a theory about how
6 these tapes came into somebody's possession and I am sure
7 you hold it very forcefully, but you have to get it from the
8 witness in order for it to be evidence.

9 MR. JACOBS: I understand.

10 THE COURT: Please.

11 MR. JACOBS: I understand.

12 THE COURT: Good.

13 MR. JACOBS: Will the government agree that he
14 turned them over January 15?

15 MR. McCARTHY: What happened is, he and the agent
16 took them all out. The agent spot-checked them, he said
17 that he could keep the 15 with all his possessions left
18 behind. After that, Mr. Kuby made an application in the
19 proceeding about any tapes that he had. I told them that
20 even though he spot-checked them and they weren't
21 consequential --

22 MR. JACOBS: Thank you, I will do it that way.
23 Thank you, Mr. McCarthy, for clarifying it.

24 (In open court)

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

1 THE COURT: Please.

2 BY MR. JACOBS:

3 Q. Tapes were removed from your house on or about
4 June 29, sir, is that correct, sir? You weren't there,
5 correct?

6 A. No, I wasn't.

7 Q. Did somebody from the FBI come to you with this
8 box of tapes and ask you to review them? Yes or no.

9 A. To review them, no, sir.

10 Q. Spot-check them?

11 A. No, sir.

12 Q. You never looked at them?

13 A. I did look at them, sir.

14 Q. Did you look at them between June 29 and July 15?

15 A. I am sorry. What is June 29? July 15 is the
16 next day to the case.

17 (Continued on next page)

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1 Q. Some two weeks later, during that period of
2 time --

3 THE COURT: Mr. Jacobs, do you want to come up to
4 the side.

5 MR. JACOBS: Sure.

6 (At the side bar)

7 THE COURT: I think you misunderstood the
8 information Mr. McCarthy gave you. What he said is, I
9 believe, that the FBI spot-checked them.

10 MR. McCARTHY: No, he spot-checked them, your
11 Honor. He obviously doesn't remember it.

12 THE COURT: Sorry.

13 (Continued on next page)

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1 (In open court)

2 BY MR. JACOBS:

3 Q. You have a conversation with Mr. McCarthy and the
4 FBI sometime around June 29 about your private tapes,
5 correct? Is that fair to say?

6 A. I don't recall the date, but we had conversations
7 about it, yes, sir.

8 Q. The FBI goes and takes tapes out of your house,
9 correct?

10 A. Yes, sir.

11 Q. They bring you a number of tapes, is that
12 correct?

13 A. Yes, sir.

14 Q. Did you in any way review the number of tapes
15 taken out of your house, yes or no, at that period of time?

16 A. I initialed them, sir.

17 Q. Other than initialing them, did you listen to any
18 part of those tapes?

19 A. No, sir.

20 Q. At the time that you initialed the tapes, did the
21 government, prosecutors, or agents give you back any tapes?

22 A. I am not sure, sir.

23 Q. Did there come a point on July 15, 1993, that
24 Agent Anticev met with you someplace and got those 15 tapes
25 from you?

1 A. No, sir. I am sorry, one second. I am confused
2 here in one thing here. If this is the whole tapes out of
3 my house, sir?

4 Q. No, I am --

5 A. I am sorry, I am confused.

6 Q. Quite all right.

7 A. OK, I remember.

8 Q. These are 50 tapes -- your Honor, is it all right
9 if I approach the witness so he can look at them?

10 THE COURT: Yes.

11 Q. These are 50 tapes which we have indicated were
12 turned over on or about June 29. OK?

13 A. OK.

14 Q. I am asking you, sir, the other 18 tapes that are
15 before you, we have had an indication that they were turned
16 over by you on July 18. I am asking you.

17 A. Yes, now I remember. I thought that's what came
18 out of my house.

19 Q. Fifty tapes, the ones on the floor, came out of
20 your house, correct, sir?

21 MR. McCARTHY: Objection.

22 Q. You don't know. What about the 18 tapes?

23 A. It's part of what was being in my house, sir.

24 Q. Where did Anticev get the 18 tapes from on or
25 about July 15, if you know?

1 MR. McCARTHY: Objection to form.

2 THE COURT: Sustained.

3 Q. After June 29 did you ever meet with Special
4 Agent Anticev -- and I don't want the location -- and hand
5 him 18 tapes? Yes or no.

6 A. Yes. I am not sure how many but yes, I did.

7 Q. And I don't want to know where. What were the
8 circumstances surrounding those 18 tapes on July 15?

9 A. The circumstances that this is my personal,
10 private tapes, which is my wife's voice or my children or
11 something in that effect, and the government later on said
12 these tapes, even this is private tapes since it's being
13 found in your house it must be turned over, so I give it
14 back to them.

15 Q. Where were these 15 tapes or 18 tapes on or about
16 June 24?

17 A. Where?

18 Q. Yes.

19 A. In a box, sir.

20 Q. Did the FBI take this many on or about June 29 or
21 not -- I am sorry, withdrawn.

22 You gave these to Anticev on July 18. Where did
23 you get them from?

24 A. In a box.

25 Q. You had them in a box in your house or wherever

1 you were, more tapes?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q. June 29, the FBI found 50 tapes in your house,
5 correct?

6 MR. McCARTHY: Objection.

7 A. No.

8 THE COURT: Sustained.

9 Q. How many tapes were in your house when you left
10 on June 24, 1993?

11 A. I have no idea, sir.

12 Q. More than 100?

13 A. I don't know, sir.

14 Q. Some tapes were taken from the Bureau on June 29,
15 correct? You weren't there, correct?

16 A. I am sorry, say it again, please.

17 Q. On or about June 29, you gave permission for the
18 FBI to take tapes out of your house, correct?

19 A. I don't recall the date, but yes, I did get them
20 permission.

21 Q. To your knowledge, did they take all the tapes?

22 A. I don't know, sir.

23 Q. On the tape, these 15, which are labeled -- so
24 the record is clear they are labeled ES50 through, I
25 believe, 66 or 68. Where did these tapes come from?

1 A. The whole tapes came together. The personal
2 tapes, which these separate tapes, since it's personal I
3 took it in a box and they took the 50 with them which have
4 subjects of the investigation. Few days later they said you
5 got to turn even these 15 tapes. I give it to them back,
6 sir.

7 Q. So sometime after June 29, you meet FBI and they
8 give you your entire box, correct?

9 A. No, sir -- I am sorry, I am sorry. Say the
10 question again, because you said June 29 here.

11 Q. Sure. After June 29 you have a meeting with some
12 agent where they put the entire box of tapes in your house
13 on the table, right?

14 A. Yes, sir.

15 Q. You picked out 50, you gave them, and you held
16 back 15, correct? Yes or no.

17 A. No, sir.

18 Q. Did you listen to them?

19 A. I listened to the personal tapes, sir, and that's
20 when I kept these 15. I said these is personal tapes and
21 it's being reviewed by one of the FBI translators with me
22 who speaks Arabic, and he find that my wife talking or a
23 song or something, so we put it on the side that that's
24 personal, sir.

25 Q. I thought you told us --

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q. Did you tell us before that you never reviewed
4 them at that time?

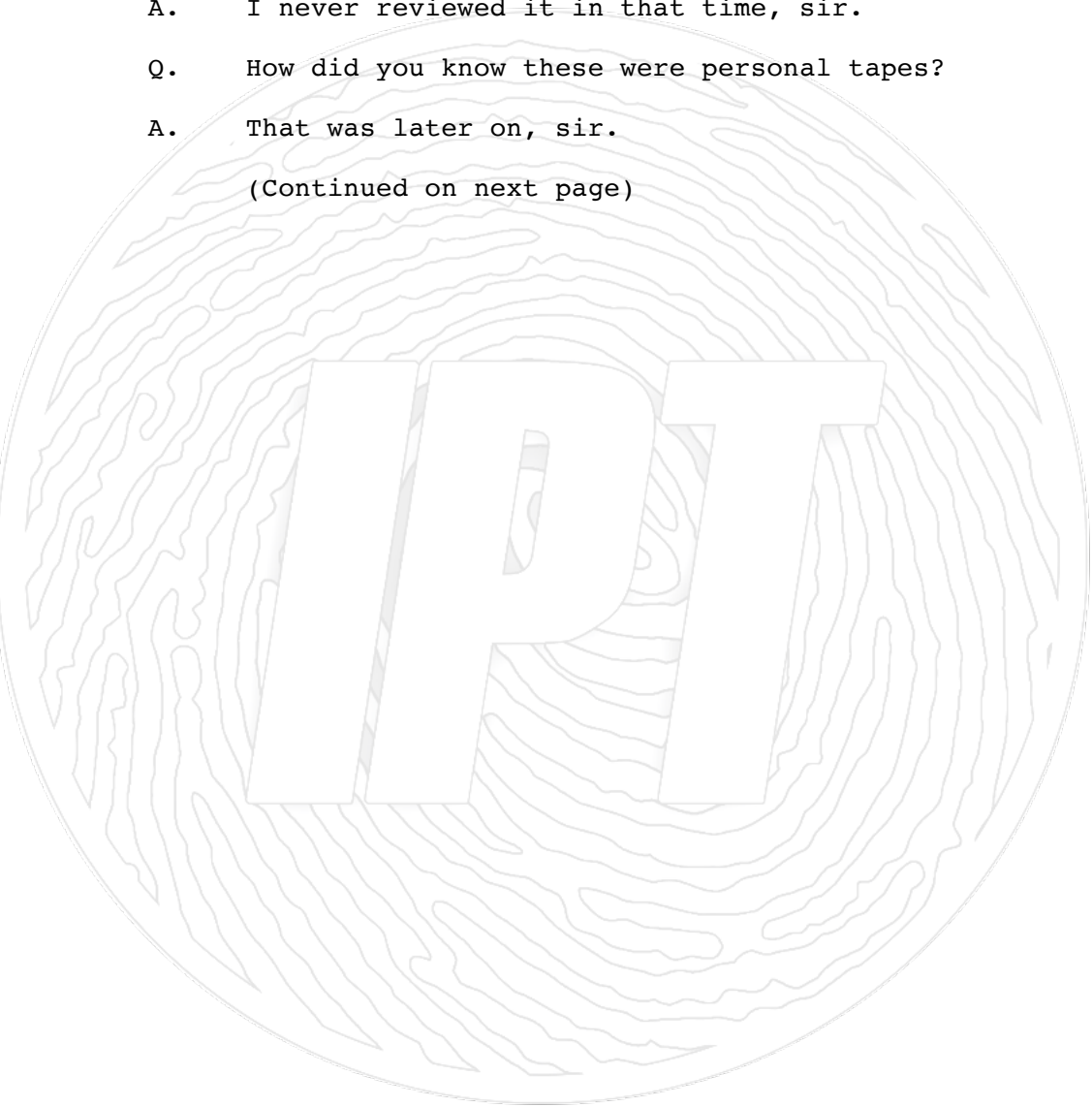
5 A. I never reviewed it in that time, sir.

6 Q. How did you know these were personal tapes?

7 A. That was later on, sir.

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

5 (Jury excused)

6 THE COURT: You may step down.

7 (Witness excused)

8 THE COURT: We will resume in a few minutes.

9 (Recess)

10 (AT the side bar)

11 THE COURT: Some people looked over at juror 11.
12 She is sitting where juror number 18 usually sits. The
13 reason for that is that she has a bad back and occasionally
14 she likes to stand up and that will alleviate it. We put
15 her by the wall so she can do that, and we have a heating
16 pad plugged in. That is the reason for her sitting in that
17 place. You can tell everybody and satisfy their curiosity.
18 I saw Ms. London looking over.

19 MR. JACOBS: Your Honor, I am moving along. I am
20 moving along. That's off the record.

21 THE COURT: It's on. I am not going to tell you
22 how to examine, but if you want to bring out what
23 happened --

24 MR. JACOBS: Mr. McCarthy is probably very
25 accurate about what happened, but he doesn't remember it. I

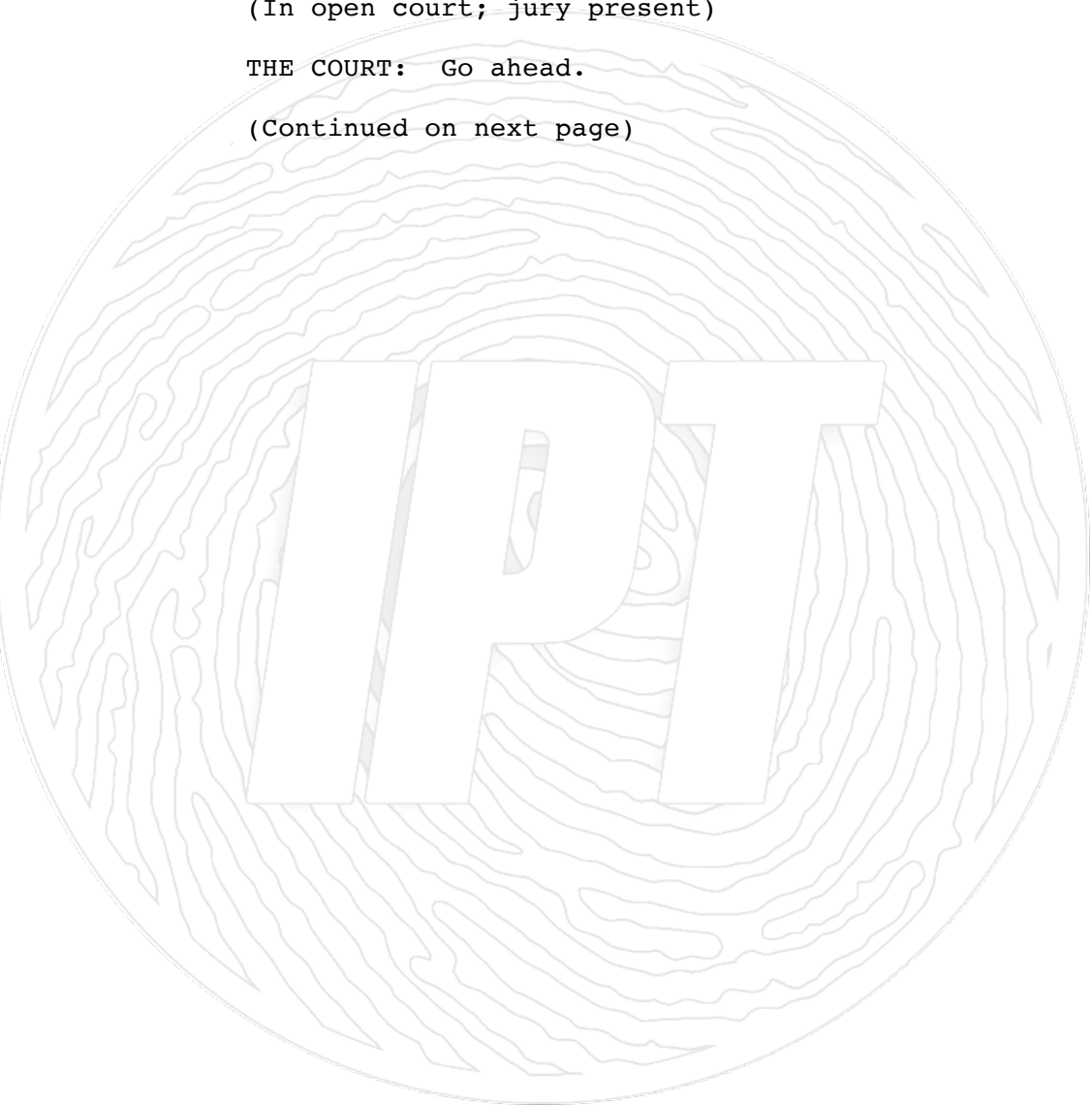
1 am not saying he is doing it intentionally. He is right,
2 they gave him the tapes, only he gave back the El-Gabrowny
3 tapes somewhere. I am unclear what happened. Mr. McCarthy
4 is representing it, probably, correctly.

5 (In open court; jury present)

6 THE COURT: Go ahead.

7 (Continued on next page)

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1 BY MR. JACOBS:

2 Q. Mr. Salem.

3 A. Yes, sir.

4 Q. The 18 tapes you gave back to the Bureau on or
5 about July 15? Those additional 18 tapes?

6 A. I give it back to them after I saw the whole
7 tapes, sir.

8 Q. So in other words, on or about sometime between
9 the 29th and the 15th, you did some review of these tapes?

10 A. Yes, sir.

11 Q. And the Bureau gave you back these 15 or 18
12 because these were personal tapes of your family?

13 A. Yes, sir.

14 Q. Didn't you describe to the jury your taping
15 system is that everything that came in was taped, your
16 family, home box, targets? There was no discrimination in
17 the taping system, correct?

18 A. Yes, sir.

19 Q. So you knew that these tapes were just family
20 tapes?

21 A. The FBI, sir, brought one of their translators
22 who speaks Arabic, and we check-point these tapes, we
23 listened that these is personal tapes, so there is no reason
24 for me to turn it over, so that's what they give me back
25 these tapes. Few days later they said no, let us to get the

1 whole tapes and nothing to be kept with you even if it's
2 personal tapes. So I turned it back to them, sir.

3 Q. Would you read what is on the outside of 658,
4 which is one of those 18 tapes. What does it say?

5 A. Ibrahim El-Gabrownny, the counsel and his name,
6 it's not important, and my initials ES, and number 1.

7 Q. When you told the jury that these were personal
8 tapes of your family, on that tape that the Bureau didn't
9 get back from you until July 15, Mr. Gabrownny is on that
10 one, isn't he? Used to be.

11 Q. Used to be on the tape?

12 A. Used to be, that's why I brought his name. But
13 it's taped over it, so since he is not on the tape any more,
14 it's just personal tape, I took it back, sir.

15 Q. Sir, if I were to tell you that the tape in your
16 named, call number 59-12, 59-13, 59-15, 59-20, and 59-21
17 are conversations with Mr. Gabrownny that are on that tape,
18 would that surprise you, sir?

19 A. I don't what these numbers that you talking
20 about, sir.

21 MR. JACOBS: Mr. McCarthy, would you agree that
22 that is correct, that on tape 59 which the witness is
23 holding, that those conversations are on those --

24 MR. MCCARTHY: My notes say 58.

25 MR. JACOBS: I am sorry, 58, have tapes with

1 Mr. Gabrowny on it, sir?

2 MR. McCARTHY: Can I just see the tape?

3 MR. JACOBS: Sure. I am sorry.

4 MR. McCARTHY: 58, I stipulate, has two.

5 Q. Looking at tape number 58, among the
6 conversations that are recorded and that are on that tape
7 are two conversations with Mr. Gabrowny. The government has
8 so stipulated.

9 A. Yes.

10 Q. How did you make the determination that they
11 weren't there, sir?

12 A. The tapes I took it back from the FBI in that
13 time, none of them have the subjects of the investigation on
14 it, sir.

15 Q. I am sorry. You said before that these were
16 personal tapes of your family. Is it now your testimony
17 that that is an error and that these do contain subjects of
18 the case?

19 A. No, sir.

20 Q. They don't. Is Mr. Gabrowny subject of the case,
21 sir?

22 A. Yes, sir.

23 Q. The government has stipulated he is on the tape,
24 OK? Now I am asking you, sir, how did you wind up with the
25 tape back in your possession? How did that happen?

1 A. If that's one of the tapes, I took it from the
2 FBI, there is no way Mr. Ibrahim El-Gabrownny will be on it,
3 but probably later on I find some other tapes in my
4 household after I moved, and when I find it I turned it to
5 the government, sir.

6 Q. Sir, the tape you are holding in your hand is a
7 tape that you gave John Anticev on or about July 15, or you
8 gave back to John Anticev, isn't that true?

9 A. I don't know, sir.

10 Q. Who wrote the name Gabrownny on that tape?

11 A. Myself, sir.

12 Q. When did you do it?

13 A. When I taped it, sir.

14 Q. So when you reviewed that exhibit and you met
15 with the FBI and Mr. McCarthy, you told them that this tape
16 was not important, was your family, and you took it back.
17 Yes, sir?

18 MR. MCCARTHY: Objection.

19 MR. JACOBS: I will withdraw it.

20 Q. Did you tell the FBI that that tape wasn't
21 important? Yes or no.

22 A. No, sir.

23 Q. Did you tell the FBI it was your family? Yes or
24 no.

25 A. No, sir.

1 Q. Did you tell the FBI that there was a tape of one
2 of the targets in the case? Did you tell them that?

3 A. Excuse me, sir.

4 Q. Did you tell the FBI when you looked at the box
5 of the tapes that this was a tape of Gabrowny? Yes or no.

6 A. I am sorry. I don't understand the question,
7 sir. Will you please --

8 Q. When you sat and reviewed the box and you saw the
9 tape with your handwriting with the defendant's name on it,
10 did you tell the Bureau that you ought to review the tape?
11 Did you say those words? Or did you take the tape back?

12 THE COURT: Sustained. Do you want to rephrase
13 it.

14 MR. JACOBS: Sure.

15 THE COURT: Maybe if you calmed down you might be
16 able to ask it.

17 MR. JACOBS: My apologies. I am sorry.

18 Q. Mr. Salem, I am sorry.

19 A. That's OK, sir.

20 Q. Did you tell the FBI, sometime after June 29 and
21 before July 15, this was a tape of your family? Yes or no.

22 A. I am sorry. I am not getting the question, sir.
23 The dates.

24 Q. Dates. The FBI goes to your house and takes your
25 box of tapes on or about June 29. Yes?

1 A. Could be, sir.

2 Q. And among the tapes that they took was this
3 exhibit that is in front of you, isn't that correct, sir?

4 A. I don't know, sir.

5 Q. Did you ever have a conversation between the 29th
6 and the 15th where somebody showed you this tape and you
7 said family tape, I can take it back with me? Did you ever
8 have such a conversation with Mr. McCarthy or the Bureau?
9 Did you do that, sir?

10 A. I don't know about this particular tape, sir. I
11 know that at the time we reviewed the tapes we reviewed the
12 personal family tapes or personal tapes, and I took it back,
13 sir.

14 Q. So you agree with me that certain tapes were
15 reviewed that you took back into your possession, correct?

16 A. Yes, sir.

17 Q. And there were about 15 or 20, correct?

18 A. Could be, sir.

19 Q. Let's take a look at this one, number 59, 659 for
20 identification, and would you read the Arabic to the jury,
21 please.

22 A. Number 4, Ferguson, Mohammed Attia, Ibrahim
23 El-Gabrownny. The other --

24 MR. JACOBS: And will the government stipulate --
25 my apologies, please continue, please.

1 A. The other side, number 4, and my initials, and
2 the FBI initials, sir.

3 (Continued on next page)

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1 MR. JACOBS: Mr. McCarthy, would you stipulate
2 that 5912, 5913, 5915, 5920 and 5921, that these are five
3 separate telephone conversations with the defendant Ibrahim
4 El-Gabrowny on this tape, sir?

5 MR. McCARTHY: Yes, your Honor.

6 I will stipulate to that.

7 Q. Would your answers be the same with respect to
8 this tape as well, that this was a personal tape that you
9 took back?

10 A. No, sir.

11 Q. Did you tell the FBI they should review that on
12 about June 29?

13 A. I don't know, sir. First, that is -- it's
14 impossible that these tapes, since Mr. El-Gabrowny's voice
15 on it, that he took it back.

16 Q. Impossible?

17 A. It's impossible, sir.

18 MR. JACOBS: Mr. McCarthy would you stipulate
19 that he turned them over to the Bureau on about July 15, or
20 turned it back to the Bureau.

21 MR. McCARTHY: Can I see the tape?

22 MR. JACOBS: Sure.

23 (Counsel conferred off the record)

24 MR. JACOBS: Your Honor, I apologize to you and
25 Mr. McCarthy. I'm trying to move this along.

1 Q. Mr. Salem, the government stipulates that these
2 tapes were returned to the FBI, that tape, on or about July
3 15, 1993.

4 So that is a tape that you returned to the Bureau
5 on or about July 15 that contains five conversations with
6 Gabrowny. Do you understand? That is the stipulation with
7 the government. Do you understand that, sir?

8 A. Yes, sir.

9 Q. Now, the question to you is: Did you tell the
10 FBI when you did this little review that this was a family
11 tape? Did you say that to the Bureau?

12 A. Again, sir, I am not sure that this is the tapes
13 I took as family tapes. I don't know that. And when we
14 reviewed the tapes, I took -- I did not find anybody's voice
15 subject of the investigation, sir, and I cannot -- I don't
16 know how to answer that question.

17 Q. When you say you didn't find anybody's voice
18 isn't Gabrowny's name on the outside of the tape that you
19 wrote at the time you made it?

20 A. I made so many tapes of Mr. El-Gabrowny and after
21 I felt it's not important, like I wrote it's not important
22 here, sir. I taped over it. It could be a regular family
23 tape or personal conversation. That's why I took it.

24 So some of the tapes could have Mr. El-Gabrowny's
25 name but his voice is not there, sir, because it's taped

1 over, sir?

2 Well, sir the government has stipulated --

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 MR. JACOBS: I will move on.

6 THE COURT: Move on, please.

7 MR. JACOBS: Fine.

8 Q. And 54, would you read what's on this one.

9 A. Yes, sir.

10 Q. What does that say?

11 A. Name of one of the Egyptian intelligence
12 officers, sir, and a date.

13 Q. And 652, or Tape No. 52, what does this one say?

14 A. Mr. Ibrahim -- Ibrahim El-Gabrownny, January 16,
15 '91, No. 2. It's not important. On the other side,
16 nothing, sir.

17 Q. So the question Mr. Salem is this: Did you tell
18 the Bureau that these tapes weren't important and you took
19 them back into your possession later to return them? Yes or
20 no.

21 A. No, sir.

22 Q. You believed that the tape that I've just given
23 to you did not have Gabrownny on it because you reviewed it
24 at the time, is that your testimony?

25 A. Yes, sir.

1 Q. Somehow, something's happened to these tapes and
2 they now contain all these conversations or some of these
3 conversations, correct? I mean somebody in the Bureau
4 manipulated the tapes, is that your testimony?

5 A. I did not say that, sir.

6 Q. How do these tapes now have Gabrowny on them?

7 A. There is -- when I got my household goods, sir, I
8 find some more tapes which is Mr. El-Gabrowny's voice on it,
9 and I turned it to the government.

10 Some other tapes with some other subjects on it,
11 I turned. Every time I find a tape I turned it to the
12 government immediately. So I don't know what's this tapes.

13 Q. On or about October 1, 1993, did you turn over to
14 Agent Mikalal, FBI agent, two additional tapes, one of the
15 sheik and another tape of Mr. Gabrowny and Mr. Ferguson?

16 A. That's what I just said. Every time I find a
17 tape, I turn it to the government instantly, sir.

18 Q. These two tapes -- let me show them to you, and
19 see if this is the same two tapes. Wrong ones.

20 I actually think there's three. Would you open
21 these three and tell me if these three tapes, which I think
22 are labeled IB74, IB73 and IB72, are tapes that you turned
23 over to the Bureau on or about October 1, 1993.

24 A. This one, I don't know.

25 This one, yes, I did, sir. I don't know when.

1 This one, yes. I don't know when, sir.

2 Q. What is written on the two tapes that you were
3 able to identify, which are -- I don't think I have a
4 sticker on them yet -- I have identified this as IB74. Is
5 there anything written on this one?

6 A. Yes, sir.

7 Q. What is written on it, sir?

8 A. Sheik Omar Abdel Rahman, and the signature of the
9 FBI agent.

10 Q. What about the other one you identified, which is
11 IB73?

12 A. El-Gabrownny. The other side, Ibrahim
13 El-Gabrownny, Ferguson, threatening message.

14 MR. JACOBS: Mr. McCarthy, would you agree that
15 these were acquired from Mr. Salem on or about October 1,
16 1993?

17 MR. McCARTHY: I would.

18 Q. These two tapes that you have identified, where
19 did you find these?

20 A. In my household goods.

21 Q. Well, where in your household goods?

22 A. Where?

23 Q. Yes.

24 A. What do you mean? Where in the household? Well,
25 somewhere -- I mean, I find it in the papers of my desk, I

1 find it -- I don't know where, but when I get hold of my
2 household goods, there was these tapes. Once I find it, I
3 turned it to the government.

4 Q. So, in other words, you had been -- I am not
5 asking you where -- you had been relocated to some other
6 place, correct?

7 A. So many times, sir.

8 Q. So many times.

9 Sometime in late September you're going through
10 papers and you happen to find a tape of the sheik and you
11 happen to find a tape of Gabrownny, correct?

12 A. Yes, sir.

13 Q. Had you seen those two tapes when you reviewed
14 them with the Bureau and they gave you back tapes or these
15 were just new tapes that you found?

16 A. No, these are new tapes being found.

17 Q. New tapes. OK.

18 So it's fair to state that the FBI didn't get all
19 your tapes on or about June 29, correct?

20 A. Yes, sir.

21 Q. Let me show you these two tapes and ask you
22 whether you recognize these two tapes.

23 MR. JACOBS: For the record, I think they are A
24 and B, Mr. McCarthy or 106.

25 A. I recognize one of them.

1 Q. What is it, sir?

2 A. It's written on it Ibrahim El-Gabrowny. The
3 other side, Ali El-Shinawy and El-Gabrowny, sir.

4 Q. Do you know where these came from, these two
5 tapes?

6 A. I don't recall, sir.

7 Q. Do you know when you gave them to the FBI?

8 A. I have no idea, sir.

9 Q. Sometime after June 29 you found more tapes?

10 A. Could be, sir.

11 Q. Another date?

12 A. Pardon me.

13 Q. You just kept finding tapes as you went through
14 things, is that fair to say?

15 A. Yes, sir.

16 Q. When you found tapes, you would call the Bureau
17 and give them tapes, correct?

18 A. Yes, sir.

19 Q. So we have June 29; July 15 you gave back some
20 tapes; October 1 you gave back some tapes, correct?

21 A. I don't know, sir.

22 Q. You don't know the dates. OK.

23 Take a look at this one. This is labeled 106,

24 B106. Could you read what is on this tape.

25 A. John, Ferguson, Ahmed Abdel Sattar, Ali

1 El-Shinawy, my initials, and nothing on the other side, sir.

2 Q. Did you give this tape to the Bureau on or about
3 April 26, 1994?

4 A. I gave it to them, but I don't know when, sir.

5 Q. You would agree with me, Mr. Salem, that on at
6 least three separate dates you called the government and
7 gave them additional tapes after June 29, is that fair to
8 say?

9 A. Yes, sir.

10 Q. There was no recordkeeping you ever kept of any
11 of these, no diary, no log, nothing?

12 A. No, sir.

13 Q. You do agree with me that some of these tapes it
14 turned out later on are some of the targets in this case?

15 A. Yes, sir.

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 MR. JACOBS: I will withdraw it.

19 MR. McCARTHY: Move to strike.

20 THE COURT: It's stricken. Do you want to reask
21 the question?

22 MR. JACOBS: No, sir.

23 Q. Now, after June 23, 1993, did your tape recorder
24 continue to run or did you make additional tapes?

25 A. After when?

1 Q. June 23, 1993. Did you make additional tapes?

2 A. I made some additional tapes, yes, sir.

3 Q. Did you turn those over to the Bureau?

4 A. Yes, sir.

5 Q. Did you continue to tape the agents?

6 A. No, sir.

7 Q. Did you tape the prosecutors?

8 A. No, sir.

9 Q. During this period of time that you were running
10 your dictation system, your phone recording system, and your
11 body wire system, you also were making official tapes,
12 correct, Nagra tapes?

13 MR. McCARTHY: Objection to form.

14 THE COURT: Sustained.

15 Q. There came a point where you were making official
16 Nagra tapes, correct, CM's? CM's 1 through --

17 A. Yes, sir.

18 Q. There's no recordkeeping of those that you kept,
19 correct, sir?

20 THE COURT: That's been covered. Please move on.

21 Q. When the FBI went to your home, they found blank
22 Nagras, is that correct, sir?

23 A. Yes, sir.

24 Q. Mr. Salem?

25 A. Yes, sir.

1 Q. On or about June 4, 1993 you paid a visit to my
2 client Mohammed Saleh, correct, June 4?

3 A. Yes, sir.

4 Q. That tape has been played to the jury, CM32, is
5 that correct, sir?

6 A. Yes, sir.

7 Q. You have been asked some questions about it by
8 Mr. McCarthy, correct, sir?

9 A. Yes, sir.

10 Q. You told us that the purpose of your going there
11 was to -- I think you wrote it on the outside of the
12 envelope, either the envelope 31 or 32 -- was to finance the
13 bomb, correct?

14 A. I'm sorry.

15 Q. Sure.

16 A. The envelope?

17 Q. The purpose that you went there was to obtain
18 financing for the bomb, correct?

19 A. It was part of the reason, yes, sir.

20 Q. I think you actually wrote it on the envelope,
21 didn't you, "finance the bomb"?

22 MR. McCARTHY: Objection.

23 Q. Isn't that on the outside of 32 or 31?

24 MR. McCARTHY: Withdraw the objection.

25 A. I'm not sure, sir, if I did.

1 MR. JACOBS: May I have the envelopes. I'm
2 sorry. Are they over here?

3 MR. McCARTHY: I'll get them.

4 MR. JACOBS: Thank you, Mr. McCarthy.

5 Q. On the date in question, Siddig Ali was going to
6 give a lecture at Mr. Saleh's mosque, isn't that correct?

7 A. Yes, sir.

8 Q. It was supposed to be a Friday prayer service,
9 correct?

10 A. Yes, sir.

11 Q. Mr. Saleh, Mohammed, was expecting Siddig to give
12 this lecture to the members of the congregation, correct?

13 A. I think, yes, sir.

14 Q. Would I be correct in stating you had never
15 discussed -- you never met Mohammed before, did you, sir?

16 A. No, sir.

17 Q. He was unaware of what the purpose was of your
18 meeting, isn't that correct, to your knowledge, sir?

19 A. I don't know, sir.

20 Q. I think it is in evidence. It's already been put
21 in evidence. In evidence before we've had this. You wrote
22 down the words "financing the bomb" on the envelope,
23 correct?

24 A. If I can see.

25 Q. Sure. We have had this. The jury has seen it.

1 MR. McCARTHY: Your Honor, it's stipulated. I
2 think it is in evidence.

3 MR. JACOBS: Yes.

4 A. Yes, sir, it's my handwriting.

5 Q. Siddig Ali brought his wife with him that
6 afternoon and evening, correct?

7 A. Yes, sir.

8 Q. Did you and Siddig Ali before the meeting discuss
9 the fact that this was going to be a surprise meeting? Did
10 you ever use those words, in Arabic obviously, "surprise
11 meeting," if you can remember?

12 A. No, I don't recall that.

13 Q. You don't recall that?

14 A. I don't recall being surprise meeting.

15 Q. You didn't make the lecture at the mosque, is
16 that correct, sir?

17 A. Me?

18 Q. Yes.

19 A. No, sir.

20 Q. You and Siddig, because you came together,
21 correct, you didn't make the lecture, is that true?

22 A. True, sir.

23 Q. That's because you arrived late, correct?

24 A. Correct, sir.

25 Q. You went to the gas station, correct?

1 A. Correct, sir.

2 Q. He was working at the gas station, correct,
3 Mohammed?

4 A. No, sir.

5 Q. You met him there?

6 A. We met him there, yes, sir.

7 Q. To your knowledge, he owned the gas station,
8 correct?

9 A. From what I understood, yes, sir.

10 Q. You never met him again after June 4, correct?

11 A. No, sir.

12 Q. Did you ever speak to him after June 4?

13 A. I may left message on his answering machine or
14 something. I'm not sure. I didn't talk to him personally,
15 sir.

16 Q. Mohammed told you that he was upset that you
17 hadn't made the lecture, correct?

18 A. I wasn't going to give a lecture, sir.

19 Q. He was upset that Siddig hadn't made the lecture,
20 correct?

21 A. He just told Mr. Siddig Ali to apologize to the
22 person who's supposed to receive him to give the lecture,
23 sir.

24 Q. In fact, Mohammed actually picks up the phone to
25 call somebody at the mosque for Siddig to apologize, is that

1 correct?

2 A. It was a phone conversation by Mr. Siddig Ali to
3 these persons, sir.

4 Q. You testified I think on direct that it was your
5 understanding that somebody by the name of Dr. Nofal gave
6 this lecture, is that your testimony, sir?

7 A. Yes, sir.

8 Q. You weren't there, were you, sir?

9 A. No, I wasn't, sir.

10 Q. During the conversation that the jury's had and
11 reviewed, didn't Mohammed tell you that the lecture was
12 given by somebody who was an Indian person, and he went on
13 to describe how this person was not familiar with giving
14 lectures and couldn't do a very good job? Didn't he tell
15 you that?

16 A. In the mosque, sir it's not necessarily to be one
17 lecture. It could be two, three lectures. There is a main
18 lecture, and anybody who want to give some extra lecture for
19 some kind of support, he can do the same thing, sir.

20 Q. Is there anything on CM32 that said Dr. Nofal
21 gave the lecture.

22 MR. McCARTHY: Objection.

23 THE COURT: Mr. Jacobs could you move near the
24 microphone.

25 MR. JACOBS: I am sorry.

1 Q. Do you recall anything being said to you by
2 Mohammed that Dr. Nofal actually gave the lecture?

3 A. Yes, sir. I do remember that.

4 Q. He said that?

5 A. He said that Dr. Nofal was giving a lecture also
6 on that day, sir.

7 Q. He did?

8 A. That's what he told me, sir.

9 Q. And if we looked at 32 we can find that?

10 A. No, sir.

11 MR. McCARTHY: Objection.

12 Q. I'm sorry. You say we can't find that? You mean
13 it's a part that's not recorded?

14 A. Yes, sir.

15 Q. So there is an unrecorded part of the
16 conversation where Mohammed tells you Dr. Nofal gave the
17 lecture?

18 A. Yes, sir.

19 MR. McCARTHY: Objection to form, unless he
20 clarifies which conversation.

21 Q. You had only one conversation with Mohammed,
22 correct?

23 A. Yes, sir.

24 Q. June 4, 1993, correct?

25 A. Yes, sir.

1 MR. JACOBS: Your Honor, I am not going to repeat
2 it.

3 Q. The beginning portion is missing, correct? The
4 beginning of the tape is missing? I'm sorry.

5 There's some portion of the conversation that's
6 not recorded, correct?

7 A. Yes, sir.

8 Q. That's where this Dr. Nofal stuff is there?

9 A. Yes, sir.

10 Q. That's not recorded, correct?

11 A. Yes, sir.

12 Q. That is where your background is not recorded,
13 correct, your hero stuff and your military wounds? All that
14 stuff is not there as well, correct?

15 A. That's not true, sir.

16 Q. It is there?

17 A. There is a part, sir, in the gas station, the
18 minute Mr. Mohammed Saleh arrived and said hello, and why
19 you are late, that part in the gas station, it is not being
20 recorded.

21 Once we hit his home and we start to eat, the
22 recording started, sir.

23 Q. So there's some portion of conversation 32 where
24 you are starting to eat, you have already had your
25 preliminary talks with him and that's not recorded, correct?

1 A. That was back in the gas station, sir.

2 Q. But 32 itself and perhaps we can open --

3 MR. JACOBS: Your Honor, with the court's
4 permission, may the jurors open their books to 32.

5 THE COURT: Yes.

6 MR. McCARTHY: Your Honor it's Exhibit 333T.

7 MR. JACOBS: 333T. Ms. Schwartz, could you tell
8 us where it is.

9 (Pause)

10 MR. JACOBS: Mr. McCarthy, do we have an extra
11 one?

12 MR. McCARTHY: Why don't you take this one.

13 MR. JACOBS: Thank you.

14 MR. McCARTHY: And I will use this one.

15 MR. JACOBS: Thank you. It's 333T, ladies and
16 gentlemen. 333T. It should say tape CM32, dated June 4,
17 1993.

18 THE COURT: Go ahead, Mr. Jacobs.

19 MR. JACOBS: Thank you.

20 Q. Mr. Salem, the conversation --

21 A. Yes.

22 Q. -- the tape recorded part begins with: "The
23 armed forces were Christians. Is that possible?" In other
24 words, you're having a political discussion with him at that
25 point. Fair to say?

1 A. We were talking about the armed forces of Sudan,
2 sir.

3 Q. I have had this before -- I mean, there is some
4 portion that is missing, the introductions are missing,
5 correct, when you come into his home, correct?

6 A. From the gas station until we get into his home,
7 that part is not recorded, sir.

8 Q. Something happens in the house. You didn't walk
9 in and Siddig Ali didn't start staying, "The armed forces
10 are Christians," did he?

11 A. We were continuing conversation. We in the car,
12 we were talking, walking into the house, still talking, the
13 food was already on the floor. We sat and then is when I
14 started the tape, sir.

15 Q. So you're saying you missed no conversation in
16 CM32, everything's recorded once you entered the house?

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained. Move on.

19 Q. When you got to the home, you were introduced to
20 Mr. Mohammed Saleh's wife, correct?

21 A. No, sir.

22 Q. He didn't introduce you to his wife?

23 A. No, sir.

24 Q. You met his wife at the gas station? Did you
25 meet his wife?

1 A. No, sir. Wives was eating in the kitchen, and we
2 were eating in the front room, sir.

3 Q. His wife was at home?

4 A. I'm not sure if his wife or not, but I heard a
5 female voice in the kitchen.

6 Q. His children were present?

7 A. Yes, sir.

8 Q. You ate a meal together?

9 A. Yes, sir.

10 Q. To your knowledge, was this a one-bedroom
11 apartment?

12 A. I have no idea, sir. It is a house, but I don't
13 know the details of it, sir.

14 Q. Do you know if it was a basement apartment?

15 A. Basement?

16 Q. Yes.

17 A. No, sir.

18 Q. During the course of your conversation, the
19 children interrupted it at various times, correct?

20 A. Yes, sir.

21 Q. They referred to you sometime as Uncle Emad,
22 correct?

23 A. I don't think so, sir.

24 Q. You were never referred to by anybody as Uncle
25 Emad?

1 A. I believe not Mr. Mohammed Saleh's kids, sir.

2 Q. You told us on direct that at some point in the
3 conversation that Siddig Ali took out a notebook and wrote
4 something down on a piece of paper, correct?

5 A. Yes, sir.

6 Q. That was the so-called three targets, correct?

7 A. It was the United Nations and the tunnels, sir.

8 Q. Well, with the court's permission, let me give
9 you a pad and paper and ask you to write down what you saw
10 on the piece of paper. In Arabic, if you'd like, with the
11 court's permission.

12 Write down exactly what you saw Siddig Ali write
13 on this notebook.

14 Take your time.

15 A. I wrote two things: "The United Nations and the
16 water -- the way it's being written, the water tunnels.

17 Q. I'm sorry?

18 A. The water tunnels.

19 Q. The water tunnels. OK.

20 A. Or the water channels.

21 THE COURT: Would you mark that, please.

22 MR. JACOBS: Yes. I'm about to.

23 THE COURT: L.

24 Q. So this is what you saw -- let me just step back.

25 This is what you saw on the piece of paper that

1 Siddig Ali wrote?

2 A. To the best of my recollection, yes, sir.

3 MR. JACOBS: Ladies and gentlemen, if you would
4 turn to page 52, if you look at page 52 in your book,
5 towards the middle.

6 Q. That's when you say Siddig Ali wrote something on
7 a piece of paper. It says: "That's first. This is
8 second." Is that what you say you saw on the piece of paper
9 that Siddig Ali wrote that you ate?

10 A. Yes, sir.

11 Q. That's all that was on the piece of paper, what's
12 in front of you? That's your testimony?

13 A. Yes, sir.

14 MR. JACOBS: I would offer it into evidence at
15 this time.

16 MR. McCARTHY: Just brief voir dire.

17 VOIR DIRE EXAMINATION

18 BY MR. McCARTHY:

19 Q. Mr. Salem, how big was the piece of paper that
20 Mr. Siddig Ali wrote on compared to the piece of paper that
21 you have before you?

22 A. It was a smaller than this. It was a regular
23 children's book, sir, so it was shorter than this.

24 Q. How much shorter?

25 A. Five inches shorter.

1 Q. OK. Was it about the same width?

2 A. Could be the same or a little smaller, sir.

3 MR. McCARTHY: Thank you.

4 I have no objection.

5 THE COURT: All right. L is received.

6 (Defendant El-Gabrowny Exhibit L for
7 identification was received in evidence)

8 THE COURT: Go ahead.

9 BY MR. JACOBS:

10 Q. Am I correct that whatever Siddig Ali wrote,
11 so-called wrote on this piece of paper that you state you
12 ate was in Arabic, correct?

13 A. Yes, sir.

14 Q. Would you now translate for the jury what you say
15 you saw on this piece of paper.

16 A. The United Nations and the tunnel, the water
17 tunnels, sir, or the water canals or channels.

18 Q. Am I correct that you have listened to this tape
19 several times, is that correct?

20 A. Yes, sir.

21 Q. You have listened to it in Arabic, is that
22 correct, sir?

23 A. Yes, sir.

24 Q. Am I correct the words United Nations, Tunnels
25 Lincoln or Holland do not appear to the ear in English or in

1 Arabic, is that correct, sir?

2 A. Appear, sir? Some of these words appear on the
3 tape, sir.

4 Q. So, in other words, if we were to listen to the
5 tape, someone who spoke Arabic, the words "United Nations,
6 Lincoln and Holland Tunnel," we can hear that?

7 A. You can hear "United Nations."
8 I can hear it, sir.

9 Q. You can hear it?

10 A. Absolutely.

11 MR. JACOBS: Would the government stipulate that
12 the government transcript does not have that?

13 MR. McCARTHY: I will stipulate that the
14 transcript that was agreed to between the government and the
15 defense does not contain that.

16 THE COURT: Which is different from what you
17 asked, right?

18 MR. JACOBS: The government has stipulated --

19 Q. You hear something that the government translator
20 didn't hear is what you are saying?

21 MR. McCARTHY: Objection.

22 THE COURT: Sustained.

23 Q. Mr. Salem, you hear the word "United Nations,"
24 correct? You hear it?

25 A. Yes, sir.

1 Q. You're sure you do?

2 A. Positive, sir.

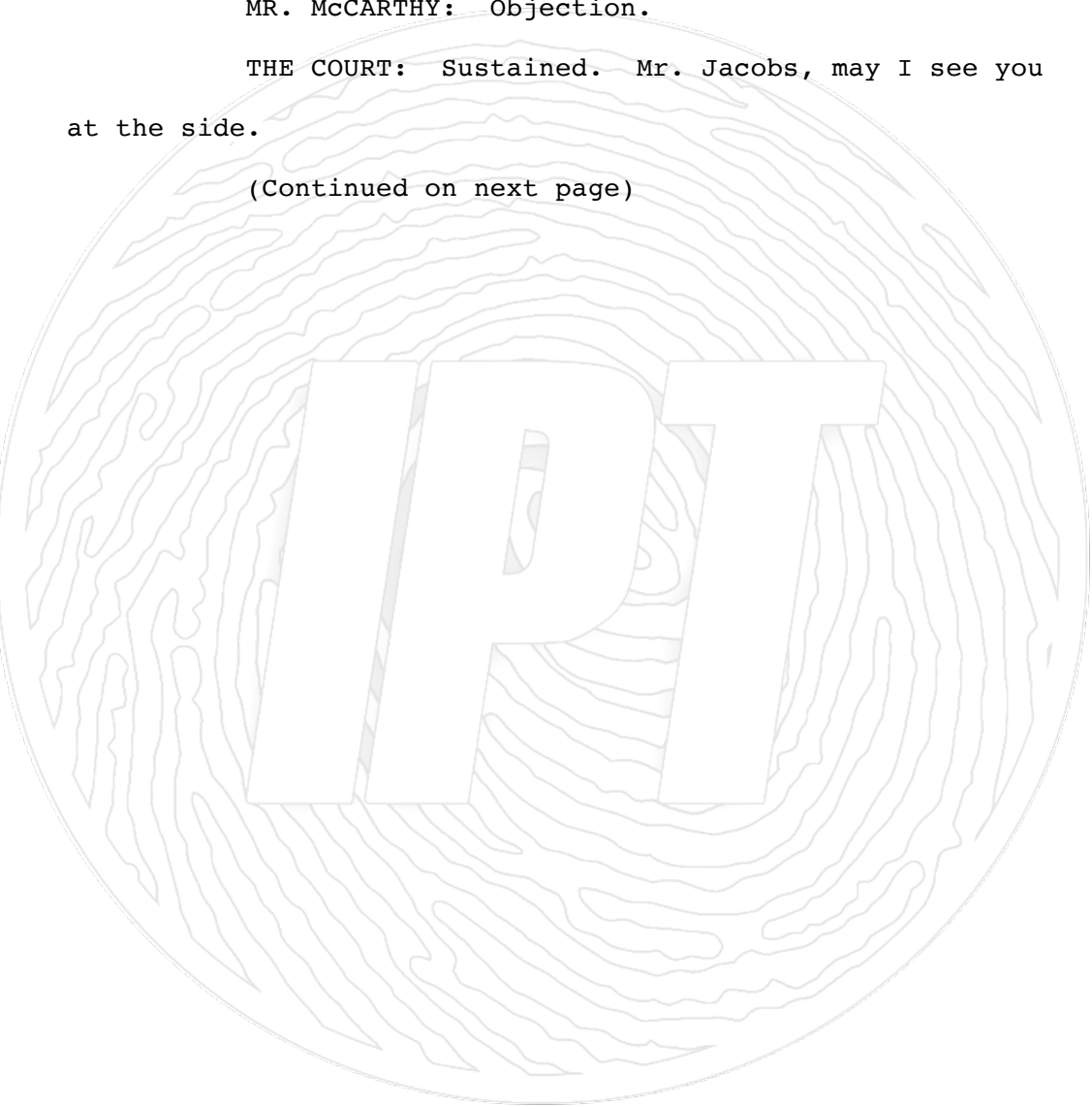
3 Q. Look at the transcript that is in evidence that
4 the government offered and tell me where it is.

5 MR. McCARTHY: Objection.

6 THE COURT: Sustained. Mr. Jacobs, may I see you
7 at the side.

8 (Continued on next page)

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1 (At the side bar)

2 THE COURT: In case it is not obvious to the jury
3 what is going on here, in about 90 seconds I am going to
4 instruct them what is going on if you don't stop it.

5 MR. JACOBS: I don't know what you mean. I must
6 be honest.

7 THE COURT: There is a transcript that has been
8 introduced in evidence that is essentially a compromise
9 between what you --

10 MR. JACOBS: That is not correct, that is
11 absolutely not correct, that is not correct. That is not
12 correct. And I would like the jury to be excused and I want
13 to be heard on it.

14 THE COURT: I understand that there are a lot of
15 histrionics and we are going to break right now.

16 MR. JACOBS: That is not correct, Judge.

17 (In open court)

18 THE COURT: We are going to break early for
19 lunch, ladies and gentlemen. Please leave your notes and
20 other materials behind. Please don't discuss the case. We
21 will resume at 2:00.

22 THE COURT: Mr. Jacobs -- you can leave.

23 (Jury excused)

24 THE COURT: You can step down.

25 (Witness excused)

1 THE COURT: Mr. Jacobs, I am going to give you 10
2 minutes to do whatever it is you do to relax, after which I
3 will see you in the robing room.

4 MR. JACOBS: I apologize.

5 THE COURT: And if you carry on like you carried
6 on at a side bar ever again, I am going to clock you in
7 front of that jury, I promise you that.

8 MR. JACOBS: I am sorry, I apologize. Your
9 Honor, I apologize. I shouldn't have done that. I
10 apologize.

11 THE COURT: I will see you in the robing room.

12 (Recess)

13 (Pages 7399 through 7405 sealed)

14 (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: Good afternoon.

EMAD SALEM, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

The jury: Good afternoon.

THE COURT: Mr. Jacobs, are you ready to resume?

CROSS-EXAMINATION (Continued)

BY MR. JACOBS:

Q. Mr. Salem, on June 4, 1993, accepting the voir dire that Mr. McCarthy asked you concerning this piece of paper, and understanding you have stated that the paper was smaller than you ate, is that correct?

A. Yes, sir.

Q. But is what's written on this piece of paper exactly what was written on it when you ate the piece of paper?

A. What's being written, yes, but not what's being drawn, sir.

Q. I'm sorry?

A. What's being drawn.

Q. There was something else on the piece of paper?

A. That's the writing, sir, not the drawing.

Q. There was something drawn?

1 A. Yes, sir.

2 Q. What was drawn on the piece of paper?

3 A. He draw first some kind of simulation to the
4 tunnel. I have it here, sir.

5 Q. You have a pencil. Sure. You write down, like I
6 asked you before, what was on the piece of paper?

7 A. I wrote, sir -- I wrote what's being written.

8 Q. Whatever you saw you write down on the piece of
9 paper.

10 A. That was the first drawing. And then after --

11 Q. You show us what was on this piece of paper at
12 the time you ate it.

13 A. Here, sir.

14 MR. JACOBS: May I just question him briefly from
15 here, your Honor?

16 THE COURT: Yes.

17 Q. So is the piece of paper -- not the size, I
18 understand what you testified -- but other than the size of
19 the piece of paper, is the piece of paper now accurate as to
20 what was on it at the time you allegedly ate it?

21 A. To the best of my recollection, yes, sir.

22 Q. You drew some drawing with an arrow one way and
23 an arrow another way, is that correct?

24 A. Yes, sir.

25 THE COURT: Could you turn the microphone back.

1 MR. JACOBS: I'm sorry.

2 Q. Your testimony is that when Siddig Ali said,
3 "First, second and third," one was the Holland Tunnel -- I'm
4 sorry. One was the UN, the Lincoln and the Holland Tunnel,
5 is that correct, sir?

6 A. Yes, sir.

7 Q. Those were the three targets that Mr. Siddig Ali
8 referred to, is that correct, on this piece of paper?

9 A. Yes, sir.

10 Q. Your testimony is that there came a point when
11 you ate this piece of paper, correct?

12 A. Yes, sir.

13 Q. After you left Mohammed's house, did you go with
14 Siddig and his wife and drop them at home in New Jersey
15 someplace, if you can recall?

16 A. As --

17 Q. Brooklyn, I'm sorry. Was it Brooklyn?
18 Did you drive Siddig Ali and his wife back, after
19 the meeting at Mohammed's house, back to Brooklyn?

20 A. Nobody is in Brooklyn, sir.

21 Q. New Jersey?

22 A. New Jersey, yes, sir.

23 Q. Do you recall that you turned the car tape on
24 after you left Mohammed's house and drove them back to New
25 Jersey, is that fair to say?

1 A. Could be, sir.

2 Q. Do you recall after Siddig and his wife left your
3 car that you put a statement on the tape in English, sir?

4 Do you remember doing that?

5 A. I may did, sir.

6 MR. JACOBS: Your Honor, CM31 is in evidence. I
7 would like to play a portion that I have given the
8 government an opportunity to hear. It is in evidence, so I
9 think we can all listen to it.

10 THE COURT: All right.

11 MR. McCARTHY: No objection, your Honor.

12 MR. JACOBS: If anybody can't hear it, just raise
13 their hand.

14 Thank you.

15 (Audiotape played)

16 MR. JACOBS: It is about to come on, your Honor.
17 Would you put it back. Is it working?

18 JUROR NO. 3: It's silent.

19 MR. JACOBS: I think there is one juror that may
20 not be working.

21 ALTERNATE JUROR NO. 2: Hold on, I just wasn't
22 plugged in.

23 MR. JACOBS: Oh, it has to be plugged in.

24 (Audiotape played)

25 THE JURY: It's not on.

1 JUROR NO. 9: I don't hear anything.

2 MR. JACOBS: You don't hear anything. I thought
3 it was running --

4 THE COURT: It is stopped.

5 MR. JACOBS: No, it's been running.

6 MR. McCARTHY: It's been running.

7 JUROR NO. 2: It's not running.

8 MR. JACOBS: Can I run it back again, your Honor.
9 I'm sorry.

10 (Audiotape played)

11 JUROR NO. 10: It's stopped.

12 Q. Mr. Salem, do you recall making that statement
13 into the tape recorder on or about June 4, 1993 at about 7
14 o'clock at night, is that correct, sir?

15 A. Yes, sir.

16 Q. You were making that statement for the FBI
17 agents, is that correct, sir?

18 A. Yes, sir.

19 Q. Am I correct, did you hear yourself saying that
20 the three targets were the United Nations, military and FBI,
21 is that correct, sir?

22 A. Yes, sir.

23 Q. Am I correct, on the piece of paper that you've
24 testified to, the three targets were the United Nations,
25 Holland and Lincoln Tunnel, is that correct, sir?

1 A. Yes, sir.

2 Q. That statement that you made was about an hour
3 later after the meeting with Mohammed, correct?

4 A. It could be a couple of hours, sir.

5 Q. On the tape that you just heard there's no
6 mention of the Holland and Lincoln Tunnels, is there, sir?

7 A. That I am --

8 Q. Yes or no.

9 A. No, there isn't.

10 Q. Is there a mention of it?

11 A. There is not, sir.

12 Q. Are you aware, sir, that the indictment in this
13 case refers to the --

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 MR. JACOBS: Pardon me?

17 THE COURT: Sustained.

18 MR. JACOBS: May I be heard at the side bar with
19 respect to this, your Honor.

20 THE COURT: No.

21 Q. Did you ever speak to an FBI agent or an
22 Assistant United States Attorney and tell them that one of
23 the three targets was the George Washington Bridge?

24 A. Yes, sir.

25 Q. Who was the agent that you told that one of the

1 three targets was the George Washington Bridge?

2 A. Not one of the three targets. It was one of the
3 targets needs to be bombed is the Washington Bridge, sir.

4 Q. Sir --

5 A. Yes.

6 Q. -- let me withdraw the question.

7 Concerning Mohammed Saleh and your conversations
8 of June 4, 1993, did you ever tell an FBI agent or an
9 Assistant U.S. Attorney that one of the three targets was
10 the George Washington Bridge?

11 A. I'm not sure, sir.

12 Q. Are you saying that you might have said that that
13 was one of the three targets?

14 A. The George Washington Bridge, sir --

15 Q. I'm sorry.

16 With respect to Mohammed and the taped
17 conversation CM32, which is in evidence, did you ever tell
18 any law enforcement agent that one of the targets was the
19 George Washington Bridge?

20 A. I said I'm not sure, sir.

21 Q. Are you aware of what the charges are with
22 respect to my client on June 4, sir?

23 A. The charges?

24 Q. Yes, the charges against him.

25 A. From what I understand, something called

1 sedition.

2 Q. Well, let me show you, let me approach you --

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 MR. JACOBS: May I show the witness a document,
6 your Honor, and ask him whether it refreshes his
7 recollection.

8 MR. McCARTHY: Objection. It is irrelevant.

9 THE COURT: No.

10 MR. JACOBS: May I be heard?

11 THE COURT: You may not.

12 Q. Is it your testimony, sir, that the three targets
13 that were told to Mohammed were the United Nations, Holland
14 and Lincoln Tunnel? Is that your testimony?

15 A. Yes, sir.

16 Q. You did not tell him nor write down the words
17 "FBI"? Yes or no.

18 A. I'm sorry, sir?

19 Q. Did you see in this piece of paper the words
20 "FBI"?

21 A. No, sir.

22 Q. Did you see in this piece of paper "George
23 Washington Bridge"?

24 A. I don't recall that, sir.

25 Q. Did you see in this piece of paper "Military"?

1 A. No, sir.

2 Q. With respect to what was written down in this
3 piece of paper that you say was written down, we only have
4 your word for what was written down, correct, sir, because
5 the piece of paper was eaten, correct?

6 A. No, sir.

7 Q. We don't have it?

8 A. We have Mr. Siddig's words --

9 Q. Correct.

10 A. -- and Mr. Mohammed Saleh's words, sir --

11 Q. Correct.

12 A. -- as well.

13 Q. And we have the tape, correct?

14 A. Yes, sir.

15 Q. We can play back the tape and here whether "FBI"
16 is mentioned, "Military" is mentioned, "George Washington
17 Bridge" is mentioned, "Holland Tunnel" is mentioned,
18 "Lincoln Tunnel" is mentioned or "UN," correct?

19 We could see what's on it, right?

20 A. We can see --

21 Q. We can hear it. I'm sorry. We can hear what's
22 on it?

23 A. We can hear the United Nations, sir. We can hear
24 No. 2, that way, No. 3, that way, and that will connect
25 between what -- and then I said "between the states," and

1 Mr. Mohammed Saleh said, "Yes."

2 Q. Take a look at page 52?

3 MR. JACOBS: I would ask the ladies and gentlemen
4 of the jury to open up their transcripts to page 52.

5 THE COURT: 331T?

6 MR. JACOBS: Pardon me.

7 THE COURT: Is this --

8 MR. JACOBS: 331T, I believe.

9 MR. MCCARTHY: 333.

10 MR. JACOBS: 333T.

11 THE COURT: 333, all right.

12 MR. JACOBS: I'm sorry. Page 52.

13 Q. Do you see that in front of you, sir. That's in
14 evidence, Government Exhibit No. 333T.

15 Do you see it, sir?

16 A. Yes.

17 Q. Have you reviewed that before, sir, seen it
18 before today's testimony?

19 A. Have I --

20 Q. Have you looked at it before?

21 A. No, sir.

22 Q. Never saw it?

23 A. The transcript?

24 Q. Yes, sir.

25 A. No, sir.

1 Q. When the jury read it before, you weren't on the
2 witness stand?

3 A. I'm sorry.

4 Q. Were you, sir?

5 A. I'm sorry?

6 Q. When this exhibit was read to the jury, were you
7 sitting on the witness stand with the exhibit in front of
8 you? Yes or no.

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q. Is it your testimony you've never seen this
12 document before?

13 A. I don't recall seeing it, sir.

14 Q. Am I correct, Mr. Salem, that on or about June 23
15 you made a video where you and Siddig drove through the two
16 tunnels, correct?

17 A. Yes, sir.

18 Q. That video was never seen by any defendant in
19 this case before you turned it over to the FBI, is that
20 correct, sir?

21 A. Yes, sir.

22 Q. That was a tape made between you and Siddig the
23 night of the arrests or the afternoon of the arrests,
24 correct?

25 A. The night before, yes, sir.

1 Q. Your testimony here before the jury is that this
2 video was made concerning where certain bombs were going to
3 be placed in the two tunnels, correct, sir?

4 A. Yes, sir.

5 Q. And nobody else was in the car but you and Siddig
6 Ali, correct?

7 A. Yes, sir.

8 Q. I think you told Ms. London that after the
9 arrests in this case you went and told the FBI there was
10 this tape in the car, correct?

11 A. I told them about it, yes, sir.

12 Q. Had you been authorized by the FBI to make this
13 tape?

14 A. I told them that he asked to bring the video
15 camera. And --

16 Q. I'm sorry.

17 A. And that was about what I told him, sir.

18 Q. Whose video camera was it, yours or Siddig's?

19 A. Mine, sir.

20 Q. Well, it was your personal camera?

21 A. That's correct, sir.

22 Q. Personal tape?

23 A. Yes.

24 Q. The FBI didn't supply the equipment?

25 A. No, sir.

1 Q. Now, since June 23, in connection with Mohammed
2 you haven't changed your story of the targets to conform to
3 that tape, have you, sir?

4 A. I'm sorry?

5 Q. You haven't changed your story since that tape
6 was made about Mohammed and the targets, have you, sir?

7 Have you changed your story?

8 A. What story, sir?

9 Q. About what the names of the targets were supposed
10 to be.

11 A. I don't understand the question, sir.

12 Q. I will rephrase it.

13 You state that on a piece of paper that you ate
14 you wrote down "UN, Lincoln and Holland," correct?

15 A. Yes, sir.

16 Q. That piece of paper no longer is in existence,
17 correct?

18 A. Yes, sir.

19 Q. I'm stating to you --

20 A. I'm sorry, sir. You said I wrote?

21 Q. Siddig wrote and you ate it, correct?

22 A. Yes, sir.

23 Q. And we heard a tape made a couple of hours later
24 where it says "UN, Military, FBI," correct?

25 A. Yes, sir.

1 Q. And I'm stating to you have you changed your
2 story on these so-called targets after the video was made --
3 yes or no -- concerning Mohammed?

4 MR. McCARTHY: Objection to form.

5 THE COURT: Sustained.

6 Q. Did you ever have another conversation after June
7 4, 1993 with my client?

8 A. No, sir.

9 (Continued on next page)

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1 Q. Did you ever make an attempt to go back and speak
2 with him concerning the naming of these targets? Did you,
3 sir?

4 A. No, sir.

5 Q. On June 4, he didn't reach into his pocket and
6 give you any money, did he, sir?

7 A. No, sir.

8 Q. Do you know if he had cash in his pocket or at
9 the gas station that day, June 4, 1993?

10 A. No, sir, I don't know.

11 Q. He drove you back to his gas station, didn't he,
12 that night?

13 A. Yes, sir.

14 Q. He didn't go back and get you any money that
15 night, did he, sir?

16 A. No, sir.

17 Q. Am I correct that you never spoke to Mohammed
18 about this diesel fuel, did you, sir? Yes or no.

19 A. No, sir.

20 Q. And you weren't there when the diesel fuel was
21 picked up, were you, sir?

22 A. No, sir.

23 Q. The FBI was there because you told them about it,
24 didn't you?

25 A. I don't know if they were there or not. I told

1 them and they picked up from there, sir.

2 Q. You told Miss Stewart on cross-examination that
3 there are times that you lied and exaggerated to the FBI,
4 didn't you?

5 A. Yes, sir.

6 Q. Are you doing that here with respect to these
7 targets, sir?

8 A. No, sir.

9 Q. From June 4 until the date of these arrests, am I
10 correct that this is the amount of money my client gave you?
11 Nothing? Correct, sir? No money?

12 A. No, sir.

13 (Continued on next page)

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1 MR. JACOBS: I have nothing further.

2 THE COURT: Thank you. Mr. Lavine.

3 MR. JACOBS: Your Honor, could I just have a
4 moment to move back?

5 THE COURT: As opposed to sitting there?

6 MR. JACOBS: Right. Is it all right if I move?

7 THE COURT: Yes, it is.

8 Mr. Lavine, representing Fadil Abdelgani.

9 MR. LAVINE: Judge, may Mr. McCarthy and I come
10 to the side bar and speak to you for just a moment? Thank
11 you.

12 (At the side bar)

13 MR. LAVINE: Judge, what I would like to do is
14 play short portions of some of the videos. I would like to
15 play a couple minutes of the government's snippets in
16 evidence and a couple minutes of the overall tape that
17 follow the snippets, and then about two to four minutes of
18 tape from later.

19 THE COURT: Fine, whenever you want to do it.

20 MR. LAVINE: I think the sooner the better.

21 THE COURT: In other words, you want to do it at
22 the start of your examination?

23 MR. LAVINE: Yes, your Honor.

24 THE COURT: Why don't you make the appropriate
25 announcement and do it.

1 MR. LAVINE: And if I can give this to Mr. Salem.

2 Thank you.

3 (In open court)

4 (Pause)

5 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. LAVINE:

3 Q. Good afternoon, Mr. Salem.

4 A. Good afternoon, sir.

5 Q. My name is Charles Lavine. I am the lawyer for
6 Fadil Abdelgani, who is sitting the second defendant in the
7 back row. Correct?

8 A. Yes, sir.

9 THE COURT: If you could move the microphone.
10 Thanks.

11 Q. You mentioned in response to some of Mr. Jacobs'
12 questions that on the day of the World Trade Center bombing
13 you were in the hospital, is that correct?

14 A. Yes, sir.

15 Q. And you mentioned that your hospitalization had
16 something to do with a problem you were having with your
17 ear?

18 A. That's what they came up with that time,
19 something to do with my inner ear, sir.

20 Q. Did that affect your hearing?

21 A. I believe it came a time they made a test on my
22 hearing and they find that there is some hearing loss in my
23 left ear, but we don't know what was the reason for it, sir.

24 Q. Mr. Salem, when you testified for the government,
25 you were shown portions of some videos, and what I propose

1 to do is to show you portions of those videos, the
2 government snippets, and a couple other minutes of video as
3 well.

4 So I am going to ask if we can do that right now.

5 (Videotape played)

6 Q. Mr. Salem, what we are watching now are portions
7 of the government videos, is that correct?

8 A. Yes, sir.

9 Q. And here you are with Mr. Siddig Ali, is that
10 correct?

11 A. Yes, sir.

12 Q. It is Mr. Ali who is doing the talking?

13 A. Mr. Siddig Ali talking to Mr. Victor Alvarez,
14 sir. And I believe, sir, that on the right bottom Mr. Amir
15 Abdelgani appears, or another individual there, sir.

16 Q. And now it is Siddig who is still doing the
17 talking, is that correct?

18 A. I am sorry, sir.

19 Q. Siddig is the one who is talking here?

20 A. Mr. Tarig Elhassan and Mr. Siddig, sir.

21 Q. And you remained seated, is that correct?

22 A. No, I am standing up, sir.

23 Yes, Mr. Amir on the right bottom, sir.

24 Q. We just saw someone pointing a hand. That was
25 Mr. Siddig, wasn't it?

1 A. That was Mr. Amir, sir, on the right bottom.

2 Q. And it is Siddig wearing the hat with the X on
3 it?

4 A. Yes, sir.

5 Q. For the record, what we were just looking at was
6 Government's Exhibit 383-A.

7 You had mentioned that it was Siddig who was the
8 emir or the leader of the group, is that correct?

9 A. Yes, sir.

10 Q. And you had mentioned that basically you were his
11 assistant, correct?

12 A. The technical person, sir.

13 Q. And certainly in the government snippets that we
14 just saw -- that's 383-A -- it is Siddig who is doing the
15 talking by and large, is that correct?

16 A. Mr. Tarig Elhassan was talking, Mr. Victor
17 Alvarez was talking, Mr. Siddig was talking, Mr. Amir was
18 talking as well, sir.

19 Q. And was Siddig being, though, who was the emir?

20 A. That's what I told me, sir.

21 Q. Could we say emir is another word for boss?

22 A. Emir means prince. That's the physical meaning
23 for it. That's the boss, yes, sir.

24 MR. LAVINE: Can we play the second?

25 Q. We are continuing to watch, I hope, and we are,

1 we are continuing to watch the activity that occurred after
2 what we saw in the snippet.

3 Who is pictured here?

4 A. That is Mr. Tarig Elhassan and myself, sir.

5 Q. What are you doing?

6 A. I'm just standing there, Mr. Tarig Elhassan
7 trying to open the top of the barrel, sir, the drum, the
8 barrel.

9 Q. Were you saying anything there?

10 A. I believe Mr. Siddig give Mr. Tarig Elhassan
11 something, and I am talking, three of us.

12 Q. What are you telling them?

13 A. I don't know, sir.

14 Q. That is Mr. Alvarez walking to us?

15 A. Yes, sir.

16 Q. Are you telling them what to do there?

17 A. Yes, sir. Mr. Tarig Elhassan carrying the bucket
18 in his hand and putting some mixed fertilizer with diesel
19 fuel oil into the barrel, sir.

20 Q. What are you telling him?

21 A. I don't know, sir.

22 Q. Right now you walked away and then you came back,
23 correct?

24 A. I am sorry.

25 Q. Withdrawn.

1 A. All right.

2 Q. Mr. Salem, are you telling them what to do?

3 A. I was telling them not to put the whole
4 fertilizer at once because I was concerned about the heat,
5 sir.

6 Q. It looks like Mr. Siddig, the boss, is putting
7 some gloves on, is that correct?

8 A. Yes, he is putting gloves on his hands, sir.

9 Q. Mr. Salem.

10 A. Yes, sir.

11 Q. Did you put any gloves on?

12 A. No, sir. I may came one day I put it in front of
13 them. I am not sure about that, but most of the time, no,
14 sir.

15 Q. Siddig was making a little speech there, wasn't
16 he, or he was speaking?

17 A. I believe he was explaining to them something,
18 sir.

19 Q. What are you saying there?

20 A. I don't have the headphones, if you want me to
21 put it, sir.

22 Q. No, only if you can remember, Mr. Salem.

23 A. No, I don't remember, sir.

24 Q. You seem to be showing them something at that
25 point. Do you remember what that was all about?

1 A. I believe something about the fertilizer, sir.

2 Q. Were you directing them where to go and what to
3 do?

4 A. About the fertilizer? Yes.

5 MR. LAVINE: Can we go on to, I believe it is on
6 the same tape, it starts at 12:54.

7 Q. You are not in the picture right now, are you,
8 Mr. Salem?

9 A. Yes, sir, I am.

10 Q. You have just come back in.

11 A. Yes, sir.

12 Q. Thank you. Mr. Salem, were you supervising the
13 activity?

14 A. I wouldn't say supervising, but I was telling
15 them not to put all the fertilizer at once because in my
16 understanding that can increase the heat of the barrel, and
17 it could create fire, sir.

18 Q. You are bending over the shoulder of Mr. Alvarez,
19 is that correct?

20 A. Yes, sir.

21 Q. What was Mr. Alvarez doing?

22 A. Was mixing some diesel oil from bucket to another
23 bucket on the fertilizer, sir.

24 Q. Were you telling him how to do that?

25 A. I was telling him not to put all at once, not to

1 increase the heat, especially that the bucket is plastic,
2 sir.

3 Q. Mr. Salem, while we are watching this, since we
4 are almost done with this portion, you mentioned something
5 about your understanding of the heat?

6 A. Yes, sir.

7 Q. While this was going on in these days, while this
8 was happening, were you getting instruction from anyone on
9 the building of a bomb?

10 A. No, sir.

11 Q. You just seem to -- you were pointing and are
12 pointing to somewhere there, at Mr. Alvarez, is that
13 correct?

14 A. That, Mr. Siddig took the bucket and tried to
15 spill it inside the barrel, I told him no, no, don't do
16 that, because that could be very big disaster, sir.

17 Q. And again, you are giving other directions?

18 A. I am talking to Mr. Alvarez, yes, sir.

19 Q. Did you show them how to stir, Mr. Salem? You
20 know the word stir?

21 A. Yes.

22 Q. Did you show them how to do that?

23 A. No, they know how to do that, sir.

24 Q. Did you ever make a stirring motion, if you
25 remember, around them?

1 A. No, sir.

2 MR. LAVINE: Thank you.

3 Q. Mr. Salem, when was the first time you ever saw
4 Fadil Abdelgani?

5 A. As far as I recall, when we went, Mr. Amir
6 Abdelgani, Mr. Victor Alvarez and myself, to bring money to
7 buy stolen cars, sir.

8 Q. Do you know what date that was?

9 A. No, sir.

10 Q. Do you know where that was?

11 A. No, I don't recall -- I believe I dictated the
12 address, maybe, to the microphone, but I don't recall where,
13 sir.

14 Q. Was that in Brooklyn?

15 A. I am not sure, sir.

16 Q. Is that on the CM?

17 A. I believe, yes, sir.

18 Q. I am going to show you one more portion of video.

19 A. Yes, sir.

20 Q. This is at about 8:39 at the garage in Queens
21 that has been called the safe house. That's you. Can we
22 stop it for one second right there.

23 Do you recognize that?

24 A. Yes, sir.

25 Q. What were you doing there when you were making

1 the motion?

2 A. The van is big and the opening of the entrance of
3 the safe house, it wasn't that big, so I am trying to direct
4 him to keep himself straight so he don't head to the door,
5 sir.

6 Q. This fellow that we see getting out of the van,
7 that's Fadil Abdelgani, is that correct?

8 A. One second, sir.

9 Yes, sir.

10 Q. You shake hands with him.

11 A. Yes, sir.

12 Q. As of that moment when you shake hands with him,
13 do you know that you have seen him before?

14 A. I am not so sure, but that -- I am not so sure if
15 I recalled that I saw him once before or not, sir.

16 Q. The day that you say that you saw him, was that a
17 long time before June 23?

18 A. I don't know how long before, sir.

19 Q. Could it have been more than a month before?

20 A. I am not sure, sir.

21 MR. LAVINE: Can we continue.

22 Q. That is Mr. Abdelgani began in the middle, Fadil,
23 laughing, is that correct?

24 A. Mr. Fadil on the middle, yes, sir.

25 Q. We see his face and we see your back --

1 A. I am sorry, sir. I can't hear you.

2 Q. We saw his face when he was laughing.

3 A. Yes, sir.

4 Q. Mr. Salem, in your direct -- I think we have
5 enough there. Thank you. In your examination when Mr.
6 McCarthy was asking you questions, you mentioned that when
7 you saw Fadil Abdelgani at the safe house, that you and he
8 were laughing about something.

9 A. Yes, sir.

10 Q. You mentioned, did you not, that you said tell me
11 that's -- you mentioned, he identified himself as Mohammed
12 and then I told him that's the way, I said oh yeah, tell me
13 that's Mohammed, because you scared me when you Abu Zabiha,
14 and we joked about it. You said that when you testified
15 here before, correct?

16 A. Yes, sir. Yes, sir.

17 Q. Mr. Salem, isn't it true that you had never seen
18 Fadil Abdelgani before the evening of June 23 when he first
19 gets out of this van in the garage?

20 A. I don't think so, sir, because I asked Mr. Amir
21 Abdelgani who is there, and he told me that's my cousin,
22 sir.

23 Q. When you saw him in Brooklyn -- withdrawn. It
24 was in Brooklyn, right?

25 A. I am not sure, sir.

1 Q. But this was a person, the person that you saw
2 when you went to get the money for the cars, that was a
3 person you saw with your own eyes, wasn't it?

4 A. I believe, yes, sir.

5 Q. And you weren't that far away from that person,
6 were you --

7 A. I was like 10, 15 feet, sir.

8 Q. -- when you meet him at the safe house, and you
9 told us that you were concerned about his name because he
10 had scared you. Was that true, what you told us, Mr. Salem?

11 A. No. That's what I --

12 MR. McCARTHY: Objection.

13 THE COURT: Can you rephrase it?

14 Q. That's what you told us. You said that you said
15 to him, I was scared, meaning you.

16 A. That's what I said in the safe house, yes, sir.

17 Q. Yes.

18 A. Yes, sir.

19 Q. And at this time you were concerned about your
20 safety in terms of being left out in the cold by the Federal
21 Bureau of Investigation, weren't you? Let me withdraw it.
22 Let me rephrase that. Let me try to ask that in a more
23 human way.

24 A. Yes, sir.

25 Q. You told us that during the course of this case

1 you made tapes of the FBI agents, correct?

2 A. Yes, sir.

3 Q. You made tapes of people who were involved in
4 Egyptian intelligence, correct?

5 A. Yes, sir.

6 Q. And you did that to protect yourself, did you
7 not?

8 A. Yes, sir.

9 Q. Isn't it true that when that van drove into the
10 garage in Queens on the evening of June 23, that you were
11 scared because you did not know who was in the van with
12 Siddig?

13 A. No, sir, I wasn't scared at all, but the word Abu
14 Zabiha, means father of the slaughterers.

15 Q. Father of the slaughterers?

16 A. Slaughter, when you kill the sheep.

17 Q. Sheep killer?

18 A. I said oh, that's scary to me, and I just made
19 myself like scared from the father of the butcher or
20 slaughterer.

21 Q. So you weren't scared because someone was coming
22 onto the scene who you didn't know who it was, correct?

23 A. No, sir.

24 Q. Will you open your book -- you have a book there.

25 A. Yes.

1 Q. To the second tab. And will you look at the
2 first page of that.

3 A. Yes, sir.

4 Q. In the meantime, while you are doing that, I have
5 to get something from Mr. McCarthy.

6 Mr. Salem, you have had a chance to take a look
7 at that. That is the first page of CM 50, is that correct?

8 A. I didn't read it, sir.

9 Q. Would you just read the top of it, where it lists
10 the participants.

11 A. That's what is being written here, sir.

12 Q. Does this CM reflect events that occurred on June
13 20?

14 A. Could be, sir, if that's what is being written,
15 here.

16 MR. LAVINE: May I approach the witness with
17 Government's Exhibit 353-A?

18 THE COURT: Go ahead.

19 MR. LAVINE: Thank you.

20 Q. Mr. Salem, what is that?

21 A. It's an envelope for exhibit, sir.

22 Q. Did you have anything to do with the preparation
23 of that envelope for exhibits?

24 A. No, sir.

25 Q. Is your writing on there?

1 A. No, sir.

2 Q. Do some names appear on this, where it says
3 identity of participants?

4 A. Yes, sir.

5 Q. What are those names?

6 A. Emad, and then a name, and it's being crossed
7 after it's being written, and then I can't read this
8 handwriting here, sir, and another name is being crossed
9 again and another name is being crossed again, and the last
10 one is WO.

11 Q. Is that a W or an M?

12 A. Could be M, sir.

13 Q. Could that name be Mohammed?

14 A. Yes, sir.

15 Q. Do you know which tape is in this envelope?

16 A. No, sir.

17 MR. LAVINE: May we open this up?

18 Q. I am showing you a white envelope that is inside
19 the brown envelope which is Government's Exhibit 353-A.
20 Does that look familiar to you, Mr. Salem?

21 A. It's an envelope, sir.

22 Q. Is this an envelope that contains a tape?

23 A. Yes, sir.

24 Q. Do you know what kind of tape is in there?

25 A. Nagra tape, sir.

1 Q. Is this a Nagra that goes to a certain CM number?

2 A. Yes, sir.

3 Q. What is that CM number?

4 A. What is being written on the envelope, CM 50,
5 sir.

6 Q. Thank you.

7 A. You are welcome, sir.

8 Q. Do you remember how many times you went to
9 Brooklyn to try to get money to get stolen cars?

10 A. I remember once we went with Mr. Amir Abdelgani
11 and Mr. Victor Alvarez. That's the time I went with him.
12 And there is a time we went -- we went to get money so many
13 times, so many places, sir.

14 Q. Let me direct your attention, Mr. Salem, to CM
15 49, which is the first tab in your book.

16 A. Yes, sir.

17 MR. LAVINE: And I would ask the jurors as well
18 to take a look at that transcript. It is in a white book,
19 small white book.

20 Q. Mr. Salem.

21 A. Yes, sir.

22 Q. To the best of your knowledge, was CM 49 recorded
23 on June 18, 1993?

24 A. I don't know, sir.

25 Q. Will you take a look at the first page of what is

1 CM 49 in your book.

2 A. It's written CM 49, June 18, 1993, sir.

3 Q. And are the participants yourself, Siddig, Amir,
4 Victor, and Fares?

5 A. That's what is being written here, sir.

6 Q. Let me direct your attention to page 4, which is
7 actually the second page.

8 A. Yes, sir.

9 Q. Let me direct your attention to the middle of the
10 page.

11 A. Yes, sir.

12 Q. It recites, it says, Salem: How about you? Uh?
13 Then it says, Abdelgani: Unintelligible, we buy
14 a car.

15 Then it says Salem: Yeah.

16 Alvarez: Brother, I am making no business at
17 all.

18 Salem: OK, if you don't have money and he has no
19 money and I don't have money, so what are we going for?

20 Alvarez: Yeah.

21 Abdelgani: Unintelligible.

22 Salem: Oh, OK.

23 Alvarez: If nobody have money, then how we going
24 to do it?

25 Salem: He says he has somebody in Brooklyn, he

1 will borrow money from him.

2 Mr. Salem, when you said that he said he has
3 someone in Brooklyn to borrow money from, you are referring,
4 are you not, to Amir?

5 A. Yes, sir.

6 Q. And you know that you are being taped, right?

7 A. Yes, sir.

8 Q. Nobody else there knows that they are being
9 taped, correct?

10 A. Yes, sir.

11 Q. You used the word somebody when you said he said
12 he has somebody in Brooklyn, correct?

13 A. Yes, sir.

14 Q. You mentioned to us that Amir had told you that
15 he was going to go get some money from his cousin, didn't
16 you?

17 A. He told me --

18 Q. I mean you no disrespect, sir, but if you can
19 answer the question in a yes or no fashion, I would
20 appreciate it.

21 A. Say again, sir.

22 Q. He told you, according to what you tell us, that
23 he was going to go get some money from his cousin, correct?

24 A. Yes, sir. That's -- I am sorry.

25 Q. And you don't use the word cousin, do you?

1 A. No, I did not, sir.

2 Q. Let me direct your attention over to page 14,
3 toward the bottom of the page.

4 A. Yes, sir.

5 Q. You say: With, with these two cars, OK, where
6 are you going to get the money, God willing?

7 Amir Abdelgani says: I will go to Ocean Parkway.

8 Do you see that?

9 A. Yes, sir.

10 Q. You and he are talking about going to Brooklyn,
11 right?

12 A. Yes, sir.

13 Q. Let's go to the next page, which is, I believe,
14 16. In the middle of the page it says Abdelgani, and the
15 quote is: I used to live here. He lives on the sixth
16 floor. I hope they are there because sometimes they are in
17 New Jersey.

18 Is that correct?

19 A. Yes, sir.

20 Q. And you say: OK, go ahead, and good luck.

21 So far the word cousin has not appeared, has it,
22 Mr. Salem?

23 A. No, sir.

24 Q. Let's go to the next page, page 17, the fourth
25 attribution down, that is, the fourth name that appears on

1 the left from the top.

2 A. Yes, sir.

3 Q. It says, Abdelgani: I think he went that way
4 because they always go over there.

5 And you say: And then.

6 He is talking about some people, is he not?

7 A. Yes, sir.

8 Q. He does not use the word cousin, does he?

9 A. No, sir.

10 Q. Let's go down to the bottom third of the page,
11 about six attributions from the bottom. It says Abdelgani:
12 Maybe later we will come back here. Let me get one of
13 their, there are two guys who live here.

14 At this point you have known Amir Abdelgani for
15 quite a few weeks, have you not?

16 A. Yes, sir.

17 Q. Did he use the word cousin?

18 A. Yes, sir, he did, but --

19 Q. But not there.

20 A. No, it is somewhere on the transcript. It is
21 somewhere. I asked him who is this, and he said my cousin.

22 Q. Mr. Salem, this is the cousin who you say is
23 Fadil Abdelgani, right?

24 A. Yes, sir.

25 Q. CM 49 is June 18, correct? If we go back to the

1 beginning it is June 18, it's a trip to Brooklyn to try to
2 find some money for some cars, right?

3 A. Yes, sir.

4 Q. Let me direct your attention to CM 50, which is
5 the next CM in your package.

6 A. Yes, sir.

7 MR. LAVINE: And I am going to ask the jurors to
8 take a look at page 10. I am going to ask to play a portion
9 of the audio of CM 50, and it will begin, we hope, towards
10 the third of the page, Mr. Salem, where it says Alvarez and
11 where Alvarez is saying one white and one red. I would ask
12 that the jurors puts their headphones back on.

13 If I could have just one second to approach the
14 witness.

15 (Tape played)

16 Q. Mr. Salem, this is the portion where Amir says
17 that's my cousin, isn't it?

18 A. Yes, sir.

19 Q. Please go to the top of page 11 of your
20 transcript.

21 A. Yes, sir.

22 Q. We heard Victor say who is that? Then we
23 heard -- it was in English -- did we not, Amir say that's my
24 cousin, correct?

25 A. That's what's being written here, sir.

1 Q. That's what we just heard, isn't it?

2 A. I am not sure if I heard it correctly, sir.

3 Q. Let me ask you this, Mr. Salem: The next line
4 says F. Abdelgani. Did you hear F. Abdelgani say what are
5 you doing?

6 A. No, sir.

7 Q. Did you hear Amir say what?

8 A. No, sir.

9 Q. Did you hear F. Abdelgani say what are you doing
10 again?

11 A. No, sir.

12 Q. Did you hear -- where it says F. Abdelgani, what
13 are you doing, did you hear Victor say go to him, go to him?
14 Did you hear that, Mr. Salem?

15 A. No, sir.

16 MR. LAVINE: Your Honor, with the court's
17 indulgence, I would like to play just that short portion one
18 more time, if we can find it.

19 (Tape played)

20 Q. Mr. Salem, is it fair to say that we just heard
21 Victor Alvarez saying, go to him, go to him, where the
22 transcript says F. Abdelgani saying, what are you doing,
23 what are you doing? Isn't that correct?

24 A. I am sorry.

25 Q. Go to the top of page 11.

1 A. Yes, sir.

2 Q. We just heard -- you said before, you testified
3 before that where it says F. Abdelgani, what are you doing,
4 F. Abdelgani, what are you doing, that that's not there,
5 correct? That's not there.

6 A. I am sorry. I am not getting the question, sir.

7 Q. Where it says F. Abdelgani, what are you doing,
8 that's not other than the tape, is it? We didn't hear that
9 on the tape.

10 MR. McCARTHY: Objection.

11 Q. Withdrawn. Do we hear that on the tape?

12 A. Not in the portion I heard it here, sir.

13 Q. But do we hear Victor saying at that portion, go
14 to him, go to him?

15 A. Yes.

16 Q. Does Amir have parents?

17 A. Have? Amir Abdelgani, does he have a mother and
18 a father, if you know?

19 A. I have no idea, sir -- well, of course.

20 Q. Does he have, if you know, uncles and aunts?

21 A. Of course, sir.

22 Q. Would it be fair to say that he has cousins?

23 A. Could be, sir.

24 Q. When you went out to Brooklyn? CM 50.

25 A. Yes, sir.

- 1 Q. You tell us here that Amir had already told you
2 that he was going to his cousin to get the money, right?
- 3 A. No, that's not what I meant, sir.
- 4 Q. Then let me ask you this.
- 5 A. Yes.
- 6 Q. Isn't it true that Amir had said that he was
7 going to Brooklyn to see a friend?
- 8 A. To get money from some friends, sir.
- 9 Q. Not from a cousin.
- 10 A. No, he did not say I am going to get money from
11 my cousin, no, sir.
- 12 Q. Mr. Salem, after the FBI, as you call it, took
13 this case down, did you listen to a lot of CM's?
- 14 A. Yes, sir.
- 15 Q. Did you help with the attributions? Do you know
16 what I mean when I say with the attributions?
- 17 A. Yes, sir.
- 18 Q. Did you help with the attributions, Mr. Salem?
- 19 A. Yes, sir.
- 20 Q. Did you help with the attributions on CM 50?
- 21 A. I am not sure. Could be, sir.
- 22 Q. Mr. Salem, when did you first start to use the
23 optical disk?
- 24 A. I don't recall the date, sir.
- 25 Q. Do you recall how long it was before the case got

1 taken down? Was it weeks? Was it months?

2 A. I am not so sure, sir, to be honest.

3 Q. Before that, you had used the Nagra, correct?

4 A. Yes, sir.

5 Q. And you also used at times the microcassette,
6 correct?

7 A. Yes, sir.

8 Q. Do you recall how many times you got to use or
9 how many times you used the device that was in your pants?

10 A. No, sir.

11 Q. Was it inconvenient for you to use that device?
12 Let me withdraw that. You had to give your trousers to the
13 FBI, correct?

14 A. Yes, sir.

15 Q. They then had to make arrangements to get them
16 back to you.

17 A. Yes, sir.

18 Q. Do you remember how many times that happened,
19 Mr. Salem?

20 A. No, sir.

21 Q. Could it have been a half dozen times or more?

22 A. I don't know, sir. I mean, it wasn't something
23 really to focus on or to memorize, sir.

24 Q. You could not, could you, play the -- you
25 couldn't play whatever you recorded on the optical disk,

1 could you?

2 A. No, sir.

3 Q. But you could play the things you recorded on
4 tape, couldn't you?

5 A. What kind of tapes, sir?

6 Q. What kind of tapes were you using?

7 A. We used the Nagra tapes, the optical disk or the
8 microchip device --

9 Q. The microchip you could not record on your own,
10 in other words, you couldn't take it home and play it.

11 A. I can record, sir.

12 Q. I am sorry. You couldn't play it.

13 A. No, sir, I cannot.

14 Q. You could not make a duplicate recording off the
15 optical disk, could you?

16 A. No, sir, I cannot.

17 Q. Did you ever ask the agents why it was that they
18 wanted you to use the optical disk, Mr. Salem?

19 A. No, sir.

20 Q. Did they ever tell you why they wanted you to use
21 the optical disk?

22 A. No, sir. I don't recall explaining to me. They
23 said we have a device, it's more sophisticated, and just use
24 it, I said OK.

25 Q. You told us that Amir told you -- excuse me one

1 moment.

2 On your direct examination, you told us that Amir
3 said I am going to meet my cousin to bring some money from
4 him, and he came back and had \$200, sir. Mr. Salem.

5 A. Yes, sir.

6 Q. To the best of your knowledge, is Amir's
7 statement to you that he was going to meet his cousin and
8 bring back money, is that on audiotape?

9 A. No, sir.

10 Q. So we can't listen to that, can we, Mr. Salem?

11 A. No, sir.

12 THE COURT: Would you come to a convenient break
13 point, please.

14 MR. LAVINE: This would be a convenient time.

15 THE COURT: Ladies and gentlemen, we are going to
16 take a short break. Please leave your notes and other
17 materials behind. Please don't discuss the case. We will
18 resume in a few minutes. Everyone remain seated until the
19 jurors leave, please.

20 (Recess)

21 (Continued on next page)

22

23

24

25

1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Go ahead, Mr. Lavine.

4 MR. LAVINE: Thank you, your Honor.

5 CROSS-EXAMINATION (Continued)

6 BY MR. LAVINE:

7 Q. Mr. Salem, most of the CM's were in the Arabic
8 language, weren't they?

9 A. Yes, sir.

10 Q. As you are turning in the tapes themselves during
11 the course of the investigation, you are, are you not,
12 explaining to the agents what's going on?

13 A. Yes, sir.

14 Q. So you are describing to them the events that are
15 occurring as you see them, is that correct?

16 A. Yes, sir.

17 Q. Did they ever have -- withdrawn.
18 Some of the tapes are in English?

19 A. Yes, sir.

20 Q. Did the agents ever have questions for you about
21 the conversations in English?

22 Let me withdraw that. Let me try to make that a
23 little clearer.

24 A. Yes, sir.

25 Q. Do you know if the agents were listening to the

1 English tapes?

2 A. I don't know what's going on there, sir.

3 Q. Of the agents that you were dealing with, during
4 the investigation before the case was taken down --

5 A. Yes, sir.

6 Q. -- were any of them Arabic speaking?

7 A. Any of the agents?

8 Q. Yes.

9 A. No, sir.

10 Q. Do you know if the agents were listening to the
11 Arabic as was spoken on the tapes that you were handing in?

12 A. I have no idea, sir.

13 Q. Did they ever come to you, any of the agents, and
14 ever ask you: Well, what did so and so mean when he said
15 such and such on an Arabic tape?

16 A. That happened when I come to say, "He said,
17 'insha Allah,'" they said, "What does that mean?"

18 I said, "It means 'God willing,' something to
19 that effect.

20 When something get brought into -- when I say,
21 "He is the emir." "What does that mean?"

22 "'Emir' means 'prince.'" That's how it --

23 Q. This was as you were explaining things to them?

24 A. Yes, sir.

25 Q. So as far as you know they weren't listening to

1 the Arabic translations -- I'm sorry.

2 As far as you know, as you were handing in the
3 tapes, the agents were not listening to the Arabic words
4 that were being spoken, were they?

5 A. I don't know, sir.

6 Q. As far as you knew, all they knew was what you
7 were telling them about the conversations?

8 A. I believe that they have their own translators,
9 sir.

10 Q. During the course of the investigation, did you
11 ever tell the agents that you were concerned about the
12 professionalism of the people that Siddig was bringing to
13 you?

14 A. No, sir.

15 Q. When Tarig Elhassan brought you a plastic bag of
16 change did you ever say to the agents, "You know I'm a
17 little concerned about this man's professionalism here as a
18 mujahed"?

19 Am I saying that right?

20 A. Yeah, mujahed.

21 Q. Did you ever say that to the agents, that you
22 were concerned about the training and the professionalism of
23 the soldiers?

24 A. I'm not getting the meaning of the question, sir.

25 Q. Did you ever tell the agents before the case was

1 taken down that you were concerned -- I'm sorry. That is
2 the problem. Let me withdraw it.

3 Did you ever tell the agents that you thought
4 that the people that Siddig was bringing to you were not
5 very professional?

6 A. Of course not, sir. I did not say that, because
7 my perception to them that -- I'm sorry.

8 THE COURT: He didn't ask you why you hadn't said
9 it. He asked whether you said it. Did you?

10 THE WITNESS: I'm sorry. I apologize, Judge.

11 Q. Mr. Salem --

12 A. Yes, sir.

13 Q. -- on the night before the case went down, there
14 comes a time, does there not, that you are alone in the
15 garage in Queens, the safe house with Amir before Siddig
16 comes back with Wahid, isn't that correct?

17 A. Could be, sir.

18 Q. Before Wahid comes into the garage, was Amir
19 nervous?

20 A. No, sir.

21 Q. Was he scared?

22 A. I wouldn't know what is his feelings, sir.

23 Q. I am going to ask you if you remember, and I am
24 going to be --

25 MR. LAVINE: If I could have one second, Judge.

1 Q. Mr. Salem --

2 A. Yes, sir.

3 Q. -- let me ask you if you remember saying these
4 things to Amir Abdelgani before Wahid came into the garage.

5 Let me withdraw that.

6 Do you remember saying these things to Siddig and
7 to Amir before Wahid comes into the garage:

8 Siddig says: Be reasonable. Be reasonable.

9 You say: Come. Oh, man.

10 Siddig says: Be reasonable, man. Be reasonable.

11 He will not be suspicious of you. That is it.

12 Amir says: No, my friend.

13 And then you say to Amir: What is this? Are you
14 going to hide? Suppose he wanted to urinate? Do you want
15 him to find you hiding in the bathroom?

16 Amir says: I got scared.

17 Mr. Salem, do you remember that?

18 A. I don't recall word "I got scared" at all, sir.

19 Q. Not you got scared, Amir saying?

20 A. Mr. Amir, sir.

21 Q. OK. But, again, Mr. Salem, while this was going
22 on, before the arrests were taken down by the FBI, did you
23 ever tell anyone in American or any foreign intelligence
24 that you were concerned about the professionalism of the
25 people that Siddig was bringing to you?

1 A. No, sir.

2 Q. Let me ask you a couple questions about the
3 garage in Queens on the evening of the 23rd and the early
4 morning hours of the 24th.

5 Was there a guard or a -- do you know the word
6 "sentinel"?

7 Was there a patrol? Do you know that word?

8 A. I know "patrol."

9 Q. Was anyone from Siddig's organization patrolling
10 outside the door of the garage?

11 A. No, sir. Or at least not to my knowledge, sir.

12 Q. Well, when you say not to your knowledge, that
13 means as far as you know --

14 A. Right.

15 Q. -- right?

16 A. Yes, sir.

17 Q. You knew, did you not, that on the evening of the
18 23rd and the early morning hours of the 24th in June that
19 there was a law enforcement presence in that area, did you
20 not?

21 A. At the time, I don't know, sir.

22 Q. Did Siddig ever tell you that he had anyone
23 patrolling the outside of the garage?

24 A. No, sir.

25 Q. There comes a time, does there not, that Fadil

1 Abdelgani and Tarig come back to the garage?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes, sir.

5 Q. When they come back you're in the garage with

6 Siddig and Victor?

7 A. Probably, sir.

8 Q. OK. And at that time is the Gamal Badawi video

9 on the VCR?

10 A. Could be, sir.

11 Q. Was the door locked, Mr. Salem?

12 A. I beg your pardon?

13 Q. Was the door to the garage locked or was it open?

14 A. Which door, sir?

15 Q. The door that you enter the garage when you come

16 from the outside. There's a door --

17 A. There is two doors.

18 Q. OK.

19 A. I'm sorry. That's right.

20 Q. When Tarig and Fadil entered --

21 A. Yes.

22 Q. -- that door was not locked, was it?

23 A. It was not locked.

24 Q. They just walked right in?

25 A. They have to raise up the metal door and then

1 open the wooden door and then get in and close both, sir.

2 Q. You told us earlier -- actually, when you
3 testified on your direct examination, you said that when you
4 first met Fadil Abdelgani at the garage in Queens that you
5 said to him, "Do you know what's going on over here?"

6 And he looked around and he said, "Yes."

7 You said, "Are you willing to participate with
8 us?"

9 And he said, "Let me do the salaah al istikhara
10 prayer first," correct?

11 A. Yes.

12 Q. Mr. Salem, you were wearing some recording
13 equipment at that time?

14 A. Yes, sir.

15 Q. You were wearing the optical disk?

16 A. Correct, sir.

17 Q. Were you wearing anything else?

18 A. No, sir. I was having the optical disk, sir.

19 Q. Are you sure of that?

20 A. Positive, sir.

21 Q. You were inside the garage in Queens?

22 A. Yes, sir.

23 Q. The garage had already been set up by the FBI,
24 correct?

25 A. It was wired, yes.

1 Q. Yes. It was wired?

2 A. Yes.

3 Q. There's videos; there's sound recording
4 equipment, things like that?

5 A. Yes, sir.

6 Q. Correct?

7 A. Yes, sir.

8 Q. In addition to you having the optical disk?

9 A. Yes, sir.

10 Q. Or the chip, whatever we want to call it.

11 A. Yes, sir.

12 Q. Mr. Salem, this remark, this statement that you
13 say Fadil made, where he looked around and he said, yes, he
14 was willing to participate, he wanted to go do the evening
15 prayer, the istikhara prayer, that's not on any audiotape,
16 is it?

17 MR. McCARTHY: Objection to form.

18 MR. LAVINE: Excuse me. Let me withdraw it.

19 Q. Mr. Salem --

20 A. Yes, sir.

21 Q. -- is it on audiotape anywhere, Fadil Abdelgani
22 saying, yes, he knows what's going on; yes, he wants to
23 participate, but he wants to go pray the istikhara first?

24 Is that on audiotape, Mr. Salem?

25 A. I did not hear it, sir.

1 Q. OK. Are there any other statements about him
2 that are on audiotape from late in the evening of the 23rd
3 going into the -- withdrawn.

4 THE COURT: Statements about him or by him?

5 MR. LAVINE: Withdrawn.

6 Q. Mr. Salem --

7 A. Yes.

8 Q. -- I am going to direct your attention to the
9 third --

10 MR. LAVINE: May I approach the witness, your
11 Honor.

12 Q. I am going to go into this area. Mr. Salem,
13 before we go into that, let me just say a couple of things.

14 MR. LAVINE: Judge, first of all, the video that
15 I played, the third excerpt was from Exhibit 381B, as in
16 baseball, and the second thing is that the government
17 stipulates that CM49, which is in our books, CM49 is
18 actually from June 19, not June 18. June 18 is on the front
19 page.

20 Q. Let me just briefly take you back to Brooklyn.

21 A. Yes, sir.

22 Q. After you see the cousin who you claim is Fadil
23 Abdelgani, you then go in the car and drive somewhere,
24 correct?

25 A. I'm not sure if I'm the one who is driving or

1 Mr. Amir was driving, sir.

2 Q. All right. But the car was going?

3 A. Yes, sir.

4 Q. The tapes are running?

5 A. Yes, sir.

6 Q. There might have been as many as two tapes on at
7 that time in that car?

8 A. I don't know.

9 Q. We don't know. All right.

10 But we know that there was at least one tape
11 running?

12 A. Yes, sir.

13 Q. All right. At any time while that trip is taking
14 place, do you ever say to Amir, "Gee, that was nice of your
15 cousin to give us the money to buy the stolen cars"?

16 A. I did not see Mr. Fadil giving Mr. Amir any
17 money, sir.

18 Q. Do you say anything about the cousin?

19 A. No, sir.

20 Q. When Fadil Abdelgani comes into the safe house,
21 as you call it, in Queens, what we watched on video, on
22 Exhibit 381B, and you shake hands with him, do you ever say
23 to him, Mr. Salem, "Nice to see you again. Haven't seen you
24 since I was in Brooklyn a couple of days ago." Do you ever
25 say that to him?

1 A. No, I did not, sir.

2 Q. Do you ever say anything to him about having seen
3 him in Brooklyn before?

4 A. No, I did not, sir.

5 Q. When he's introduced to you and they use the name
6 Abu Zibiha, and you say you got scared because of the
7 name --

8 MR. McCARTHY: Objection to form.

9 MR. LAVINE: I will withdraw that.

10 Q. Let me draw your attention to the third section
11 of that book --

12 MR. LAVINE: And the people on the jury, you
13 don't have this section.

14 Q. During the early morning hours of June 24, just
15 before the case was taken down by the FBI, you are with
16 Fadil Abdelgani and others and we saw it on video, right?

17 A. Yes, sir.

18 Q. Let me direct your attention to page 40.

19 MR. LAVINE: If I could approach the witness,
20 your Honor.

21 THE COURT: Yes.

22 A. There is some discussion that you have with
23 Siddig, and I am going to direct your attention to page 40.

24 Do you say this to Siddig, and does Siddig say
25 this to you, and Amir is there as well:

1 Amir says: Maybe Mohammed is late. We should
2 rely on God and go. That's it.

3 And Siddig says: That's it. Drop him.

4 Amir says: (Unintelligible) Drop him.

5 Siddig says: Enough, enough Mohammed.

6 Amir says: That's it.

7 Then Siddig says: Because yesterday I came to
8 know that he was speaking with this man in the presence of
9 El-Fadil, his cousin. His cousin has nothing to do with
10 that matter.

11 You then say, pardon my language: Shit.

12 And do you remember that conversation, Mr. Salem?

13 A. I believe there is some mistranslation here, sir.

14 Q. Let me direct your attention to -- by the way, is
15 that mistranslation that helps my client or hurts my client,
16 Mr. Salem?

17 MR. McCARTHY: Objection.

18 MR. LAVINE: Withdrawn.

19 THE COURT: Sustained.

20 MR. LAVINE: Withdrawn.

21 Q. Mr. Salem --

22 A. Yes, sir.

23 Q. -- let me direct your attention to the next page,
24 page 41.

25 A. Yes, sir.

1 Q. Let me direct your attention to the bottom of the
2 page, and if I can approach the witness for one second,
3 Judge.

4 I am directing your attention to page 41. The
5 page after where we just read a portion.

6 Do you remember speaking to Siddig and Amir and
7 Siddig says: Take it easy, if you please.

8 Amir says: It is better if one finishes in five
9 or six days.

10 And Siddig claps his hands and says: I have to
11 leave.

12 Amir says: But there is another month here.

13 Siddig says: No, no, no. Let us account for the
14 people who have knowledge of this.

15 And you say: Who?

16 Siddig says: El Fadil.

17 Then Amir says: He's not going to know.

18 Mr. Salem, do you remember that happening?

19 A. No, sir. That did not happen because -- that did
20 not happen, sir.

21 Q. Mr. Salem, you mentioned that your hearing was
22 the subject of some treatment back on February 26, 1993, the
23 day that the explosion went off at the World Trade Center.

24 You mentioned that after this investigation
25 started you went to Brooklyn with Amir and that Amir told

1 you that his cousin had given him some money to buy stolen
2 cars, and that's not on audio, is it?

3 We have no tape of that, do we?

4 A. No, sir.

5 Q. Then you mention that at the garage in Queens,
6 Mr. Salem, Fadil Abdelgani told you that he knew what was
7 going on here and he would be willing to participate, but he
8 had to go pray the istikhara prayer first.

9 Am I pronouncing that close to correctly, sir?

10 A. Yes, sir.

11 Q. But that's not on audiotape either, is it?

12 A. Well, it's on audiotape but --

13 Q. Mr. Salem --

14 A. Yes, sir.

15 Q. -- his words --

16 MR. McCARTHY: Objection.

17 THE COURT: Is his statement on audiotape?

18 THE WITNESS: It is on audio, but nobody picked
19 it up, sir.

20 Q. Very good, Mr. Salem.

21 Mr. Salem, let me ask you this question --

22 A. Yes, sir.

23 Q. -- from June the 20th to June the 23rd -- and, of
24 course, June 20 is when you're in Brooklyn, right?

25 A. Could be, sir.

1 Q. Could be.

2 But June the 23rd is when you're with Fadil out
3 in the garage?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes, sir.

7 Q. Had your hearing gotten any worse in those few
8 days?

9 A. I don't think so, sir.

10 Q. Mr. Salem, had it gotten any better?

11 A. I don't think so, sir.

12 Q. Would it be fair to say that it remained just
13 about the same?

14 A. Yes, sir.

15 MR. LAVINE: Thank you very much, Mr. Salem. I
16 have no further questions.

17 MR. SERRA: Your Honor, I need a few moments to
18 set up, with the court's indulgence.

19 THE COURT: OK.

20 (Pause)

21 THE COURT: Mr. Serra, representing Mr. Alvarez.

22 MR. SERRA: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. SERRA:

25 Q. Good afternoon, Mr. Salem.

1 A. Good afternoon, sir.

2 Q. Mr. Salem, my name is Wesley Serra. I represent
3 Victor Alvarez. You did not know that name, Victor Alvarez,
4 until after the arrests were made, is that right?

5 A. Yes, sir.

6 Q. You knew the gentleman seated there with the
7 headphones on as Mohammed the Spanish, is that correct?

8 A. Yes, sir. That was --

9 Q. You first met Mohammed the Spanish, I believe you
10 told Mr. McCarthy on your direct examination, days before
11 the arrests, is that right?

12 A. Yes, sir.

13 Q. You don't remember the exact date?

14 A. No, sir.

15 Q. But it was at a meeting at Siddig's house, is
16 that correct?

17 A. I believe I saw him in the mosque once before,
18 sir, or twice.

19 Q. But you didn't speak to him, is that right?

20 A. No, I did not, sir.

21 Q. So the first time you some spoke to him, the
22 first -- withdrawn. I will ask them one at a time.

23 The first time you spoke to Mohammed the Spanish
24 was days before the arrest in Siddig Ali's apartment, is
25 that correct?

1 A. Yes, sir.

2 Q. The first time that you were introduced to him,
3 that you met him was in Siddig Ali's apartment days before
4 the arrests, is that correct?

5 A. Yes, sir.

6 Q. That event, that occasion when you met him in
7 Siddig Ali's apartment was a lengthy conversation, wasn't
8 it?

9 A. Yes, sir.

10 Q. It was tape recorded, wasn't it?

11 A. Yes, sir.

12 Q. Would you know, Mr. Salem, whether that is CM48?

13 A. I don't know, sir.

14 Q. Would you know, Mr. Salem, as to whether or not
15 it was June 19, 1993?

16 A. I wouldn't remember that, sir.

17 Q. OK. The day that you met Mohammed the Spanish in
18 Siddig Ali's apartment, you were with people in this case
19 the entire day, is that right, whatever day it was? I know
20 you don't remember, June 19 or another date, but you were
21 with people the entire day, is that correct?

22 A. Could be, sir.

23 Q. You went from Siddig Ali's apartment -- you also
24 were at Abu Bakr mosque in Brooklyn, is that right?

25 A. Could be, sir.

1 Q. You were at the safe house, is that right?

2 A. Could be, sir.

3 Q. Mr. Salem, by the way, am I pronouncing your name
4 correctly, Salem?

5 A. Yes, sir.

6 Q. Mr. Salem, the first time in answer to
7 Mr. McCarthy's questions on your direct examination that you
8 mentioned Mohammed the Spanish was in connection with the
9 people who asked you to sweep their apartments for bugs, do
10 you remember that?

11 A. Yes, sir.

12 Q. It was shortly after Mr. McCarthy asked you that
13 question that you identified Mr. Alvarez sitting in court,
14 do you remember that, sir?

15 A. Yes, sir.

16 Q. Now, you told us in answer to those questions of
17 Mr. McCarthy's that there were several people who asked you
18 to sweep their apartments for bugs, is that right?

19 A. And the phones, sir.

20 Q. And their phones?

21 A. Yes.

22 Q. And their phones and their apartments, is that
23 right?

24 A. Yes, sir.

25 Q. Mohammed the Spanish was one of them, is that

1 correct?

2 A. Yes, sir.

3 Q. You also mentioned someone by the name of Abdel
4 Rahman Haggag, is that right?

5 A. Yes, sir.

6 Q. That is another person who asked you to sweep his
7 apartment and his phone for bugs?

8 A. Yes, sir.

9 Q. You mentioned Ahmed Abdel Sattar as another
10 person who did that, is that right?

11 A. Yes, sir.

12 Q. Now, Mr. Salem, Mr. Sattar, Abdel Sattar, Ahmed
13 Abdel Sattar is his name, is that right?

14 A. Yes, sir.

15 Q. He asked you to sweep his apartment for bugs
16 because he was afraid that the FBI had placed a bug in his
17 apartment, is that right?

18 A. I believe, yes, sir.

19 Q. Well, you believe or you're sure?

20 A. Well, yeah, he told me he wants me to sweep his
21 car for --

22 Q. Because he -- I'm sorry, sir, continue.

23 A. His car, his phone and his apartment, sir.

24 Q. Because he believed that the FBI had placed bugs
25 there, is that correct?

1 A. I believe, yes, sir.

2 Q. Well, that's what he told you, isn't it?

3 A. Well, he didn't tell me. He said, "I want you to
4 sweep my phone, my car" -- he told me, first check the car,
5 which I did, and then he took me to his house, I swept the
6 home, at the house and his phone, sir.

7 MR. SERRA: Mr. McCarthy, page 5081 at line 15.

8 MR. McCARTHY: Can I have a moment?

9 THE COURT: Yes.

10 (Pause)

11 MR. SERRA: Through, Mr. McCarthy, the beginning
12 of the next page, the entire answer.

13 MR. McCARTHY: No objection.

14 MR. SERRA: With the court's indulgence for a
15 moment, your Honor.

16 Q. Mr. Salem, were you asked this question on your
17 direct examination by Mr. McCarthy and did you give this
18 answer:

19 "Q. Tell us how it happened that you did some
20 sweeping for Ahmed Abdel Sattar.

21 "A. We were in Abu Bakr mosque doing our
22 evening prayer. Ahmed told me, 'You have your briefcase
23 with you? You have your equipment?'.
24

"'Yes.'

25 "'Can you check my car because you know the FBI

1 is constantly after me.'

2 "I said, 'Sure, I will.'

3 "We went outside the mosque; he opened his car.
4 I kept going through the car, and I got a hold of one of the
5 wires, gives me a whistle and I told him, 'Listen here,
6 there is a device inside here and it's very sensitive. It's
7 screaming very loud. Be careful. Don't talk about anything
8 in the car.'

9 "He said, 'Now I know the car is not safe.'

10 "He wants me to go check his apartment."

11 Q. Did you give that answer to that question?

12 A. Yes, sir.

13 Q. So, in other words, Mr. Salem, Mr. Sattar told
14 you that he was afraid that the FBI was bugging his car and
15 his apartment, is that right?

16 A. Yes, sir.

17 Q. Mr. Haggag, Abdel Rahman Haggag told you that he
18 was afraid -- he wanted you to sweep his apartment because
19 he was afraid both the FBI and the CIA were bugging his
20 apartment, is that right?

21 A. I believe the CIA was -- it was being told to me
22 by Mr. Siddig Ali, sir, but Mr. Rahman Haggag was talking
23 FBI.

24 Q. FBI?

25 A. Yes.

1 Q. All right. When Mohammed the Spanish asked you
2 to sweep his apartment and his phone for bugs, did he tell
3 you that he was afraid that the FBI had bugged his
4 apartment?

5 A. I don't recall that he said such things, sir.

6 Q. Did he tell you that he was afraid that the CIA
7 had bugged his apartment?

8 A. I don't think he said that, sir.

9 Q. The New York City Police Department?

10 A. No, sir.

11 Q. The Royal Canadian Mounted Police?

12 Did he tell you he was afraid the Mounties had
13 bugged his apartment?

14 A. I'm sorry, sir?

15 Q. Withdrawn.

16 Mr. Salem, would you please listen to the
17 following tape.

18 MR. SERRA: Your Honor, the court and
19 Mr. McCarthy and Mr. Khuzami and the jurors have transcript
20 books which were distributed during the break. The excerpt
21 that I am about to play is at page 86 under Tab CM48.

22 MR. McCARTHY: May I have a moment.

23 MR. SERRA: Your Honor, that's page 86. The page
24 numbers are very small down at the bottom. That is the way
25 the printing came out. It is page 86, CM48. I believe,

1 your Honor, the excerpt will start with the attribution to
2 Mr. Salem at the top of that page.

3 MR. McCARTHY: I have no objection to this one,
4 your Honor.

5 THE COURT: Go ahead.

6 MR. SERRA: Your Honor, with the court's
7 permission, may we play the tape?

8 THE COURT: Go ahead.

9 (Audiotape played)

10 Q. Mr. Salem, did you hear that?

11 A. Yes, sir.

12 Q. First of all, since this is the first tape we've
13 played that uses -- your voice was one of the voices, is
14 that correct?

15 A. Yes, sir.

16 Q. And the voice of Mohammed the Spanish, is that
17 right?

18 A. Yes, sir.

19 Q. And Siddig Ali was in there briefly, is that
20 right?

21 A. Yes, sir.

22 Q. Now, Mr. Salem, when Mohammed the Spanish asked
23 you to sweep his apartment for bugs -- and that's what you
24 just heard him do, right? He just did that in the excerpt
25 to the tape that you heard, he asked you to sweep his

1 apartment?

2 A. There is another occasion, sir.

3 Q. We'll get to it, Mr. Salem.

4 A. Yes, sir.

5 Q. This occasion --

6 A. Yes.

7 Q. -- he just asked you to sweep his apartment for
8 bugs?

9 A. I believe he said that he have a lot of people he
10 he's concerned about, sir.

11 Q. The Italians in his neighborhood, is that right?

12 A. Yes, sir.

13 Q. He didn't tell you he was concerned about the
14 FBI, did he?

15 A. No, he did not, sir.

16 Q. He didn't tell you he was concerned about the
17 CIA?

18 A. No, he did not.

19 Q. He told you that he was afraid that the Italians
20 in his neighborhood had bugged his phone, is that right?

21 A. Yes, sir.

22 Q. Mr. Salem, as you mentioned there is another
23 excerpt where -- there is another conversation where
24 Mohammed the Spanish asks you to sweep his apartment, is
25 that right?

1 A. Yes, sir.

2 MR. SERRA: Let's listen.

3 Your Honor, that is also in the books which were
4 distributed to the court and the jury. It is under the tab
5 CM -- withdrawn.

6 Your Honor, I believe the government will
7 stipulate that what we just listened to from CM48 was
8 recorded on June 19, 1993.

9 MR. McCARTHY: Yes, your Honor. Stipulated.

10 MR. SERRA: The next except, your Honor, is under
11 the tab CM51. The excerpt begins on page 2 of that
12 conversation in the court's book and the jury's book.

13 Q. Mr. Salem, would an English transcript help you?

14 A. Could be, sir, yes.

15 MR. SERRA: Could be, OK.

16 I'm going to have to reclaim one from the
17 government.

18 May I approach, your Honor.

19 THE COURT: Yes.

20 Q. This is an excerpt from under the tab CM51, page
21 2. I believe the tape begins about where you say,
22 Mr. Salem, at the top of that page: "Yeah, this is a \$1,000
23 piece."

24 A. I'm sorry, sir? Which part here?

25 MR. SERRA: May I, your Honor?

1 THE COURT: Yes, please.

2 Q. Mr. Salem, if you will note there are tabs here
3 on which there is written CM numbers.

4 A. Yes.

5 Q. OK. What I'm referring to -- and there are small
6 page numbers down at the bottom here, smaller than I
7 intended on page 2. At the top of the page, this will begin
8 where you talk about a \$1,000 piece.

9 Are you with me, Mr. Salem?

10 Do you see that, sir?

11 A. I don't see the thousand dollars, sir.

12 Q. Right at the --

13 A. OK. Yes. Thank you, sir.

14 Q. You're welcome, sir.

15 (Audiotape played)

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1 MR. SERRA: One of my colleagues tells me that
2 there may have been a problem with the sound for one or more
3 of the jurors. Would the court inquire.

4 THE COURT: Was there a problem? Everybody who
5 did not hear that excerpt raise their hand.

6 A JUROR: I didn't hear part of it.

7 A JUROR: It cut out.

8 THE COURT: It cut out at some point? Do you
9 want to try running it again.

10 MR. SERRA: Your Honor, it will take a moment to
11 cue it up to that spot again.

12 Your Honor, we are cued up. Perhaps if a juror
13 has a problem they could indicate it immediately so we can
14 track the technical --

15 THE COURT: If there is anybody who can't hear
16 when he says the tape has started to play, just raise your
17 hand.

18 (Tape played)

19 MR. SERRA: Your Honor, it appears that even with
20 the volume turned up we have problems with some of the
21 jurors hearing.

22 THE COURT: Can I see you at the side for a
23 moment.

24 (At the side bar)

25 MR. SERRA: The government volunteered their

1 help, Judge, and I said it is probably not a great idea when
2 the jury is in the box.

3 THE COURT: No, it is not. My question is this,
4 you want to examine him about, I assume, whether he wanted
5 the apartment swept --

6 MR. SERRA: No, your Honor, there is a whole
7 other area that is led into by this part.

8 THE COURT: Do you want to examine him without
9 some of the jurors having heard the tape?

10 MR. SERRA: Judge, these are English tapes. I
11 realize that the court's preference is not to waste time --

12 THE COURT: It is not a waste.

13 MR. SERRA: I didn't mean that. My preference is
14 to let the jury hear the tapes.

15 THE COURT: Let's break and I will have Joel look
16 at it and make sure everybody hears it tomorrow.

17 (In open court)

18 THE COURT: Ladies and gentlemen, we are going to
19 break for the day. We will see if we can correct the audio
20 by tomorrow morning. Please leave your notes and other
21 materials behind. Please don't discuss the case. We will
22 resume tomorrow morning.

23 (Jury excused)

24 (Witness excused)

25 THE COURT: Mr. Ricco, you had a matter that you

1 wanted to see me about with the government?

2 MR. RICCO: Yes, your Honor.

3 THE COURT: I will see you back there.

4 MR. SERRA: Your Honor, I appreciate the court
5 breaking at this point.

6 THE COURT: Quite all right. We will have
7 somebody look at it and make sure it is on line tomorrow.

8 (Pages 7480 through 7486 sealed)

9 (Proceedings adjourned until 9:30 a.m., Tuesday,
10 April 11, 1995)

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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,"

21 Defendants.
22 -----x

S5 93 Cr. 181 (MBM)

April 11, 1995
9:30 a.m.

23 Before:

24 HON. MICHAEL B. MUKASEY,

District Judge

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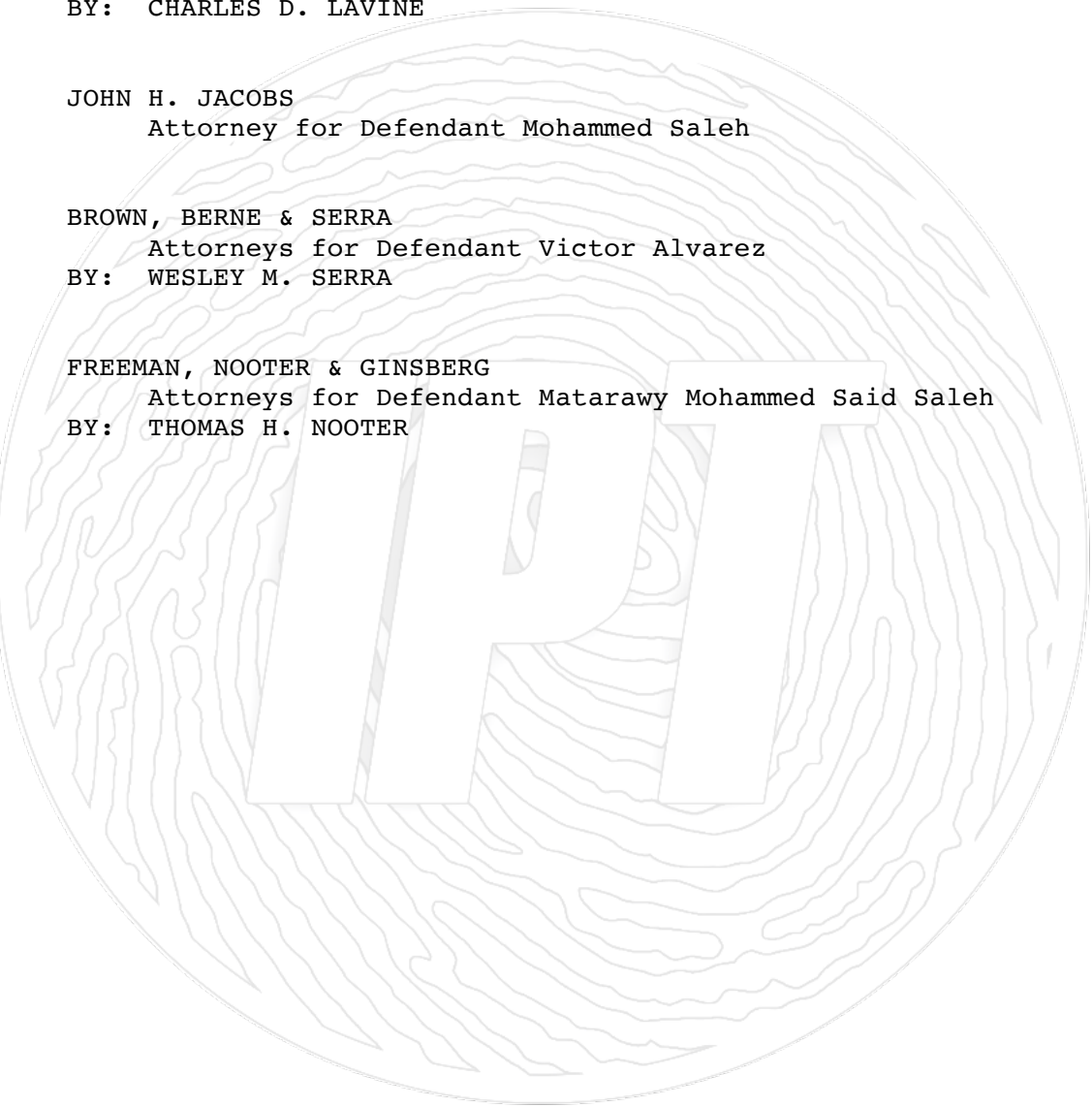
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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 EMAD SALEM, resumed.

5 MR. SERRA: Your Honor, could the court ask the
6 jurors as soon as they come in if any of them have technical
7 problems to let us know right away, then we don't have
8 problems playing the tapes. Mr. McCarthy and I checked
9 every one of the tapes and there should be no problem now.

10 THE COURT: Good.

11 THE COURT: I don't think it is the volume.

12 MR. SERRA: Your Honor, this morning I heard that
13 a few jurors' volumes were lower than the rest. There were
14 also a few that were unplugged, but even plugged in there is
15 lower volume.

16 (Jury present)

17 THE COURT: Good morning, ladies and gentlemen.

18 JURORS: Good morning.

19 THE COURT: The lawyers have checked the headsets
20 and we think we have everything squared away, but if any
21 tape plays and you don't hear it at a time that it is
22 playing, please raise your hand immediately so that we can
23 try to rectify it.

24 Mr. Serra.

25 MR. SERRA: Thank you.

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1 THE COURT: Mr. Salem, you are still under oath.

2 THE WITNESS: Yes, sir.

3 CROSS-EXAMINATION continued

4 BY MR. SERRA:

5 Q Good morning, Mr. Salem.

6 A Good morning, sir.

7 Q Mr. Salem, you recall yesterday when we had
8 technical problems we were discussing people who had asked
9 you to sweep their apartments, cars, telephones. Do you
10 remember that?

11 A Yes, sir.

12 Q And you had testified that there were several
13 people who asked you to do that because they were afraid the
14 FBI had bugged their phones or bugged their apartments, is
15 that right?

16 A Yes, sir.

17 Q And we had played one tape of Mohammed the
18 Spanish asking you to do it because he was afraid that the
19 Italians in his neighborhood had bugged his phone, is that
20 right?

21 A Yes, sir.

22 Q Where we were, Mr. Salem, I believe we were about
23 to play a second tape and we had technical problems.

24 A Yes, sir.

25 Q Mr. Salem, I believe you still have the

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1 transcript book on the witness stand. If it would help you
2 to read it in English, feel free to do that.

3 MR. SERRA: Your Honor, this is under the tab CM
4 51, at page 2.

5 Your Honor, if the jurors wish, the tape is in
6 English.

7 THE COURT: Ladies and gentlemen, put on your
8 headsets, please.

9 (Tape played)

10 Q Do you recall that conversation, Mr. Salem?

11 A Yes, sir.

12 MR. SERRA: Your Honor, I believe the government
13 will stipulate that CM 51 was recorded on June 19, 1993.

14 MR. McCARTHY: I will stipulate to that.

15 Q Once again, Mr. Salem, Mohammed the Spanish told
16 you that he was afraid the Italians in his neighborhood had
17 bugged his apartment, is that right?

18 A He said he is afraid of the Italians trying to
19 find out everything.

20 Q Trying to find out everything including what
21 books he reads. Did he tell you that?

22 A He said that he took the books out of his place.

23 Q Every book except the Koran, is that right?

24 A Yes, sir.

25 Q Mr. Salem, you have told other examiners that you

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1 had a lot of gadgets, is that right?

2 A Yes, sir.

3 Q Amongst your gadgets was a gadget which detected
4 magnetic fields, is that right?

5 A Electric fields, sir.

6 Q Electric fields.

7 A Yes, sir.

8 Q So in other words, it would detect any wire which
9 had a current flowing through it, is that right?

10 A Yes, sir.

11 Q Not necessarily a bug, is that right?

12 A Not necessarily a bug, sir.

13 Q In other words, the wires to the lights in this
14 courtroom have current in them, is that correct?

15 A Yes, sir.

16 Q And it would affect the current flowing to the
17 lights in this courtroom, correct?

18 A Yes, sir.

19 Q In other words, when you told people that any
20 apartments or phones or lights were bugged, you didn't know
21 whether they were bugged or not, right?

22 A No, sir.

23 Q In the conversation we just listened to,
24 Mr. Salem, you told Mohammed the Spanish that you know Ahmed
25 Abdel Sattar, one of the brothers, the FBI monitor him and

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1 you checked his car and found it full of bugs. Did you tell
2 Mohammed the Spanish that?

3 A Yes, sir.

4 Q It wasn't true, was it?

5 A No, sir, it wasn't true.

6 Q So you lied when you said that to Mohammed the
7 Spanish, is that right?

8 A Yes. That's my role, sir.

9 Q Your role was to lie?

10 A My role, to make him believe that I have
11 equipment to detect bugging devices or stuff like that, sir.

12 Q But you specifically told Mohammed the Spanish
13 that you had detected bugs in brother Ahmed Abdel Sattar's
14 car, is that correct? You told him that.

15 A I told him that, yes.

16 Q That was not true.

17 A That was not true, sir.

18 Q Why did you lie to him about detecting bugs in
19 brother Ahmed Abdel Sattar's car?

20 A To make him believe that my equipment can
21 discover bugs, and I did discover already bugs because he
22 asked me, did you try it before? I said yes, I tried it
23 before and it detected bugging devices, sir.

24 Q Mr. Salem, you mentioned, as you put it, Ahmed
25 Abdel Sattar, one of the brothers. You used that phrase

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1 intentionally, didn't you?

2 A No, sir, that's the way we talk -- they talk,
3 sir.

4 Q When you said to Mohammed the Spanish one of the
5 brothers, you were telling him that the person you were
6 speaking about was a Muslim, is that right?

7 A That's right, sir.

8 Q And you were telling him, falsely, that you had
9 discovered that the FBI had bugged a brother Muslim's car,
10 is that right?

11 A That is right, sir.

12 Q Isn't it true, Mr. Salem, that you lied to
13 Mohammed the Spanish about that to get him angry at the FBI?

14 A That's not true, sir.

15 Q To get him angry at an agency of the United
16 States government, isn't that true?

17 A That's not true, sir.

18 Q You told Mr. Ricco a couple of weeks ago that you
19 lied to people to get them to repeat conversations that they
20 had had in the basements of mosques. Do you remember that
21 testimony?

22 A I am sorry. Say it again, please.

23 Q Mr. Ricco, the gentleman sitting on the end who
24 examined you, I think a week ago, 10 days ago?

25 A Yes.

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1 Q You told him that you lied to people to get them
2 to repeat conversations on tape that they had had in the
3 basements of mosques. Do you remember that?

4 A I lied to them to get them repeat --

5 Q Yes.

6 A I am not so sure that I said that, sir.

7 Q You had never spoken to Mohammed the Spanish
8 before this day, isn't that right?

9 A No, sir.

10 Q When you came to the United States, Mr. Salem,
11 you spoke poor English, isn't that right?

12 A Yes, sir.

13 Q When you were in Egypt as a young man, you
14 studied English in Egypt, is that right?

15 A Yes, sir.

16 Q As a matter of fact, didn't you testify you
17 studied English since you were a boy?

18 A Yes, sir.

19 Q Nonetheless, when you came here you had a lot of
20 trouble in English, didn't you?

21 A I am sorry, sir.

22 Q When you came here you did not speak English
23 well, isn't that right?

24 A Yes, sir.

25 Q And to this day, Mr. Salem, you don't read

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1 English well, is that right?

2 A Yes, sir.

3 Q That's why during the course of your testimony
4 before the jury you have said several times it would take me
5 a long time to read this transcript, is that right?

6 A Yes, sir.

7 Q That's because you don't read English well to
8 this day, is that right?

9 A Yes, sir.

10 Q Do you remember discussing proceedings in Mr.
11 Nosair's state court trial with various -- you discussed
12 proceedings in Mr. Nosair's state court trial with a lot of
13 different people, is that right?

14 A What do you mean proceedings, sir?

15 Q What was going on in court.

16 A Yes, sir.

17 Q In fact, Mr. Salem, didn't you remark to people,
18 including Mr. Sattar, whose name we have already mentioned,
19 that from time to time in English you and other people who
20 were not native English speakers would become lost? Do you
21 remember that?

22 A Sometimes we get lost in legal terms and some
23 English terms, sir.

24 Q Mr. Salem, about the time that you started
25 recording conversations officially for the FBI on the Nagras

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1 that you had, you had a meeting at FBI headquarters with
2 someone by the name of Carson Dunbar. Do you recall that
3 meeting?

4 A Yes, sir.

5 Q Do you know what ASAC means, Mr. Salem?

6 A I know ASAC but I don't know what's the meaning
7 of it, sir.

8 Q Do you know that ASAC stands for assistant
9 special agent in charge? Do you know that?

10 A Could be, sir.

11 Q That would be a high level agent supervisor, is
12 that right?

13 A Yes, sir.

14 Q And you knew that that is who Mr. Dunbar was, is
15 that correct?

16 A Yes, sir.

17 Q And there came a time back when you started
18 officially recording conversations for the FBI when you met
19 with Mr. Dunbar and Agents Anticev and Detective Napoli, is
20 that right?

21 A Yes, sir.

22 THE COURT: Mr. Serra, could you move the
23 microphone a little bit closer to you.

24 Q You were given during the course of that meeting,
25 Mr. Salem, instructions on how you should proceed in the

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1 course of the investigation, is that right?

2 A In this meeting, no, sir.

3 Q There came a time early on in your official
4 taping when you did have a meeting in which you received
5 instructions as to how to deal with the people that you were
6 investigating, is that right?

7 A Yes, sir.

8 Q That was also with Assistant Special Agent in
9 Charge Dunbar and Agents Napoli and Anticev, is that right?

10 A No, sir.

11 Q It was just with Mr. Dunbar?

12 A No, sir.

13 Q It was just with the case agents, sir?

14 A Yes, sir.

15 Q Mr. Salem, were you advised that you were not to
16 offer to purchase any materials?

17 MR. McCARTHY: Objection, relevance.

18 THE COURT: I will allow it. Go ahead.

19 MR. SERRA: Thank you.

20 Q Were you advised, Mr. Salem, that you were to
21 offer to purchase any materials?

22 A I don't recall that --

23 Q Mr. Salem, excuse me. Let me get the question
24 right for the record.

25 A Yes, sir.

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1 Q Were you advised that you were not to offer to
2 purchase any material?

3 A I don't recall that specifically, sir.

4 (Continued on next page)

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1 Q Were you advised that you were not to instruct
2 people on what should be done?

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained.

5 Q Were you advised that you were only to respond to
6 requests by the people that you were dealing with?

7 MR. McCARTHY: Objection.

8 THE COURT: May I see counsel at the side
9 briefly.

10 (At the side bar)

11 THE COURT: I don't doubt that you have a basis
12 for asking the question. I assume the objection goes to
13 relevance.

14 MR. McCARTHY: Yes, your Honor.

15 MR. SERRA: Your Honor, one of the main themes of
16 the crosses and for that matter the defenses in this case is
17 that this person, Mr. Salem, was out on his own, and it is
18 relevant in terms of what he did with the -- the rest of my
19 cross will be what he did with Victor.

20 THE COURT: His being out on his own is not a
21 defense, entrapment is a defense.

22 MR. SERRA: Your Honor, I am not saying that if
23 he says yes to his questions he went out on his own
24 automatically that is an entrapment, I am not saying that.
25 But there is not one question that will make out an

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1 entrapment defense, your Honor, and that is clearly part of
2 what I am getting at.

3 THE COURT: The point is what he did in
4 interacting with the people that he dealt with, whether he
5 was told to do it or not to do it or whatever, and of course
6 what their disposition or predisposition was in terms of
7 what he can constitutes inducement.

8 MR. SERRA: I understand, Judge, and I will move
9 on.

10 (Continued on next page)

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(In open court)

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BY MR. SERRA:

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Q Mr. Salem, from the earliest of the recorded

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conversations which you made, you and Mr. Siddig Ali

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discussed the construction of bombs, is that correct?

6

A Yes, sir.

7

Q Where you would get the materials, is that right?

8

A I am sorry, sir.

9

Q Where you and Mr. Siddig Ali would get the

10

materials to make bombs, you discussed that?

11

A Yes, sir.

12

Q How much they would cost, you discussed that?

13

A Yes, sir.

14

Q And what you would do with them once you got

15

them, you discussed that?

16

A Yes, sir.

17

Q In terms of what would go into the bombs that you

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and Siddig Ali were planning, there was more than one --

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withdrawn. The first bomb that you talked about with

20

Mr. Siddig Ali was going to be constructed of either C-4,

21

dynamite or some sort of black powder, is that right?

22

A Yes, sir.

23

Q C-4, as I believe you testified before, being

24

military plastic explosives, is that right?

25

A Yes.

7505

1 Q As a matter of fact, as early, Mr. Salem, as CM
2 1, which is Government's Exhibit 301 in the transcript,
3 301T, you were discussing with Siddig Ali the manufacture of
4 such a bomb made from dynamite or C-4, is that right?

5 A Yes, sir.

6 Q You discussed during the course of that
7 particular conversation, CM 1, how much dynamite you might
8 need, is that right?

9 A Yes, sir.

10 Q And Siddig Ali said perhaps a ton. Do you recall
11 that?

12 A Yes, sir.

13 Q And you said well maybe not a ton but half a ton?

14 A Yes, sir.

15 Q And you discussed detonators, is that right?

16 A Yes, sir.

17 Q And you discussed condensers, is that right?

18 A A little later, but yes, sir.

19 Q And the efforts which you and Siddig Ali made to
20 get those materials included a trip to Philadelphia. That
21 has come up also. Do you recall that?

22 A I beg your pardon.

23 Q Withdrawn. Among the efforts that you and
24 Mr. Siddig Ali made to get these materials, you took trip to
25 Philadelphia, is that correct?

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1 A Yes, sir.

2 Q And the purpose of going to Philadelphia was to
3 try to get dynamite or C-4 or some sort of black powder, is
4 that correct?

5 A Yes, sir.

6 Q In point of fact, Mr. Salem, in the car on the
7 way to Philadelphia, you said to Mr. Siddig Ali, I have my
8 way to do it, is that correct?

9 A Yes, sir.

10 Q Nothing happened on that trip -- withdrawn. As a
11 result of that trip to Philadelphia, you didn't get
12 anything, is that right?

13 A No, sir.

14 Q As a matter of fact, Siddig Ali blew it by asking
15 his contact in Philadelphia -- withdrawn. Do you understand
16 what I mean by blew it? Other than blowing things up, do
17 you understand what the English expression means?

18 A Yes, messed it it up.

19 Q Siddig Ali blew it by asking his contact in
20 Philadelphia for the wrong material, is that right?

21 A No, that's not right.

22 Q He asked his contact for gun powder rather than
23 dynamite or C-4, is that right?

24 A He did ask him, yes, sir, for gun powder.

25 Q But, making a long story short, Mr. Salem, this

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1 plan, the plan for dynamite or gun powder or C-4, proved to
2 be too expensive, isn't that right?

3 MR. McCARTHY: Objection to form.

4 MR. SERRA: I will rephrase it.

5 Q The first bomb which you and Siddig Ali were
6 discussing involved dynamite, C-4 or gun powder, is that
7 right?

8 A Yes, sir.

9 Q You recall discussing with Siddig Ali that such a
10 bomb would cost in the neighborhood of 10 to \$20,000 apiece.
11 Do you remember that?

12 A No, sir, it wasn't that way.

13 Q In any event, the money for the materials, for
14 dynamite or C-4, never became available, isn't that correct?

15 A No, sir.

16 Q I am sorry, sir, I don't understand what -- am I
17 correct in saying that the money to buy dynamite or C-4
18 never materialized?

19 A No, sir.

20 Q I am not correct?

21 A I am sorry.

22 Q Mr. Salem, I am sorry, perhaps we are just not
23 communicating. Did the money ever show up to buy dynamite
24 or C-4?

25 A No, sir, it did not show up.

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1 Q So you changed the plan to something cheaper,
2 isn't that right?

3 A That's as per Mr. Siddig's request, sir.

4 Q If you were going to make a bomb and you couldn't
5 build a more expensive one, the plan got changed to
6 something cheaper, is that correct?

7 A Correct, sir.

8 Q And that cheaper plan, Mr. Salem, is something
9 called an ANFO, is that correct?

10 A Correct, sir.

11 Q ANFO being, for the record, A-N-F-O, is that
12 right?

13 A I think so.

14 Q It stands for ammonium, nitrate, fuel oil, is
15 that right?

16 A Yes, sir.

17 Q Those are what the letters stand for?

18 A Yes, sir.

19 MR. SERRA: Your Honor, at this point with the
20 court's permission, I would play for Mr. Salem an excerpt
21 from CM 37 and then question him on that excerpt. The
22 conversation is mostly in Arabic. The English transcript is
23 reproduced in the jury's binder behind CM 37.

24 Q Mr. Salem, the conversation, as I say, is mostly
25 in Arabic. If it would help you to follow the English, feel

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1 free to do that.

2 Mr. Salem, to be sure that you understand, this
3 is an excerpt from CM 37, which covers the English pages
4 which are in the binder that are in front of you. Do you
5 understand, sir?

6 A All right, I will listen to the Arabic, sir.

7 MS. AMSTERDAM: Your Honor, could Mr. Serra
8 indicate from what page he is beginning?

9 MR. SERRA: I am sorry, your Honor, for those who
10 don't have the binder. It begins on page 9 of CM 37.

11 MS. AMSTERDAM: Thank you.

12 (Tape played)

13 THE COURT: Mr. Salem, do you recall that
14 conversation, sir?

15 A Yes, sir.

16 Q That was you and Siddig Ali, is that correct?

17 A Yes, sir.

18 Q Do you recall right at the beginning of that
19 excerpt -- withdrawn. Do you recall right at the beginning
20 of the tape which you just heard discussing with Siddig Ali
21 the question of money, is that right?

22 A Yes, sir.

23 Q The point was that Siddig had never come up with
24 the money to get C-4 or dynamite, is that right?

25 A Yes, sir.

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1 Q And then you continue saying -- your Honor, it is
2 from page 1 of the excerpt in the books -- then we try to
3 find a way different and cheaper.

4 Did you say that, sir?

5 A Yes, sir.

6 Q And you proceeded for the rest of the excerpt
7 that we just heard to describe what's known as an ANFO, is
8 that correct?

9 A Yes, sir.

10 Q You told Siddig Ali that the first ingredient was
11 heating oil, is that correct?

12 A Yes, sir.

13 Q And Siddig Ali didn't believe you, did he?

14 A No, he was just surprised.

15 Q OK. Perhaps I wasn't clear. I didn't mean, sir,
16 that he literally disbelieved you. He said unbelievable, is
17 that right?

18 A Yes, sir.

19 Q He was surprised that you could make a bomb from
20 heating oil, is that right?

21 A Yes, sir.

22 Q This is the man who is the emir, the boss of the
23 operation, correct?

24 A Yes, sir.

25 Q And the second ingredient you told him about was

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1 fertilizer, is that correct?

2 A Yes, sir.

3 Q He found that hard to believe too, didn't he?

4 A Yes, sir, he was surprised.

5 Q And you continue on to list, you still need a
6 detonator, is that right?

7 A Yes, sir.

8 Q And he had forgotten what a detonator was in this
9 conversation, isn't that true?

10 A No, sir.

11 Q You continue on that you needed a condenser, is
12 that right?

13 A Yes, sir.

14 Q You were listing all of these ingredients, is
15 that correct?

16 A That was my role, sir.

17 Q Does that mean, Mr. Salem, you were listing all
18 of these ingredients?

19 A Yes, sir.

20 Q Right at the point where we cut it off, you said
21 we need glass containers, is that correct?

22 A Yes, sir.

23 Q The problem with this sort of bomb, Mr. Salem, is
24 that it needs a lot of people, is that right?

25 A Yes.

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1 Q You need people to come and mix the stuff, is
2 that right?

3 A Yes, sir.

4 Q And I believe you told one of the other examiners
5 that you were trying to get Siddig Ali to bring people into
6 the safe house, is that right?

7 A To bring his people who he mentioned it to me
8 before.

9 Q Into the safe house, correct?

10 A Into the -- yes, sir.

11 Q And in point of fact, Mr. Salem, one of the
12 reasons that -- withdrawn. One of the reasons you suggested
13 an ANFO was because you couldn't afford a more expensive
14 bomb, is that right?

15 A Yes, sir.

16 Q Another reason you suggested this type of bomb to
17 Siddig Ali is because it would require him to bring people
18 in, is that correct?

19 A I am sorry, can you please -- please.

20 Q Certainly, sir. Another reason you suggested
21 this type of bomb to Siddig Ali is so that he would bring
22 people to the safe house to make it, is that right?

23 A Part of the reason, sir.

24 Q You described this bomb, this formula for a bomb
25 as the cheapest hadduta you could ever imagine, is that

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1 right?

2 A Yes, sir.

3 Q So, Mr. Salem, right up until the last night, the
4 night that the FBI came in and raided the safe house, your
5 plan with Siddig Ali was to make an ANFO, is that correct?

6 A Yes, sir.

7 Q An ammonium-nitrate-fuel oil bomb, is that right?

8 A Yes, sir.

9 Q And in fact, another examiner went into with you
10 how you had the day before the arrests a little test up in
11 Connecticut with Siddig Ali, is that right?

12 A Yes, sir.

13 (Continued on next page)

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1 Q You led him to believe that that test up in
2 Connecticut was in fact a small ANFO, isn't that correct?

3 A Yes, sir.

4 Q You told him things like: Now you will see the
5 ammonium nitrate activated, is that correct?

6 A I'm not sure if I made this statement, but --

7 Q OK. But, in any event, as has been previously
8 brought out, that small test bomb was in fact an M80, is
9 that right, a firecracker?

10 A Yes, sir.

11 Q You had put in a plastic tomato juice can and
12 wrapped it in duct tape, is that right?

13 A No, sir.

14 Q You didn't tell Siddig Ali it was a firecracker,
15 right?

16 A Yes, I did not tell him.

17 Q Finally, Mr. Salem, just a few hours before the
18 FBI came into the safe house, you one more time discussed an
19 ANFO with Siddig Ali, didn't you?

20 A Could be, sir.

21 MR. SERRA: Your Honor, this is not in the books
22 that I distributed to the jury and to the government and the
23 court. Mr. McCarthy, it is CM64, at page 53. Your Honor, I
24 believe the government will stipulate that CM64 was recorded
25 on June 23, 1993.

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1 MR. McCARTHY: That is correct, your Honor. I'm
2 sorry, Mr. Serra. You said page 63?

3 MR. SERRA: 53.

4 MR. McCARTHY: 53. Thank you.

5 Q Mr. Salem, my last question to you was on June
6 23, a few hours before the FBI came to the safe house, you
7 one more time had a conversation with Siddig Ali about ANFO
8 bombs?

9 A Could be, sir.

10 Q Mr. Salem, did you have the following
11 conversation:

12 Salem: So the formation, it's name is --

13 Siddig Ali: What is its names?

14 Salem: ANFO.

15 Siddig Ali: What?

16 Salem: The bomb mixture called ANFO, what is
17 ANFO means?

18 Siddig Ali: Information.

19 Salem: No.

20 Siddig Ali: Huh.

21 Salem: ANFO means ammonium fuel, ammonium
22 nitrate, ANFO, ammonium nitrate fuel oil.

23 Siddig Ali: Yes, OK.

24 Salem: This is the mixture of the -- what? This
25 is A, B, C.

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1 Siddig Ali: Ammonium.

2 Salem: ANFO, ammonium nitrate fuel oil. What we
3 brought yesterday is fuel oil and the ammonium nitrate is
4 here, however, we increase the -- yeah.

5 Siddig: (Unintelligible)

6 Salem: (Unintelligible) Yes. Of course, I have
7 so much experience, sheik.

8 Do you recall that conversation, Mr. Salem?

9 A Yes, sir.

10 Q So, a few hours before the FBI raided the safe
11 house, Siddig Ali, the boss of the operation, thought ANFO
12 meant information, is that right?

13 A Yes, sir.

14 Q Mr. Salem, you have told other examiners that at
15 the beginning of the Nagra tapes you would start and stop
16 them to make sure that the tape was running, do you recall
17 that testimony?

18 A Yes, sir.

19 Q That happened on many of the tapes, didn't it?

20 A Almost every tape, sir.

21 Q I would like you to listen to the beginning of
22 one of them, Mr. Salem.

23 MR. SERRA: That is CM51, your Honor, and
24 Mr. McCarthy. All I intend to play, your Honor, is the
25 stops and starts at the beginning, so it won't be in the

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1 jury's transcript books.

2 Q Could you put your headset on, Mr. Salem.

3 MR. SERRA: And the jurors may, too, your Honor,
4 with the court's permission.

5 (Audiotape played)

6 Q Mr. Salem, you heard that, sir?

7 A Yes, sir.

8 Q Those are the stops and starts that you are
9 talking about, is that right?

10 A Yes, sir.

11 Q Did you hear a voice on the second or third stop
12 and start? The second time there was a voice. Did you hear
13 a voice say, "The doctor, where is he"?

14 A I didn't understand if it was in English, but I
15 heard voice.

16 Q If you didn't understand, perhaps we can play it
17 again with a view towards you answering the question.

18 That's Louis Napoli, isn't it?

19 That's Louis Napoli's voice?

20 A I mean, if I may --

21 Q Listen to it again, by all means.

22 (Audiotape played)

23 Q Mr. Salem, did you hear the voice say, "The
24 doctor, where is he now"?

25 A Yes, sir.

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1 Q That's Louis Napoli's voice, isn't it?

2 A Yes, sir.

3 Q OK. We spoke yesterday about how the first time
4 that you met Mohammed the Spanish was in Siddig Ali's
5 apartment, is that right?

6 A Yes, sir.

7 Q I know you said you had seen him a couple of
8 times in the mosques, but you were introduced to him and you
9 spoke to him and he spoke to you for the first time in
10 Siddig Ali's apartment, is that right?

11 A Yes, sir.

12 Q In a lengthy recorded conversation, is that
13 correct?

14 A Yes, sir.

15 MR. SERRA: Your Honor, I believe yesterday the
16 government stipulated that CM48 was June 19.

17 MR. McCARTHY: I think that's right. Yes, your
18 Honor.

19 MR. SERRA: If I can have the court's indulgence
20 for a moment.

21 THE COURT: Sure.

22 (Counsel conferred off the record)

23 Q You were recording on a total of three Nagras, is
24 that correct?

25 A I'm sorry. I don't understand the question, sir.

7519

1 Q Yes. The recordings which you officially made
2 for the FBI were made on, among other equipment, were made
3 on three Nagras, is that correct? You had two in your car
4 and one in your briefcase?

5 A Yes, sir.

6 Q So is it true, Mr. Salem, that if a conversation
7 was recorded by a Nagra, by you, in Siddig Ali's apartment,
8 it would have been your briefcase, is that right?

9 A Yes, sir.

10 Q Because you wouldn't have driven your car into
11 Siddig Ali's apartment, and those were the only Nagras,
12 right?

13 A Yes, sir.

14 MR. SERRA: May I approach the witness, your
15 Honor.

16 THE COURT: Yes.

17 Q I am showing you Government Exhibit 352A. If I
18 may share your microphone here.

19 A Yes.

20 Q I am going to ask you questions at the same time,
21 Mr. Salem.

22 A All right.

23 Q First of all, is this CM48?

24 A That's what's written on the envelope, sir.

25 Q Would you please look at the tape inside with a

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1 view towards answering the question. It is a Nagra tape,
2 isn't it?

3 A That's correct, sir.

4 Q Thank you.

5 A You're welcome, sir.

6 Q Before Mohammed the Spanish got to Siddig Ali's
7 house, you and the other people who were at his house
8 discussed him, is that correct?

9 A I never been in Mr. Mohammed's house, sir.

10 Q No, sir. Perhaps I wasn't clear in my question.
11 When Mohammed the Spanish got to Siddig Ali's
12 apartment, the first time you met him, you were already
13 there, is that right?

14 A Yes, sir.

15 Q You were there with Siddig Ali and I believe with
16 Amir Abdelgani, is that right?

17 A Yes, sir.

18 Q The three of you, or two of you, discussed
19 Mohammed the Spanish before he got there, isn't that right?

20 A Yes, sir.

21 MR. SERRA: Your Honor, we need a second to cue a
22 tape.

23 THE COURT: Go ahead.

24 MR. SERRA: Because there was a piece that we
25 didn't play.

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1 THE COURT: Go ahead.

2 (Pause)

3 MR. SERRA: Your Honor, with the court's
4 permission I would play an excerpt of CM48. It is in
5 Arabic. It is to be found on pages 5 to 6 of CM48 in the
6 jury's binder.

7 Your Honor, for my brethren who do not have my
8 binder, the entire CM48 is reproduced for the jury so it
9 will be the same pages -- and sistern, I'm sorry. The first
10 excerpt is 5 to 6. Your Honor, it should start in the
11 English transcript where Siddig Ali says: Yes, there is a
12 Spanish brother, on page 5.

13 (Audiotape played)

14 Q Mr. Salem, do you recall that portion of the
15 conversation?

16 A Yes, sir.

17 Q Siddig Ali told you that there was a Spanish
18 brother who was going to be coming, is that right?

19 A Yes, sir.

20 Q You thought that it was someone by the name of
21 Mustafa Assad, is that correct?

22 A Yes, sir.

23 Q The gentleman seated there with headphones,
24 Victor Alvarez, is not Mustafa Assad, is that right?

25 A No, sir.

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1 Q Mustafa Assad is, however, Hispanic, is that
2 correct?

3 A Yes, sir.

4 Q And he is a Muslim, is that right?

5 A Yes, sir.

6 Q You knew him from wherever before this date, is
7 that right -- withdrawn.

8 You knew him before this date, is that right?

9 A I don't know him personally, but I know that he
10 was referred to me, sir.

11 Q The conversation between you and Siddig Ali
12 proceeded to other subjects and it returned to Mohammed the
13 Spanish, is that right?

14 A Could be, sir.

15 MR. SERRA: Your Honor, with the court's
16 permission, another excerpt. It is found on pages 25 and
17 26, 25 through 27 actually, in the jury's binders under CM48
18 also.

19 It's in Arabic. The Arabic will start with
20 Siddig Ali saying: If we failed in this, I want Mohammed.
21 It is pages 25 to 27 of the jury's binders, starting about
22 two-thirds of the way down page 25.

23 (Audiotape played)

24 Q Mr. Salem, do you remember that conversation,
25 sir?

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1 A Yes, sir.

2 Q It is you and Siddig Ali, right, and every now
3 and then Amir Abdelgani says something?

4 A Yes, sir.

5 Q It is mainly you and Siddig Ali, is that right?

6 A Yes, sir.

7 Q You are discussing Mohammed the Spanish, whom at
8 this point you still haven't met, is that right?

9 A Yes, sir.

10 Q Siddig Ali tells you that he doesn't know him for
11 long, isn't that right?

12 A Yes, sir.

13 Q You suggest that maybe you don't want to get him
14 involved at all, isn't that right?

15 A Yes, sir.

16 Q Then Siddig Ali says -- well, withdrawn.
17 There is concern because he, Mohammed the
18 Spanish, does not know much about religion, is that right?

19 MR. McCARTHY: Objection.

20 THE COURT: Overruled. Is that what he said?

21 THE WITNESS: I'm not sure, sir.

22 Q Well, there was concern that if you tell him
23 about bombs he might say that it is against the Koran, isn't
24 that discussed?

25 A Not that way, sir.

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1 Q Well, the word "bomb" isn't mentioned.

2 Isn't it true that the discussion is if you tell
3 him that's going on he might say that it is against the
4 religion, isn't that right?

5 A We didn't say it that way, sir.

6 Q You conclude that segment of the discussion by
7 saying that before telling him what's going on everyone must
8 agree, is that right?

9 A No, that's not what I said, sir.

10 Q Mr. Salem, didn't you say --

11 MR. SERRA: Mr. McCarthy, page 27.

12 Mr. McCarthy, page 27.

13 MR. McCARTHY: I am there. I just want to know
14 where on 27.

15 Q Didn't you say, Mr. Salem, discussing Mohammed
16 the Spanish: Let us see him first, all of us, before we
17 tell him anything. We have to agree whether to tell him or
18 not?

19 Siddig Ali: But we need people.

20 Salem: Uh.

21 Siddig Ali: We need people.

22 Salem: Of course.

23 Didn't you say that?

24 A Yes, sir.

25 Q Then, once again, the conversation goes on to

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1 other things, is that right?

2 A Yes, sir.

3 Q And comes back again to Mohammed the Spanish?

4 A Yes, sir.

5 MR. SERRA: Your Honor, with the court's
6 permission, pages 36 to 37, again, the tape is in Arabic,
7 starting halfway down the page. I believe the tape is cued
8 halfway down page 36 where Siddig Ali says: Yeah. One, two
9 three. This is CM48, your Honor.

10 (Audiotape played)

11 Q Do you remember that part of the conversation,
12 Mr. Salem?

13 A Yes, sir.

14 Q Once again discussing Mohammed the Spanish?

15 A Yes, sir.

16 Q Siddig Ali told you that Mohammed the Spanish
17 thought the day before that he, Siddig Ali, was recording a
18 conversation in his, Siddig Ali's, car, is that correct?

19 A I believe it was not Mr. Siddig Ali's car, sir.

20 Q OK. Withdrawn.

21 Siddig Ali told you that the day before Mohammed
22 the Spanish was afraid that a conversation that he had with
23 Siddig Ali in a car was being recorded, is that right?

24 A Yes, sir.

25 Q The conversation once again goes on to other

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1 subjects and come comes back to the Mohammed the Spanish, is
2 that right?

3 A Could be, sir.

4 MR. SERRA: With the court's permission, your
5 Honor, pages 40 to 41. The tape should be cued to halfway
6 down the page where Siddig Ali says: Yeah, listen,
7 Mohammed.

8 (Audiotape played)

9 Q Do you remember that part of the conversation,
10 sir?

11 A Yes, sir.

12 Q That excerpt begins with Siddig Ali speaking
13 English giving directions to his house, is that correct?

14 A Yes, sir.

15 Q And then Siddig Ali says that was the -- he goes
16 back to Arabic and says that was the Spanish guy that he was
17 just speaking to, is that right?

18 A Yes, sir.

19 Q There's further discussion about how much, if
20 anything, to tell him, is that correct?

21 A Yes, sir.

22 Q The conversation veers off and comes back to
23 Mohammed the Spanish again, isn't that right?

24 A Could be, sir.

25 MR. SERRA: With the court's permission, your

7527

1 Honor, page 58. The tape is cued to about halfway down the
2 page where Amir Abdelgani says: How can Mohammed go to
3 place like this?

4 Your Honor, all of this is CM48, I'm sure
5 everyone realizes that by now.

6 (Audiotape played)

7 Q Do you recall that part of the conversation,
8 Mr. Salem?

9 A I don't recall it, but it's here, I heard it,
10 yes, sir.

11 Q You just heard it, didn't you?

12 A Yes, sir.

13 Q So you are not relying on your knowledge of
14 reading English, you just heard the Arabic conversation,
15 didn't you?

16 A Yes, sir.

17 Q Once again, a discussion of Mohammed the Spanish?

18 A I'm not sure that's -- this discussion about
19 Mohammed.

20 Q You say, don't you, in what you have just heard,
21 you say --

22 A Right. Yes, sir. I'm sorry. Yes. Yes.

23 Q Let me finish my question, Mr. Salem. So it's
24 clear for everyone, let me finish my question. You say:
25 which Mohammed? And Siddig Ali says: The Spanish.

7528

1 Is that right?

2 A Right, sir.

3 Q OK. The discussion continues that he looks
4 white, is that right?

5 A Yes, sir.

6 Q And if he shaves his beard and cuts his hair, he
7 can go somewhere, is that right?

8 A Yes, sir.

9 Q What that meant is that you needed someone who
10 did not look Middle Eastern, isn't that right?

11 A That's not me talking, sir.

12 Q You were there, weren't you?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q During the conversation you just heard, you heard
16 that in person, isn't that right?

17 A Yes, sir.

18 Q Was your understanding of that conversation that
19 someone who could look white would be needed?

20 A No, sir.

21 Q That wasn't?

22 A Is my understanding that if he cut his hair and
23 shaved his beard he will look different, sir?

24 Q Did someone say --

25 MR. McCARTHY: Objection.

7529

1 THE COURT: Overruled.

2 Q Did someone say he will be OK because he is
3 white? Did someone say that?

4 A I believe, yes, sir.

5 Q The conversation veers off, Mr. Salem, and
6 returns to Mohammed the Spanish one more time, is that
7 right?

8 A Could be, sir.

9 MR. SERRA: Your Honor, pages 61 to 62, starting
10 two-thirds of the way down page 61 where Mr. Salem says: Is
11 that Mohammed coming now?

12 (Audiotape played)

13 Q Do you recall that part of the conversation,
14 Mr. Salem?

15 A Yes, sir.

16 Q It is, once again, Mr. Mohammed the Spanish, is
17 that right?

18 A I'm not sure that's Mohammed the Spanish, because
19 the way they talked about him --

20 Q The first thing you heard was you saying: Is
21 that Mohammed coming now, is that right?

22 A Well, there is so many Mohammeds, sir.

23 Q Well, how many Mohammeds were in Siddig's
24 apartment on that day? Only one, right?

25 A Who came in that day, one.

7530

1 Q One. Yes. That's it?

2 A But we could be speaking about somebody else.

3 Q When you said: Is that Mohammed coming now? And
4 Siddig Ali said: Yeah. He is coming. He called on the
5 phone, only one Mohammed came to Siddig's house on that day,
6 isn't that right?

7 A That's right, sir.

8 Q Did you hear Mr. Abdelgani say he will stand by
9 the door, and then you said he'll stand by the door for an
10 hour?

11 A No, I did not.

12 Q You didn't say for one hour?

13 A I did not, sir.

14 Q And then Siddig Ali said: 24 hours, and you'll
15 find him.

16 A What we heard now?

17 Q Yes, sir.

18 A No, sir. I didn't hear it.

19 Q There came a time, Mr. Salem, when Mohammed the
20 Spanish did get to Siddig Ali's apartment, is that right?

21 A Yes, sir.

22 Q By the way, do you recall any other parts of the
23 conversation on that day about him other than those we just
24 played?

25 A We talked a lot about him and what --

7531

1 Q On that day, Mr. Salem.

2 A I don't recall, sir.

3 Q As far as you recall now, we just played every
4 word about Mohammed the Spanish that was discussed?

5 MR. McCARTHY: Objection. Asked and answered.

6 THE COURT: Overruled.

7 Q As far as you now recall, Mr. Salem, as you sit
8 there, we just played the entirety, all of the conversation
9 about Mohammed the Spanish which occurred in Siddig Ali's
10 apartment before he got there, is that right?

11 A I don't know if you did or not, sir.

12 Q OK. But you don't recall anything else, is that
13 correct?

14 A That was two, three years ago, sir.

15 Q Mr. Salem, is that does that mean you don't
16 recall.

17 THE COURT: The question is simply whether you
18 remember anything else.

19 THE WITNESS: No, sir.

20 Q Mr. Salem, there came a time when Mohammed the
21 Spanish got to Mr. Siddig Ali's apartment, is that right?

22 A Yes, sir.

23 Q After these conversations, is that right?

24 A Yes, sir.

25 Q Almost as soon as he got there, referring you to

7532

1 page 77 of CM48, prayers begin, is that right? Page 77,
2 Mr. Salem. Do you see where at the top of the page you say:
3 We wait for Mohammed. Here he comes.

4 Mr. Salem, CM48, page 77.

5 A Yes, sir.

6 Q And you say "Salaam Alaikum Alaikum Salaam," and
7 then prayers begin, is that correct?

8 A I don't know if prayers begin or not, sir.

9 Q I direct your attention to two-thirds of the way
10 down the page: "All spent time praying led my Siddig."

11 Do you see that?

12 A Yes, sir.

13 Q Then, after the prayers, conversation started
14 among all the people in the apartment, is that right?

15 A Yes, sir.

16 Q By the way, you heard that the government -- this
17 is the time -- withdrawn.

18 The tapes that you have heard and we're about to
19 continue with, this is the first meeting you had with
20 Mohammed the Spanish, is that correct?

21 A Yes, sir.

22 Q You heard the government stipulate that this was
23 June 19, 1993, is that right?

24 A Could be, sir.

25 Q OK. The arrests took place in the safe house in

7533

1 the early morning hours of June 24, 1993, is that right?

2 A Yes, sir.

3 Q So you knew Mohammed the Spanish about four days
4 between when you first met him and when he was arrested, is
5 that right?

6 A According to the tapes that way, yes, sir.

7 Q During those four days you spent a fair amount of
8 time with him, didn't you?

9 A Yes, sir.

10 Q You were in your car a lot, is that right?

11 A Yes, sir.

12 Q You were in this long conversation in Siddig
13 Ali's apartment that we are about to go into, is that right?

14 A Yes, sir.

15 Q And in the safe house several times?

16 A Yes, sir.

17 Q A few times, is that right?

18 A Yes, sir.

19 Q How smart do you think he is?

20 MR. McCARTHY: Objection.

21 MR. SERRA: May we approach, your Honor, Rule
22 701.

23 THE COURT: The objection is overruled. Do you
24 still want to approach?

25 MR. SERRA: No, sir.

7534

1 Q Mr. Salem, how smart do you think Mohammed the
2 Spanish is?

3 A Smart.

4 Q You do?

5 A Pardon me?

6 Q How smart do you think he is, how intelligent?

7 A Smart.

8 Q You think so?

9 A Yes.

10 Q How does "stupid, stupid, stupid, stupid" sound
11 as a description for him?

12 A Well, stupid the way it's being said means not he
13 is retarded. Sometimes I get mad at somebody and I say,
14 "You are stupid." It doesn't mean that he is retarded, sir.

15 Q OK.

16 A But it is a way of giving somebody hard time,
17 sir.

18 THE COURT: Mr. Serra, could you move the
19 microphone a little bit closer. Thank you.

20 Q In other words, what you are saying, Mr. Salem,
21 is you might call him to his face stupid, but that doesn't
22 mean you really think he's stupid, is that what you are
23 saying?

24 A Yes, sir.

25 Q You testified on your direct examination that

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1 Mohammed the Spanish wound up supplying you with a gun,
2 which is in evidence, is that right?

3 A Yes, sir.

4 Q You made more than one trip out to New Jersey to
5 pick that up, didn't you?

6 A Yes, sir.

7 Q You made two, as a matter of fact, is that right?

8 A Yes, sir.

9 Q The first time you went out there, you and Siddig
10 had made arrangements with Mohammed the Spanish to pick it
11 up in New Jersey, is that right?

12 A Yes, sir.

13 Q Then he was nowhere to be found, is that correct?

14 A Yes, sir.

15 Q You went out to his house, you looked around, you
16 beeped him, you stayed there for a while and he wasn't
17 around, isn't that right?

18 A No, sir.

19 Q Well, you had a conversation on tape with Siddig
20 Ali about that, didn't you?

21 A I did not go to his house. Mr. Siddig and
22 Mr. Amir Abdelgani, they went, and they left me in a
23 different place, sir.

24 Q OK. You drove them somewhere near his house;
25 they went to his house; you stayed in the car, is that

7536

1 right?

2 A It was two cars, sir.

3 Q You stayed in a car, is that correct?

4 A Yes, sir.

5 Q And then they looked around, they beeped him and
6 they couldn't find him, is that right?

7 A That's what they told me when they came back,
8 sir.

9 Q You and Siddig Ali had a conversation about this,
10 didn't you?

11 A Yes, sir.

12 MR. SERRA: Your Honor, CM61, in the exhibit
13 books starting at page 2.

14 MR. McCARTHY: Your Honor, I think we have a
15 problem for a moment.

16 MR. SERRA: Your Honor, this is a portion of
17 CM61, which I believe the government will stipulate was
18 recorded on June 22, 1993.

19 MR. McCARTHY: That is stipulated, your Honor.

20 MR. SERRA: It is starting from the beginning
21 behind the tab CM61 in the jury's book, and for my
22 colleagues, unfortunately, I do not recall the page in the
23 full transcript.

24 MR. McCARTHY: That is page 2.

25 MR. SERRA: Thank you. I am told it is page 2 in

7537

1 the full transcript.

2 (Audiotape played)

3 Q Do you recall that conversation, Mr. Salem?

4 A Yes, sir.

5 Q You said "shit" in English, is that right?

6 A Yes, sir.

7 Q And then you said, "habi, habi, habi, habi," is
8 that right?

9 A Yes, sir.

10 Q That is Arabic for stupid, isn't it?

11 A Yes, sir.

12 Q You said it four times, didn't you?

13 A I'm not sure. Four or three, yes, sir.

14 Q And Mohammed the Spanish wasn't there during this
15 conversation, was he?

16 A No, sir.

17 Q That was the whole problem, that he wasn't there,
18 right?

19 A Yes, sir.

20 Q So you weren't talking to him to his face and
21 saying "stupid" in anger to him, were you?

22 A No, sir.

23 Q Let's continue, please, with this segment of the
24 conversation.

25 THE COURT: Mr. Serra, could you come to a

7538

1 convenient break point in the next five minutes or so.

2 MR. SERRA: Your Honor, I would like to finish
3 this segment if I could and then we will --

4 THE COURT: Fine.

5 MR. SERRA: OK.

6 A That is CM what, sir, please?

7 Q That is CM61, playing from right at the point
8 where we left off, which was in the binder on page 3. I'm
9 sorry. Page 2. It is so small I can't see it.

10 (Audiotape played)

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1 BY MR. SERRA:

2 Q Mr. Salem, the last thing that was just said on
3 that tape is you saying what would be translated literally
4 into English as destroy the house of his stupidity, is that
5 correct?

6 A Yes, sir.

7 Q In the transcript it's darn his stupidity. It
8 loses something in translation, doesn't it?

9 A It's not the same way it's meant to be said, sir.

10 Q But the last thing that you said was destroy the
11 house of his stupidity, is that correct?

12 A Literally, yes, sir.

13 (Continued on next page)

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1 MR. SERRA: Your Honor, this would be a good
2 point.

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

7 (Jury excused)

8 (Witness excused)

9 MR. BERNSTEIN: Your Honor, I have an objection
10 to make which refers to items that are being given to the
11 jury, which items are not in evidence and which are not
12 admissible under 801(d)(2)(E). Specifically what I am
13 referring to is that it seems that the jurors are now
14 reading some of the personal comments made by Mr. Salem to
15 himself and/or to agents to whom he is talking by telephone.
16 Those are not admissible under 801(d)(2)(E). They certainly
17 are proper statements to be used for purposes of impeachment
18 but they are not admissible, and for the jurors to have
19 access to them, I think, is not something that should be
20 had. We don't have finalized sets of transcripts and the
21 lawyers for the government have made plain that any of those
22 items that exist, footnotes and headnotes and intervening
23 items, are not admissible. So I am raising that objection
24 now.

25 MR. SERRA: Your Honor, if that was directed to

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1 me, I apologize to Mr. Bernstein.

2 THE COURT: It was directed to me.

3 MR. BERNSTEIN: It's only because I don't know if
4 other people are about to do similar things.

5 THE COURT: Mr. Serra, I believe, is the last --
6 Mr. Nooter is. I apologize.

7 MR. NOOTER: If it helps Mr. Bernstein, I think
8 the one particular area that he told me about I will not be
9 putting in.

10 THE COURT: There was only one segment that did
11 that.

12 MR. BERNSTEIN: I understand.

13 THE COURT: What remedy do you want?

14 MR. BERNSTEIN: I don't know that there is a
15 remedy. Certain things pass under the bridge and there is
16 nothing to do about them.

17 THE COURT: The remedy is to not do it in the
18 future.

19 MR. BERNSTEIN: I guess so. Forewarned.

20 MR. SERRA: Your Honor, I needed that for the
21 purpose of establishing what that conversation was about.
22 As it turned out Mr. Salem agreed. But that is why it was
23 there.

24 THE COURT: In any event, I don't think it is
25 terribly harmful. See you in a couple of minutes.

7542

1 MR. JACOBS: Your Honor, did your Honor have a
2 chance to read the government's letter of today, April 11?

3 THE COURT: Guess not.

4 MR. JACOBS: It concerns some of the World Trade
5 Center matters. If your Honor would have a chance maybe
6 later today -- hold off?

7 THE COURT: Another uncoordinated --

8 MS. STEWART: Precipitous.

9 THE COURT: I will read the letter anyway, but
10 that's all I will do. See you later.

11 (Recess)

12 (Witness resumed)

13 (Jury present)

14 THE COURT: Go ahead, Mr. Serra.

15 MR. SERRA: Thank you, your Honor.

16 (Continued on next page)

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1 BY MR. SERRA:

2 Q Mr. Salem, the acoustics in the safe house were
3 pretty bad, weren't they?

4 A I beg your pardon.

5 Q Do you know the English word acoustics? I will
6 rephrase it.

7 THE COURT: Speaking of acoustics, Mr. Serra,
8 would you move the microphone, please.

9 MR. SERRA: The acoustics in that glass booth are
10 pretty bad.

11 Q Mr. Salem, it was difficult to record
12 conversations in the safe house, isn't that right?

13 A Yes.

14 Q The recordings which came out of the safe house
15 are hard to understand, is that right?

16 A Some of it, yes, sir.

17 Q The safe house is basically a concrete block
18 garage, is that right?

19 A Yes, sir.

20 Q With bare concrete walls, correct?

21 A Yes, sir.

22 Q So the sound was very difficult in the safe
23 house, correct?

24 A In some conversations, yes, sir.

25 Q Mohammed the Spanish, getting back to him, there

7544

1 was a beeper code which other counsel have referred to in
2 terms of when people would enter the safe house, that they
3 were supposed to use, is that right?

4 A Yes, sir.

5 Q The beeper code was, each person had a number, is
6 that right?

7 A Yes, sir.

8 Q 1 through 6 or 1 through 8 or whatever it was,
9 right?

10 A Yes, sir.

11 Q And then they were to put that number in, and
12 then a second number which would indicate they were coming
13 into the safe house, or a third number which would indicate
14 they weren't coming into the safe house, is that right?

15 A Yes, sir.

16 Q In other words, if I were number 1 and the code
17 for coming in was 1,000 and I were coming into the safe
18 house, I would put in your beeper 1, 1,000, correct?

19 A Yes, sir.

20 Q Not the theory of relativity, is it?

21 A I beg your pardon.

22 THE COURT: Sustained.

23 Q Mohammed the Spanish never got that, did he? He
24 never once used that code successfully, did he?

25 A I am not sure. I don't recall exactly, sir.

7545

1 Q The very last night -- you saw parts of the
2 videos from the last night, is that right?

3 A Yes, sir.

4 Q Up until the last night, the night of the
5 arrests, he didn't get that beeper code, did he?

6 A I am not sure, sir.

7 Q In fact, that last night when he came into the
8 safe house, you let him in, didn't you?

9 A Probably, sir.

10 Q You didn't know he was coming, did you?

11 A I believe I do know that he is coming, sir.

12 Q You said who is it, do you recall that?

13 A I don't know who is knocking, sir.

14 Q And he said Mohammed and you said Mohammed who,
15 is that right? Withdrawn.

16 You said who is it, he said me, and you said me
17 who, isn't that right?

18 A Could be, sir.

19 Q And isn't it true, Mr. Salem, that the first
20 conversation between Mohammed the Spanish and you and Siddig
21 Ali that last night in the safe house was Siddig yelling at
22 him about why he didn't use the beeper?

23 A Yes, I believe something that effect happened,
24 sir.

25 Q Earlier in the safe house, you had a conversation

7546

1 about where -- withdrawn. You had several conversations
2 about where you were going to put the oil, the heating oil,
3 is that correct?

4 A Where?

5 Q Yes, where you were going to store is it.

6 A Probably, sir.

7 Q Do you remember a conversation, in which Mohammed
8 the Spanish was part, CM 52, in which you were discussing
9 putting it in boilers in buildings? Do you remember that
10 conversation?

11 A No, that didn't happen, sir.

12 Q Do you recall during the course of a conversation
13 about where you were going to put the heating oil, where you
14 were going to store it, spelling the word oil for Mohammed
15 the Spanish, O-I-L? Do you remember that?

16 A No, I don't, sir.

17 MR. SERRA: Let's listen. Your Honor, this is CM
18 52. It is not in the excerpt of CM 52 which is in the
19 binder. It is very brief and it is in English. Mr.
20 McCarthy, it is page 29 of the CM 52 transcript.

21 (Tape played)

22 Q You spelled out the word oil, O-I-L, for
23 Mohammed.

24 A I didn't hear anything, sir.

25 MR. SERRA: In that case, your Honor, from page

7547

1 29.

2 Q Mr. Salem, did you have this conversation -- your
3 Honor, I believe the government will stipulate that CM 52 is
4 June 19, 1993. Reading from page 29 in the middle of the
5 page.

6 THE COURT: First of all, there has been a
7 request for a stipulation that CM 52 is June 19.

8 MR. McCARTHY: Yes, your Honor, I do stipulate.

9 THE COURT: All right.

10 MR. SERRA: I am sorry, Judge.

11 Q It isn't in the binder you have before you,
12 Mr. Salem, but the conversation was in English.

13 MR. McCARTHY: Objection.

14 MR. SERRA: I am sorry. I withdraw that.

15 MR. McCARTHY: I object to the line of
16 questioning based on the initial questioning.

17 MR. SERRA: Your Honor, I will pose another
18 initial question.

19 Q You at one point when you were discussing where
20 to store the heating oil spelled out the word oil for
21 Mohammed the Spanish. That is the pending question.

22 THE COURT: The question is do you recall that, I
23 guess.

24 A No, sir, I don't.

25 MR. SERRA: Page 29 --

7548

1 THE COURT: Can you show him the spot in the
2 transcript?

3 MR. SERRA: Sure. Your Honor, for the record, I
4 am showing Mr. Salem CM 52, page 29, and, Mr. Salem, there
5 is a highlighted portion of that.

6 (Pause)

7 A Yes, sir.

8 Q Mr. Salem, the conversation with Mr. Alvarez,
9 Mohammed the Spanish, you spelled out the word oil for him,
10 didn't you?

11 A I was spelling word oil which is written on the
12 cap to the boiler --

13 Q You were discussing --

14 MR. McCARTHY: Objection.

15 THE COURT: Yes, let him finish his answer.

16 Q Please continue.

17 A I was spelling that there is a word oil written
18 on a cap on the pipe where you pour gas into the boiler,
19 sir.

20 Q You were explaining that the word oil is written
21 on the boiler, is that right?

22 A It was written on the cap of the pipe which is
23 going to the boiler, sir.

24 Q It was written on a part of the boiler, right?

25 A No, sir.

7549

1 THE COURT: It's not a boiler. It is a cap on a
2 pipe.

3 Q It was written on a cap going to the boiler, is
4 that right?

5 A Yes, sir.

6 Q And you spelled out O-I-L, is that correct?

7 A Yes, sir.

8 Q It occurred frequently, Mr. Salem, didn't it,
9 that people would make fun of Mohammed the Spanish?

10 MR. McCARTHY: Objection.

11 THE COURT: I will allow it. Go ahead.

12 A No, sir.

13 Q In fact it happened in front of his face on some
14 occasions when people were doing it in Arabic, isn't that
15 right?

16 A I believe there is a time when somebody is
17 speaking Arabic in front of him and somebody else said shame
18 on you, speak in English.

19 Q And they were making fun of him, weren't they?

20 A I wouldn't take it that, sir.

21 Q Mr. Salem, we were at the point in CM 48, do you
22 recall, before the break we were discussing that Mohammed
23 the Spanish came in and prayers started almost immediately?
24 Do you recall that?

25 A Yes, sir.

7550

1 MR. SERRA: Your Honor, with the court's
2 permission I would play from the part where prayers leave
3 off in CM 48, which is page 77. It is a conversation which
4 is 95 percent in English. I will be playing from the bottom
5 of page 77, starting with Mr. Salem saying it is hot.

6 Q Mr. Salem, once again, this is the first time
7 that you met Mohammed the Spanish, is that right?

8 A In Mr. Siddig's house, yes, sir.

9 MR. SERRA: CM 48, page 77.

10 (Tape played)

11 Q Mr. Salem, do you remember that conversation?

12 A Yes, sir.

13 Q The word that was used in Arabic, Fi sabil
14 Allah -- I am probably killing the pronunciation -- that
15 means for the sake of Allah, right?

16 A Yes, sir.

17 Q It is one of those words which every Muslim will
18 know in Arabic, is that right?

19 A Yes, sir.

20 Q Short of like insha Allah, Al Hamdulillah?

21 A Yes, sir.

22 Q Mohammed the Spanish said it five times, right?

23 A I didn't count it, sir.

24 MR. SERRA: Let's continue, please. Your Honor,
25 I will be doing this. I will be playing excerpts from the

7551

1 conversation, pausing and asking questions.

2 (Tape played)

3 Q Mohammed the Spanish, Mr. Salem, asked you what
4 you do, is that right?

5 A Yes, sir.

6 Q And you told him you were a jeweler?

7 A Yes, sir.

8 Q And then you told him how you had been in the
9 army and the Green Berets for 18 years, is that right?

10 A Yes, sir.

11 MR. SERRA: Your Honor, I am not sure if all the
12 jurors are with us. We are on page 79 of CM 48, towards the
13 bottom.

14 (Tape played)

15 Q Please take off the phones for a moment.

16 Mr. Salem, at that point Mohammed the Spanish
17 asks Siddig what he was doing, is that right?

18 A I didn't hear it, sir. It wasn't clear to me.

19 Q Can you hear through the phones?

20 A I hear, but, I am sorry, his accent is a little
21 heavy, sir, so I didn't pick it up here.

22 MR. SERRA: Your Honor, will the government
23 stipulate that the transcript reads at that point Alvarez,
24 Now, Siddig, what are you doing for yourself?

25 MR. McCARTHY: Yes.

7552

1 Q Did you hear Siddig's answer, Mr. Salem?

2 A Yes, but I did not distinguish it as well, sir.

3 MR. SERRA: Will the government stipulate that
4 Siddig Ali said, right now, Mohammed, my most concern at
5 this very moment is to get out of this country that what I
6 will be doing for myself?

7 MR. McCARTHY: Yes, your Honor.

8 Q Did you hear me just read it, Mr. Salem?

9 A Yes, sir.

10 Q In fact Siddig had been spending most of his time
11 with you planning blowing things up, is that right?

12 A Yes, sir.

13 Q And what he told Mohammed the Spanish is that his
14 main concern is to get out of the country, is that right?

15 A That's not right, sir.

16 MR. SERRA: Continue, please.

17 (Tape played)

18 MS. STEWART: Your Honor, your Honor, we have a
19 problem with the translating here. We are having a problem
20 with the translation because we don't have a copy of the
21 transcript. The sheik's translator can't translate and
22 can't hear it. Do we have an extra copy?

23 Thank you, your Honor.

24 (Tape continued)

25 Q Mr. Salem, you just heard Mohammed the Spanish

7553

1 asking Amir what he does, is that right?

2 A No, sir.

3 Q You didn't?

4 A I didn't distinguish that question, sir. He may
5 said it.

6 MR. SERRA: Will the government stipulate that I
7 am reading accurately from page 82.

8 Alvarez: How are you doing?

9 Amir Abdelgani: Thanks to God.

10 Siddig Ali: Oh God.

11 Alvarez: What are you doing for yourself?

12 Amir Abdelgani: Driving a livery.

13 MR. McCARTHY: We stipulate.

14 Q Mr. Salem, is the volume too low on your
15 headphones or are you having trouble --

16 A No, it's just difficult to pick up what is being
17 said on this segment, sir.

18 Q In the future maybe we will turn up the volume a
19 little bit.

20 Q Mr. Salem, it is fair to say that what is going
21 on here are introductions, is that right?

22 A No --

23 Q People meeting each other and asking what they
24 do.

25 A No, sir.

7554

1 MR. McCARTHY: Objection.

2 THE COURT: Sustained.

3 Q People are drinking, is that right -- not
4 alcohol, obviously. People are drinking iced tea or
5 something, is that right?

6 A Something to that effect, yes.

7 Q As a matter of fact, the clanking sounds that you
8 hear on that tape are ice cubes in glasses, aren't they?

9 A No, sir.

10 Q What are they?

11 A Spoon in glass, sir.

12 Q Spoons in glasses, all right.

13 A Yes.

14 MR. SERRA: Your Honor, it is my intention, with
15 the court's permission, to skip to page 84. We have to cue
16 the other side of the tape. Perhaps the jury and the
17 witness, if he wishes, can read the bottom half of page 84,
18 page 85, top half of 86. I will be picking up with the tape
19 on page 86 -- I am sorry, on 84, rather. Let me start that
20 over, Judge. I think I got the pages wrong. We were on
21 page 82. I will be skipping to page 84 because there is
22 quiet time on the tape, where I will be picking up with the
23 attribution to Mr. Alvarez, do you know a mosque called
24 Siddig Masjid, a third of the way down page 84. While we
25 are cuing the tape, if the jury want to read the intervening

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1 two pages.

2 A Could you just point it to me, please, sir.

3 Q Sure.

4 (Pause)

5 (Continued on next page)

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1 MR. SERRA: Your Honor, all parties are prepared.
2 We are prepared to pick up on page 84, a third of the way
3 down the page, with that attribution to Mr. Alvarez where he
4 says: Do you know a mosque?

5 (Audiotape played)

6 Q Mr. Salem, a couple of questions: Do you
7 recognize that last excerpt as something we played earlier
8 this morning? Is that right?

9 A Yes, sir.

10 Q That was one of the conversations where Mohammed
11 the Spanish asked you to sweep his apartment and phone for
12 bugs, is that right?

13 A I believe it was one of these occasions, yes,
14 sir.

15 Q Do you know of an Abu Bakr mosque in Jersey City?

16 A Yes, sir.

17 Q There is one in Jersey City also as well as in
18 Brooklyn?

19 A I'm sorry. In Brooklyn, sir.

20 Q Abu Bakr is in Brooklyn, is that right?

21 A Yes, sir.

22 Q Not in Jersey City?

23 A The one I know, Abu Bakr Siddique, is in
24 Brooklyn, sir.

25 Q Let's continue. Before we do that, there is a

7557

1 mixture from time to time of Arabic and English in this
2 conversation, is that correct?

3 A Yes, sir.

4 (Audiotape played)

5 Q A couple of questions, Mr. Salem.

6 A Yes, sir.

7 Q I'm sorry. Mr. Salem, at this point, Siddig Ali
8 is talking directly to Mohammed the Spanish, is that right?

9 A Yes, sir.

10 Q And he lowered his voice, is that right?

11 A Yes, sir.

12 MR. SERRA: Let's continue, please.

13 Your Honor, would the court ask now that we have
14 had it playing a while if the jurors are all with us.

15 THE COURT: We are on page 89?

16 MR. SERRA: I believe that's correct, your Honor.

17 MR. McCARTHY: The top of 89.

18 MR. SERRA: The top of the page.

19 THE COURT: OK. The top of page 89.

20 MR. SERRA: CM48, the top of page 89. OK.

21 (Audiotape played)

22 Q Mr. Salem --

23 A Yes.

24 Q -- when Siddig Ali said: We already studied it,
25 you were one of the -- did you understand him to mean that

7558

1 you were one of the people who already studied it?

2 A I am?

3 Q Yes.

4 A Yes, sir.

5 MR. SERRA: Let's continue, please.

6 (Audiotape played)

7 Q Mr. Salem, a couple of questions: That was you
8 and Siddig who just had a brief exchange in Arabic, is that
9 right?

10 A Yes, sir.

11 Q What were you talking about?

12 A Something I smelled.

13 Q As in food?

14 A I'm not sure, sir.

15 MR. SERRA: Let's continue, please.

16 MS. AMSTERDAM: I'm sorry, your Honor, I didn't
17 hear the last answer.

18 THE COURT: He said he was not sure.

19 MS. AMSTERDAM: I'm sorry. Thank you.

20 (Audiotape played)

21 Q Mr. Salem --

22 A Yes, sir.

23 Q -- Siddig Ali just said something in Arabic,
24 didn't he?

25 A Yes, sir.

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1 Q Isn't it true that what he said had to do with
2 his summary of what Mohammed the Spanish was saying, isn't
3 that right?

4 A I didn't pick it up, sir.

5 Q You couldn't make out what Siddig said?

6 A No, sir.

7 MR. SERRA: Your Honor, will the government
8 stipulate that the transcript reads -- it is page 93 --
9 Siddig Ali: Do you understand what he is saying? He is
10 saying, for example, he can't go and strike them, for
11 instance, or anything unless they come and attack him.

12 MR. McCARTHY: That passage is read accurately, I
13 stipulate.

14 Q In other words, Mr. Salem, Siddig Ali accurately
15 summarized your understanding of what Mohammed the Spanish
16 just said, didn't he?

17 MR. McCARTHY: Objection to form.

18 Q I will withdraw it and rephrase it.

19 Did you understand, Mr. Salem, Mohammed the
20 Spanish to be saying that Muslims in America could defend
21 themselves if attacked?

22 A Yes, sir.

23 Q That is what he said, right? "If we are
24 attacked, we can defend ourselves," is that right?

25 A If they are attacked, yes, sir.

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1 Q If we, if Muslims in America are attacked, we can
2 defend ourselves, that's what he said, right?

3 A Yes, on the tape, yes.

4 Q He said: If they write about us, we write about
5 them. If they kill us, we kill them, is that right?

6 A Yes, sir.

7 Q And Siddig Ali in Arabic just then accurately
8 summarized that, didn't he?

9 A I don't know, sir. I couldn't understand what's
10 being said, sir.

11 MR. SERRA: Let's play a few more lines, please.

12 THE COURT: Could you come to a convenient break
13 point, Mr. Serra?

14 MR. SERRA: A couple of minutes, your Honor,
15 please.

16 THE COURT: A "couple" being five?

17 MR. SERRA: Pardon me, sir?

18 THE COURT: A "couple" being five?

19 MR. SERRA: Perhaps.

20 (Audiotape played)

21 MR. SERRA: No, before that.

22 (Audiotape played)

23 Q Mr. Salem --

24 A Yes, sir.

25 Q -- after Siddig Ali in Arabic said that Mohammed

7561

1 the Spanish said that Muslims in America can defend
2 ourselves if attacked, you said: No, that's not what he
3 meant. Isn't that right?

4 A I would like to listen to it again, please, if I
5 may, sir.

6 Q By all means.

7 (Audiocassette played)

8 A I said that's not what he meant.

9 Q That is what you said, is that right?

10 A Yes, sir.

11 Q But, in fact, Siddig Ali had accurately said your
12 understanding of what Mohammed the Spanish meant, hadn't he?

13 A No, sir. You see, I couldn't understand some of
14 Mr. Mohammed's English, sir. So I wouldn't say that I
15 understood that Mr. Siddig explained exactly what I
16 understood from Mr. Mohammed.

17 Q Could you understand it, Mr. Salem, when Mohammed
18 the Spanish said, from page 93: "We do whatever they do to
19 us here. In the same way that they do to us, here we do it
20 to them back. You understand if you come to my house and
21 you break my house, I want to go to your house and I am
22 going to break your house. You know what I mean? If you're
23 going to kill my brother, I am going to kill your brother to
24 see how you feel.

25 Did you have any problem understanding that, sir?

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1 A Some of it, yes, sir.

2 Q What didn't you understand, Mr. Salem. Point to
3 a word -- withdrawn.

4 A That's --

5 MR. SERRA: I withdraw it, your Honor. This
6 would be a good point to break.

7 THE COURT: Ladies and gentlemen, we are going to
8 break for lunch. Please leave your notes and other
9 materials behind. Please don't discuss the case and we will
10 resume at 2 o'clock.

11 (The jury was excused)

12 THE COURT: You may step down.

13 (Witness excused)

14 (Luncheon recess)

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AFTERNOON SESSION

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2:05 p.m.

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(In open court; jury not present)

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MR. LAVINE: There is a stipulation that I have with Mr. McCarthy. It concerns portions of transcripts that I read yesterday. If this is an appropriate time, I would put it on the record right now. It should take about one minute.

9

THE COURT: A stipulation for me or for the jury?

10

11

MR. LAVINE: For the jury, your Honor. For you as well, but for the jury also.

12

13

THE COURT: Why don't we wait until they come out.

14

MR. LAVINE: Yes.

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EMAD SALEM, resumed.

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(Jury present)

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THE COURT: Good afternoon, ladies and gentlemen.

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JURORS: Good afternoon.

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THE COURT: Mr. Lavine has a stipulation, that is, an agreement, with the government worked out regarding, as I understand it, some transcripts that he read from during the course of his examination yesterday. He is going to read that agreement to you, and you should take whatever facts are contained in it as if they had been proved and give them whatever weight you think they deserve.

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1 Go ahead.

2 MR. LAVINE: Thank you, your Honor. This is a
3 stipulation with the government with respect to the accuracy
4 of two portions of transcript which I read to Mr. Salem
5 yesterday during the course of the cross-examination,
6 towards the very end of the cross-examination. At page 7462
7 of the record, I read him portions of V5-V8, and the
8 portions, very short, are as follows:

9 Amir says: Maybe Mohammed is late. We should
10 rely on God and go, that's it.

11 Siddig says: That's it, drop him.

12 Amir says: Unintelligible, drop him.

13 Siddig says: Enough, enough, Mohammed.

14 Amir says: That's it.

15 Then Siddig says: Because yesterday I came to
16 know that he was speaking with this man in the presence of
17 El Fadil, his cousin. His cousin has nothing to do with
18 that matter.

19 The stipulation is that when I read that, I read
20 accurately from the transcript which had been provided. The
21 second portion begins at page 7462 of our record and
22 continues briefly onto 7463, and it is as follows.

23 Amir says: It is better if one finishes in five
24 or six days.

25 Siddig claps his hands and says: I have to

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1 leave.

2 Amir says: But there is another month here.

3 Siddig then says: No, no, no. Let us account
4 for the people who have knowledge of this.

5 You, referring to Mr. Salem, say: Who?

6 And Siddig then says: El Fadil.

7 Amir says: He's not going to know.

8 The stipulation is that I read accurately from
9 the transcript of V5-V8 when I read those portions to
10 Mr. Salem.

11 Thank you, Mr. Serra, for letting me interrupt
12 your examination. Thank you, your Honor.

13 THE COURT: Thank you, Mr. Lavine.

14 MR. SERRA: May I inquire, your Honor?

15 THE COURT: Go ahead.

16 (Continued on next page)

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1 CROSS-EXAMINATION continued

2 BY MR. SERRA:

3 Q Good afternoon, Mr. Salem.

4 A Good afternoon, sir.

5 Q Mr. Salem, this morning when we were playing the
6 part of CM 48 which you heard as you were sitting there, you
7 heard there was a time when Fares Khallafalla came into
8 Siddig's house, is that right, and you greeted him?

9 A That is right, sir.

10 Q Sir, do you remember that?

11 A I don't know which part. We heard so many parts,
12 sir.

13 Q Do you remember him coming into Siddig's
14 apartment at some point during the day? As you sit there
15 now, do you remember him coming in?

16 A I remember Mr. Amir Abdelgani, and I am not sure
17 if Mr. Khallafalla was.

18 Q When Mr. Khallafalla came in, do you remember him
19 asking you if the rest of you had already prayed?

20 A Yes, sir.

21 Q And you had already prayed, is that right?

22 A I don't recall, sir.

23 Q Do you recall during the portion of the
24 conversation we are playing now, do you recall if
25 Mr. Khallafalla was himself praying?

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1 A No, sir.

2 MR. SERRA: Your Honor, where we left off before
3 lunch was page 93 of the CM 48 transcript. Where the tape
4 is cued now is a third of the way down the page, Mr. Alvarez
5 speaking, we do whatever they do.

6 THE COURT: You played this already, Mr. Serra.

7 MR. SERRA: Your Honor, I backed up two
8 attributions to get the context of the conversation.

9 THE COURT: Go ahead.

10 (Tape played)

11 Q Mr. Salem.

12 A Yes, sir.

13 Q It was you who asked Mr. Alvarez, Mohammed the
14 Spanish, if he understood that you are saying you cannot
15 attack physically unless you are being attacked physically.
16 That was you, sir, is that right?

17 A Yes, sir.

18 Q And when you say he, you were referring to Siddig
19 Ali, is that right?

20 A Yes, sir.

21 Q In that Arabic passage that we discussed before
22 lunch, is that correct, sir?

23 A Yes, sir.

24 Q And the answer to that question that you asked
25 Mohammed the Spanish, he said sure, is that right?

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1 A Yes, sir.

2 Q And then you said to him, that means brother
3 Siddig is saying if there is a physical attack here, you
4 will participate or not. Do you remember that, sir?

5 A Yes, sir.

6 Q You phrased that question very carefully, didn't
7 you, Mr. Salem?

8 A I want understand if he will participate or not,
9 sir.

10 Q Mr. Salem, would you turn back in the transcript
11 to a portion we listened to this morning, two pages back,
12 the top of page 92.

13 A Yes, sir.

14 Q Do you see where Siddig Ali says: Three times
15 but they are not killing us here? Do you see that, sir?

16 A Yes, sir.

17 Q Do you recall that from the conversation, sir?

18 A No, sir.

19 Q You don't, all right.

20 Then what you asked minutes later, you asked
21 Mohammed the Spanish, that means brother Siddig is saying if
22 there is a physical attack here you will participate or not.
23 Is that right?

24 A That was my question, sir.

25 Q Isn't it true, Mr. Salem, that you intended

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1 Mohammed the Spanish to understand that question as being
2 what Siddig Ali had asked him if we are physically attacked
3 here?

4 MR. McCARTHY: Objection to form.

5 MR. SERRA: Your Honor, I asked his intention.

6 THE COURT: I will allow it. Go ahead.

7 Q Isn't that true, sir?

8 A Which is, sir?

9 Q Isn't it true, Mr. Salem, that when you said to
10 Mohammed the Spanish if there is a physical attack here you
11 intended for him to understand that to mean if we Muslims
12 are physically attacked here? Isn't that right?

13 A That's not right, sir.

14 Q Despite what Siddig Ali had said two minutes
15 before, your testimony is that is not what you intend?

16 MR. McCARTHY: Objection to form.

17 THE COURT: Sustained.

18 Q Mr. Salem, you understood what Mohammed the
19 Spanish said about when he felt as a Muslim in America force
20 is justified. You understood that perfectly well, didn't
21 you, sir?

22 MR. McCARTHY: Objection, relevance.

23 THE COURT: I will allow it. Go ahead.

24 Q Do you understand my question, Mr. Salem?

25 A No, sir.

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1 Q You understood what Mohammed the Spanish said
2 about when as a Muslim in America he believed force was
3 justified. You understood those times when he said that
4 perfectly well, didn't you, sir?

5 A I am sorry. I am not getting the question.

6 Q You understood Mohammed the Spanish to say three
7 times that he only felt he could use force if he, Muslims in
8 America were attacked physically.

9 MR. McCARTHY: Objection.

10 THE COURT: Did you understand that that was what
11 he was saying?

12 THE WITNESS: No, sir.

13 Q And when you said to him brother Siddig is saying
14 if there is a physical attack here what you intended him to
15 understand is if he is attacked, if he is attacked, isn't
16 that right?

17 A No, sir.

18 MR. SERRA: Your Honor, may we continue playing?

19 THE COURT: Yes.

20 (Tape played)

21 Q Couple of questions, Mr. Salem.

22 A Yes.

23 Q I was just waiting for you to take your
24 headphones off. I don't know if you heard me.

25 You just heard Mohammed the Spanish say I want to

7571

1 be with you guys, is that right?

2 A Yes, sir.

3 Q He said those sorts of things a lot, didn't he?

4 A Yes, sir.

5 Q I want to be with you, I am glad to be with you,
6 I am very glad to be with you, I want to join with you,
7 anything I can do -- he said those things, didn't he?

8 A He may said it, sir.

9 MR. SERRA: Your Honor, if we may continue.

10 (Tape played)

11 Q Couple of questions, Mr. Salem.

12 A Yes, sir.

13 Q Siddig Ali was speaking about something called
14 shoura just then, is that right?

15 A Yes, sir.

16 Q And that is an Islamic concept, isn't it?

17 A What?

18 Q That is an Islamic idea basically meaning
19 consultation, is that correct?

20 A Correct.

21 Q Do you recall this morning we played an earlier
22 part of this tape where Mohammed the Spanish said to Siddig
23 Ali tell me what you are doing and we will talk about it and
24 study it and Siddig Ali said we already studied it? Do you
25 recall that, sir?

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1 A Yes, sir.

2 Q It is the same Siddig Ali, isn't it, who is
3 telling Mohammed the Spanish don't do anything without
4 telling us first?

5 A Yes, sir.

6 MR. SERRA: Let's continue, please.

7 (Tape played)

8 Q Couple of questions, Mr. Salem.

9 A Yes, sir.

10 Q When you say a special place for our meetings, it
11 is a place out of New York, you are talking about the safe
12 house at that point, is that right?

13 A Yes, sir.

14 Q And you told Mohammed the Spanish, don't ask us
15 now what's going on, we will tell you at the safe house, is
16 that right?

17 A Yes, we will talk about these things at the safe
18 house, sir.

19 Q You said we will discuss what is the real thing
20 we are going to do. Isn't that what you said?

21 A Yes, sir.

22 Q And you would do that at the safe house, is that
23 what you are telling him?

24 A Yes, sir.

25 Q You also said, speaking of Siddig Ali, we chose

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1 him to be the emir for this group. Is that right?

2 A Yes, sir.

3 Q Mr. Salem, when you were testifying in answer to
4 Ms. Amsterdam's questions a couple of days ago, you said
5 that other people -- withdrawn. You told Ms. Amsterdam you
6 had nothing to do with choosing Siddig Ali to be the emir,
7 is that right?

8 A No, I did not choose him, sir.

9 Q You had nothing to do with choosing him, right?
10 That's what you told Ms. Amsterdam.

11 A Yes.

12 Q And you just told Mohammed the Spanish --

13 MR. McCARTHY: Objection.

14 MR. SERRA: I will rephrase it, your Honor.

15 THE COURT: Go ahead.

16 Q Didn't you just tell Mohammed the Spanish, didn't
17 we just listen to you tell Mohammed the Spanish, we chose
18 Siddig to be the emir?

19 A Yes, I said it, sir.

20 Q You understand that the English word we includes
21 the person who is speaking, don't you?

22 A Yes, sir.

23 MR. SERRA: Let's continue, please.

24 THE WITNESS: Give me one second, because I keep
25 getting lost here.

7574

1 Q Mr. Salem, let me know when you are ready.

2 A Yes, sir.

3 MR. SERRA: Your Honor, and if any of the jurors,
4 because I am not looking over at them constantly, if they
5 could let us know, too.

6 (Tape played)

7 Q Mr. Salem, do you remember saying just then to
8 Mohammed the Spanish, we'll come eventually within two or
9 three days to start to some kind of practical action, the
10 practical action is a practical technical action, when it
11 comes to technical I am in charge of technical work? Do you
12 remember saying that, sir?

13 A Yes, sir.

14 Q At this point, you have heard the government
15 stipulate it was June 19, 1993. You had been talking to
16 Siddig Ali for weeks about blowing things up, hadn't you?

17 A Yes, sir.

18 Q You had been talking about blowing up the UN?

19 A Yes, sir.

20 Q You had been talking about blowing up tunnels?

21 A Yes, sir.

22 Q You had been talking about blowing up 26 Federal
23 Plaza?

24 A Yes, sir.

25 Q You had been talking about blowing up at least

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1 one bridge, is that right?

2 A Yes, sir.

3 Q And you had been talking about using all the
4 various kinds of materials to do that that we spoke about
5 this morning, is that right?

6 A Yes, sir.

7 Q When you said to Mohammed the Spanish a practical
8 technical action, did you believe, sir, that from those
9 three words he was going to understand that you and Siddig
10 Ali had been talking for weeks about blowing up all those
11 things?

12 A I don't know what's his understanding, but I
13 didn't explain to him until this point --

14 Q Did you believe, sir, that from what you just --
15 MR. McCARTHY: Objection to cutting the witness
16 off.

17 THE COURT: He answered it.

18 MR. SERRA: Your Honor, I don't want to argue the
19 point. I believe he said he didn't know.

20 THE COURT: He didn't know what his understanding
21 was.

22 MR. SERRA: I will rephrase it.

23 Q Mr. Salem, did you intend by saying practical
24 technical action that Mohammed the Spanish would understand
25 that you and Siddig Ali were planning on blowing things up?

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MR. McCARTHY: Objection, relevance.

THE COURT: Sustained.

MR. SERRA: Let's continue with the tape, please.

THE WITNESS: One second, sir.

(Tape played)

(Continued on next page)



7577

1 Q Mr. Salem --

2 A Yes, sir.

3 Q -- you were discussing just then Siddig Ali with
4 Mohammed the Spanish, and you said, "We trust him." Is that
5 right? If you want to look at the transcript, the bottom of
6 page 99, the last time you speak on page 99.

7 A Yes, sir.

8 Q You were referring to Siddig Ali and you said to
9 Mohammed the Spanish, "We trust him," is that right?

10 A Yes, sir.

11 Q Did you trust Siddig Ali?

12 A In which respect, sir?

13 Q Well, how did you mean it, sir? When you said,
14 "We trust him," what did you mean?

15 A As a leader to this group, sir.

16 Q You trust him as a leader.

17 Did you trust Siddig Ali, Mr. Salem, in any sense
18 of the word whatsoever?

19 A No, I did not, sir.

20 Q You also said to Mohammed the Spanish, "We
21 believe in him," meaning Siddig Ali, is that right?

22 A Yes, sir.

23 Q Did you believe, sir, in Siddig Ali?

24 A I didn't -- in which respect also, sir?

25 Q How did you mean it, sir?

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1 Those were your words, weren't they?

2 A As emir to this group, we believe in him, sir.

3 Q Did you, sir, believe in Siddig Ali?

4 A Personally, no, sir.

5 Q You understand, again, that the English word "we"
6 includes the speaker, who in this case is you?

7 MR. McCARTHY: Objection.

8 I withdraw the objection.

9 THE COURT: Go ahead.

10 Q Did you understand --

11 A Yes, sir.

12 Q So when you said, "We trust Siddig Ali,"
13 including yourself, "We believe in Siddig Ali," including
14 yourself, you were lying to Mohammed the Spanish, weren't
15 you?

16 A Yes, sir.

17 Q The reason that you were lying to Mohammed the
18 Spanish about whether you believed or you trusted Siddig Ali
19 is so that you could use your personal Green Beret
20 credibility with him as a member of this organization, is
21 that right?

22 A I'm sorry. I'm lost here.

23 Q You had gone through with Mohammed the Spanish
24 how you were in the Green Berets for 18 years, is that
25 right?

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1 A Yes, sir.

2 Q You said that to a lot of people, right?

3 A Yes, sir.

4 Q He was one of them?

5 A Yes, sir.

6 Q Isn't it true, Mr. Salem, that you said to
7 Mohammed the Spanish, "We trust Siddig Ali," because you
8 wanted Mohammed the Spanish to believe that you, among other
9 people, trusted Siddig Ali, isn't that right?

10 A That's what I said, yes.

11 Q That's what you wanted him to believe, that you
12 trusted him, right?

13 A I don't want him to believe anything, sir.

14 Q That is why you said, "We trust him," so that he
15 would believe that you trusted him, is that right?

16 A Sir, I have to act as one of this group. I talk
17 like they talk, sir. Otherwise they are going to find
18 another builder.

19 Q You talk like they talk? Is that what you just
20 said, Mr. Salem?

21 A Yes, sir.

22 Q Did you hear anyone else say to Mohammed the
23 Spanish, "We trust Siddig Ali"?

24 A Everybody told him we trust Siddig Ali.

25 Q It was just you who said that, wasn't it, sir?

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1 A On this tape, sir, yes.

2 MR. SERRA: Your Honor, from the point where the
3 tape stopped I -- withdrawn.

4 May I have a moment with the government.

5 (Counsel conferred off the record)

6 MR. SERRA: Your Honor, at this point we intend
7 to skip to the middle of page 104, and if the jury, or for
8 that matter Mr. Salem, wishes to read the intervening
9 English. We will pick up on page 104.

10 (Pause)

11 Q Mr. Salem, I see that you are still reading. I
12 am not going to question you about what's in between the
13 passages. So perhaps let me ask you some questions now.

14 You testified on your direct examination,
15 Mr. Salem, that -- withdrawn.

16 You were asked by Mr. McCarthy if there was
17 discussion about how the bombs were to be gotten from the
18 safe house to wherever they were going to go, is that right?

19 A Yes, sir.

20 Q And you answered stolen cars, is that right?

21 A Yes, sir.

22 Q Mr. McCarthy then asked you who did you discuss
23 stolen cars with, do you recall that question?

24 A Yes, sir.

25 Q One of the people that you mentioned was Mohammed

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1 the Spanish, is that right?

2 A Yes, sir.

3 MR. SERRA: Are we ready?

4 Your Honor, picking up in the middle of page 104.

5 I'm sorry. It's still CM48 -- we're almost done -- still

6 CM48, the middle of page 104.

7 (Audiotape played)

8 Q There is a discussion of stolen cars between
9 Siddig Ali and Mohammed the Spanish, is that right?

10 A Yes, sir.

11 Q Did you hear Siddig Ali say, speaking of getting
12 stolen cars for this purpose, it's hallal.

13 Did you hear him say that?

14 A Yes, sir.

15 Q "Hallal" means permissible under the Islamic
16 religion, under Muslim religion, is that right?

17 A Yes, sir.

18 Q You are a Muslim, is that right?

19 A Yes, sir.

20 Q Is it for any purposes permissible, is it for any
21 purposes hallal to steal cars?

22 A Absolutely not, sir.

23 Q So that was nonsense, what Siddig Ali just told
24 Mohammed the Spanish, is that right?

25 A It makes whole sense to Mr. Siddig, sir.

7582

1 Q To you, sir, and -- withdrawn.

2 To you, sir, it was nonsense, is that right?

3 A It's nonsense to steal or to kill for religious
4 reasons, sir.

5 Q OK. So Siddig Ali said it's hallal for this
6 purpose. Did you hear him say that?

7 A Yes, sir.

8 Q He didn't say: We're going to put bombs in it
9 and blow things up, is that right?

10 A No, he did not say that, sir.

11 MR. SERRA: Let's continue listening.

12 (Audiotape played)

13 Q Mr. Salem --

14 A Yes, sir.

15 Q -- you heard yourself just say it will be driven
16 for 15 minutes, 20 minutes, speaking to Mohammed the Spanish
17 about a stolen car, is that right, sir?

18 A Yes, sir.

19 Q What you meant by that is you are going to get
20 the stolen car and drive it to the safe house, right?

21 A No, sir. That's not what I meant.

22 Q The plan was to get a stolen car and take it to
23 the safe house and put a bomb in it, is that right?

24 A That's not what I meant, sir.

25 Q Well, that isn't what I asked you, Mr. Salem.

7583

1 I said is that what the plan was for the stolen
2 cars?

3 A No, sir.

4 Q The plan for the stolen cars was not to get it,
5 drive it to the safe house? That was not the plan?

6 A The plan was put the bombs in the cars and drive
7 it to the targets, sir.

8 Q I'm not to that point, yet, Mr. Salem.

9 A Yes, sir.

10 MR. McCARTHY: Objection.

11 MR. SERRA: Withdrawn.

12 THE COURT: Sustained.

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

14 Q You get the stolen car on the street, right?

15 A I don't --

16 Q The plan is you get the stolen car somehow on the
17 street, is that correct?

18 A He's the one who knows where to get it, sir.

19 Q I didn't ask who was going to do it.

20 A I'm sorry.

21 Q I said the plan was to get it on the street, is
22 that right?

23 A I don't know what's where he going to get it
24 from, sir.

25 Q Mr. Salem, was it the plan to get the stolen car

7584

1 on the street, whoever was going to do it?

2 MR. McCARTHY: Objection.

3 THE COURT: Sustained.

4 Q A bomb would be put in it at the safe house, was
5 that the plan?

6 A Yes, sir.

7 Q And then once the bomb was in it, it would be
8 driven to wherever it was going to go, a tunnel, a bridge,
9 whatever, with the bomb in it, is that right?

10 A That's right, sir.

11 Q That is what you meant when you said it will be
12 driven for 15 minutes, 20 minutes, is that right, sir?

13 A That's right, sir.

14 Q In saying that, Mr. Salem, did you believe that
15 Mohammed the Spanish was going to understand, "It will be
16 driven for 15 minutes, 20 minutes," to mean, "We'll put a
17 bomb in it in the safe house, drive it to a tunnel and leave
18 it there and detonate it"?

19 Did you believe he was going to understand that?

20 A I don't know what's his understanding, sir.

21 MR. SERRA: Let's continue, please.

22 (Audiotape played)

23 MR. SERRA: Your Honor, that is the end of this
24 side of the tape, right in the middle of a sentence. We
25 need to put in a new tape.

7585

1 Your Honor, continuing just from the next side of
2 the tape.

3 (Audiotape played)

4 Q Mr. Salem --

5 A Yes, sir.

6 Q -- a question or two.

7 That was Siddig Ali talking about jihad in the
8 Philippines, is that correct?

9 A Yes, sir.

10 MR. SERRA: That's it. Please continue.

11 (Audiotape played)

12 Q Mr. Salem, it is fair to say that this
13 conversation goes on, is that correct?

14 A Yes, sir.

15 Q Where we just stopped is not the end of the
16 conversation, is that right?

17 A Yes, sir.

18 Q But there did come a time when you left Siddig's
19 house on this day which the government has stipulated is
20 June 19, 1993, is that right?

21 A Yes, sir.

22 Q You went down into your car, is that right?

23 A Yes, sir.

24 Q You had driven there and your car was downstairs
25 at Siddig's house, is that right?

7586

1 A I don't know. I don't know, sir. Probably
2 Siddig was driving; probably me.

3 Q In your car recordings, Mr. Salem, when there is
4 road noise, they are difficult to understand from time to
5 time, is that right?

6 A Yes, sir.

7 Q Also, there is a substantial amount of time on
8 those car recordings where people are not saying anything,
9 is that right?

10 A Sometimes, yes, sir.

11 Q In fact, one of the people who got into your car
12 when you left Siddig Ali's apartment was Mohammed the
13 Spanish, is that right?

14 A Could be, sir.

15 Q Well, let's see.

16 Do you recall, Mr. Salem, that Mohammed the
17 Spanish had to go shopping?

18 A Yes, sir.

19 Q In point of fact, you went by several stores that
20 he refused to shop in, is that right?

21 A I don't recall. I recall that he want to buy
22 some rice.

23 MR. SERRA: Your Honor, playing from the CM49
24 binder. These are English conversations.

25 First of all, your Honor, I believe the

7587

1 government will stipulate that CM49 was recorded on June 19,
2 1993.

3 MR. McCARTHY: Yes, your Honor.

4 MR. SERRA: Your Honor, playing beginning in the
5 jury's binder on page 1 of the CM49 excerpt towards the
6 bottom. Your Honor, perhaps if the court could ask if
7 everyone is with us, CM49, page 1, towards the bottom.

8 THE COURT: It is behind the tab marked CM49, the
9 first page of that section. Go ahead.

10 (Audiotape played)

11 Q Mr. Salem, do you remember that conversation?

12 A Yes, sir.

13 Q That was Mohammed the Spanish in your car talking
14 about going shopping, is that right?

15 A Yes, sir.

16 Q The other voice is Amir Abdelgani, is that
17 correct?

18 A Yes, sir.

19 Q Mohammed the Spanish and Mr. Abdelgani just
20 mention the two stores that Mohammed the Spanish didn't want
21 to shop in, is that right?

22 A Yes, sir.

23 Q By the way, this is right after you left Siddig's
24 apartment and right after the conversation we just heard, is
25 that right?

7588

1 A Yes, sir.

2 MR. SERRA: Your Honor, the next excerpt is from
3 page 5 of the jury's binder under CM49, at the bottom of the
4 page beginning with Mr. Salem, I believe, going, "Yeah."
5 All the way at the bottom of page 5.

6 (Audiotape played)

7 Q Do you remember that conversation, Mr. Salem?

8 A Yes, sir.

9 Q Two more stores that Mohammed the Spanish
10 wouldn't shop in?

11 A Yes, sir.

12 Q He did find a store that he was willing to shop
13 in, is that right?

14 A Yes, sir.

15 Q You parked, I believe, out in back of the store
16 while he went in and bought his groceries?

17 A Yes, sir.

18 Q When he came out, you were eating some sort of
19 cheese snack in the car, do you remember that?

20 A No, sir.

21 Q You don't?

22 A I --

23 Q OK. I'm sorry, sir. Did you start to say
24 something?

25 A It's just -- it's hard for me, sir, to remember

7589

1 if I ate a snack three years ago or not, sir.

2 Q Mr. Salem, if you didn't remember, you didn't
3 remember.

4 A I'm sorry, sir.

5 Q Page 7 of CM49, the transcript in the binder, the
6 tape will pick up about in the middle of the page:

7 Mr. Salem: That's OK.

8 Mr. Alvarez: You eating this with no --

9 THE COURT: May I see counsel briefly at the
10 side.

11 (Continued on next page)

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(At the side bar)

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THE COURT: I understand cross-examination

designed to show that your client is a fool. I don't

understand cross-examination designed to show that he is a

fool in particular about where he shops.

Where are we going with this?

MR. SERRA: As the court can see, I am being much

briefier with this than I was in the more substantive

conversations in CM48. However, I haven't done it with the

witness because I don't -- I try not to argue on cross, but

my argument is going to be that this is not the behavior of

someone who just -- I am entitled to bring this out because

I am going to argue from it that it is not the behavior of

someone who's just agreed to go blow things up.

It will be quick, Judge, as it's been so far.

THE COURT: Well, please move it along.

(Continued on next page)

7591

1 (In open court)

2 Q Mr. Salem, one question before we play the tape.

3 The word for pork in Arabic is "khinzeer," is
4 that correct?

5 A I'm sorry.

6 Q The word for pork in Arabic is "khinzeer," is
7 that correct?

8 A Yes, sir.

9 Q OK.

10 A That is one of the meanings. There are other
11 words for it.

12 Q Fine. That is one of the words, right?

13 A Yes, sir.

14 (Audiotape played)

15 Q Do you remember that conversation, Mr. Salem?

16 A I understood nothing, sir.

17 Q Mr. Salem, in this car ride, you ultimately drove
18 to Abu Bakr mosque, is that correct?

19 A I don't recall, sir.

20 MR. SERRA: Your Honor, playing from page 11 at
21 the bottom of the jury's binder, also CM49.

22 (Audiotape played)

23 Q Mr. Salem, you heard the beginning part of that
24 excerpt discussing a bridge, is that right?

25 A Yes, sir.

7592

1 Q Then there was a long pause.

2 Do you recall that, sir?

3 A Yes, sir.

4 Q During that pause, Mr. Salem, weren't you saying
5 to yourself, let's get this conversation back on track?

6 A I didn't say that to myself, sir.

7 Q Didn't you say, let's talk about something more
8 meaningful to the FBI than bridges?

9 Didn't you say that to yourself?

10 A No, I did not say that, sir.

11 Q You did, however, ask Mohammed the Spanish, "How
12 do you like Sheik Omar?" is that correct?

13 A Yes, sir.

14 Q And he answered that Sheik Omar is a very nice
15 guy, is that right?

16 A Yes, sir.

17 Q Sheik Omar doesn't speak English, is that right?

18 A Ten words.

19 Q And Mohammed the Spanish speaks maybe ten words
20 of Arabic, is that right?

21 A Could be, sir.

22 Q Mohammed the Spanish told you that even though he
23 doesn't understand Sheik Omar, he likes what he says?

24 A Yes, sir.

25 Q Do you now recall, Mr. Salem, whether or not at

7593

1 the end of this car ride you and Amir Abdelgani and Mohammed
2 the Spanish went to the Abu Bakr mosque in Brooklyn?

3 A No, sir.

4 MR. SERRA: You don't recall, OK.

5 At page 24 of CM49, Mr. McCarthy, it is not in
6 the binders to the jury.

7 Q Do you recall the following conversation,
8 Mr. Salem, between Mr. Abdelgani you and Mohammed the
9 Spanish:

10 Salem: So where you want to go now?

11 Abdelgani: We need to pray. Go straight.

12 Alvarez: Abu Bakr El Siddique mosque?

13 Abdelgani: Yeah.

14 Salem: Yeah.

15 Alvarez: Abu Bakr.

16 Siddig: They have a green sign now.

17 Salem: Yeah.

18 Abdelgani: Yeah.

19 Alvarez: Oh, that is the mosque.

20 Abdelgani: Green sign with golden --

21 Do you recall that conversation?

22 A I may said it, but I don't recall it, sir.

23 Q Do you remember going to Abu Bakr mosque on that
24 day to pray?

25 A No, I don't recall, sir.

7594

1 Q Do you remember meeting someone by the name of --
2 I may have the name wrong Abu Barakat?

3 A Abu Barakat, yes, sir, I remember.

4 Q That was at Abu Bakr mosque, is that correct?

5 A I believe -- I'm not sure, sir. I remember I met
6 with Mr. Abu Barakat, but I don't recall where, sir.

7 MR. SERRA: May I approach the witness, your
8 Honor.

9 Q Mr. Salem, showing you Government Exhibit 354A,
10 that is CM51, is that correct, sir?

11 A That's what's being written here, sir.

12 Q Is that a Nagra tape?

13 A Correct, sir.

14 MR. SERRA: Thank you.

15 Your Honor, I believe the government will
16 stipulate, if they haven't already, that CM51 was recorded
17 on June 19, 1993.

18 MR. McCARTHY: Yes, your Honor.

19 Q Mr. Salem, it's true isn't it that -- withdrawn.

20 Do you recall at any time that day meeting
21 Detective Louis Napoli?

22 A I don't recall, sir.

23 Q If CM48, which we just played, was your
24 briefcase, and CM51 is also your briefcase, and it's on the
25 same day, you have to change the tape at some point, isn't

7595

1 that right?

2 A Could be, sir, yes.

3 Q Well, you would have had to change the tape in
4 order to have --

5 A Yes.

6 Q -- a fresh tape in the briefcase if both of these
7 are from the briefcase, is that right?

8 A Yes, sir.

9 If both from the briefcase?

10 Q Yes.

11 A Yes, sir.

12 Q Well, CM48, the tape that we spent all morning
13 listening to from Siddig Ali's apartment with a Nagra, that
14 was from your briefcase, right?

15 A Yes, sir.

16 Q CM51 is a Nagra, is that right?

17 A Yes, it's a Nagra.

18 Q If, in fact, this was recorded in a mosque in Abu
19 Bakr mosque, the only Nagra you had out of your car was in
20 your briefcase, is that correct?

21 A Yes, sir.

22 Q OK. Do you recall that we played at the end of
23 the morning, middle of the morning a start and stop
24 beginning of a CM tape, do you remember that?

25 A Yes, sir.

7596

1 Q You identified one of the voices as Louis
2 Napoli's, one of those starts and stops, isn't that right?

3 A Yes, sir.

4 Q That would mean that when you put that tape into
5 your briefcase and you were testing it to make sure that it
6 was going to be running, you would have taped Louis Napoli
7 at some point, is that right?

8 A Could be, sir.

9 Q There came a time, you testified on your direct
10 examination, that you also discussed weapons, is that right?

11 A With whom, sir?

12 Q Well, I believe on your direct you testified with
13 a number of people, is that right?

14 A Yes, sir.

15 Q One of whom was Mohammed the Spanish, is that
16 correct?

17 A Yes, sir.

18 MR. SERRA: Your Honor, with the court's
19 permission, we will play CM51. The excerpt in the jury's
20 books starts at the beginning of that full conversation, for
21 my colleagues.

22 THE COURT: While we do that, could we bear in
23 mind the possibility of an appropriate break point.

24 MR. SERRA: Your Honor, thank you. Judge, rather
25 than starting to play the tape, this will be the best time.

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THE COURT: We are going take a short break.

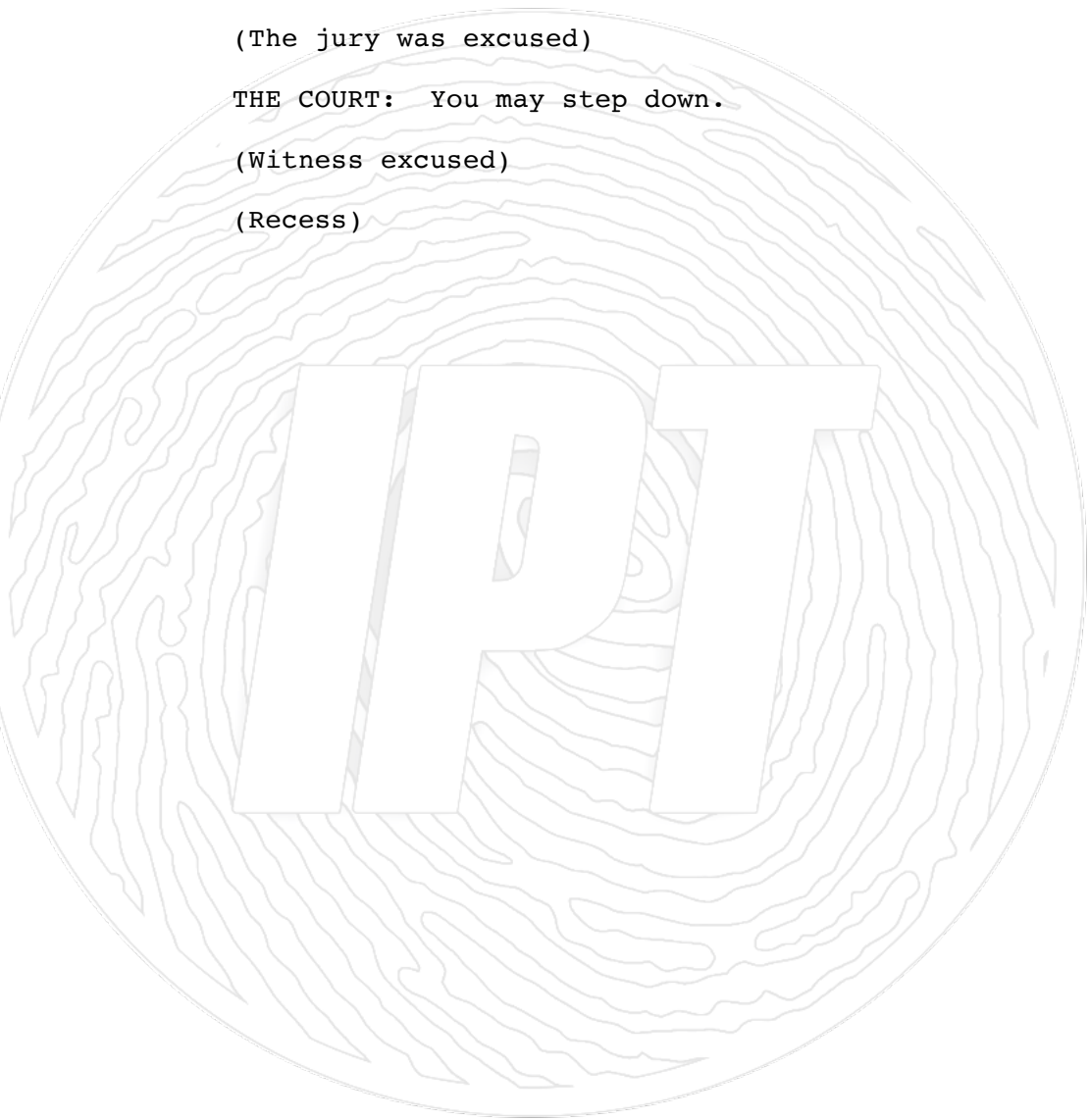
Ladies and gentlemen, please leave your notes and other materials behind. Please don't discuss the case, and we will resume in a few minutes.

(The jury was excused)

THE COURT: You may step down.

(Witness excused)

(Recess)



7619

1 Q You heard Mohammed the Spanish say: OK. That's
2 it. I won't ask any more questions, is that right?

3 A Not specifically like you said, sir.

4 Q Specifically, Mr. Salem, did you hear him say:
5 OK, I am not going to ask nothing more, nothing no more,
6 that's it, that's the end of it?

7 A OK. Yes.

8 Q Mr. Salem, you are a Muslim, is that correct?

9 A Yes, sir.

10 Q Islam has a tradition of scientists and scholars
11 that goes all the way back to the time of the Prophet,
12 doesn't it?

13 A The question again, please?

14 Q Yes, sir. Islam that is a tradition of
15 scientists and scholars which goes back to the time of the
16 Prophet, doesn't it?

17 A Yes, sir.

18 Q Islam had some of the earliest, for example,
19 astronomers in the world, isn't that correct?

20 A Yes, sir.

21 Q Part of that tradition of scientists, scholars
22 and learned people is to educate, is that not true,
23 Mr. Salem?

24 A True, sir.

25 Q To inform people who do not know answers, is that

7620

1 correct?

2 A Yes, sir.

3 Q To be available to ask questions, is that
4 correct?

5 A Yes, sir.

6 Q That is also part of the religious tradition of
7 scholars, to be available should people wish advice, isn't
8 that true?

9 A True, sir.

10 Q So when Siddig Ali told Mohammed the Spanish that
11 it was his duty as a Muslim to do what Siddig told him and
12 not ask any questions, that was nonsense, wasn't it, sir?

13 A You can ask Mr. Siddig, sir.

14 Q No, sir, I'm asking you as a Muslim.

15 A I don't --

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Would you come to a convenient break point in the
19 next five minutes, please, Mr. Serra.

20 MR. SERRA: Thank you.

21 Q You are now a naturalized American citizen, is
22 that true?

23 A Yes, sir.

24 Q Is it true, Mr. Salem, that among the reasons why
25 you wish to be an American was because you respected the

7621

1 American tradition of education?

2 A Yes, sir.

3 Q You respected the American tradition of helping
4 people less fortunate?

5 A Yes, sir.

6 Q You respected the American tradition of
7 respecting the individual, is that right?

8 A Yes, sir.

9 Q Mr. Salem, as a Muslim and an American, when you
10 heard Siddig --

11 MR. McCARTHY: Objection.

12 THE COURT: Sustained.

13 MR. SERRA: Withdrawn.

14 Q When you heard Siddig Ali say to Mohammed the
15 Spanish that it was his duty as a Muslim to do what Siddig
16 told him and not ask questions, you didn't say a word, did
17 you?

18 A No, I did not, sir.

19 MR. SERRA: Your Honor, I have no further
20 questions.

21 THE COURT: All right. Ladies and gentlemen, we
22 are going to break for the day. Please leave your notes and
23 other materials behind. Please don't discuss the case.
24 Please don't see, hear or read anything related to the case.
25 We will see you tomorrow morning at 9:30.

7622

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THE DEPUTY CLERK: If you will follow me.

2

(The jury was excused)

3

(In open court, jury not present)

4

THE COURT: You may step down.

5

(Witness excused)

6

THE COURT: Mr. Serra, when you said, "No further questions," did you mean for the day or --

8

MR. SERRA: No, your Honor. I meant that is the end of my cross-examination.

10

THE COURT: OK. So Mr. Nooter, you are ready to start tomorrow?

11

12

MR. NOOTER: I am, your Honor.

13

THE COURT: Mr. Jacobs, you wanted to see me?

14

Mr. Jacobs isn't here. In that case I am going to make a quick exit. Have a pleasant evening.

15

16

(Proceedings adjourned to April 11, 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)

April 12, 1995
9:35 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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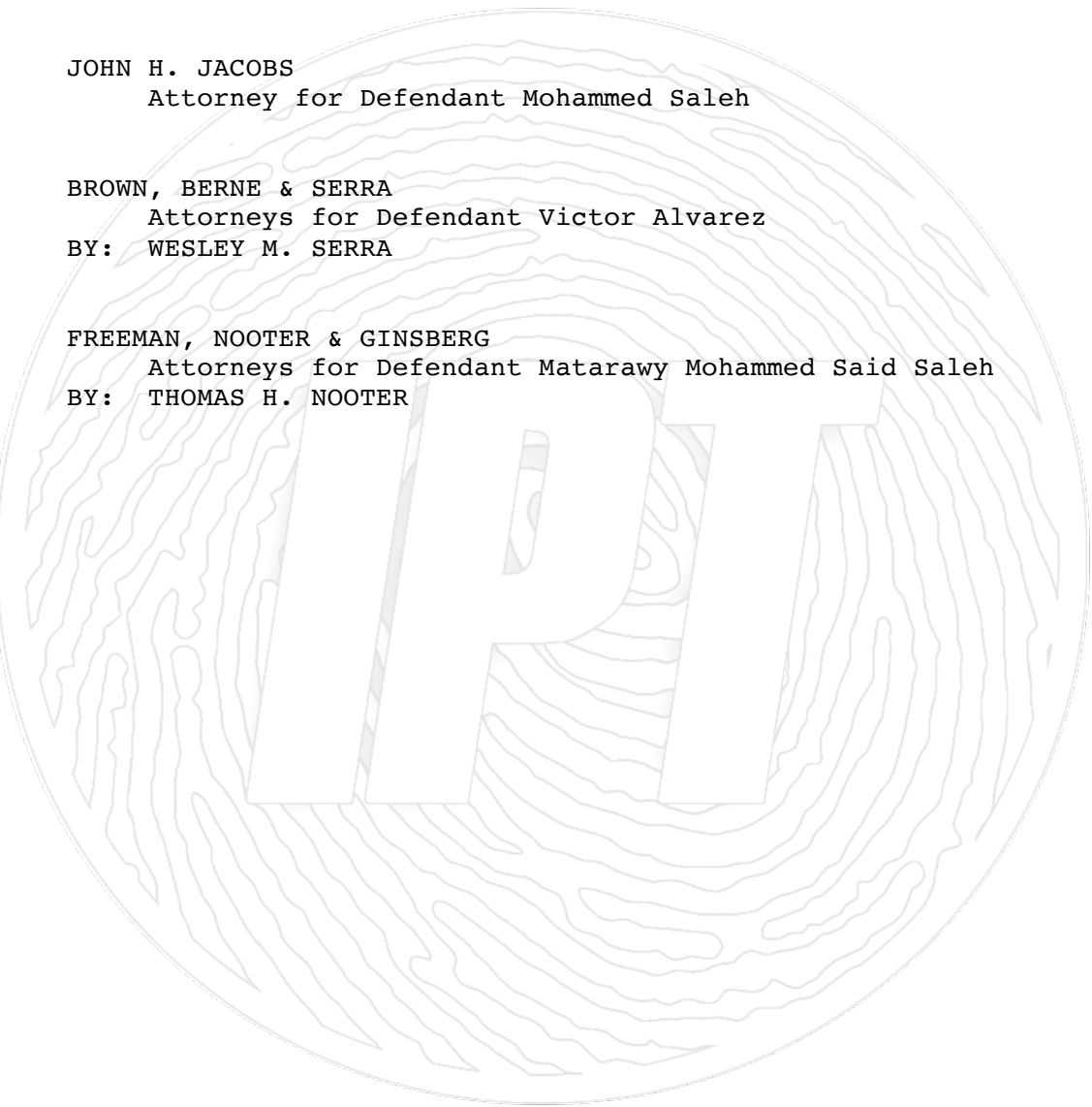
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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 MR. NOOTER: Your Honor, just before we start,
5 very early in my cross-examination I was planning to use a
6 video exhibit that has been labeled video A. This is a
7 video which has been prepared from the government videos but
8 with subtitles added to it for the convenience of the jury.
9 The subtitles are taken from the transcript originally
10 prepared by the government. Some of the words God were
11 changed to Allah, but otherwise it is the government's
12 transcript with disputed portions of our transcript
13 indicated in blue, so it is highlighted very clearly that
14 they are disputed.

15 It would be my request to use this video for
16 cross. Later of course I will authenticate it with my
17 translator, who did a very careful job patching in the
18 speeches where they are supposed to be, and so forth. But
19 because of the unique way this case is being presented with
20 tapes and things like that not yet in evidence, I would ask
21 for permission to do that. It is the same transcript as I
22 would be using except that it is on the screen instead of in
23 the lap of the jury.

24 MR. McCARTHY: Your Honor, we object. It is not
25 close to the transcript. What I was able to get through

1 given the amount of time I had to review this item, I found
2 what I regard as substantial differences between the
3 transcript that currently exists and the other transcript.
4 Besides that, there are some sort of subliminal theatrics in
5 the tape that I particularly object to. For example, there
6 is one section toward the beginning of the tape where there
7 is a discussion as to which there is some audible laughter
8 and I believe laughter indicated in the transcript but not
9 in the tape, where Siddig Ali makes the statement to
10 Mr. Saleh, listen to me, I am the boss, you work for me now.
11 In what Mr. Nooter has prepared, we have the film, we have
12 the attribution before that and the attribution after that
13 in very small print, and then we have in what is obviously
14 highlighted print, which basically dwarfs the rest of the
15 lettering on the film, the quotation from Siddig Ali, I am
16 the boss, you work for me now, with boss and you work for me
17 now, in big letters. That is not the only place that that
18 happens on the tape.

19 MR. NOOTER: Judge, if I can explain the big
20 letters, the big letters are the words in English. We were
21 just trying to use an italicized font but the way the video
22 editor had the fonts, it turns out to be a little bigger.
23 They are words in English so the jurors can spot for
24 themselves the way they match up.

25 Any what I would call stage direction laughter is

1 not indicated on the video. You would have to hear it for
2 yourself. It is just the words, with one exception where
3 there is some television background noise, and we indicate
4 that is what it is. The only reason the size is different
5 is because those words are spoken in English.

6 THE COURT: I am less concerned about that than I
7 am about the claim that there are differences between the
8 lettering on the screen and the transcript.

9 MR. McCARTHY: Differences, your Honor, with no
10 obvious reference to what is in dispute and what is not.
11 Your Honor made a ruling. We objected to it but obviously
12 we live with the court's ruling. The court said they could
13 put things in front of the jury that are not in evidence.
14 This is not only putting in front of the jury words and
15 attributions that aren't in evidence but hooking them up to
16 particular phrases on the tape in a way that suggests that
17 before we ever get to cross-examine the person who put this
18 together that a lot of thought and meticulous work went into
19 this to insure the accuracy of it. That is vastly different
20 than what went on the last few weeks.

21 MR. NOOTER: As the government may remember, I am
22 probably the first person who submitted transcripts well
23 over a year ago of this tape. I have been pressing the
24 government repeatedly and repeatedly to come up with a
25 finalized version, to allow my translator to sit down with

1 their translator, to hammer out the differences. They gave
2 me a transcript which I assumed was a final. We worked from
3 that. About halfway through the job they gave us another
4 one that was supposedly more final, and it was very hard to
5 backtrack and redo it.

6 If there are differences, they are incredibly
7 minor. The transcript is basically the government
8 transcript with any major discrepancy clearly indicated in
9 blue. If there is something minor, it may be just a slight
10 phrase thing. There isn't anything I can see which is any
11 different. The transcript book we have prepared for the
12 jury to read so that they can refer back to that in case the
13 frames flash by too fast is prepared, as maybe the court has
14 noted already, from the government transcript, their most
15 final one with our disputed pieces patched in, clearly
16 indicated as being disputed and different, because in fact
17 the Arabic is provided as well as the English for the
18 benefit of the witness.

19 So I don't know if there is any other specific
20 thing that Mr. McCarthy can refer me to but I have gone
21 through this meticulously. I don't think there is any
22 significant word change other than what is indicated in the
23 blue lettering.

24 MR. McCARTHY: Let me give the court one example
25 of the minor differences. Our transcript, the current

1 transcript has a place on page 22, and this is transcript V5
2 to V8, where Salem says to Saleh: What do you do?

3 Saleh says: I have been working in the line of
4 car theft for six years. Do you understand?

5 Siddig Ali says: Yes.

6 Wahid says: So it is possible with the time.

7 Siddig says: Yes.

8 Then they go on to have a conversation about
9 whether it is better to get stolen cars or cars which are
10 fraudulently procured. There is not word one or mention of
11 what I just read to your Honor in Mr. Nooter's transcript.
12 There is a portion where he is talking about licenses, where
13 the word license dwarfs everything else that is on that
14 particular attribution or that particular piece of video. I
15 don't regard that as a minor difference.

16 MR. NOOTER: Judge, that is a strongly disputed
17 line. I have provided numerous times versions of our
18 transcript back, versions of their transcript marked back,
19 indicating that we have listened and listened and listened
20 and do not hear this line about being in the line of car
21 theft for six years. In our patched together transcript
22 that portion is indicated with what we say is being said by
23 Mr. Salem in English and Arabic. The witness is free to say
24 no, that is not what was said. I am giving him that
25 portion. It happens to be something that we don't believe

1 is in there, so we put ours in there.

2 MR. McCARTHY: Your Honor, two seconds ago he
3 said there were very minor differences except for the Allah
4 and God.

5 MR. NOOTER: In the blue.

6 MR. McCARTHY: And that our changes were going to
7 be evident to the jury because of some mode of presentation.
8 This is just the one I was able to find this morning. I
9 haven't been able to get through the whole thing yet.

10 MR. NOOTER: That is the only one that is
11 probably like that, where there is a whole sentence that the
12 government says is there that we claim is not there, so we
13 put in what our sentence is.

14 THE COURT: What was done with regard to other
15 disputed matters in connection with other transcripts? Was
16 the government's version presented as well?

17 MR. McCARTHY: Yes, your Honor, it was
18 underscored, and counsel noted for the record that this was
19 a portion that was disputed.

20 MR. NOOTER: As I understood, we could use our
21 transcript, so we underscored --

22 THE COURT: If you ever get to that point in the
23 tape, I am going to require you to read out the government's
24 version.

25 MR. NOOTER: I will be happy to do that with any

1 of the parts of the tape, actually.

2 THE COURT: Understand also that as of now the
3 only thing the tape is going to be used for is
4 cross-examination. It is not going to go in until it gets
5 authenticated, when, as and if. And the jury is going to be
6 instructed that the subtitles or super titles, I guess they
7 are --

8 MR. NOOTER: They are up, yes.

9 THE COURT: -- as I saw it -- are, to the extent
10 indicated, disputed, and they can rely on the witness's
11 testimony.

12 MR. NOOTER: I will be happy to explain that
13 myself to the jury.

14 THE COURT: No, I will explain it.

15 MR. MCCARTHY: Thank you.

16 THE COURT: Thank you. Anything else? No.

17 MR. NOOTER: No, your Honor.

18 THE COURT: Ms. Amsterdam, I have been told -- it
19 is obvious that Mr. Jacobs is not here, right?

20 MS. AMSTERDAM: That is correct, your Honor, and
21 he has asked me if I would represent his client until he
22 arrives, which should be at about 11:30. I have spoken with
23 Mr. Saleh, who has agreed, and that is perfectly appropriate
24 with him.

25 THE COURT: Mr. Saleh, is that acceptable to you?

1 DEFENDANT MOHAMMED SALEH: Yes.

2 EMAD SALEM, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: I am sorry we are getting started a
7 little bit later even than we usually do. There was a
8 matter that I had to talk to the lawyers about and that
9 accounts for the delay. Sorry about it.

10 Mr. Nooter on behalf of Mr. Wahid Saleh.

11 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. NOOTER:

3 Q Good morning, Mr. Salem. My name is Tom Nooter.

4 I represent Wahid Saleh.

5 A Good morning.

6 Q I am your last tormentor, I think.

7 THE COURT: Mr. Salem, you are still under oath.
8 Go ahead.

9 Q Let me take you back to the last hours before
10 this case was taken down, as you have described, which
11 occurred in the early morning hours of June 24, is that
12 correct?

13 A Yes, sir.

14 Q Maybe 1:20, 1:30 in the morning, is that right?

15 A Something like that, sir.

16 Q At that time, a number of people in this case
17 were arrested in the safe house and some others had been
18 arrested elsewhere, to your knowledge, is that correct?

19 A Yes, sir.

20 Q Mr. Wahid Saleh, however, was not arrested at
21 that time, was he?

22 A No, sir.

23 Q At about 12 minutes before midnight that night
24 was the first time you ever were introduced to Mr. Wahid
25 Saleh, is that correct?

1 A No, sir.

2 Q You had been introduced to him before?

3 A Yes, sir.

4 Q When was that, do you recall?

5 A It came a time we did the evening prayer in El
6 Salaam Mosque --

7 Q Which mosque is that, which location?

8 A In New Jersey. And Mr. Siddig Ali pointed him to
9 me and we went downstairs in the street right in front of
10 the mosque, and he introduced me, this is Wahid, this is
11 Emad, and we shake each other's hand, and he told me about
12 his trip of scuba diving, sir.

13 Q Do you recall when that was?

14 A It was prior, of course, to the day he came to
15 the safe house.

16 Q Could it have been late May, something like that?

17 A I can't confirm that, sir.

18 Q Beyond the discussion you have just related, you
19 didn't really know anything about him apart from talking to
20 him, would that be fair to say?

21 A From talking to him, no, sir.

22 Q So let me take you to the time that he
23 reintroduced you a few minutes before midnight on June 23,
24 going into June 24.

25 MR. NOOTER: For this, your Honor, I would like

1 to play just a little piece of the V5 video that covers that
2 point.

3 THE COURT: Ladies and gentlemen, let me explain
4 a few things about the videotape that you may be seeing
5 during this cross-examination. Mr. Nooter, defense counsel
6 for Mr. Wahid Saleh, has caused to be prepared a version of
7 the videotape that has what would be subtitles if they were
8 at the bottom. They are at the top, whatever you want to
9 call them you can call them. They are indications in
10 writing of what the defense claims the people were saying at
11 the time in English, so that you can understand it. English
12 words that they actually use on the tape appear larger than
13 the translations of Arabic words that they use on the tape,
14 and disputed matters, that is, matters where the defense
15 claims the tape says one thing and the government claims it
16 says another, appear in blue with the defense version. That
17 is simply to assist in the cross-examination. It is not
18 evidence that there was any finding or agreement that the
19 parts in blue are the correct parts. There may also be
20 parts that are omitted, where the defense says they are not
21 there and the government says they are, and those will be
22 read to you at an appropriate time. But I want you to
23 understand what you are seeing, which is a defense version
24 of this tape, insofar as the writing appears on it. Go
25 ahead.

1 MR. NOOTER: Thank you very much. We have to
2 make sure some of the monitors are on.

3 OK if we could roll tape -- yes, stop one second.
4 Although this part is in Arabic, you may want to use the
5 headphones to hear the sounds at this point.

6 (Videotape played)

7 MR. NOOTER: You can stop the tape completely.

8 Q Mr. Salem, if you would like, there is a book in
9 front of you called videotape exhibits, a white exhibit. If
10 you turn to page 4, you will see the transcript we just
11 looked at -- I have put line references down the page --
12 starting at about line 31, 32.

13 Sir, turning to page 5, you will see and did you
14 hear on the tape where there were some questions, do you
15 know him, do you know him? Do you recall that?

16 A Yes, sir.

17 Q And Mr. Siddig Ali was pointing with his hand.
18 Did you see that on the video, he pointed at you, he pointed
19 at Mr. Saleh, is that correct?

20 A Correct, sir.

21 Q So he at least on the tape was indicating -- and
22 the answer was no, I don't know him, isn't that correct? I
23 am sorry. I didn't mean to blast you.

24 A I did say that but I was -- yes, I did say that.

25 Q You were laughing. You had met him once before.

1 ?

2 A I was kidding no, I don't know him, he said I
3 don't know him, we were pretending we don't know each other
4 but actually we do know each other, sir.

5 Q Because you had met that one time briefly, is
6 that right?

7 A Yes, sir.

8 Q That one time that you had briefly met, all he
9 talked about was that he was going to go on a scuba diving
10 trip, is that right?

11 A I believe he talked about the scuba diving trip,
12 he talk about he going to give Mr. Siddig a truck, car with
13 hot dog products and food products and things like that,
14 sir.

15 Q All of that occurred in the May conversation?

16 A The street in front of El Salaam Mosque in New
17 Jersey, sir.

18 Q Other than that conversation, did you know
19 anything about what line of business he was in?

20 A Yes, sir.

21 Q I am sorry. Let me just direct you only to that
22 one conversation which we will assume was in late May, not
23 what you may have learned later. At that point did you know
24 what line of business he was in?

25 A Yes, sir.

1 Q What line was that?

2 A I know that he used to do drug deals. I know
3 that he used to do --

4 Q That is not what I meant. Was he in the line of
5 business of owning a flea market? Did you learn that?

6 A No, sir. I learned that he used to --

7 THE COURT: He didn't ask you that. He just
8 asked if you knew what line of business he was in --

9 Q The answer was no?

10 A No, sir.

11 Q Let me ask you, in May --

12 MR. McCARTHY: Objection.

13 THE COURT: It hasn't been established that it
14 was in May.

15 MR. NOOTER: Withdrawn.

16 Q The first time you met him at the El Salaam
17 Mosque, did he tell you that he used to be a drug dealer?

18 A No, sir, he did not tell me that.

19 Q So I am not asking you what somebody might have
20 told you at that time, only what happened in that
21 conversation.

22 A Yes, sir.

23 Q In that conversation, did it come up what line of
24 business he was in?

25 MR. McCARTHY: Objection to form. Did it come

1 up? He just said he was only asking him --

2 THE COURT: Was there any discussion of what line
3 of business he was in during the earlier conversation in
4 front of El Salaam Mosque?

5 A Only he talked about the scuba diving, sir, and
6 about the truck with food products, sir.

7 Q If it was explained to you, was that like one of
8 these hot dog lunch trucks parked out in front of
9 courthouses and things like that?

10 A Yes, sir.

11 Q Did you learn in that conversation that he was
12 going to purchase the truck, be the owner of the truck but
13 someone else was going to work on the truck?

14 A Yes, sir.

15 Q And the someone else was going to be Siddig Ali,
16 is that right?

17 A Yes, sir.

18 Q In various of your conversations with Siddig Ali,
19 he indicated to you, did he not, that he needed work, that
20 he was looking for work, is that right?

21 A Mr. Siddig?

22 Q Yes.

23 A Yes, sir.

24 Q One time when you were going for an interview as
25 a security, some sort of security officer for a private

1 company, he himself said he needs a job also. Do you recall
2 a conversation like that?

3 A Mr. Siddig, yes, sir.

4 Q So Mr. Wahid Saleh was going to give him a job on
5 the hot dog truck, is that right?

6 A Yes, sir.

7 Q Is it true or did you come to learn that there
8 was some delay in actually completing the purchase of the
9 hot dog truck?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q Directing your attention back to the night of
13 June 23 when Mr. Wahid Saleh came into the Queens garage and
14 you met each other, I want to show you a piece of videotape
15 and just ask you if you can explain to us what was being
16 said. OK?

17 A Yes, sir.

18 Q This is Exhibit B, and let me explain to you what
19 I want you to look at.

20 A Yes, sir.

21 Q There will be a point where you ask a question to
22 Mr. Siddig Ali and he answers. You ask a question again and
23 he answers with a fairly long explanation and points to his
24 eye. If you would look at those and listen carefully, and
25 we will talk about what those words were. OK?

1 A Yes, sir.

2 (Videotape played)

3 MR. NOOTER: Is that too loud? Back it up a
4 little bit. Let's try and we will back it up if we have to.
5 You can stop the tape.

6 Q Do you recall that conversation?

7 A I could not distinguish any words, sir.

8 Q It is a little hard to hear, this videotape, is
9 it not?

10 A The sound here is not clear, sir.

11 Q If you would pick up the video transcript book
12 and look at page 3 -- when I refer to page numbers, these
13 are the large numbers in the upper right corner.

14 Actually, the first question I was directing your
15 attention to was really at the very bottom of page 2, the
16 bottom line. We may have missed that because of the blare,
17 but that is not really the question I wanted you to focus
18 on. But just for reference. The first question was did you
19 bring the guy Mohammed Siddig Ali apparently waving on
20 bringing them on their way here. Did you hear that part?

21 A I am sorry, sir. Can you say it again, please.

22 Q Bottom of page 2.

23 A Yes, sir.

24 Q The last line. Salem: Did you bring the guy
25 Mohammed?

1 Then going to the top of page 3, Siddig Ali:

2 They are bringing him on their way here.

3 Did you hear that part? It may have been the
4 part that was too loud.

5 A I didn't hear it, sir.

6 Q Nevertheless, let's go on. On page 3 at about
7 line 5 there is the second question I asked you to look at.
8 Salem: All right. Have you explained to Wahid? And now do
9 you see the answer there both in Arabic and in English, and
10 I just ask you, does that comport with your recollection of
11 what was said? Do you recall that that is what was said?

12 A It's not the way it's written here, sir.

13 Q You don't think it's that way?

14 A No, sir.

15 Q Let me focus on the word no. Do you see the word
16 no in the transcript? In Arabic that would be said La, is
17 that correct?

18 A Yes, sir.

19 Q I would like you to listen again to the tape,
20 watching it, and again, that speech starts as Mr. Ali is
21 walking away from you and then he turns around and answers,
22 and I just want to see if you hear the word La.

23 Did you hear?

24 A I heard the part they bringing him.

25 Q Then we should roll to the next time he turns

1 around. We can proceed. Stop. If you would run it back
2 again, I will tell you where. Stop.

3 Q There is one question, there is an answer, there
4 is a question, there is an answer. It is the second answer
5 when Siddig Ali turns around the second time and talks to
6 you.

7 A He said I brought you here to see by yourself
8 that I'm not joking, or I'm not kidding.

9 Q I want to focus on the very first word he says
10 when he turns around in answer to your question.

11 A Yes, sir.

12 Q Let's watch it one more time.

13 A Yes, sir.

14 I didn't get it, sir.

15 Q Would you like to try one more time or do you
16 think it's too hard to hear?

17 A If you try, I will do my best to pick it up, sir.

18 Q Try it one more time.

19 As he turns around, you don't hear him say La or
20 you can't tell what he says?

21 A I didn't tell the two parts but the two parts I
22 picked up I said it before.

23 MR. McCARTHY: Your Honor, may we approach very
24 briefly?

25 THE COURT: Yes.

1 (At the side bar)

2 MR. McCARTHY: Your Honor, I don't want to
3 repeatedly interrupt the cross so I would like to bring this
4 up one time and then try to leave it be. Unlike all the
5 other transcripts that the jury has seen, there is no
6 underscoring in this transcript. There is no agreed-upon
7 version. I am concerned that the jury is going to think,
8 because they have seen other transcripts and because of the
9 way it has been presented to them, that this is a joint
10 version that we have agreed upon. This, for example, is one
11 of the passages that there is pretty strong disagreement
12 about. This is what we say it says and this is what he says
13 it says. I don't want to stop him from doing what he is
14 going to do.

15 MR. NOOTER: I certainly have no problem with the
16 jury being instructed that the portions that show Arabic on
17 the side are disputed. I have a little bit of a problem
18 with the witness hearing it, though. I would like to know
19 that the witness is hearing it without having the
20 preconception that anything I have put there in Arabic -- he
21 may be able to figure it out but I would prefer that he not
22 officially be told that that is the case.

23 THE COURT: We will excuse him for two minutes, I
24 will explain it to the jury and we will come back.

25 (In open court)

1 THE COURT: Mr. Salem, I am going to ask you to
2 step down for two minutes and wait outside for a moment, and
3 then we will have you back.

4 THE WITNESS: Yes, your Honor.

5 (Witness excused)

6 THE COURT: Ladies and gentlemen, I want to
7 explain to you something about the transcript that you are
8 looking at that may be obvious to you and may not. Unlike
9 the other transcripts that you saw where the disputed parts
10 were underlined, they are not underlined in this transcript,
11 although they are indicated when you see Arabic alongside
12 English. Those apparently are disputed parts with the
13 defendant's version set forth on this transcript. I want
14 you to understand that, that the parts that have Arabic and
15 English are disputed, they are not an agreed-upon version.

16 (Witness resumed)

17 MR. NOOTER: Thank you very much. Actually, we
18 can turn the TV's off. We won't need them for a bit.

19 (Continued on next page)

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1 BY MR. NOOTER:

2 Q Mr. Salem, I had focused you on that part because
3 there was a discussion of explanations. I would like to ask
4 you, the only two conversations you ever had with Wahid
5 Saleh were the one you described at the mosque and this one
6 that you had the night of June 23, is that correct?

7 A Yes, sir.

8 Q Mr. Siddig Ali at times told you things about
9 Wahid Saleh, though, is that correct?

10 A Yes, sir.

11 Q And those appear in your CM transcripts, in the
12 CM tapes, is that correct?

13 A Yes, sir.

14 Q He also told you a lot of things about a lot of
15 people, is that correct?

16 A Such as, sir?

17 Q About various people he, for example, thought
18 were going to help him with the project, the bombing
19 project, is that correct?

20 A He told me that he was going to bring people to
21 help build it, yes.

22 Q He told you that he had people who could get
23 money for various things, is that right?

24 A Yes, sir.

25 Q You did not always know whether the things he was

1 saying were true or not, did you?

2 A I mean, the things, he did it practically, means
3 it's proven, it's true, but --

4 Q Some things -- I am sorry, finish.

5 A But if there is something that he told me about
6 it and did not happen, I cannot speculate, sir.

7 Q Isn't it true that sometimes Mr. Siddig Ali
8 talked about using people who would not know the plan, using
9 them for aspects or resources they had? Is that true?

10 A As far as I recall, he said that these people
11 should not know until the last minute and then they know
12 about it.

13 Q Right, he wanted to function on what we call a
14 need-to-know basis. If the guy didn't need to be told, he
15 wouldn't have to be told, is that correct?

16 A He mentioned something like that, sir.

17 Q And there were some people he talked about who
18 probably would never be told, such as -- do you recall a
19 situation --

20 MR. McCARTHY: Objection to form.

21 MR. NOOTER: OK.

22 Q Is that true?

23 A No, sir.

24 Q Do you recall a situation where someone from the
25 embassy of Qatar was going to steal a car from Mr. Siddig

1 Ali, that he said this guy will never know, we just want him
2 to get us the car? Do you recall that?

3 A No, that's not the way he said it, sir.

4 Q This guy was going to know?

5 A That's not the way he said it to me, sir.

6 Q What do you recall about that?

7 A He said that the driver of the ambassador --
8 should I say his name?

9 Q You don't need to say the name. It doesn't
10 matter.

11 A The driver of the ambassador, the Sudanese
12 ambassador, will steal the license plate from Qatar cars,
13 diplomatic license plate, because they parking close to each
14 other in the United Nations.

15 Q So the Qatar guys wouldn't know that their
16 license plate was going to be used for a bomb carrying car,
17 is that right?

18 A The Qatar car will never know who stole his
19 license plate, sir.

20 Q So basically, though, it is fair to say --
21 withdrawn. Is it fair to say that some people would not be
22 told until they had to be told? Is that correct?

23 A Yes, sir.

24 Q When Mr. Wahid Saleh was brought to the safe
25 house, he was brought there by Siddig Ali, is that correct?

1 A Yes, sir.

2 Q You were already in the safe house waiting for
3 him, is that correct?

4 A Yes, sir.

5 Q And you were there with one other person, is that
6 right?

7 A I believe, yes, sir.

8 Q Do you recall what the purpose was of bringing
9 Mr. Wahid Saleh into the Queens safe house that night?

10 A Yes, sir.

11 Q What was the purpose?

12 A To bring a us stolen cars, sir.

13 Q To ask him to get stolen cars, is that your
14 testimony?

15 A Yes, sir.

16 Q By the time he left the safe house 25 minutes
17 later, he had been asked for stolen cars, is that correct?

18 A He was asked -- yes, sir.

19 Q Beyond that, was he asked to provide you with
20 money?

21 A Not in front of me, sir.

22 Q Was there any talk about jihad?

23 A Yes, sir.

24 Q There was talk about jihad when he was there?

25 A Yes, sir.

1 Q Was he told that in the next few days he had
2 better not drive through the tunnels?

3 A No, sir.

4 Q Sir, when you began this job as an informer for
5 the FBI in the second phase, as you say, you had to play a
6 role, is that correct?

7 A Yes, sir.

8 Q This has been discussed by a number of people
9 already, is that right?

10 A Yes, sir.

11 Q And your purpose was to try to infiltrate what
12 you saw as a cell of people headed by Siddig Ali, is that
13 correct?

14 A Delivering what's going on or carrying the
15 recorder, asking questions, sir.

16 Q Trying to find out who might be working for
17 Siddig Ali, is that correct?

18 A Yes, sir.

19 Q In order to play that role, you had to assume a
20 certain persona, is that right, a certain character, am I
21 right?

22 A Yes, sir.

23 Q And part of that character was that you had to
24 pretend to be a good Muslim, is that right?

25 A Well, I am a good Muslim, I believe, sir, but I

1 have to pretend that I am radical or fanatic, sir.

2 Q So you have to -- don't take me wrong if you do
3 this anyway. I don't mean pretend as a bad word. In order
4 to show these people you had to pray the number of times a
5 day that you are supposed to pray, is that right?

6 A I am already praying, sir.

7 Q Right. You had to go to mosque, particularly on
8 Fridays, for Jummah prayers, is that right?

9 A I went on so many different times, sir.

10 Q Even though you might do that because you do that
11 anyway, you also did it because you needed the people to
12 believe that you were, as you say, a radical Muslim, is that
13 correct?

14 A I went to specific mosques and I talked to the
15 specific people in a specific way, sir.

16 Q And would it be fair to say that there are
17 certain characteristics of a good Muslim that you had to
18 maintain? For example, you don't swear, is that true?

19 A No, they swear -- everybody swears, sir.

20 Q Isn't it true, maybe not always but as a general
21 rule, when a good Muslim wants to say a strong word he might
22 say son of a dog or something like that but almost never
23 make a sexual reference like son of a bitch? Is that fair
24 to say?

25 A Some of them they slip sometimes, some of them

1 they keep their tongue.

2 Q They try to keep their tongue, is that right?

3 A Yes, sir.

4 Q Part of the way of life, is that true?

5 A They try, yes, sir.

6 Q And it is true as sort of a way of life not to
7 talk badly about someone behind their back, is that true?

8 A I beg your pardon.

9 Q Not to talk badly about someone behind their
10 back?

11 A This is the rules but nobody is following the
12 rules.

13 Q They break them, but you were trying to follow
14 that kind of role, is that true?

15 A Me?

16 Q Yes.

17 A No, I did not, sir.

18 Q Isn't it true that a person who is a good, even a
19 radical Muslim, is not supposed to cheat other people?

20 A Supposedly, yes, sir.

21 Q They are not supposed to use fraudulent methods
22 in business, for example, is that right?

23 A Supposedly, yes, sir.

24 Q They are not supposed to steal, is that right?

25 A Yes, sir.

1 Q You should not be a crook, is that right?

2 A Yes, sir.

3 Q And in fact should not have anything to do with
4 drugs, is that right?

5 A That's the rules, sir.

6 Q In addition to that, you have talked about that
7 sometimes people were referred to as being a good mujahed.
8 Do you recall that?

9 A Yes, sir.

10 Q And that is someone who believes in jihad, is
11 that right?

12 A Yes, sir.

13 Q Someone who believes in a you have to struggle
14 physically in order to promote the interests of Muslims
15 around the world, let's say. Is that fair?

16 A Believe is not enough, to be a good mujahed. You
17 got to believe and act, sir.

18 Q And some of those actions are that you have to be
19 prepared to die for the cause, is that right?

20 A It's different from -- it depend on the amount of
21 the radicality of the person. Some people said I am
22 willing, find me a mission to die, please, somebody asking
23 me that. Some people say well, contribute some money for
24 jihad. So it depends.

25 Q Let me ask you about jihad. Jihad is not always

1 a bad word, is it?

2 A No, sir.

3 Q Jihad can be a good type of struggle depending on
4 what the issue is, is that right?

5 A Absolutely, sir.

6 Q So, for example, the mujahidin who fought in
7 Afghanistan might be considered good mujahidin, is that
8 correct?

9 A Well, it depends, sir. This mujahidin going to
10 Afghanistan -- what is the purpose of your going to
11 Afghanistan? To show off? Or to disobey the rules of your
12 country? Or --

13 Q But I just want to establish, jihad is sometimes
14 a perfectly acceptable way -- let me withdraw that. .

15 MS. STEWART: Objection, Judge. May we approach?

16 THE COURT: Sustained.

17 Q Again I am asking you about the role you felt you
18 had to play and the people you felt you were going to be
19 coming into contact with.

20 A Yes, sir.

21 Q People who might be considered good mujahiden
22 sometimes expressed loyalty to an emir of some kind. You
23 described that before, is that right?

24 A Yes, sir.

25 Q And people who are loyal to an emir and/or loyal

1 to a cause are supposed to be reliable in coming through
2 with what they have to do, is that right?

3 MS. STEWART: Objection.

4 THE COURT: Sustained.

5 Q Was it characteristic of the people you are
6 talking about, the radical mujahiden, that they did not
7 approve of peace demonstrations, for example, peace
8 demonstrations for Bosnia?

9 A I am sorry, sir. I apologize. I didn't get the
10 question, please.

11 (Continued on next page)

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1 Q Was it characteristic of the radical type of
2 mujahiden that you thought you might be meeting that they
3 would not approve of peace demonstrations, for example,
4 peace demonstrations in front of the UN, that kind of thing?

5 THE COURT: Sustained. May I see counsel at the
6 side, please.

7 (At the side bar)

8 THE COURT: I sustained my own objection to this
9 question because in essence it asked him to speculate about
10 the profile of the people that he intended to meet and then
11 to discuss characteristics that they had, which I don't
12 think is relevant to anything in this case.

13 MR. NOOTER: The reason it is relevant is that
14 each of these things are things that were either spoken
15 about or are true, but my client does not have these
16 characteristics.

17 THE COURT: His anticipated profile of the people
18 that he was going to meet has zero to do with this case, and
19 if you want to bring out your client's views and the views
20 of others who were involved in this I suppose I can't stop
21 you from doing that. But to bring out what he had in his
22 mind about the people he thought he was going to be
23 encountering or he didn't, is irrelevant to any issue in
24 this case.

25 MS. STEWART: My objections went to asking expert

1 questions of a witness not qualified as an expert.

2 THE COURT: Right. That was a wholly different
3 thing. His view of a mujahed I don't think is germane.

4 MR. NOOTER: I put it in terms of what he felt he
5 had to do. I am not making him an expert.

6 THE COURT: I think whatever point had to be made
7 has been made, and let's move along.

8 (In open court)

9 (Continued on next page)

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1 BY MR. NOOTER:

2 Q In playing your role you tried to impress the
3 other people you were meeting with the fact that you
4 yourself believed the same kinds of things, is that true?

5 A Yes, sir.

6 Q I would like to take you to the first time
7 Mr. Wahid Saleh is mentioned by name in the CM transcripts,
8 which are in the blue CM book in front of you.

9 A Yes, sir.

10 Q I would direct your attention to page 2 of that
11 book. Let me just direct your attention to about line 12
12 and the following several lines from the transcript.

13 Siddig Ali: Do you see how? Be sure there is
14 nothing. Do you know Wahid?

15 Salem: Wahid who?

16 Siddig Ali: The young man you wanted to greet.

17 Salem: Huh.

18 That's a reference to Mr. Wahid Saleh, is that
19 correct?

20 A Yes, sir.

21 Q You never did learn his last name, did you, at
22 least before the case was taken down?

23 A No, sir.

24 Q I just want to flip you back to page 1 for a
25 moment, which is also a page from CM 27, about line 22.

1 There is a reference to your providing Siddig Ali with a
2 telephone number of someone named Wahid. That's not Wahid
3 Saleh, is that correct?

4 A You know second. I got to see where it is.

5 Q It is actually not a line for line. The
6 translator put a little summary there. That is not Wahid
7 Saleh, it is someone whose phone number you had, is that
8 correct?

9 A I wouldn't have Mr. Wahid Saleh's phone number
10 with me.

11 Q You never had his phone number, did you?

12 A No.

13 Q You never had his beeper number?

14 A No, sir.

15 Q You never spoke to him by phone, did you?

16 A No, sir.

17 Q Yourself?

18 A No, sir.

19 Q Once in a while Mr. Siddig Ali might have spoken
20 to him by phone while you were present, is that correct?

21 A Yes, sir.

22 Q But you yourself did not?

23 A No, sir.

24 Q So there are other people named Wahid who were
25 discussed by you at times, is that correct?

1 A Yes, sir.

2 Q Going back to page 2.

3 THE COURT: For the sake of clarity, I should
4 point out to the jury that although these pages have been
5 numbered 1, 2, etc., they are excerpts, and in fact they are
6 excerpts from much longer conversations. The actual page
7 numbers appear in small print at the bottom. Go ahead.

8 MR. NOOTER: Thank you very much, your Honor.

9 Q The line I just read to you, the young man you
10 wanted to greet, ah, do you recall telling Mr. Siddig Ali
11 you wanted to greet this individual?

12 A Sir, I don't recall.

13 Q Could that be a reference to when you met him
14 before, when you saw him at the mosque?

15 A I am out of contacts like that, sir. I am not
16 following what was being said, sir.

17 Q Would it help you to see the whole -- I will just
18 tell you that in the discussion before that it doesn't
19 relate to Wahid. Just all of a sudden Mr. Siddig brings up
20 the name Wahid.

21 A All right, sir.

22 Q Let's go on. Maybe this will help. Transcript
23 line 22, Siddig Ali. This, by the way, is from page 47 of
24 the full transcript.

25 You asked him: By the way, what kind of work

1 does he do, remember?

2 Salem: Yes.

3 Siddig Ali: This man he knows, money, need
4 people, people with lots of money but he has a problem, he
5 is reluctant, reluctant.

6 Does that bring it into focus a little bit more?

7 A Yes, sir.

8 Q When you saw him and wanted to greet him, do you
9 remember why you wanted to greet him?

10 A I want to know what's his connection with
11 Mr. Siddig Ali, sir.

12 Q Did he appear to you to be a person who was
13 wealthy?

14 A Wealthy?

15 Q Yes.

16 A Even how to --

17 Q Prosperous, let us say?

18 A I know how to dress well.

19 Q Did you happen to know the Mercedes car he was
20 driving?

21 A No, I did not, sir.

22 Q But he did look like a businessman, would that be
23 fair to say?

24 A Yes, sir.

25 Q And Mr. Siddig confirms that he knows people with

1 money in this line that we just read, is that correct?

2 A Yes, sir.

3 Q He says in what I just read, he is reluctant,
4 reluctant. Doesn't that mean he doesn't love jihad, he is
5 not with him, per se?

6 A No, it doesn't mean that, sir.

7 Q What do you think it means?

8 A Reluctant into the religion, sir.

9 Q Could you explain that a little further.

10 A I mean, if he pray three times a day instead of
11 five, he go to the mosque each other day instead of every
12 day. That's what reluctance here means.

13 Q Not a very good Muslim in Siddig Ali's eyes, is
14 that correct?

15 A I wouldn't speculate about Mr. Siddig's opinion,
16 sir.

17 Q Let's read on in that passage. It is about line
18 28.

19 Siddig Ali continuing: I am telling you, my
20 friend, you don't know him. Quote, I know people know
21 people, end quote, and things like that. Quote, well, if
22 you know people my friend, let's see what you can really do,
23 end quote. Forget it.

24 Salem: Correct.

25 In that passage, was Mr. Siddig Ali basically

1 saying the guy brags that he knows a lot of people but he
2 doesn't really come through, that Mr. Wahid brags that he
3 knows people? Is that not what was being said there?

4 A No, sir.

5 Q What do you think was being said there?

6 A He is saying that he knows Mr. Siddig himself
7 since he know Mr. Wahid, he knows people with money, sir.

8 Q Then why did he say forget it?

9 A I don't know where it came from. I am not sure
10 if that's on the tape or not, sir.

11 Q Then let's go on, because the conversation
12 continues. After you say correct, now we are about at line
13 36 Siddig Ali: Huh?

14 Salem: All right. Do you think that this Wahid
15 cannot be talked to?

16 Siddig Ali: But this Wahid, you can't imagine
17 him, cannot imagine him because frankly speaking, he is not
18 committed.

19 Salem: Not committed?

20 Siddig Ali: Not committed, yes. He himself is
21 not committed.

22 That's continuing what you just said, he is not
23 committed to the religion, is that correct?

24 A Yes, sir.

25 Q He goes on, Salem at about line 49: Ah.

1 Siddig Ali: And even with appointments he is not
2 reliable.

3 Salem: This is disgraceful.

4 Siddig Ali: And he will tell you, quote,
5 tomorrow, end quote, and it will be the day after tomorrow.

6 Next page Salem: No, no, this is not good.

7 Siddig Ali: And after that, one more tomorrow.

8 Salem: No, no, this is not good.

9 Siddig Ali: And I ask him, quote, what happened,
10 my friend, quote, quote, I swear to God that I forgot,
11 quote. What a pity. Quote. Oh, I aware to God I got very
12 busy, end quote, and so on, and 20 times he's done that,
13 this is his style.

14 Salem: Forget it.

15 Now do you recall the context of that
16 conversation?

17 A Yes, sir.

18 Q Mr. Siddig Ali was saying this guy is not a
19 reliable guy, is that right?

20 A Yes, sir.

21 Q He doesn't even keep appointments, is that right?

22 A Yes, sir.

23 Q He goes on to talk about something else about

24 Mr. Wahid Saleh on line 14. Siddig Ali: But he has

25 arranged for buses for Washington for the brothers who want

1 to go and march in the demonstration.

2 Salem: Yeah, yeah.

3 Siddig Ali: Huh? He arranged 10 buses for them.

4 Salem: Wahid?

5 Siddig Ali: Yes. Do you see how he is? Have
6 you ever seen this kind of nonsense before? This is sinful.
7 For that reason we consider him finished.

8 Do you recall that conversation?

9 A Yes, sir.

10 Q Do you recall that sometime during the spring
11 there was a big demonstration that was held down in
12 Washington in connection with the problems in Bosnia?

13 A I never went there, sir.

14 Q You didn't go, but were you aware of it from
15 reading the newspapers or anything like that?

16 A No, sir.

17 Q So you didn't know which demonstration he was
18 talking about, is that correct?

19 A No, sir.

20 Q It is fair to say, though, that Mr. Siddig Ali
21 was saying that this was something disapproved of, this kind
22 of peace demonstration, is that right?

23 A I am sorry, say it again, please.

24 Q That Mr. Siddig Ali disapproved of Mr. Wahid
25 Saleh's involvement in the peace demonstration, is that

1 true?

2 A No, sir. That's not --

3 Q He called it nonsense, he called it sinful.

4 A The nonsense here, sir, means that it's nonsense
5 that he is not that committed but he brought 10 buses to
6 help mujahideen. So that's nonsense, it's not completely
7 committed or not committed.

8 Q Maybe he is in it for the money, something like
9 that?

10 MR. McCARTHY: Object.

11 THE COURT: Sustained.

12 Q I would like to direct your attention for a
13 moment to page 5 of the transcript book, which is a page
14 from the CM 20-21 combined transcript, transcript page 27.
15 Do you recall one time on a different date when you were
16 driving with Mr. Siddig Ali and you were up around the UN
17 and you saw a demonstration going on and Mr. Siddig Ali
18 talked about the demonstration? Do you recall that
19 incident?

20 A I dropped Mr. Siddig Ali?

21 Q I think you two were in the car, perhaps you were
22 in the car together and you saw a demonstration happening,
23 people demonstrating for peace in Bosnia. Do you recall an
24 incident like that?

25 A No, sir.

1 Q Let me see if this refreshes your recollection or
2 if it's something else you can explain to me.

3 A Yes, sir.

4 Q Line 28, Salem: Yes, yes, it is just that some
5 people are saying that that I have made -- it's cut off. We
6 are going to pray at the United Nations and follow up with a
7 demonstration and such.

8 Actually I will stop myself. This is a talk
9 about a demonstration that might happen in the future, is
10 that correct?

11 A Yes, sir.

12 Q Siddig Ali: No, unintelligible. I don't like
13 demonstrations.

14 Salem: No, it's, unintelligible, around the.

15 Siddig Ali: No, no, I'm going to hang out with
16 the brothers in New Jersey.

17 Salem: God willing.

18 Siddig Ali: Demonstrations during a holiday,
19 what craziness.

20 Salem: For Bosnia and Herzegovina.

21 Siddig Ali: What demonstration? They told the
22 UN and the UN did not reply, they told America and America
23 did not reply.

24 Salem: Well that's because there isn't.

25 Siddig Ali: They entrusted their faith in

1 America and not in God.

2 Do you recall that discussion?

3 A Sir, I am sorry. That transcript is not
4 accurate, sir, because simply, even Herzegovina, I never
5 said it in my life. I heard it so many times, I will never
6 say it, sir.

7 Q Is the substance of the discussion correct,
8 though, that Mr. Siddig Ali was saying he wasn't going to go
9 to any demonstrations because he doesn't believe in that?
10 Is that right?

11 A I cannot confirm that, sir.

12 Q Let's go back to page 3. Picking up with Siddig
13 Ali in his speech at about line 26, which is on page 48 of
14 the CM 27 transcript, after what I just read, we consider
15 him finished.

16 Ah. His problem is that if he were committed he
17 would be good, good, had he been committed it would have
18 been good because he knows good people, people whose pockets
19 are full. Moreover, he is, you could say, huh?

20 Salem: He's not disciplined and he's not
21 committed.

22 Do you recall that part of the conversation? He
23 went on to tell you he's really -- we should not bother with
24 Mr. Wahid Saleh, is that correct?

25 A Let us not to bother with him?

1 Q He would have been good if he was someone who is
2 committed, but since he's not, forget it.

3 A Not forget it, sir.

4 Q Let's go on. Line 35 Siddig Ali: But God
5 willing, what I'm going to say about him is not bad talk
6 because of the following. It is because he is a bad person.
7 He is street smart, you understand?

8 Salem: You mean he is a guy who is a rambler? A
9 street smart, yes.

10 Salem: In our language they say he is a rambler.

11 Siddig Ali: That's it. Laughing. He is a
12 definite rambler, but he knows God and religion.

13 Salem: Unintelligible.

14 Siddig Ali: He doesn't miss a prayer.

15 Salem: He that is wonderful.

16 When you said wonderful, you were in a sense
17 being sarcastic, is that it?

18 A That's the nonsense here. Yes, I was like --

19 Q You were almost kidding around with him, is that
20 right?

21 A Yes, sir.

22 Q But he was saying that he is a rambler, street
23 smart guy, by that he meant almost like a street criminal,
24 is that right?

25 A I am sorry, rambler, I don't know what that mean,

1 sir.

2 Q Rambler, someone like a drifter, someone who --

3 A It's worse.

4 Q This wasn't my word either.

5 A I am sorry.

6 Q Someone who --

7 A A bum?

8 Q Like a bum.

9 A Yes.

10 Q Actually, Mr. Siddig Ali at some other occasion
11 referred to Wahid as a bum. Do you recall that?

12 A Yes.

13 Q So it is like a bum?

14 A Streetwise, yes, sir, all right.

15 Q In fact, up at the top of what I just read at
16 line 35, Mr. Siddig Ali was trying to excuse him for talking
17 bad about a person behind his back, is that right, because
18 you are really not supposed to do that, is that right?

19 A Yes, sir.

20 Q He was saying because he is a bad guy it's all
21 right for me to say he is a bad guy, is that right?

22 A Yes, sir.

23 Q Continuing, line 55 right at the bottom. Siddig
24 Ali: Ah, unintelligible. Very good. Do not tell him
25 anything. He is a crook when he deals with you, and when he

1 deals with the Americans he is all F, F, F you.

2 Salem: Ah.

3 Siddig Ali: You got it? But he is a Muslim.

4 Salem: Ah, I got you. Siddig Ali. He cannot pull that on
5 Muslims. You see how, he is a rambler with them -- you want
6 bum, he is a bum with them in their lifestyle.

7 Do you recall that, that he went on to say that?

8 A Yes.

9 Q In other words, when he is with us Americans, he
10 doesn't act like a Muslim at all, is that what he is saying,
11 he uses swear words, F, F, F you, is that correct?

12 A Yes, sir.

13 Q He also told you in this passage that he is a
14 crook, is that correct?

15 A Something in that effect, sir.

16 Q And he also told you, do not tell him anything,
17 is that correct?

18 A I am not sure of that, sir.

19 Q Wasn't he basically saying this is a guy I don't
20 really trust?

21 A No, sir, he did not say that.

22 Q Picking up at line 13 on page 24, CM 39,
23 unintelligible FDR. Presumably that was a driving direction
24 on the FDR Drive. Is that correct?

25 A Could be, sir.

1 Q Line 15, Siddig Ali: No, proceed. In the name
2 of God the merciful and the compassionate, do you see how he
3 is a rambler with them? Unintelligible. I ask God to make
4 us followers of the right path.

5 Salem: Amen, God, oh God.

6 Siddig Ali: Guide us and number us among the
7 good people, not of the infidels nor of the hypocrites, oh
8 God.

9 Siddig Ali was basically saying a little prayer
10 there, wasn't he, please, God, make us not like him. Isn't
11 that what he was saying?

12 A He didn't refer to him but it's always, sir,
13 these words always common words is being used with, among
14 Muslims, sir.

15 Q But he said he is a rambler with them, I ask God
16 to make us followers of the right path.

17 A Yes, sir.

18 Q And he talked about infidels and hypocrites, is
19 that right?

20 A Yes, sir.

21 Q Wasn't he basically saying that Wahid Saleh is a
22 hypocrite because he uses the religion, he will go to the
23 mosque to meet people maybe for business but he is not
24 really committed, he is not really religiously committed?

25 A No, sir, I didn't get that meaning.

1 Q You didn't get that meaning from it?

2 A No, sir.

3 Q Then days go by and you don't have any
4 discussions, at least on the CM transcripts, about Wahid
5 Saleh or with Wahid Saleh. Do you recall that?

6 A Could be, sir. I am not sure.

7 Q Directing your attention to page 6 of the
8 transcript book, CM 37, page 19 of that transcript, which is
9 on June 13, which is 10 days later than the one we were just
10 reading, I will ask you if you remember this conversation,
11 starting about the middle of the page, line 28, 29, Siddig
12 Ali: There is, there is a man, he needs someone to hold him
13 and cut his hand and his ear.

14 Salem: Good.

15 Siddig Ali: He has money.

16 Salem: Who is he?

17 Siddig Ali: Some man, some man.

18 Salem: Who? You mean it's a secret?

19 Siddig Ali: Wahid.

20 Salem: Wahid?

21 Siddig Ali: Wahid, yes. There is no secret, my
22 friend.

23 Salem: You already told me of Wahid.

24 Siddig Ali: I told you about them.

25 Salem: A spoiled brat who hops around and

1 dances.

2 Do you recall that conversation?

3 A Yes, sir.

4 Q The very first lines that I just read, he needs
5 someone to hold him and cut his hand and his ear, is that an
6 Arabic expression?

7 A Yes. It's when you, sometimes you kid with your
8 son you can say something I will cut your hand and your ear,
9 you little tyke.

10 Q Like a discipline?

11 A But a kidding way, sir.

12 Q And he mentioned that he is a guy who has money,
13 is that correct?

14 A Yes, sir.

15 Q At first he doesn't want to say the name, he says
16 some man, some man, and when you press him is it a secret he
17 says no, it's Wahid, he clarifies that it is Wahid, is that
18 correct?

19 A Yes, sir.

20 Q And that is Wahid Saleh, is that correct?

21 A Yes, sir.

22 Q And you, remembering the earlier conversation,
23 you say that he is a spoiled brat, is that correct?

24 A Yes, sir.

25 Q Going on, Mr. Siddig Ali at line 54 repeats your

1 line, a spoiled brat, he hops around, but he has?

2 Salem: Hm, hm, hm.

3 Siddig Ali: And you want him to work, to work,
4 to work, to work.

5 Salem: All right, let him come over to work.

6 Siddig Ali: All right. Should I ask him to come
7 over?

8 Let me just stop you right there. When Siddig
9 Ali says and you want him to work, to work, to work, were
10 you talking about working with bomb materials in the safe
11 house -- I am sorry. Let me just retract that and ask,
12 sometimes when you use the phrase to work, do you mean to
13 work in the safe house?

14 A No, to work for jihad or to do something for the
15 jihad cause.

16 Q Whatever it may be, but something participating
17 in the plan?

18 A Yes, sir.

19 Q At that bottom line on page 6, Mr. Siddig Ali is
20 saying, and you want him to work, almost as if it is a
21 question, is that correct? You really want him to work?

22 A I am sorry, sir. Well, OK, ask the question
23 again, sir.

24 Q Let's look at the next two or three lines again
25 on page 7. I won't reread them. Mr. Siddig Ali basically

1 asks you, should I ask him to come over? Isn't that
2 correct?

3 A Correct, sir.

4 Q He is a little skeptical about whether to invite
5 this crook, this bum into the plan, isn't that correct? He
6 is asking you for advice.

7 A He asked me, sir, yes.

8 Q And your response then, which we hadn't read yet,
9 on page 7 of the book, CM 37, line 5: Let him come over and
10 do the buying.

11 Siddig Ali: That's it.

12 Salem: Do you get me?

13 Siddig Ali: No, I don't want him to be informed
14 of this matter. Pause.

15 So you made suggestion that he could, since he
16 had money, buy some of the stuff you need, is that right?

17 A Yes, sir.

18 Q And Mr. Siddig Ali likes the idea because he was
19 saying he could buy the stuff but I don't want him to be
20 told about the plan, isn't that correct?

21 A Correct, sir.

22 Q Then there is a pause, and it goes on at line 16,
23 Salem: As long as he is going to work.

24 Siddig Ali: What?

25 Salem: As long as he is going to work with his

1 hands, let him come over.

2 I will stop you there. Work with your hands, did
3 that mean like mixing the bombs, that kind of thing, is that
4 right?

5 A Yes.

6 Q You asked him that because you didn't want Siddig
7 Ali trapping innocent people into this thing, you wanted
8 only people who really would know, isn't that fair, would
9 know that this is a bombing plan?

10 A I am sorry. I am getting -- I don't want to
11 answer and then --

12 Q Let me slow down.

13 When you asked him that question or stated as
14 long as he is going to work with his hands --

15 A Right.

16 Q -- you did not want Siddig Ali just using people
17 who did not know what this is all about, did you?

18 A As long as he will work with his hands so he will
19 know what he is doing, then that's his problem.

20 Q Because you are actually working for the FBI,
21 you're not trying to build bombs, is that right?

22 A Of course, yes, sir.

23 Q So you only want people who are going to be
24 eventually arrested who are in fact guilty, who know what
25 they are doing, isn't that right?

1 A I want, yes, the people who will accept to build
2 bombs, that's it.

3 Q So you didn't want Mr. Wahid just to be used for
4 buying things without knowing what it's about, you wanted
5 Mr. Siddig to have him work with his hands, and he would
6 have to know, isn't that right?

7 A I don't want anybody to do something against his
8 will, sir.

9 Q Exactly.

10 A If Mr. Siddig will bring him to work with his
11 hands, let him to bring him. As long as he accepted to work
12 with his hands, it's his problem, sir.

13 Q And what Mr. Siddig seemed to be doing was trying
14 to use somebody who didn't want, didn't know what this was
15 about, and you were saying you don't want that, you want him
16 to come work with his hands. Is that fair?

17 A I am sorry, sir. I am not getting the question.

18 Q Let me withdraw the question. I think we have
19 covered it. Let's go on to line 16.

20 THE COURT: Could you come to a convenient break
21 point, Mr. Nooter, say in the next five minutes or so.

22 MR. NOOTER: Yes, I will read one or two more
23 lines and that will be it.

24 Q I think we were at line 23, Siddig Ali: You want
25 him to come over?

1 Salem: Yeah. Is he ready and is he asking?
2 You were trying to find out if he knew, is that
3 right?
4 A Yes, sir.
5 Q Siddig Ali: No. He went on a trip. He made a
6 trip to the Caribbean.
7 Salem: Where to?
8 Siddig Ali: The Caribbean.
9 Salem: You mean the Caribbean Sea?
10 Siddig Ali: He is, you know what, a scuba diver.
11 Salem: Ah.
12 I believe the word scuba diver is underlined
13 simply because it was said in English, not because it is a
14 dispute.
15 Do you recall that?
16 A Yes, sir.
17 Q Mr. Siddig Ali goes on to explain this job he is
18 going to do about a ship, is that right?
19 A Yes, sir.
20 Q He says at line 40: He went because there is a
21 sunken ship. I'm telling you this man is a disaster.
22 Salem: God willing.
23 Siddig Ali: A disaster.
24 Salem: Eh.
25 Siddig Ali: There is a sunken ship and they are

1 on their way and this ship broke into two, and what will
2 they do with it, they will weld it under the water.

3 Salem: Hm, hm, hm. I have.

4 Siddig Ali: They will weld it, and he is telling
5 me they will weld it under the water.

6 You respond: I have taken an underwater welding
7 course, naturally, it's not so big.

8 Siddig Ali: And that's what he does for a hobby,
9 but now he's going to be paid lots of money, big sums for
10 this job.

11 Salem: Unintelligible.

12 Siddig Ali: He is saying he will be paid big
13 sums of money.

14 Salem: Ah, ah.

15 He had told you something before about going to
16 the Caribbean, is that correct?

17 A Yes, sir.

18 Q When you heard that he is someone who could weld
19 underwater, did you think about like a frogman, someone in
20 the military who could do things underwater?

21 A Yes, sir.

22 Q In fact later when you meet him you talk about
23 frogman, is that right?

24 A Yes, sir.

25 Q And it is also interesting because it means he is

1 going to have a lot of money and maybe Siddig Ali can get
2 some of this money, is that correct?

3 A That what --

4 Q That was the implication?

5 A That what Mr. Siddig Ali suggested, sir.

6 MR. NOOTER: This would be a good breaking point.

7 THE COURT: Ladies and gentlemen, we are going to
8 take a short break. Please leave your notes and other
9 materials behind. Please don't discuss the case, and we
10 will resume in a few minutes.

11 (Recess)

12 (Continued on next page)

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1 EMAD SALEM, resumed.

2 (Jury present)

3 THE COURT: Mr. Nooter. Go ahead.

4 MR. NOOTER: Thank you very much.

5 Q I am going to direct your attention to the
6 continuation of CM37, which is in the blue booklets, page 8.

7 A Yes, sir.

8 Q We had just finished talking about how Wahid was
9 in the Caribbean and he was going to make a lot of money, do
10 you recall that?

11 A Yes, sir.

12 Q Continuing at line 14:

13 Siddig Ali: He is running next Friday or
14 Saturday.

15 That means Wahid, is that correct?

16 A Yes, sir.

17 Q Salem: If you want to do it that way. I did not
18 know you thought it should be done that way, but if --

19 Siddig Ali: Ah, he has no work with us. He will
20 buy these things for us and that's it.

21 Do you recall that passage?

22 A Yes, sir.

23 Q Again, Siddig Ali is still suggesting he'll just
24 use him to buy things without really getting him into the
25 plan, is that right?

1 A Yes, sir.

2 Q Salem: If you want it done that way, no problem.
3 But there is one more point to discuss.

4 Siddig Ali: He will go buy these things for us.
5 He will go and buy these things for us.

6 Salem: Yes, he goes down to buy these things.
7 That's it.

8 Siddig Ali: That's it. And he is --

9 Salem: The water bottles?

10 Siddig Ali: He's very clever in the marketplace.

11 Salem: Um, the water bottles?

12 And then you go on to discuss other materials,
13 pipes and frames and things like that.

14 Do you recall that?

15 A Yes, sir.

16 Q So basically would it be fair to say that Siddig
17 Ali was suggesting he buys things which are ordinary things
18 like water bottles, is that correct?

19 A Yes, sir.

20 Q Then he'll do it in the marketplace and we can
21 use him because he's a good negotiator, he's a good
22 businessman, is that correct?

23 A Yes, sir.

24 Q I'd asked you before whether there were times
25 that Mr. Siddig Ali seemed to want to use people that way

1 without their knowing.

2 Turning to the next page, page 9 in this book,
3 which is an excerpt from CM44, page 21 of the CM transcript,
4 this may have been discussed with you before. An individual
5 named Mohsen, do you remember him?

6 A Yes, sir.

7 Q If you look at the top of the page there is a
8 discussion about doing something with the fertilizer, is
9 that correct?

10 Salem: Yeah, the fertilizer.

11 Siddig Ali: We put it in a boiler of someone we
12 know, later we take it.

13 Salem: And later we take it from the boiler.

14 Siddig Ali: Yeah, OK.

15 And then he goes on to discuss someone who is a
16 landlord, about line 24, 25:

17 Salem: Mohsen, our friend. I mean you know him
18 and --

19 Siddig Ali: Very, very well. Very, very, very
20 well.

21 Salem: I know he is a religious, pious man.

22 Siddig Ali: But I am telling you, ah, it is not
23 necessary, uh, that he knows anything.

24 Salem: In a very low voice, He will say what and
25 why?

1 Siddig Ali: Whispering unintelligible.

2 Salem: In a very low voice, are you sure?

3 Siddig Ali: Whispering, yeah.

4 Salem: OK.

5 Siddig Ali: Whispering, unintelligible, very
6 good. I mean, I tell him Mohsen, unintelligible, he will
7 say your secret is buried and it stays like that.

8 Salem: Good.

9 Siddig Ali: But still -- we will not tell him.

10 Salem: Yeah.

11 Siddig Ali: Why not?

12 Salem: Yeah.

13 Siddig Ali: He will just serve us and that's it.

14 Do you recall that conversation?

15 A Yes, sir.

16 But there is one thing here is not accurate, sir.

17 Q Which is that?

18 A That we're going to put the fertilizer in the
19 boiler.

20 Q OK.

21 A That never --

22 Q It is probably not a major point. I will just
23 point out this is the joint transcript we've been using.

24 So there is an instance or a time when Siddig Ali
25 wanted to use somebody without telling him really what the

1 whole deal was, is that correct?

2 A No, sir, that's not correct.

3 Q You don't think that's what he was saying there?

4 A Because he said over here, which is not in the
5 transcript, that he will tell Sheik Mohsen what we doing and
6 Sheik Mohsen willing keep it a secret because sheik Mohsen
7 is --

8 Q Because he's a pious -- I'm sorry. I didn't mean
9 to cut you off.

10 A Because Sheik Mohsen is one of the people he
11 really trust very, very much, sir.

12 Q Right. He mentions he's a pious religious man,
13 is that right?

14 A Yes, sir.

15 Q And he mentions if we told him he would keep it a
16 secret, he'd say he'd keep it a secret?

17 A Yes, sir.

18 Q But when he finishes he changes his mind and
19 says: No, we won't tell him. Let's not tell him, isn't
20 that fair?

21 A Yes, sir.

22 Q I want to direct your attention to page 13 of
23 this book.

24 A Yes, sir.

25 Q Which is also a piece from CM37.

1 You remember I asked you about the thing with the
2 Qatar embassy and the license plate?

3 A Yes, sir.

4 Q Let me just ask you if this refreshes your
5 recollection if there was something different or something I
6 misunderstood.

7 At about line 32:

8 Siddig Ali: Yeah. He is going to steal a car
9 from me.

10 Salem: Huh.

11 Siddig Ali: You understand? Of the Qatar
12 embassy which is -- unintelligible, the car, he will steal
13 it. The Qatar people, unintelligible,

14 Salem: Yeah.

15 Siddig Ali: Now, he does -- now, he does know
16 what I want.

17 Salem: Yeah.

18 Siddig Ali: He thinks it's a simple thing or so
19 because I told him.

20 Now, he's not talking about Wahid Saleh right
21 here, is he?

22 A No, sir.

23 Q He's talking about someone who is going to steal
24 the car or a license or something from the Qatar embassy
25 people, is that right?

1 A Yes, sir.

2 Q Now, just looking at the last lines, starting at
3 line 48:

4 Salem: You told him we are going to do
5 something, but not here.

6 Siddig Ali: Yes, but not here.

7 Salem: A hadduta, but not in your house?

8 Siddig Ali: I didn't mention the hadduta. I
9 told him we were going to do something in the future, and
10 asked him to get inside myself.

11 In other words, whoever he is talking about, he
12 only told him part of a plan, is that right?

13 A Right, sir.

14 Q That it is a bomb, but not here, meaning in the
15 United States perhaps?

16 A No, sir.

17 Q Or not in the UN perhaps?

18 A Not in the UN, yes.

19 Q OK. So, in other words, Siddig Ali is prepared
20 to use people telling them some things that he thinks they
21 need to know, but not necessarily everything, is that right?

22 A Yes, sir; yes, sir.

23 Q All right. Directing your attention to page 10
24 of this transcript book, which is still back in CM37 on June
25 13, page 24 of the CM37 transcript. Down at the bottom,

1 starting at about line 47, there is a discussion about
2 nitrates, and that nitrates, you and Siddig Ali discuss
3 nitrates as being one of the things you need, is that
4 correct?

5 A Yes, sir.

6 Q I will read it.

7 Siddig Ali: The second, the second thing that
8 looks like which is the nitrates.

9 Salem: Um, um, um.

10 Siddig Ali: It is sold.

11 Salem: Common thing, common thing, regularly the
12 jewelers use it?

13 Siddig Ali: Yeah. Pause.

14 Do you use it?

15 Next page.

16 Salem: Sometimes we use it, uh-huh.

17 Siddig Ali: Are there stores that sell it that
18 you can tell me about?

19 Now, the nitrates is a chemical that's supposed
20 to be available anywhere, is that right? Not anywhere, but
21 easily obtainable, is that correct?

22 A Sir, that's not what we said. We talked about
23 mercury.

24 Q Mercury?

25 A Mercury. Not nitrate. You translated here

1 nitrate.

2 Q OK. I would just ask Mr. McCarthy to concede
3 that I am reading the joint transcript correctly. I don't
4 know that mercury or nitrates makes any difference here.

5 MR. McCARTHY: Your Honor, it is stipulated.

6 Q Whichever it is, what happens then is you go to
7 the yellow pages to look for chemical companies and things
8 like that that can sell the product, is that right?

9 A Yes, sir.

10 Q I won't read it, but the top half of page 11 is
11 while he's flipping through the yellow pages and mentioning
12 some company names he's reading.

13 Going to line 32:

14 Siddig Ali -- he reads apparently a company name
15 out of the yellow page Davoire, U.S.A.: I am going to be
16 smart. I will not call them.

17 Salem: Naturally not. I was waiting to see how
18 you would do.

19 Siddig Ali: No, no. I would never be that
20 careless. No.

21 Salem: I mean, I suggest that you go over there
22 in person.

23 Siddig Ali: How will I go to them?

24 Salem: Just like that.

25 In that passage isn't it true that what Siddig

1 Ali meant was that he doesn't want to connect himself to the
2 purchase of the, whatever it is, mercury, nitrates,
3 whatever, so that he can't be traced later, isn't that
4 right?

5 A Yes, sir.

6 Q You were kind of almost flattering him saying:
7 Oh, yes. I was waiting to see how you were going to handle
8 this problem. That's very smart.

9 Is that right?

10 A Yes, sir.

11 Q So we go on at line 47, 48:

12 Siddig Ali: Ah, um, um, um, you know how I'm
13 going to do it? No. I will do it, but I will use someone
14 who does not know.

15 Salem: All right.

16 Siddig Ali: We will make Wahid do that.

17 Salem: Um, um, um, fine. But when will Wahid be
18 coming.

19 Siddig Ali: He will not know. Do not worry.

20 Do you remember those lines?

21 A I recall we talked about Wahid in that effect,
22 but I am not sure if that's the --

23 Q If that is totally the exact wording?

24 A The exact words we said, sir.

25 Q But basically he had said: I don't want to be

1 traced. I am not going to do this myself. We'll use
2 somebody, and in order to use somebody, it has to be someone
3 who doesn't know, isn't that correct?

4 A Yes, sir.

5 Q Because then if he's questioned later by the FBI
6 or something, he can't lead to the plotters, isn't that
7 correct?

8 A Yes, sir.

9 Q Turning to page 14 in CM37, Wahid's name comes up
10 again in the same conversation, CM37, page 14, line 7 to 8.

11 Siddig Ali: Wahid has a storage place his own,
12 unintelligible, so we could order it -- probably talking
13 about the oil or something like that.

14 Is that right?

15 A Yes, sir.

16 Q OK. So we could order it and have it delivered
17 to him there. Then we will pick it up because we can't send
18 the car there, the truck, the water truck to Queens. I
19 don't want anyone to go there. We leave it there, and then
20 we will pick it up.

21 I'll note the word "Queens" in the government
22 transcript was unintelligible. But does it appear that
23 that's what he's talking about, he doesn't want the water
24 truck, which is actually the oil, to come directly to the
25 safe house, is that correct?

1 A No, sir.

2 Q That wouldn't be very safe, right?

3 A The water truck, it's mentioned about the
4 bottles, we talked about water bottles.

5 Q Like you mean like Great Bear, that kind of
6 thing, those five gallon bottles?

7 A Right.

8 Q OK.

9 A So right here he don't want the water truck which
10 will bring the bottles to come to the safe house.

11 Q Correct.

12 A So he suggested to go to Mr. Wahid's area to
13 store it there.

14 Q OK.

15 A Mr. Wahid, sir.

16 Q I just wanted to clarify that on the word
17 "Queens."

18 Going on at around line 10:

19 Water truck to Queens. I don't want anyone to go
20 there. We leave it there, and then we will pick it up.

21 Salem: The brothers will move it.

22 Siddig Ali: I want everything far away.

23 And then you go on to discuss the beeper code
24 system of getting into the safe house.

25 Now, this again is a situation where Mr. Siddig

1 Ali doesn't want the delivery of the water to result in
2 tracing anybody to himself, is that right?

3 A Yes, sir.

4 Q So that, again, he'll deliver it to somebody who
5 doesn't know, Wahid's storage place, whatever that is, is
6 that correct?

7 A Yes, sir.

8 Q Then someone will come pick it up later, the
9 brothers?

10 A Yes, sir.

11 Q Which was actually your suggestion, is that
12 right?

13 A Yes, sir.

14 Q All of this time, of course, Mr. Wahid Saleh was
15 not even around, is that correct, he was in the Caribbean or
16 someplace?

17 A Correct, sir.

18 Q As far as you know, there was no conversation
19 going on back and forth between Siddig Ali and Mr. Wahid
20 Saleh while he was in the Caribbean, is that correct?

21 A I wouldn't know, sir.

22 Q OK. Well you didn't have any yourself, is that
23 right?

24 A No, myself, no, sir.

25 Q You were not present with Mr. Siddig Ali while he

1 was on the phone or anything with Mr. Wahid Saleh while he
2 was in the Caribbean, is that correct?

3 A No, sir, I wasn't.

4 Q Three days later, in CM43, there is a discussion
5 in which Wahid Saleh's name comes up again, as Wahid.

6 I am going to direct your attention to page 15 of
7 the blue transcript book. You've spoken before about this
8 individual named Haggag, do you recall that?

9 A Yes, sir.

10 Q Haggag was somebody who was some kind of
11 associate of Siddig Ali, is that right?

12 A Yes, sir.

13 Q An Egyptian man, is that right?

14 A Yes, sir.

15 Q At some point he became suspicious of almost
16 everybody and started accusing people of being with the FBI
17 and things like that, is that correct?

18 A He was suspicious of Mr. Siddig and myself, sir.

19 Q Did you ever see Haggag in the company of
20 Mr. Wahid Saleh?

21 A No, sir.

22 Q Looking at page 15, just to put it in some
23 perspective, there is a discussion that is going on that
24 seems to be about firing mortars in Egypt or in the Sudan or
25 something like that. At around the middle, line 25, Siddig

1 Ali says: He must have said these people are for sure in --
2 unintelligible -- but these Jordanian are dangerous because
3 they work with the Mossad.

4 And then a little lower down on 33 and 34:

5 Salem: He told me you are FBI, and I am shit in
6 the CIA and they are Mossad and that's paranoia.

7 You were talking about Haggag there and his basic
8 accusations of people, is that correct?

9 A I believe, yes, sir.

10 Q Then it goes on with this discussion of things in
11 Jordan.

12 If we turn the page to 16, it still goes on with
13 the Mossad? The Mossad is the intelligence service of
14 Israel, is that correct?

15 A Yes, sir.

16 Q Siddig Ali: I am telling you what he told me?
17 This is the very top. They are -- or he is from
18 the Mossad. He said they are in the Mossad.

19 Salem: They're the Mossad, and he told you that
20 I am in the intelligence. That was in quotes. I'm in the
21 intelligence.

22 Siddig Ali, interrupting: Do you know brother
23 Wahid?

24 Salem: Yeah.

25 Did he also turn out to be what, KGB?

1 That was a joke, right?

2 A Yes, sir.

3 Q Siddig Ali: He told me don't introduce anybody
4 else to the group.

5 Salem: Ah.

6 Siddig Ali: He told me, no, no, this Wahid is
7 100 percent with the FBI. 100 percent.

8 That should be the end of quotes there.

9 Salem: Yeah.

10 Siddig Ali: He told me, quote, I suspect him 100
11 percent, 100 percent. He suspects him 100 percent. That is
12 what he told me.

13 Siddig Ali, continuing: I asked him why. He
14 told me, quote, no, no, no.

15 Salem: Because he's bad. His eyes speak, yeah,
16 yeah, uh, come on, I mean --

17 Q Do you recall that discussion there?

18 A Yes, sir.

19 Q So you don't know how it is that Haggag knew
20 anything about Wahid, but Siddig is telling you that Haggag
21 thinks that Wahid is in the FBI or working with the FBI, is
22 that right?

23 A Sir, I am not so sure that we are talking about
24 Haggag here. So I don't put myself in trouble, sir, you are
25 talking about somebody.

1 Q Somebody, OK. It doesn't really matter who it
2 is.

3 A Yes, sir.

4 Q Isn't it a fact that what Siddig means is that
5 somebody thinks he's in the FBI because Mr. Wahid Saleh has
6 been in jail before?

7 A I couldn't speculate, sir.

8 Q All right.

9 Well, let's go on and see what he says at line
10 30:

11 Because Wahid was.

12 Siddig Ali: Because Wahid was in jail before.

13 Salem: Sort of, in quotes, so what?

14 Siddig Ali: Because he was in jail before now.

15 Salem: Ah.

16 Wasn't that sort of implying that maybe if he
17 went to jail, perhaps he's now become an informer or
18 something like that?

19 A Somebody, sir.

20 Q Siddig Ali goes on to discuss now Wahid
21 apparently, line 38: Because he's married to someone who's
22 not a Muslim.

23 By the way, did you ever meet Mr. Wahid Saleh's
24 wife?

25 A No, sir.

1 Q Other than this passage, did you ever hear about
2 her or anything?

3 A No, sir.

4 Q You don't know that she is an American Christian,
5 not a Muslim, anything like that?

6 A I don't know more than what's being said here,
7 sir.

8 Q You really don't know anything about his family?

9 A No, sir.

10 Q Line 38, Siddig Ali: Because he is married to
11 someone who is not a Muslim, and I'm always telling him,
12 quote, Wahid, follow the right path, my friend. Are you not
13 a Muslim? end of quote. His wife is abusive and she's
14 abusing him very much.

15 Salem: Yeah.

16 Siddig Ali: Before now he was also married to
17 one who was abusing him. They want his money, his money.
18 He lays the eggs and they are sucking him, sucking his
19 blood.

20 Salem: Ah.

21 Siddig Ali: I am always telling him, quote, my
22 friend, why all this bad behavior? Why don't you marry a
23 Muslim woman, my friend?"

24 Why don't you -- I'm sorry. Do you know what he
25 tells me, quote, by God, I cannot, end of quote, meaning,

1 you know, ah, if I marry a Muslim woman and I leave, you
2 know, the lady, I must not do this, my friend. I will be
3 abusing her, and I will not do that.

4 Do you recall that discussion?

5 A Yes, sir.

6 Q Would it be fair to say that Siddig Ali, of
7 course, was apparently advising Wahid to leave his American
8 wife and marry a Muslim woman, is that right?

9 A Yes, sir.

10 Q Might it be fair to say that Siddig Ali was again
11 implying that Wahid is not really a good Muslim, he won't
12 leave his American wife, he's got to stay with this American
13 wife, he won't marry a Muslim woman?

14 A Yes. He was trying to suggest that he should
15 marry a Muslim woman, sir.

16 Q Right. So that he would be a good Muslim, is
17 that right?

18 A Yes, sir.

19 Q All right. Now it goes back to the jail
20 discussion at the top of page 17, line 4:

21 Salem: He was in jail for what? I mean, what
22 was the crime he committed?

23 Let me just stop you --

24 A Which page?

25 Q I'm sorry. Page 17.

1 A Line?

2 Q Line 4. Very near the top.

3 A Yes, sir.

4 Q Basically, you asked him why he was in jail? You
5 recall saying something before about drug dealing, is that
6 correct?

7 A Yes, sir.

8 Q Did Siddig Ali tell you something about my client
9 in connection with drug dealing?

10 A Yes, sir.

11 Q Nobody else did, is that right?

12 A No.

13 MR. McCARTHY: Objection.

14 Q Well, with respect to anything before June 23,
15 Siddig Ali is the person who talked to you about drug
16 dealing in connection with Wahid Saleh?

17 MR. McCARTHY: Your Honor, may I have a moment
18 with Mr. Nooter?

19 THE COURT: Yes.

20 (Counsel conferred)

21 Q Do you know whether he went to jail for drugs?
22 Let me ask you this.

23 A OK.

24 Q Let me rephrase the question.

25 Did Siddig Ali tell you that he went to jail for

1 drugs?

2 A Siddig told me he went to jail for something
3 else.

4 Q It was not drugs, is that right?

5 A One of them was drugs, but he told me about
6 something else also, sir.

7 Q OK. Well, let's go on then.

8 Line 7, of page 17:

9 Siddig Ali: He was in jail because he wanted to
10 buy and sell weapons for the liberation.

11 Now, listen to the explanation for his crime. It
12 is that he came to know a man, do you remember the man named
13 Sultan.

14 Salem: Yeah.

15 Siddig Ali: He was arrested with Sultan. Do you
16 remember Sultan's case?

17 Salem: Yes.

18 Now, do you know who he was talking about when he
19 said "Sultan"?

20 A Yes, sir.

21 Q Is that Sultan El-Gaharli?

22 A Gaharli.

23 Q Gaharli? Something like that?

24 A Yes, sir.

25 Q That's a man who has a store in Jersey City, is

1 that right?

2 A Yes, sir.

3 Q Would it be fair to say it is on Kennedy
4 Boulevard, Sip Avenue, something like that?

5 A Close to that, sir, yes.

6 Q Were you aware at the time when Sultan got
7 arrested, did you know that that was happening -- let me
8 rephrase it.

9 A OK.

10 Q Whenever Sultan got arrested, did you know
11 Sultan?

12 A No, sir.

13 Q Is this something you heard about later?

14 A Yes, sir.

15 Q You mentioned in testimony, what was probably
16 several weeks ago now, something about sending a fax to
17 Egypt. Do you recall that testimony? You sent a fax to
18 Egypt about somebody who had been working for the FBI or for
19 the government?

20 A Yes, sir.

21 Q Do you recall that?

22 A Yes, sir.

23 Q That was about an individual who was working
24 undercover sort of the way you yourself had been, is that
25 correct?

1 A Yes, sir.

2 Q Isn't it true that was the guy responsible for
3 Sultan being arrested?

4 A As far as I know, yes, sir.

5 Q So you were fairly familiar with the case in one
6 way or another, is that correct?

7 A Yes, sir.

8 Q Isn't it, in fact, true that Wahid had nothing to
9 do with that arrest?

10 A I don't think -- I don't think so, sir.

11 Q Wahid was not arrested with Sultan in fact at
12 all, isn't that true?

13 A I don't know that, sir.

14 Q What you do know about the Sultan case?

15 You don't remember that anybody else named Wahid
16 was arrested, anybody else at all was arrested with Sultan,
17 is that correct?

18 A From my recollection, no, I don't recall, sir.

19 Q Going on at line 18, 19: Sultan and Wahid both
20 wanted to buy weapons to sell to the organization. What is
21 the organization?

22 A The PLO, sir.

23 Q Line 21, 22.

24 Siddig Ali: Ah, yeah, do you understand, and
25 that is why Wahid is afraid now. It is evident from his

1 appearance that he does not want to do it. He doesn't trust
2 anybody at all, not even his father, that is 100 percent.

3 Salem: All right, my friend. Let him give
4 you -- and do you think that he thinks you will rob him?

5 What did that mean? What did you mean to say
6 about robbing?

7 A What we talking here that, let him give you the
8 money, do you think that he going to think that you are
9 going to steal the money, or steal it and not use it for
10 jihad? That is what.

11 Q I see. Of course, on June 16, as far as you
12 know, Wahid Saleh is still in the Caribbean, isn't that
13 correct?

14 A Could be, sir.

15 Q He's not around, is that right?

16 A No, he was not.

17 Q Continuing, line 30, 31:

18 Siddig Ali: To give me what? The trouble is I
19 would like to explain this to him. He's driving me crazy
20 but he has -- ah, if I tell him come on, Wahid, bring me
21 money, that was in quotes, come on, Wahid, bring me money, I
22 will answer my quote, where from? end quote. It is
23 important to keep him away from this matter. Forget all
24 about him when it comes to this matter.

25 Now, Siddig Ali is telling you that he would like

1 to tell Wahid that so far he has not, isn't that correct?

2 A Yes, sir.

3 Q He's continuing in his opinion that he should
4 not, that it's not a good idea, is that right?

5 A Yes, sir.

6 Q At line 37, 38:

7 Salem: Yeah.

8 Siddig Ali: We don't want to let him know about
9 this matter.

10 Salem: What?

11 Siddig Ali: Wahid has told us two things, wahid
12 has told us quote, two things, unintelligible. You know my
13 situation is very bad really, I cannot act and --
14 unintelligible. But if you have other people who will buy
15 you the tickets, your tickets to wherever you would like to
16 go, quote, we agreed I'll go by myself, I mean to finish
17 these things, quote, or after you take it and then --

18 Salem: Unintelligible.

19 Siddig: Unintelligible.

20 Salem: Without Wahid knowing?

21 Siddig Ali: Better, yeah. He doesn't have to
22 know. You see how -- without him knowing is better.

23 Now, Siddig Ali's speech there is a little hard
24 to understand.

25 What were the tickets?

1 A I'm not sure, sir.

2 Q Could it have anything to do with the travel
3 tickets to the Philippines or something like that?

4 MR. McCARTHY: Objection.

5 THE COURT: Sustained.

6 Q At around this time, did you have any discussions
7 with Mr. Siddig Ali about what would happen after the bombs
8 blew up in terms of an escape plan?

9 A Yes, sir.

10 Q What did Mr. Siddig say he was planning to do?

11 A He was planning to do? He was planning at the
12 beginning was planning to go to Sudan. And then he switched
13 to go to Philippines with Dr. Rashid.

14 Q But, in any event, he was going to leave the
15 country, is that correct?

16 A Yes, sir.

17 Q If you know, was he talking about airplane
18 tickets?

19 A Yes, sir.

20 Q But, again, he ends that conversation by saying
21 he doesn't have to know, without him knowing is better, is
22 that right?

23 A Yes, sir.

24 Q That means knowing about the plan?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q Now, turning to page 19, which is just several
4 pages after -- well, maybe about 25 pages in the actual
5 transcript to page 46, that is, CM43, Wahid's name comes up
6 again, reading transcript lines 13, 14:

7 Siddig Ali: All right, Emad, what is the plate
8 numbers on this car?

9 Salem: The plate numbers will be stolen numbers,
10 and the car will be a stolen car.

11 To your knowledge, is that the first time Siddig
12 Ali suggested using stolen cars to carry the bombs?

13 A No. We all along talked about stolen cars, since
14 Mohammed Salameh was renting his car, sir.

15 Q He was renewing the idea, is that correct?

16 A Yes, sir.

17 Q Going on, 19, 20:

18 Siddig Ali: Therefore, Wahid must give us a car.

19 Salem: Does Wahid have stolen cars?

20 Siddig Ali: He knows people who can get a car.

21 Salem: All right. As long as --

22 That sentence wasn't finished, but again he was
23 saying as long as he doesn't know, isn't that right?

24 He still doesn't want to be traced?

25 MR. McCARTHY: Who was saying?

1 MR. NOOTER: Withdrawn.

2 Q In line 25. This is your line in line 25, 26:

3 Salem: All right. As long as -- and you did not
4 finish the sentence. Is that correct?

5 A Yes, sir.

6 Q What you were confirming was as long as we don't
7 tell him, isn't that right?

8 A No, sir.

9 Q Just earlier Siddig had told you as long as he
10 doesn't know, isn't that right?

11 A That's Siddig's opinion, sir.

12 Q But that's not what you were about to finish
13 saying? No?

14 A No, sir.

15 Q Siddig Ali: Do you understand how?

16 Salem: All right. We will let him do that.

17 Siddig Ali: We want stolen cars, all of them
18 will be stolen, ah, it is all things and who cares. This
19 seems to be reversed.

20 Line 34, 35:

21 Salem: Yeah.

22 Siddig Ali: Even the car, including the one in
23 the bombs.

24 Salem: Yeah.

25 And you go on and discuss again the stolen cars.

1 As far as you know this the first place where
2 Siddig Ali says maybe we can get stolen cars from Wahid?

3 A Yes, sir.

4 Q Now, this is June 16, Wahid is still in the
5 Caribbean, right?

6 A Could be, sir.

7 Q He's certainly not around, is that right?

8 A I didn't see him in that time, sir.

9 Q Do you recall that near the very final days
10 before the arrests there is a lot of discussion about his
11 coming back and is he back yet, isn't that correct?

12 A Correct, sir.

13 Q Wherever he was, he didn't get back until one or
14 two days before the case was taken down, is that right?

15 A Yes, sir.

16 Q Going ahead three more days to June 19, Wahid's
17 name comes up again, in CM48. It's page 61 of that
18 transcript. It is page 20 of our blue books.

19 You were discussing at that point apparently the
20 oil with Amir Abdelgani. I'm sorry. You weren't discussing
21 it, but you were present while Siddig and Amir were
22 discussing the oil.

23 Do you see your name up at around the middle of
24 the page, lines 21 and 22, lines 25, 26, is that correct?

25 A Yes, sir.

1 Q We heard a lot, I think, from CM48 yesterday. Do
2 you recall that you were present for this conversation, is
3 that right?

4 Mr. Abdelgani at line 41, 42 says: The oil we
5 bring it over here.

6 Siddig Ali: I am saying, I am say the following,
7 I am saying the following. You buy it from the man and tell
8 him that I will pick it up on Monday.

9 Amir Abdelgani: Um.

10 Siddig Ali: Let me tell you why. For your
11 information, Wahid as a store over here.

12 Abdelgani: Has what?

13 Siddig Ali: He has a store do you know what a
14 store is? I mean, it's not a storage. Good, of course.

15 Amir Abdelgani: Unintelligible.

16 So he mentions again Mr. Wahid's store, is that
17 right?

18 A From what I understand, sir, he have a storage
19 space.

20 Q OK.

21 A That is what Mr. Siddig suggested.

22 Q You never actually went to it or saw it, is that
23 right?

24 A No, sir, I never did.

25 Q At some point do you recall Siddig Ali talking

1 about a flea market?

2 A Storage space, sir.

3 Q OK. I'm not going to read it, but then on page
4 21 there is more discussion about how you are going to order
5 oil in the summertime.

6 Then on page 22, Wahid's name comes up again. At
7 line 9, 10, you say: Brother tell him, quote, I am doing an
8 experimentation on the small boiler, end of quote.

9 That's just like an excuse for why you need oil
10 in the summer, like, we are working on the boiler or
11 something, is that right?

12 Let me just step back.

13 There is a problem of why do you need oil in the
14 middle of the summer, is that correct?

15 A Yes, sir.

16 Q You provide an explanation that could be used if
17 you want, "We need to check the boiler or something like
18 that," isn't that right?

19 A I'm not sure here, sir, that we are talking about
20 the barrels or the oil. The oil -- I'm not sure, sir.

21 Q All right. It doesn't make too much difference.

22 At line 12, 13, then, Siddig Ali says: Leave
23 this to Wahid. Leave it to Wahid.

24 Salem: When is Wahid coming, or he came?

25 Siddig Ali: He's coming today or tomorrow.

1 Amir Abdelgani: From where is he coming?

2 Siddig Ali: He went somewhere.

3 Salem: Give him a call and find out.

4 Siddig Ali: No, when he arrives he will call me
5 100 percent because he needs me for some matter, he bought a
6 truck.

7 We just discussed that truck before, is that
8 right?

9 A That's right, sir.

10 Q The hot dog truck. And Wahid Saleh needs Siddig
11 because he wants someone to work on his truck, is that
12 correct?

13 A Yes, sir.

14 Q Siddig Ali needs Wahid because he needs a jump,
15 is that right? At least at this point he wants to work on
16 the truck?

17 A Not only that, sir. That was part of the
18 reasons.

19 Q OK.

20 A Sir.

21 Q But actually the line is: He needs me. He needs
22 me. Meaning Wahid needs him to work on the truck?

23 A Yes, sir.

24 Q Amir Abdelgani: This Wahid, our friend?

25 Siddig Ali: Huh.

1 Amir Abdelgani: Wahid, the --

2 Siddig Ali: Wahid, yes. I checked him. He is
3 good. No problems. I know him. Unintelligible. There's
4 no need to ask to his history, good, but we benefit from his
5 capabilities. That's all.

6 Again, he's saying we're going to use Wahid again
7 for this, is that right?

8 A Correct, sir.

9 Q Basically the storage?

10 A Storage and buying the water bottles.

11 Q Right.

12 A Yes, sir.

13 Q Again, basically so it won't be traced without
14 his knowing, isn't that right?

15 A Yes, sir.

16 Q Of course, he's still in the Caribbean, is that
17 right?

18 A I believe, yes, sir.

19 Q You suggest: Go give him a call?

20 And Siddig Ali says: No, when he arrives, he'll
21 call me. Is that right?

22 A Yes, sir.

23 Q So it's quite possible Siddig Ali isn't able to
24 call him as far as you can tell, is that correct?

25 MR. McCARTHY: Objection.

1 THE COURT: Sustained.

2 Q Did you know whether Siddig Ali was able to call
3 Wahid by telephone?

4 A I don't know, sir.

5 Q But his reply was, no, I'll wait for him to call
6 me, is that correct?

7 A Correct, sir.

8 Q Jumping ahead to June 20 in CM55, it is on page
9 23 of the transcript book, you ask about Wahid in line 20,
10 21:

11 Salem: Good. Did Wahid come yet?

12 Siddig Ali: No, I called him yesterday.

13 Salem: Yes.

14 Siddig Ali: And he said he will come tomorrow.

15 Salem: Which is today.

16 Siddig Ali: Monday.

17 Salem: OK, fine.

18 Siddig Ali: Unintelligible.

19 Salem: OK, brother. Why don't you find him,
20 call him.

21 Siddig Ali: Find him? I told you where the man
22 is.

23 Salem: Caribbean.

24 Then you go on to discuss some kind of idea.

25 Do you recall that?

1 A Yes, sir.

2 Q At this point you've asked is Wahid coming back
3 yet, is that right, has he come back?

4 A Yes, sir.

5 Q Siddig claims to have called him, is that right?

6 A That's what he told me, sir.

7 Q All right.

8 Now, if you turn the page to 24, this is still
9 part of CM55, there is a long passage that starts with some
10 numbers around line 20, 21.

11 Is it fair to say this is when Siddig Ali is
12 talking on the telephone, perhaps on the car phone or
13 something with a man named Rawhi. Do you remember the name
14 Rawhi, "Rawha," "Rawhu," something like that?

15 A No, sir, I'm sorry.

16 Q Or possibly Rafiha, Rafha?

17 A No, sir.

18 Q OK. Do you remember you've told us about the hot
19 dog truck, do you remember, that Wahid Saleh has to buy the
20 truck?

21 A Yes, sir.

22 Q That was told to you?

23 A Yes, sir.

24 Q Do you remember that the person who was selling
25 the truck was named Rawhi or something like that?

1 A I don't recall these names, sir.

2 Q This long passage is one side of a telephone
3 conversation with Siddig, is that right?

4 Let me read some of it to you to see if it
5 reminds you of that one way or the other. At line 20, 21:

6 Siddig Ali: Some numbers. Unintelligible. Yes.
7 Someone just called me, yeah, peace be upon you, and God's
8 mercy and blessings.

9 Hello? Who is this? Huh, hello? Rawhi. How
10 are you, brother? May God bless you. How's is it going,
11 man? Thanks be to God. Thanks to God.

12 Wahid called me the day before yesterday,
13 yesterday, but I was not there. He said he will call, he
14 will come Monday. Yes, he will come Monday. Um, I were not
15 there. I mean, he called at home while I was not there, by
16 God.

17 Does that remind you that he's talking on the
18 telephone to somebody?

19 A Yes, sir.

20 Q It's the same conversation that he's going to be
21 home Monday, is that right?

22 A Yes, sir.

23 Q But he clarifies that he didn't call Siddig Ali,
24 did not call Wahid, wahid called Siddig Ali's house and
25 spoke to Siddig Ali's wife, isn't that correct?

1 A That's what's being written here, sir, yes.

2 Q So before, when Siddig Ali said, "I called him,"
3 he probably just meant he got the message from him, is that
4 right?

5 A Could be, sir.

6 Q OK. We can skip some of this long thing and go
7 down to about line 39:

8 Should I wait on you in the morning? Yes. No,
9 he never gave me any money. No, by God, he did not give me
10 at all. Um, he didn't give me, by God. He didn't give me
11 money, by God. Now, I really need money because I don't
12 have any. He went, do you remember when he told you I am
13 going to Siddig now to give him money? He left without even
14 talking to me, by God. I am a little upset with him but
15 I -- uh, find an excuse for your brother, um, um, um.

16 Q Do you recall that discussion?

17 A Yes, sir.

18 Q Do you know anything about why Mr. Wahid was
19 supposed to give Siddig money in connection with the hot dog
20 truck?

21 A Something to do with that issue of this truck,
22 sir.

23 Q Did you hear something about how the license had
24 to be transferred to somebody's name?

25 A Not to my recollection, sir.

1 Q You didn't. OK.

2 The next line: Um, um, um, do you mean we should
3 transfer it. No problem.

4 You don't know what the "transfer it" was about?

5 A I believe this license plate you just talked
6 about.

7 Q The license of the truck?

8 A Or the license of the truck, health license,
9 something like that.

10 Q Fine.

11 He says that one or two more times about
12 transferring it to my name tomorrow. There's no objection.

13 Do you happen to recall whether Wahid Saleh was
14 supposed to pay more money to the man with the truck, the
15 truck had not in fact been paid for yet?

16 A I'm not sure of that, sir.

17 Q OK. Going to page 25 of this transcript, which
18 is immediately after this conversation, there is a little
19 bit of explanation here about it. Right at the top, line 1:

20 Salem: What is up, Sheik.

21 Siddig Ali: There is a truck belongs to brother
22 Wahid. I mean, I will work with him.

23 Salem: Yes, that is good by God.

24 Siddig Ali: I will work. I mean I don't have
25 time but --

1 Salem: Yes.

2 Siddig Ali: That is what is available, huh?

3 Salem: Uh.

4 Siddig Ali: I like to help him a little.

5 Salem: Good.

6 Siddig Ali: He wants me, there's a truck. I

7 told you about, do you remember or not? Yes.

8 Then it goes on talking a little bit about the
9 truck, who's buying the truck and things like that. Do you
10 recall that? He just clarified for you the situation with
11 the truck?

12 A Yes, sir.

13 Q Of course, Mr. Siddig Ali is not really planning
14 to stay around very long to work on this truck, is that
15 correct?

16 A Excuse me. According to his plan that he should
17 leave after the bombing, sir.

18 Q This is now on June 20, the bombing is going to
19 be pretty soon, is that right?

20 A The what, sir?

21 Q The bomb plan is supposed to happen within a few
22 days, is that right?

23 A Building the bombs.

24 Q OK.

25 A Yes, sir.

1 Q So in a week or two presumably Siddig Ali is
2 going to leave town, is that right?

3 A Yes, sir.

4 Q He won't be working on a truck?

5 A According to the plan, yes, sir.

6 Q That's when he says I'd like to help him a
7 little, I don't have time, but I would like to work, but I
8 don't have time because he's really not going to be there
9 long enough to work on the truck, is that right?

10 A Could be, sir.

11 Q Now turning to page 26, this is after the
12 discussion about the hot dog truck, you continue a little
13 bit about Wahid at line 5. It notes here actually at line 3
14 very bad audio, so this is perhaps a little hard to hear.

15 Siddig Ali: He knows.

16 Salem: Does he still have the intention to do
17 this work?

18 Siddig Ali: No, no. I do not know.

19 Unintelligible. I mean, he's good, unintelligible, we will
20 sit with him and see. If you took this, this phone with
21 you, sheik, and got out with it. He changed the subject
22 there about the phone, is that right?

23 A I am not sure of that, sir.

24 Q OK. In any event, your question is, does he
25 still have the intention to do this work, that is asking

1 whether Wahid intends to work on the plan, is that right?

2 A I'm not sure, sir.

3 Q Siddig's answer to whoever it is you are asking
4 about is: No, no, I do not know. Is that correct?

5 A Yes, sir.

6 Q We will sit down with him and see, is that
7 correct?

8 A Yes, sir.

9 Q Now, turning to page 27, the truck issue is
10 discussed again briefly. If you see at line 21, 22, Siddig
11 Ali starts: Or there is a possibility that we will not wait
12 until 3 because the man tells the people by phone. All we
13 need to do is go to the motor vehicle and change the
14 ownership of the car.

15 Now, actually, that use of car could be any kind
16 of vehicle, isn't that true?

17 A I beg your pardon?

18 Q The word here says "car," but it is the really
19 the Arabic word that can mean any kind of vehicle, is that
20 true? It could be car, truck, taxi, is that right?

21 A Yes, sir.

22 Q And so then we go on:

23 Salem: Yes. Yes.

24 Siddig Ali: Until Wahid comes and I tell him
25 that the ownership is from me to him, because the man will

1 pay me 200 tomorrow.

2 Salem: Yes.

3 So that's again the transferring of the license
4 or something about that?

5 A Something in that effect, sir, yes.

6 Q And the 200, if you know, is that like the filing
7 fee or something like that, he needs the \$200 to transfer
8 the license?

9 A I think so, sir.

10 Q Then at line 36, 37:

11 Salem: Yes, how much is he going to buy the,
12 unintelligible, for.

13 Siddig Ali: By God, I believe for ten thousands.

14 Then you were asking about the price of the
15 truck, is that right?

16 A Yes, sir.

17 Q The ten thousand.

18 When you hear that it is 10,000, of course, that
19 is a pretty big purchase, is that correct, \$10,000 for a
20 truck?

21 A It could -- I'm not sure what's the question,
22 sir.

23 Q OK. Let me rephrase it.

24 When you hear that Mr. Wahid Saleh is going to
25 buy something for \$10,000, it's clear to you he does in fact

1 have money, is that right?

2 A That's what I was told, sir.

3 Q Therefore, he could be useful to the plan, is
4 that right?

5 A Yes, sir.

6 Q But when this discussion happens on June 20,
7 Wahid Saleh is still not back yet, is he?

8 A As far as I was told, he's still in the
9 Caribbean, sir.

10 Q Down at the bottom of the page, at line 49, it
11 just reiterates about the truck:

12 Salem: Is Wahid going to buy it from the man?

13 Siddig Ali: I mean, he is with Wahid,
14 unintelligible.

15 Salem: Yes. And he will let you work with it.

16 Um --

17 Siddig Ali: He wanted to help me a little. I
18 mean --

19 Salem: By God, he is a good guy.

20 On the next page:

21 Siddig Ali: Brother, he is good, a good man, by
22 God, he knows the values of men, by God.

23 Salem: The glory is to God.

24 So, again, that's just because he's being a nice
25 guy, he's giving Wahid -- Wahid is giving Siddig Ali a job

1 on the truck, is that right?

2 A Yes, sir.

3 Q Siddig Ali goes on to say at line 6: We also
4 told him to give us a few thousands, anything to work with.

5 Salem: Yes.

6 Siddig Ali: I mean, all I have got from him are
7 promises.

8 Salem: Um, unintelligible, then, um?

9 Siddig Ali: Unintelligible. OK. Let's go.

10 So there he seems to be suggesting that he asked
11 Wahid for a few thousand dollars himself, is that correct?

12 A Yes, sir.

13 Q But, in fact, Wahid Saleh is still gone, isn't
14 that correct, he's still in the Caribbean?

15 A That is what I was told, sir.

16 Q What we now know is that he didn't even speak to
17 him directly, Wahid Saleh spoke to Siddig Ali's wife by
18 telephone and left a message, isn't that right?

19 MR. MCCARTHY: Objection.

20 THE COURT: Sustained.

21 Q It goes on. Siddig Ali says: Yes. So what I'm
22 saying is maybe when I show him something he will be
23 convinced. Now they are thinking that I am playing or
24 fooling around with him.

25 Salem: Yes.

1 Siddig: I have this feeling.

2 Salem: OK. By God, if you trust him.

3 Siddig Ali: Very much.

4 At this point Siddig Ali is all of a sudden
5 saying he does trust Wahid Saleh, is that right?

6 A That's not what's being said, sir.

7 Q OK. What is being said?

8 A That he want to show him that he is doing
9 something for jihad. Because he have a feeling that they
10 don't believe that he's doing something for jihad.

11 Q OK.

12 A So if I showed him something, maybe he will
13 believe.

14 Q Now apparently he's suggesting that he will show
15 something to Wahid, is that right?

16 A Yes, sir.

17 Q Of course, if Wahid was someone who was going to
18 be part of this, you wanted to have him in the safe house on
19 video, isn't that right?

20 A I'm sorry. The question, please, again, sir?

21 Q OK. You wanted to get Wahid Saleh into the safe
22 house so that he would be on video, isn't that correct?

23 A If Mr. Wahid will know the plan, he have to come
24 to the safe house.

25 Q Right.

1 A I don't want anybody to do anything, sir.

2 Q OK. At line 32, you say:

3 Salem: OK, bring him. Tell him to come and see
4 the work.

5 Siddig Ali: When he comes then.

6 Salem: Yes. Here is the work and here is what we
7 are doing and here are our targets.

8 Siddig Ali: Fine.

9 Salem: And we need support, by God, if you are
10 willing to support. I mean --

11 Siddig Ali: Yes.

12 Salem: We welcome you, if you are not willing to
13 support.

14 Then Siddig Ali says: I will say, quote, what
15 are your needs, close quote. He will tell them that, quote,
16 we will tell him that, quote, our needs are so and so and
17 so.

18 Salem: That's it.

19 Siddig Ali: And then I tell you what.

20 Salem: Yes.

21 Siddig Ali goes on: It is a possibility God
22 knows best. In the plan I always keep the door open behind
23 me.

24 So in that passage you have suggested he bring
25 him in and show him the work, is that right?

1 A Yes, sir.

2 Q You have told Siddig Ali, you have instructed him
3 to say we need these things, we need your support, is that
4 right?

5 A I am -- I did not instruct -- I cannot instruct
6 Mr. Siddig because he's the emir and I got a mission from
7 him. So he instructing me, sir.

8 Q OK. Let's just go back. On page 28, line 31,
9 32, you say: OK. Bring him. Tell him to come and see the
10 work.

11 A I'm sorry, sir? Line what, sir?

12 Q I'm sorry.

13 A Page 29?

14 Q Page 28.

15 A 28, I'm sorry.

16 Q Line 32.

17 A Yes, sir.

18 Q Your line is: OK. Bring him. Tell him on come
19 and see the work. And then your line is: Yes.

20 At line 36: Here is the work and here is what
21 we're doing and here are our targets.

22 Those are your instructions to him, aren't they?

23 A No, that's not instructions.

24 Q Suggestions?

25 A What I understood from Mr. Siddig that Mr. Wahid

1 don't believe that he is doing jihad. That is why he said
2 that he will bring him to the safe house to show him.

3 Q When he brought him to the safe house, he didn't
4 tell him about any targets, did he?

5 A I did not hear him telling him targets, sir.

6 Q OK.

7 THE COURT: Mr. Nooter, could you come to a
8 convenient break point in the next five minutes or so.

9 MR. NOOTER: Yes.

10 Q On the line on the top of page 29, Siddig Ali
11 says: It is a possibility God knows best. In the plan I
12 always keep the door open behind me. Did you understand
13 that to mean Siddig Ali was having like a fallback position?

14 Do you know what I mean by that? Let me withdraw
15 the question.

16 A I'm not so sure, sir.

17 Q Did you understand Siddig Ali to be saying if one
18 thing doesn't work, I'll have a second plan just in case?

19 A Once again, let me read this line again, sir,
20 please?

21 Q OK.

22 (Pause)

23 A Something to that effect, yes, sir.

24 Q All right. In this same conversation just a few
25 lines later, Mr. Siddig Ali begins to explain a feeling he's

1 having about the safe house, do you recall that?

2 A Could be, sir.

3 Q Do you remember that he's beginning to get
4 nervous that the safe house is no longer safe?

5 A Yeah, it came a time he suggested to me that,
6 sir.

7 Q OK. If we look at line 28 on the same page, 29,
8 which is CM 55, page 61:

9 Siddig Ali: As a conclusion of this matter, I'm
10 telling you God forbids if we felt any danger in the house
11 we are in now, the small house.

12 The "small house" is the Queens garage, is that
13 right?

14 A Yes, sir.

15 Q Continuing, line 32:

16 Salem: Yes, yes.

17 Siddig Ali: Any people peeping, I mean any
18 danger.

19 Salem: Yes.

20 Siddig Ali: Ha.

21 Salem: Yes.

22 Siddig Ali: Wahid has a storage area room. It
23 is his.

24 Salem: Yes.

25 Siddig Ali: He has a store. He will finish with

1 it and take his stuff out of it when.

2 Salem: Yes.

3 Siddig Ali: At the end of the month -- I'm
4 sorry.

5 Siddig Ali: At the end of the month. Until the
6 end of this month. They started to ship things also. This
7 is his flea market.

8 Salem: Yes.

9 Next page:

10 Siddig Ali: It is very huge.

11 Salem: Yes.

12 Siddig Ali: We will see either we will take his
13 store, this flea market opens on Friday or Thursday, Friday,
14 Saturday and Sunday.

15 Salem: Yes.

16 Siddig Ali: So we can work in it on Monday and
17 Tuesday or we can work at night.

18 Salem: Yes.

19 Siddig Ali: I mean, we can work in the corner of
20 his flea market, in his flea market in one of the corners,
21 one of the corners at night only.

22 Salem: Yes.

23 Siddig Ali: Or he gives us the store, I mean the
24 storage as -- unintelligible.

25 Salem: Yes.

1 Siddig Ali: That is in case we were convinced
2 that there is a danger, that there is danger.

3 That is a point where Siddig Ali thinks that
4 maybe he could use Wahid's store or storage or flea market
5 if we are not going to use the safe house anymore, is that
6 right?

7 A Yes, he suggested that, sir.

8 Q Of course you don't want to move out of the safe
9 house because that's where the video cameras are, is that
10 right?

11 A Yes, sir.

12 Q You say in line 31, 32: I personally comfortable
13 100 percent and I am --

14 Siddig Ali says: Frankly, I'm not comfortable in
15 it, honest. Then he goes on to talk about the Italians
16 across the street and things like that, is that correct?

17 A Yes, sir.

18 Q Would it be fair to say that at this point
19 Mr. Siddig Ali has gotten a little bit desperate and now
20 thinks he wants a back door, a second plan to go use the
21 storage area that Wahid has?

22 A I wouldn't speculate about his being desperate or
23 not, but, yes, he did suggested just in case we are not
24 comfortable, we can use Mr. Wahid's storage place, sir.

25 Q Right. Now, Wahid is still in the Caribbean, is

1 that right?

2 A That's as far as my knowledge in that time, yes,
3 sir.

4 MR. NOOTER: This would be a good breaking point.

5 THE COURT: Ladies and gentlemen, please leave
6 your notes and other materials behind. Please don't discuss
7 the case. Have a pleasant lunch, and we will resume at 2
8 o'clock.

9 (The jury was excused)

10 THE COURT: May I see the government and Mr.
11 Nooter in the robing room.

12 You may step down.

13 (Witness excused)

14 (Pages 7736 to 7737 were sealed by order of the
15 court)

16 (Luncheon recess)

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1 A F T E R N O O N S E S S I O N

2 Time noted, 2:10 p.m.

3 EMAD SALEM, resumed.

4 (Jury present)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 THE JURY: Good afternoon.

7 THE COURT: Mr. Nooter.

8 MR. NOOTER: Thank you.

9 Q Mr. Salem, before he we broke for lunch, we were
10 talking about the date June 20, do you recall that?

11 A Yes, sir.

12 Q In the interests of time, we will just talk about
13 the last two days fairly quickly. On June 21, you brought
14 up the name of Wahid again to ask Siddig if he had come back
15 from the Caribbean, is that not true?

16 A True, sir.

17 Q That is reflected on page 31 of the transcript
18 book. It is on line 49?

19 THE COURT: He's acknowledged that it happened,
20 so let's just move on.

21 MR. NOOTER: Yes.

22 Q Basically he told you that he had just gotten
23 back, that he had a long journey and so forth. Do you
24 recall something like that?

25 A Something in that effect, yes, sir.

1 Q In that same conversation he again reminded you
2 that Wahid is a crook, do you recall that?

3 A Could be, sir.

4 Q If you look at line 15, on page 32.

5 A Yes, sir.

6 Q Then they discuss Rawhi again and again. At the
7 very bottom of the page he again reminds you that he is a
8 crook, is that right?

9 A Yes, sir.

10 Q At the end of that conversation again you remind
11 Siddig: Remember, tomorrow you are going to go see Wahid or
12 go with Wahid, do you recall that?

13 A Could be, sir.

14 Q OK. If you look at bottom of page 33, line 49.

15 A Yes, sir.

16 Q Later on on that date in what is called CM60,
17 which was a tape made the same day but later, again you
18 reminded Siddig Ali about Wahid by saying, "What's up with
19 Wahid." Do you recall doing that?

20 A Could be, sir.

21 Q Siddig gave some answer about how he has to stay
22 in Queens with a friend, his wife is going to pick him up,
23 do you recall something like that?

24 A Yes, sir.

25 Q Mentioned maybe we'll see him at night because

1 Wahid is a night person, do you recall that?

2 A Yes, sir.

3 Q Looking at page 35, line 12, do you recall saying
4 to Siddig Ali, "I have prepared for him a small hadduta, a
5 sample." Do you recall saying that?

6 A Yes, sir.

7 Q What were you referring to?

8 A A small bomb test.

9 Q A little device you made?

10 A It's not a device. It is a small container with
11 powders in it to go off, like the one we tried in
12 Connecticut, sir.

13 Q Did it actually have any powder in it?

14 A Yes, sir.

15 Q Let me just show you an exhibit, if I may.

16 MR. NOOTER: May I approach.

17 A Yes, sir.

18 Q Does that picture accurately reflect this thing,
19 this so-called small hadduta?

20 A Yes, sir.

21 Q That's marked Wahid Saleh J-3, and I move it into
22 evidence.

23 MR. McCARTHY: No objection.

24 THE COURT: J-3 is received without objection.

25 (Wahid Saleh Exhibit J-3 for identification was

1 received in evidence)

2 MR. NOOTER: Your Honor, may I let the jury pass
3 that around as I continue to question?

4 THE COURT: Yes.

5 (Wahid Saleh Exhibit J-3 was published to the
6 jury)

7 Q What it really was was some kind of can or
8 something with tape around it, is that right?

9 A It's a can full of black powder and have a fuse
10 for detonation. It is wrapped by duct tape, sir.

11 Q Do you remember where that was on the night of
12 June 23?

13 A Where it was?

14 Q Yes.

15 A It was on the bench where I --

16 Q Someplace on the bench?

17 A Yes, sir.

18 Q Later in that same tape you again brought up
19 Wahid. You said: The point is let us meet Wahid today one
20 way or another. Do you recall saying something like that?

21 A Could be, sir.

22 Q On the date of June 23, there are a number of CM
23 tapes that cover the events of that date, is that correct?

24 A Yes, sir.

25 Q Correct me if I am wrong, those tapes were not

1 handed to you in person by the agents, they were taken from
2 your briefcase and from your car after the case went down,
3 is that correct, after the case was taken down as you say?

4 A I believe, yes, sir.

5 Q So they were given numbers arbitrarily by the
6 FBI, and the number of the tape does not necessarily mean it
7 is the right order in time, is that fair to say?

8 A I have no idea, sir.

9 Q From time to time on those tapes you did mention
10 what time of day it is, is that correct?

11 A Could be, sir.

12 Q That was the day that you went to buy the
13 fertilizer, is that right?

14 A Yes, sir.

15 Q So sometimes you say, "Well, we are going to buy
16 the fertilizer," is that right?

17 A Yes, sir.

18 Q And then in one tape you do buy the fertilizer,
19 is that right?

20 A Yes, sir.

21 Q Later you say, "we have bought the fertilizer"?
22 Things like that that give us reference points,
23 is that right?

24 A Yes, sir.

25 Q Again on that date do you recall bringing up the

1 subject of Wahid by saying, "Did you meet with Wahid? Yes?"

2 Do you recall that?

3 A Could be, sir.

4 Q Do you recall Siddig Ali saying, "He told me. I
5 told him to come over, uh, we would like to invite you to a
6 dinner, something like this."

7 Do you recall that?

8 A I'm sorry, who said?

9 Q Siddig Ali. This is not in the book.

10 MR. NOOTER: If I could just hand the witness a
11 paper marked for identification Defendant's L.

12 Q If you would just look at the bottom of that
13 page, the very last entry, which is a piece of transcript
14 from CM64, page 12. Does that refresh your recollection
15 that Siddig Ali said something about, "We'll invite him for
16 dinner, and he said, 'OK, no problem.'"

17 A Yes, sir.

18 Q Siddig Ali did not say -- well, withdrawn.
19 He was telling you what he told Wahid Saleh, is
20 that right?

21 MR. McCARTHY: Objection.

22 A Yes.

23 MR. McCARTHY: I withdraw the objection. I am
24 sorry, your Honor.

25 THE COURT: When?

1 MR. NOOTER: I'm sorry.

2 Q In this paragraph or statement that you just
3 looked at from CM64, Siddig Ali was reporting to you what he
4 had said to Wahid when he spoke to him on the phone, is that
5 right?

6 A About the dinner, yes, sir.

7 Q And he said I invited him for dinner, and he said
8 OK, is that right?

9 A Yes, sir.

10 Q Isn't it a fact that Siddig Ali was in effect
11 tricking him to come over to the safe house?

12 A I cannot say that, sir.

13 Q But he invited him for dinner. He didn't say, "I
14 invited him to come see our work," is that right, looking at
15 the passage you have?

16 A Which passage, sir?

17 Q On that Exhibit L, on the front page, the very
18 last entry.

19 A The dinner, sir, should be at Mr. Siddig's house
20 not in the safe house.

21 Q Right. But Siddig Ali was saying he's inviting
22 Saleh, Wahid Saleh to come to dinner, is that correct?

23 A Yes, sir. That's what is being said here.

24 Q A little later that day -- this is in the
25 transcript book at page 38, if you need to look at it --

1 again, you brought up Saleh: When is Wahid coming?

2 Siddig Ali said: We will take him with us.

3 Do you recall that?

4 Then he has a description of how they'll do that,
5 where you'll go and you'll pick him up --

6 A Yes, sir.

7 Q -- and bring him.

8 As that conversation proceeds on page 39, at line
9 44 you specifically talk about whether he wants to help.

10 Do you recall Siddig Ali says: Good. He told me
11 that I want to help, yes.

12 Salem: Well, we will see today.

13 Siddig Ali: Unintelligible. He didn't tell me
14 that himself.

15 Salem: Yeah.

16 Siddig Ali: But this is my feeling. Do you see
17 how --

18 Salem: Yes.

19 On the next page.

20 Siddig Ali: I told him it is to his
21 circumstances, unintelligible.

22 Do you recall that?

23 A I'm sorry. I am lost, sir, when we flip to the
24 next page.

25 Q I am sorry. It is the top of 40: I told him it

1 is to his circumstances. It is, unintelligible, so it is a
2 little hard to understand what that means.

3 A Yes, sir.

4 Q Do you recall ever having a discussion with
5 Siddig Ali about how maybe you could break into Wahid
6 Saleh's car to break into his trunk to take things he might
7 have in the trunk?

8 A No, sir.

9 Q Do you recall a conversation like that?

10 A No, sir.

11 Q Or perhaps it is a friend or someone that
12 Mr. Wahid Saleh knows, you are going to break into his trunk
13 to get maybe guns or something?

14 A No, sir, I don't recall that.

15 Q OK. If you would look at page 42, this is also
16 CM64, at the top of the page he reminds you that Wahid Saleh
17 is a lazy guy. Do you remember that?

18 A Which line, sir, please?

19 Q 3, 4.

20 Siddig Ali: But he is lazy?

21 A Yes, sir.

22 Q Lower down, though, let's say line 40, 41?

23 Siddig Ali: In the car, at the back, in the
24 trunk.

25 Salem: In Wahid's trunk?

1 Siddig Ali: What? In whose trunk? Let me just
2 see if I can -- can you read those passages? Do you see
3 where there is a discussion there about things in the trunk?

4 A Yeah, I see it, but I am out of context, sir, so
5 I got to go up a little bit, if you please.

6 Q OK.

7 (Pause)

8 Q You don't remember anything like that, some
9 discussion of breaking into his car?

10 MR. McCARTHY: Objection.

11 A That's something to that effect, but I'm not
12 recalling the whole discussion, sir.

13 Q Something about whether maybe he drinks at night,
14 he'll be out at night and we can steal the keys and break in
15 the car?

16 A I cannot say, yes, sir, until I --

17 Q All right. Let's go on.

18 Later that day Siddig Ali leaves a couple of
19 messages on a message machine for Wahid to call him, is that
20 right?

21 A I don't know, sir.

22 Q If you look at page 48, line 20, you see he first
23 leaves a message for him and then he calls back again to
24 leave the message with the car phone number.

25 A Yes, sir.

1 Q Skipping ahead to page 50, which is also part of
2 CM64, but later in the day, line 44 through 45, do you see
3 you brought up Wahid again and asked a question: Wahid
4 wants to work or not?

5 Siddig Ali: No, he does not want to.

6 Salem: Are you into jihad or not?

7 Siddig: Ah.

8 Then you go on to say: Well, if you're into
9 jihad, then help us, if not, good-bye, something along those
10 lines, is that correct? You can just read it to yourself.

11 A Yes, sir.

12 Q So Mr. Siddig Ali said he's not willing to work
13 or he doesn't want to work, is that correct?

14 A That is what is written here, yes, sir.

15 Q On page 53, if it helps you remember, later that
16 day in CM62, Siddig Ali reports to you that Wahid called him
17 and said he was in Bayonne, very far, do you recall that?

18 A Yes, sir.

19 Q That he was doing deposits or something,
20 something banking maybe, or insurance business, something
21 like that?

22 A Could be, sir.

23 Q That was going to cause a problem because he
24 couldn't meet him earlier, you would have to meet later, is
25 that right?

1 A Yes, sir.

2 Q In fact, did you know that there was a very good
3 chance they were going to take the case down that day?

4 A I didn't -- I get that feeling very, very late at
5 night, sir.

6 Q OK.

7 A Like 15 minutes before, sir.

8 Q If you turn to page 54, again there is a
9 discussion about the telephone call from Wahid. At the very
10 bottom line you say, it says:

11 Salem: Till now I'm just taking your word
12 regarding Wahid.

13 Siddig Ali: Yeah, yeah, correct.

14 Salem: And I'm saying, oh, God, I hope.

15 Siddig: And I say God, he doesn't turn out to be
16 a loser.

17 Salem: Exactly. May God bless him.

18 Do you recall that?

19 A Yes, sir.

20 Q You had still never met him, is that right, never
21 met Wahid Saleh?

22 A Yes, I did, sir.

23 Q I'm sorry. Since that time that you met him in
24 the mosque --

25 A No.

1 Q -- you had not met him again and spoken to him,
2 is that right?

3 A No, sir, I did not.

4 Q You had not spoken to him by phone?

5 A No, sir, I did not.

6 Q Sir, my client ended up coming into the Queens
7 garage at about 12 minutes before midnight on the night the
8 case was taken down, is that correct?

9 A Could be, sir.

10 Q Just before we look at the videotape, I would
11 like to did you to step down -- if I might, your Honor -- to
12 look at an exhibit to show us the layout of the safe house a
13 little bit.

14 MR. NOOTER: Your Honor, this is Exhibit G, which
15 I believe the government has no objection to. I move it
16 into evidence as a demonstrative exhibit.

17 MR. McCARTHY: Your Honor, I have no objection.

18 THE COURT: The government said they have no
19 objection. Would you get the witness please to endorse it.

20 Q Mr. Salem --

21 A Yes, sir.

22 Q -- if you could just come down.

23 (The witness stepped down from the stand)

24 Q Does this more or less show the layout of the
25 safe house as you recall it that evening, referring to where

1 the doors are and where the work bench was?

2 A That is correct, sir.

3 Q Would it be fair to say that this area in the
4 lower right was a large garage door which had a smaller
5 entrance door in it?

6 A That's correct, sir.

7 Q The large door could be opened for vehicles, is
8 that right?

9 A That's correct, sir.

10 Q The small door for people?

11 A Yes, sir.

12 Q And there was a little office up -- in this chart
13 it was up in the upper right, is that correct?

14 A Yes, sir.

15 Q The night that Mr. Saleh came in, you had your
16 red rental car in the safe house, do you recall that?

17 A Yes, sir.

18 Q I have a little diagram here. That would have
19 been about in this position, is that correct?

20 A Yes, sir.

21 MR. McCARTHY: Your Honor, may I just move to the
22 back?

23 THE COURT: Yes.

24 MR. McCARTHY: Thank you.

25 Q In addition to that there was a certain number of

1 barrels, bags of fertilizer and little buckets, things like
2 that that were in the corner near the work bench, is that
3 correct?

4 A Yes, sir.

5 Q If I put this up here, is that approximately
6 where four of the barrels were and some sacks and some
7 buckets?

8 A Yes, sir.

9 Q The fifth barrel was somewhere out here near this
10 little step, is that correct?

11 A Yes, sir.

12 Q In addition, there were some folding chairs in
13 the safe house, is that right?

14 A Yes, sir.

15 Q They were near the work bench, is that right?

16 A Yes, sir.

17 Q Were there about three of them?

18 A I believe -- yeah, around three, sir, yes.

19 Q I have just placed three here. It might be four,
20 something like that.

21 Would it be fair to say that when Mr. Wahid Saleh
22 came in, he came in through this small entrance door, walked
23 over toward the area of the chair closest to the office, is
24 that right?

25 A Yes, sir.

1 Q Sat down there, is that correct?

2 A Yes, sir.

3 Q You stood but were sort of leaning on the chair
4 that was in front of the work bench, is that right?

5 A May I move it a little bit, sir, please?

6 Q Of course. Fine.

7 This one probably won't move, but Mr. Siddig Ali
8 also sat down in a chair, is that correct?

9 A Yes, sir.

10 Q That was maybe a bit more this way, but it was
11 over in a position close by?

12 A Yes, sir.

13 Q More like here?

14 A Yes, sir.

15 Q You can resume your seat.

16 (The witness resumed the stand)

17 Q You had a procedure that a person coming in to
18 the safe house was supposed to beep you first on a pager, is
19 that correct?

20 A Yes, sir.

21 Q That is so you would know, then they would put in
22 a code, and you would know who it was that was coming in, is
23 that right?

24 A Yes, sir.

25 Q This particular night, when Wahid Saleh came, you

1 were already in the safe house, is that correct?

2 A Yes, sir.

3 Q Amir Abdelgani was also with you at that time, is
4 that right?

5 A Yes, sir.

6 Q A knock came on the door, but there had been no
7 beep, is that right?

8 A Yes, sir.

9 Q So you and Mr. Abdelgani got a little nervous
10 maybe or pretended to be nervous, is that correct?

11 A Yes, sir.

12 Q Then Siddig came in, is that right?

13 A Yes, sir.

14 Q And mentioned that he had brought Mr. Wahid
15 Saleh, is that right?

16 A Yes, sir.

17 Q At that point Amir Abdelgani went to hide in the
18 bathroom, is that correct?

19 A He didn't go to -- I believe, yes, sir.

20 Q I failed to ask you where the bathroom was on
21 this chart, but it was down in the lower part near the car,
22 is that correct?

23 A Yes, sir.

24 MR. NOOTER: Your Honor, if I could approach just
25 to show the witness an exhibit.

1 THE COURT: Go ahead.

2 Q Does that photograph show the bathroom and the
3 car at approximately the way it was that night?

4 A Yes, sir.

5 MR. NOOTER: I move that into evidence.

6 THE COURT: "That" is what?

7 MR. NOOTER: I'm sorry.

8 Q Could you look at it. I think it's F1?

9 A F1, sir.

10 MR. NOOTER: Thank you.

11 MR. McCARTHY: No objection your Honor.

12 THE COURT: F1 is received without objection.

13 (Defendant Wahid Saleh Exhibit F1 for
14 identification was received in evidence)

15 MR. NOOTER: If I could just pass that to the
16 jury as we go along.

17 THE COURT: You may.

18 (Defendant Wahid Saleh Exhibit F1 was published
19 to the jury)

20 Q When he went into the bathroom, you called him
21 out, is that correct?

22 A I don't think he went already to the bathroom.
23 He want to go to the bathroom, something --

24 Q He went near it, though, is that right?

25 A Yes, sir.

1 Q Then Siddig went over and also convinced him to
2 come back, isn't that correct?

3 A For the best of my recollection, yes, sir.

4 MR. NOOTER: Maybe we should play the video and
5 you can see. If we could play Exhibit A, your Honor.

6 THE COURT: Go ahead.

7 (Videotape played)

8 MR. NOOTER: Could we pause a minute. In order
9 to hear the sound, you have to use the headphones. It is
10 mostly in Arabic, but not entirely.

11 (Videotape played)

12 MR. NOOTER: If you could just pause it a minute.

13 Q Did you see that part, going to the bathroom and
14 then sort of being coaxed out, is that correct?

15 A Yes, sir.

16 Q You have a brief exchange with Siddig Ali and
17 then he goes out to get Wahid Saleh, is that right?

18 A Yes, sir.

19 MR. NOOTER: OK. If we could continue.

20 (Videotape played)

21 Q Mr. Salem, it is a little hard for us to see the
22 things on the TV that are on your work bench. Do you happen
23 to recall where the device called the small hadduta was?

24 A Yes, sir.

25 Q Where was it?

1 Can you explain it or --

2 A It is in the right top corner, sir.

3 Q Isn't it fair that it was right behind the second
4 television?

5 A I can't see from here, sir.

6 Q Right here?

7 A No, sir. I can point to it if you want me, sir.

8 Q Yes. If you could come down and point.

9 (The witness left the stand)

10 A Here.

11 Q Indicating a black object.

12 (The witness resumed the stand)

13 Q Is it fair that the thing next to it was a coffee
14 cup, a white styrofoam coffee cup?

15 A Could be, sir.

16 Q Let's resume the tape.

17 (Videotape played)

18 Q Just to clarify, at that point we saw Amir
19 Abdelgani go by and go into the office that's to the right
20 of the work bench, is that right?

21 A He walked close to the office, but Mr. Siddig get
22 inside the office, sir.

23 Q You went over to turn off the television, is that
24 right?

25 A Yes, sir.

1 Q You mentioned on direct testimony that you showed
2 Wahid Saleh a timer, is that correct?

3 A I showed it to both of them, sir.

4 Q Isn't it true you were actually showing it to
5 Siddig Ali?

6 A They were both sitting in front of me, sir.

7 Q When you say "timer," what is it that you picked
8 up, do you recall?

9 A Yes, sir. It is electronic device with a thread
10 coming out of it with a laundry line pin, wooden pin, when
11 you pull out the thread, the pin close the circuit and then
12 that will detonate the bomb, sir.

13 Q Would it be fair to say it was a plastic box that
14 had these things in it except for the thread hanging out, is
15 that right?

16 A Yes, sir. It is a plastic box with integrated
17 circuit or the components in it, with the thread out of it,
18 sir.

19 Q If I could show you an exhibit -- I will do two
20 at once, J4 and J5.

21 MR. NOOTER: May I approach.

22 THE COURT: Go ahead.

23 Q Are those fair and accurate representations of
24 two devices like that that you had constructed and that you
25 had on the work bench?

1 A Yes. This is the devices. It was on the bench,
2 but I did not construct it, sir.

3 Q You had pretended to construct it, is that right?

4 A Yes, sir.

5 MR. NOOTER: I would move those photographs into
6 evidence.

7 MR. McCARTHY: I am sure I have no objection,
8 your Honor. I would just like to see them.

9 Thank you.

10 MR. NOOTER: May I pass them?

11 THE COURT: I take it there is no objection?

12 MR. McCARTHY: Yes, there is no objection.

13 THE COURT: J4 and J5 are received without
14 objection. You may pass them.

15 (Wahid Saleh Exhibits J4 and J5 for
16 identification were received in evidence)

17 (Wahid Saleh Exhibits J4 and J5 were published to
18 the jury)

19 Q These plastic boxes did have lids, is that
20 correct?

21 A I beg your pardon?

22 Q They had lids on top?

23 A Yeah, you can cover it, sir.

24 Q OK. We are going to proceed with the videotape
25 now. I would just like you to observe when you pick up that

1 device, OK?

2 A Yes, sir.

3 (Videotape played)

4 Q Sir, did you notice that the first time you
5 brought up the subject of the timer, "this being set for
6 four minutes" or whatever, Mr. Saleh was still finding his
7 chair, is that correct?

8 A At the beginning, but he sat down when I showed
9 it to him, sir.

10 Q You, in fact, had to bring up the subject about
11 three times even to get Siddig Ali's attention about the
12 timer, isn't that correct?

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained.

15 Q Well, the tape will reveal what it reveals.

16 MR. McCARTHY: Objection.

17 Q Did you use the word "timer" in that discussion?

18 A I don't recall using it, sir.

19 Q You just talked about time periods, four minutes,
20 15 minutes, is that correct?

21 A I said, I set up this for four minutes, and this
22 is for 15 minutes, for the big house.

23 Q You used the word "big house," is that right?

24 A Yes, sir.

25 Q You did not say "UN"?

1 A No, I did not, sir.

2 Q You did not say "tunnel"?

3 A No, I did not, sir.

4 Q "Big house" was a word that you and Siddig had
5 made up as a code for the UN, is that right?

6 A That was Mr. Siddig's instructions, sir.

7 Q You were never present at any time when Siddig
8 told Wahid Saleh "big house" means UN, isn't that fair to
9 say?

10 A No, sir.

11 Q In fact, "big house" just means big house. I
12 mean, they are innocuous words by themselves, is that
13 correct?

14 A I'm sorry. What's the question?

15 Q Withdrawn.

16 If you say, "This is for the big house," it could
17 be any big house anywhere, is that right?

18 A If it's for anybody passing by who doesn't know
19 what we doing.

20 Q Right. That was the point of the code, so you
21 wouldn't understand, is that right?

22 A Yes, sir.

23 Q "Big house" is ordinary words?

24 A Yes, sir.

25 Q Is that right?

1 MR. NOOTER: Why don't we resume the tape.

2 (Videotape played)

3 Q Mr. Salem, during that rather long speech you
4 gave, you were trying to impress Wahid Saleh, is that
5 correct?

6 A Not to impress him. I was just trying to make a
7 connection between me and him, sir.

8 Q Because he had said he was a scuba diver, or you
9 had heard he was a scuba diver, which he confirmed, is that
10 right?

11 A Yes, sir.

12 Q You went on talking about all your military
13 experience and frogmen and things like that, is that right?

14 A Yes, sir.

15 Q What you had heard about Wahid Saleh was that he
16 was a commercial scuba diver at best, not a military scuba
17 diver, isn't that correct?

18 A I know that -- I mean, he's not a military
19 definitely. But he's going for welding under the water,
20 sir.

21 Q Isn't it a fact that what you were doing was
22 trying to impress him with your professionalism as a
23 military man?

24 A No, sir. I was trying to show him something in
25 common between us, sir.

1 Q All right.

2 Now, at this point, Mr. Siddig Ali takes over and
3 starts talking to him, is that correct?

4 A Correct, sir.

5 MR. NOOTER: Why don't we roll that tape.

6 (Videotape played)

7 Q Some of that went by a little fast on the screen,
8 but basically Siddig Ali was telling Wahid Saleh that a
9 Muslim should never betray another Muslim, is that correct?

10 A Mr. Siddig was saying that there is no traitor
11 among us here. And --

12 Q Didn't he --

13 MR. McCARTHY: Objection.

14 THE COURT: Sustained. Let him answer.

15 Q Go ahead.

16 A There is no traitor among us here. And if there
17 is any traitor, God will punish him severely, sir.

18 Q Wasn't he threatening Wahid Saleh, telling him,
19 "You better not tell on us, what we're doing"?

20 A Absolutely not, sir.

21 Q The word debaucher came up. I don't know if you
22 know in English what the word debaucher is. Do you know?

23 A "Debaucher" mean --

24 Q Debaucher, well, someone who is like an infidel
25 in a way, something like that.

1 A Infidel, yes, sir. That one when he said, when
2 Mr. Siddig said -- do you want me to say it?

3 Q Yes.

4 A When Mr. Siddig told him if we get angry with
5 each other, we can talk with each other, but don't go to the
6 infidels and report it to them, sir.

7 Q He was saying, "Don't tell on us."
8 Wasn't he saying that?

9 A No, sir. It's not that way. We have no traitor
10 among us. And if somebody would betray, God will take care
11 of him, and -- I'm sorry. I'm lost here.

12 If we have a problem among each other, we should
13 solve it between each other, but don't run, or nobody should
14 run and report to the infidels, which is usually mentioned
15 about the non-Muslims or the FBI, sir.

16 Q Was there a problem among you?

17 A No.

18 Q Had Wahid Saleh asked, "Is there a traitor among
19 us?"

20 A No, sir.

21 MR. NOOTER: Can we go ahead with the tape.

22 (Videotape played)

23 Q At that point when Siddig Ali says: What we're
24 doing here, what we are talking about could put us in prison
25 for life, Mr. Wahid says: I know the law, and Siddig cuts

1 him off and says: The law, the law. What law?

2 Didn't he do that?

3 A No, sir.

4 Q When a person's speaking to another -- when two
5 Muslims are speaking, if someone uses the word "Allah,"
6 isn't it incumbent on the other person to say something with
7 Allah like "Thanks be to God" or something like that?

8 A Yes, sir.

9 Q That's normal speech in Arabic among Muslims, is
10 that correct?

11 A Correct, sir.

12 Q It's also a way to get somebody to stop talking
13 about what they're saying, isn't it? If someone is speaking
14 to you and you say something quickly with the word "Allah"
15 in it, they have to stop and say something with "Allah,"
16 like "thanks be to God," isn't that correct?

17 A It's sometimes being used that way, yes, sir.

18 Q In this passage that we just saw, did not Siddig
19 cut off Mr. Wahid and say, "There's no God but God," and
20 which he then did --

21 A Yes, it did happen, sir.

22 MR. NOOTER: OK. If we can proceed.

23 (Videotape played)

24 Q That was funny because in fact Siddig Ali was
25 going to work for Wahid Saleh, is that right?

1 A That's correct, sir.

2 Q That's why it became a joke when Siddig said, "I
3 am the boss," which he said in English, is that correct?

4 A Correct, sir.

5 MR. NOOTER: OK. Can we resume.

6 (Videotape played)

7 Q Sir, in that portion Siddig Ali is telling Wahid
8 Saleh that there's something secret going on that could put
9 us in jail, is that right?

10 A Yes, sir.

11 Q He doesn't say what it is however, is that
12 correct?

13 A No, he did not, sir.

14 Q At this point, Mr. Wahid Saleh asks about the
15 lock on the door, is that right, whether there's a lock on
16 the door?

17 A If the door was locked or not.

18 Q Do you recall at that point where Mr. Abdelgani
19 was?

20 A Yes, sir.

21 Q Where was he?

22 A Standing at the door, sir.

23 Q Was he holding the machine gun?

24 A That's correct, sir.

25 Q He did that a little earlier -- withdrawn.

1 Is it true that Mr. Siddig Ali gave him the
2 machine gun and told him to stand there with it?

3 A That's correct, sir.

4 Q So he was standing over by the door holding it,
5 is that correct?

6 A He was -- I'm sorry, sir?

7 Q Standing by this entrance door, the garage door,
8 holding the machine gun, is that right?

9 A Correct, sir.

10 Q That remained throughout the time Mr. Wahid Saleh
11 was there, is that correct?

12 A Yes, sir.

13 MR. NOOTER: OK. Could we proceed.

14 (Videotape played)

15 Q What we just heard was Mr. Siddig Ali asking what
16 would be like a rhetorical question: Why is it we brought
17 Wahid Saleh here tonight? Is that correct? Something along
18 those lines?

19 A Yes, sir.

20 Q Mr. Wahid Saleh answered, and is it not true that
21 he answered: To show me that you're not working?

22 A To show me that you are working, sir.

23 Q OK. You are sure it wasn't that he was saying to
24 show me --

25 MR. McCARTHY: Objection. Asked and answered.

1 THE COURT: Sustained.

2 MR. NOOTER: Let's proceed.

3 MR. McCARTHY: Your Honor, I understood the
4 disputed portions were going to be noted.

5 MR. NOOTER: I think that instruction was given
6 this morning.

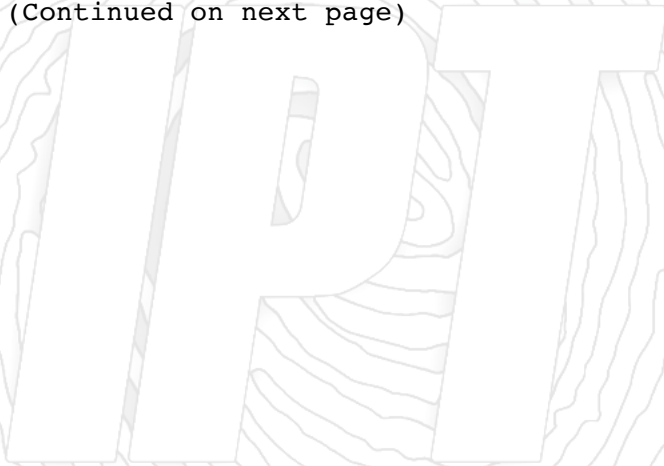
7 THE COURT: I have already given that
8 instruction.

9 MR. McCARTHY: All right.

10 THE COURT: May I see counsel at the side.

11 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I gave that instruction hours ago.

3 MR. McCARTHY: I apologize, your Honor. I
4 thought that the --

5 THE COURT: What I was going to ask is, since I
6 did give it hours ago, I could remind the jury that the
7 disputed portions are in blue. On the other hand, you have
8 the witness sitting there. I can excuse him for two minutes
9 and reiterate the instruction, which I think would be
10 reasonable at this point.

11 MR. NOOTER: I think that is reasonable, too.

12 THE COURT: OK.

13 MR. McCARTHY: It wouldn't be an accurate
14 instruction. I think there is no point. There are many
15 more disputed portions than just the stuff that is in blue.
16 It would be misleading at this point.

17 THE COURT: All right.

18 MR. McCARTHY: I thought what Mr. Nooter was
19 instructed this morning was that at least with respect to
20 those things that are clear disputes he was going to read
21 that to the jury. That was the point of my objection.

22 THE COURT: Yes. What about it?

23 MR. NOOTER: Given what you told me in the
24 robbing room, it is a little hard for me to figure out how
25 to fit that in here. What I wanted to do was go through the

1 whole thing and then go back over those passages.

2 THE COURT: Come on.

3 MR. NOOTER: I'm sorry. I am feeling a real time
4 pressure, Judge.

5 MR. McCARTHY: If your Honor could just remind
6 the jury that it is a disputed transcript, it is not the
7 subject of agreement.

8 THE COURT: All right.

9 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I am simply
3 going to reiterate something I mentioned earlier with regard
4 to the writing that appears on the screen, which is that
5 there are portions of this that are disputed, as I pointed
6 out to you this morning. I am simply reminding you of that.

7 Go ahead.

8 MR. NOOTER: OK. Let's proceed.

9 (Videotape played)

10 Q Sir, at that point you got impatient with
11 Mr. Siddig Ali and his speeches and told him get to the
12 subject, is that right?

13 A Yes, sir.

14 Q You said to him, "You're torturing him," and you
15 made a whipping motion, is that right?

16 A Yes, sir.

17 Q That was kind of a joke, is that right?

18 A Yes, sir.

19 Q But the torture he was doing was saying all these
20 things about people betraying other people and all of that,
21 isn't that correct?

22 A He get into very lengthy introduction, sir.

23 Q He was not talking about the subject that you
24 thought Wahid Saleh was brought there for, is that correct?

25 A Yes, he did not talk about it yet, sir.

1 Q When you said, "You are torturing him," and you
2 made the whipping motion, you laughed, is that right?

3 A I what?

4 Q Laughed.

5 A Yes, sir.

6 Q But Wahid Saleh did not laugh, did he?

7 A I didn't see -- if I can look at it again.

8 MR. NOOTER: Could you just run it back.

9 (Videotape played)

10 Q He sat there and didn't move, isn't that right?

11 A He did not laugh, sir.

12 MR. NOOTER: Let's go ahead.

13 (Videotape played)

14 Q In the passage we just saw and that you just
15 listened to Siddig said he wanted to get stolen cars and
16 Wahid Saleh asked about what kind of cars you want, is that
17 right?

18 A Yes, sir.

19 Q Siddig did not say what he wants the cars for, is
20 that correct?

21 A He did not say yet, sir.

22 Q What it was for?

23 A Yes, sir.

24 Q Mr. Saleh asked: Well, why stolen? You could
25 have a problem if it's stolen, isn't that right?

1 A Yes, sir.

2 Q It could be driving along, it could be a problem,
3 is that correct?

4 A Yes, sir.

5 Q You noticed that Mr. Siddig Ali really hadn't
6 told Wahid Saleh anything yet, and you asked him: Please
7 explain it to him. Didn't you say that?

8 MR. McCARTHY: Objection to form.

9 THE COURT: Sustained as to form.

10 Q Withdrawn.

11 You said: Please explain it to him, is that
12 right?

13 A Yes, sir.

14 Q That's because you wanted Siddig Ali to be more
15 forthright because you knew this was on camera, isn't that
16 correct?

17 A No, that's not correct, sir.

18 Q You wanted him to tell more details about what
19 was involved, isn't that right?

20 A No, sir, that's not my intentions, sir.

21 MR. NOOTER: OK. Let's go ahead.

22 (Videotape played)

23 Q I hope I didn't cut that off in mid-sentence.

24 Siddig Ali gave a very long explanation there
25 about the cars, is that correct?

1 A That translation is not correct, sir.

2 Q OK. But more or less he was talking about the
3 cars, that there might be cameras and that they needed
4 stolen cars?

5 A There is no word of "camera" being mentioned at
6 all, sir, here.

7 Q He was saying that -- no, "camera" did not
8 mention here, sir.

9 I will accept the withdrawal of "camera."

10 But he made a long explanation about cars, the
11 size of cars he wanted and things like that, without really
12 saying where these cars are going, isn't that correct?

13 A That's not correct, sir. He said that the cars
14 will be driven 30, 40 minutes and there a person will leave
15 the van, will ride the regular car or the smaller car and
16 leave.

17 Q OK.

18 A That is the part when the word "camera" get
19 inserted.

20 Q You think it's not "camera"?

21 A It's not camera, sir.

22 Q OK. But he doesn't say where the 30, 40
23 minutes --

24 A No, sir.

25 Q -- is going to be, is that correct?

1 A No, he did not.

2 Q He doesn't say the word "tunnels" or "UN," is
3 that right?

4 A No, he does not, sir.

5 Q He does than say the word "bomb," is that right?

6 A When we came to this point, I said that the van
7 will carry two of this, and I pointed to the barrels, sir.

8 Q OK. Well, the way we see it, you spoke someplace
9 in this long passage we just listened to?

10 A Right. Prior to this, sir, I said -- Mr. Siddig
11 told him, "Vans, small vans"

12 And I said, "To carry a couple of this, two of
13 this."

14 Mr. Siddig said, "Two of them."

15 Q So behind your back were the barrels as we showed
16 on the diagram, is that right?

17 A Yes, sir.

18 Q Those are what are called 50-gallon drums, is
19 that right?

20 A Yes, sir.

21 Q They are used for holding chemicals, is that
22 right?

23 A Yes, sir.

24 Q For oil, is that correct?

25 A Yes, sir.

1 Q Almost any bulk liquid in commercial use, is that
2 right?

3 A Yes, sir.

4 Q At that point nothing had been done to them, like
5 putting any fuses or anything like that, is that right?

6 That all happened later?

7 A I'm not sure, sir.

8 Q OK. When you pointed like that, you didn't get
9 up and go over to them, though?

10 A No, I did not.

11 Q Nor did you get up and go over to the cardboard
12 that was sitting on the floor, is that right?

13 A No, sir.

14 MR. NOOTER: Let's go ahead.

15 (Videotape played)

16 Q Mr. Wahid Saleh has suggested -- has made a
17 counterproposal that maybe you could rent cars, is that
18 correct?

19 A Yes, sir.

20 Q When he says that, you say, "Using forged
21 licenses for example?" Is that correct?

22 A Yes, sir.

23 Q And he says, "Yes, using any name," is that
24 right?

25 A Yes, sir.

1 Q You and Mr. Siddig Ali had already discussed the
2 necessity of using stolen cars, not rented cars, is that
3 right?

4 A Yes, sir.

5 Q Renting cars could have a problem of tracing the
6 person who rented a car, is that right?

7 A Yes, sir.

8 Q Indeed, the World Trade Center defendant was
9 arrested because of that, is that correct?

10 A Yes, sir.

11 Q But, nevertheless, his suggestion was you could
12 rent cars and you suggested maybe with forged licenses, am I
13 right?

14 A Yes, sir.

15 MR. NOOTER: Let's go ahead.

16 (Videotape played)

17 MR. NOOTER: Pause.

18 Q Mr. Salem --

19 A Yes, sir.

20 Q -- I don't know if you have looked at all the
21 videos that cover this period, but are you aware that there
22 were two separate video machines recording two different
23 views at the same time. Do you recall that, as far as you
24 know?

25 A I have no idea about the --

1 Q The setup?

2 A The wiring system, sir.

3 Q OK. In any event, at this point, there is a gap
4 in the videos between the end of one and the beginning of
5 another and apparently the tape was being changed or
6 something like that so the conversation is not recorded on
7 the video.

8 You testified before that you were wearing the
9 pants that have a recorder in them, is that correct?

10 A Correct, sir.

11 Q Do you know if you were running the recorder at
12 this time?

13 A Yes, I was, sir.

14 Q Is it a fact that a transcript was made early on,
15 probably soon after the arrests made from that tape -- well,
16 let me just ask. Did you help make any kind of transcript
17 from that tape?

18 A I did help sometimes, yes, sir.

19 Q Do you recall working on or seeing a transcript
20 called Q27?

21 A No, sir, I don't recall.

22 Q Do you recall whether in making that transcript
23 at this period of time there was a discussion about the
24 payment of rent on the safe house?

25 A Yes, sir.

1 Q Do you recall that someone mentioned, maybe
2 Siddig Ali mentioned that it was a thousand dollar rent and
3 there was concern -- withdrawn.

4 Do you recall there was concern about it being
5 near the end of the month?

6 A Yes, sir.

7 Q That was what we just saw happening, is that
8 correct?

9 A Correct, sir.

10 Q Do you recall saying something about, "Well, you
11 could send it by Federal Express"?

12 Do you remember using that phrase?

13 A I remember -- yes, about the keys, sir.

14 Q The keys, OK.

15 A I said that -- OK, yes, sir.

16 Q It all had to do with the payment of rent and the
17 fact that the month had run out and that you didn't have
18 enough money for the rent for the next month, is that
19 correct?

20 A No, sir. That has to do with another something
21 happening.

22 Q What was that?

23 A Mr. -- I'm sorry. Mr. Wahid advised to clean up
24 the place --

25 Q Well, that part is on the tape. We will get to

1 that.

2 MR. McCARTHY: Objection.

3 A OK, sir.

4 Q Just, the 24 seconds here that we're missing, you
5 remember something about sending the keys --

6 A Rent.

7 Q -- and/or something?

8 A Rents and sending the keys by Federal Express,
9 yes, sir.

10 MR. NOOTER: Now, we can resume.

11 (Videotape played)

12 Q Now, that is a point that you just referred to
13 where Mr. Saleh talked about taking everything out so there
14 would be no riha, is that correct?

15 A Will be no trace.

16 Q No trace.

17 That was the word "riha" we heard him say?

18 A No, the word "riha" means smells.

19 Q Smell. It can be like the smell that a hound dog
20 can follow --

21 MR. McCARTHY: Objection. Foundation.

22 MR. NOOTER: Well, I assume the witness speaks
23 Arabic.

24 MR. McCARTHY: That wasn't my objection.

25 THE COURT: I will allow it.

1 Q When the word "riha" is used, it can mean
2 literally a smell, is that right?

3 A Yes, sir.

4 Q It can also mean a trace or something that can be
5 followed figuratively, is that correct?

6 A The word "riha" means smell, sir.

7 Q OK. When Mr. Saleh says -- withdrawn.
8 You have just been talking about the fact that
9 you have to leave the place at the end of the month, is that
10 right?

11 A Right, sir.

12 Q Mr. Siddig Ali had earlier said, "What we're
13 doing could put us in jail for life," isn't that right?

14 A Yes, sir.

15 Q There is a man standing by the door with a
16 machine gun in his hand, is that right?

17 A Yes, sir.

18 Q So clearly something is going on that's not
19 legal, is that right?

20 A Yes, sir.

21 Q In the discussion where it says -- well, in the
22 discussion you inform him that the place is not even rented
23 under any of your names, is that correct?

24 A I inform him about the person, yes, sir.

25 Q It's the name Yahood Arrad?

1 A Yes, sir.

2 Q Which is a phony name, is that right?

3 A Yes, sir.

4 Q And he says, "Well, you can take everything with
5 you," is that right?

6 A No, sir.

7 Q Doesn't he say, "Just as long you don't leave a
8 trace, clean up, take everything with you," is that right?

9 A Exactly what he said, "This place got to be
10 cleaned up so you don't leave any trace or riha," or smell
11 it means, or smell.

12 Q Then at this point you jump in and say, "Yes. In
13 my experience as a military man I know how to clean up with
14 vinegar and pepper and stuff like that," is that right?

15 A Yes, sir.

16 Q And you had mentioned that to other people at
17 other times in this case, is that right?

18 A Yes, sir.

19 MR. NOOTER: Could we resume.

20 (Videotape played)

21 Q On this portion you first pressed Mr. Wahid
22 Saleh: "Are you prepared to work or not?" isn't that
23 correct?

24 A I beg your pardon?

25 Q Didn't you ask him, "Are you prepared to work or

1 not?" to help us or not in effect, isn't that right?

2 A No, sir. I asked him, "The issue is, are you
3 willing to participate or not?"

4 Q Right. And then he proceeds to talk about what
5 you could rent, the things using the licenses, and you go
6 into the discussion about the licenses again, is that right?

7 A That's right, sir.

8 Q Isn't it a fact that he's basically saying,
9 "Well, why don't you just go rent the cars under any name,
10 any license."

11 And you keep asking him, "Well, can you help us
12 get them?"

13 MR. McCARTHY: Objection to form.

14 THE COURT: Sustained.

15 Q Isn't it a fact that he is suggesting why don't
16 you just rent the cars under your names?

17 A No, sir.

18 Q Or under any phony name?

19 A Phony names, yes, sir.

20 Q Isn't it a fact that it's you who keep asking
21 him, "Well, could you get it for us? We don't have this
22 capacity," is that right?

23 A That's right, sir.

24 Q You used the word "capacity" in English when you
25 said that, is that right?

1 A That's right, sir.

2 Q Then you go on discussing this some more, the
3 whole idea of who can get licenses and things like that, is
4 that right?

5 A Yes, sir.

6 MR. NOOTER: OK. Could we go on.

7 (Videotape played)

8 Q In that portion do you remember saying something
9 about, "We'll rent the cars and then load them up fast."
10 Did you hear something like that?

11 A No, once the cars came, we'll load them fast.

12 Q We'll load them fast and get them out, is that
13 right?

14 A Yes, sir.

15 Q You don't ever say, "We'll load them with the
16 bombs," is that right?

17 A No, I did not use this word, sir.

18 Q Or the word "hadduta," do you?

19 A No, I did not use this word, sir.

20 Q You just say, "We'll load them and they'll go,"
21 is that right?

22 A Yes, sir, I did.

23 Q Then there is a discussion about whether you have
24 to leave a copy of your driver's license when you rent a
25 car, is that correct?

1 A Yes, sir.

2 Q At this point there is a pause, and, if you
3 listen closely, I will ask you, isn't it true that Mr. Wahid
4 Saleh has stopped and Siddig Ali is sort of trying to bring
5 him back, saying "Wahid, Wahid, Wahid, Wahid"?

6 If you could listen for that right now.

7 (Videotape played)

8 Q Mr. Salem, I don't know if we started a little
9 too late there. Did you see the point where -- or is there
10 a point where Siddig Ali says, "Wahid, Wahid, Wahid" --

11 A It's when him and Mr. Wahid were thinking and
12 Mr. Siddig tried to attract his attention, sir.

13 MR. NOOTER: OK. We can go on.

14 (Videotape played)

15 Q Sir, in this portion, you get a little impatient
16 because Siddig Ali says, well, take your time, or something
17 like that, isn't that true? There's some parts that are
18 very difficult to hear, but doesn't Siddig say something
19 like: "Well, go. Take your time."

20 And you say: "Wait a minute. You think we're
21 going to rent here another month?"

22 A I did say this portion, sir, but that's not
23 response for "take your time" because Siddig knows very well
24 that we cannot afford to pay another month rent, sir.

25 Q Right. So you say: "Look, we're living on the

1 edges of our nerves. We have to finish this up," is that
2 correct?

3 A Yes, sir.

4 MR. NOOTER: Let's go on.

5 Q I'm sorry. At this point is it not fair that
6 Mr. Wahid Saleh suggests going to see someone in a garage
7 who might be able to help with cars or something like that?

8 A He mentioned that, he mentioned that he have, he
9 have stolen cars and he just smuggled 18 of them to South
10 America or North America,

11 Q He says that sometime that we haven't heard yet?

12 A I don't know if we heard -- no, we didn't hear it
13 here yet.

14 Q OK.

15 A That's what he mentioned, that he have a garage
16 with stolen cars, and he just smuggled 18 cars to either
17 North or South America.

18 MR. NOOTER: OK. Let's proceed.

19 THE COURT: Can you come to a break point.

20 MR. NOOTER: Yes.

21 Why don't we do one more short passage and then
22 break.

23 THE COURT: Fine.

24 (Videotape played)

25 Q You say, "This isn't a very good idea this guy

1 with the garage," is that right?

2 A Yes, sir.

3 Q Just before that happened, though, Mr. Siddig Ali
4 told Wahid Saleh there's a secret, and Mr. Wahid Saleh said,
5 "I don't want to know whatever the secret is."

6 Do you recall that?

7 A Yes, sir, I recall that.

8 MR. NOOTER: This would be a good breaking point.

9 THE COURT: Ladies and gentlemen, we are going to
10 take a short break. Please leave your notes and other
11 materials behind. Please don't discuss the case, and we
12 will resume in a few minutes.

13 (The jury was excused)

14 THE COURT: You may step down.

15 (Witness excused)

16 (Recess)

17 (Jury not present)

18 THE COURT: We are going to need to stop at a
19 quarter of today, so 45 minutes.

20 MR. NOOTER: May I request some more time
21 tomorrow morning. I think I am being more efficient.

22 THE COURT: OK.

23 EMAD SALEM, resumed.

24 (Jury present)

25 THE COURT: Go ahead, Mr. Nooter.

1 Q Mr. Salem, I would like to resume with the tape.
2 In this portion of the tape, there will be a place where the
3 conversation stops briefly and we hear some sound. I would
4 just like you to pay attention to that sound when we get to
5 that, if you would.

6 A Yes, sir.

7 (Videotape played)

8 Q Sir, did you hear that sound at the last part of
9 what we played?

10 A Click, click, click.

11 Q Yes. That was the gun, is that right?

12 A No, sir.

13 Q What do you think it was?

14 A Mr. Siddig was tapping his hand or something, but
15 that wasn't the gun because the gun was all the way at the
16 door, sir.

17 Q The man was standing in front of the door with a
18 gun, is that right?

19 A That wasn't the sound of the gun, sir.

20 Q You don't think so.

21 MR. NOOTER: At this time, your Honor, I would
22 like to switch exhibits briefly and play a short piece of
23 Video Exhibit C.

24 Mr. Salem, if you would just listen -- there are
25 several little clips here. If you would just listen to them

1 through and then at the end you will see the same thing we
2 just saw without the subtitle.

3 A Yes, sir.

4 (Videotape played)

5 Q Mr. Salem, let me just ask you to look at the
6 screen in order to be able to see if the gun is in view in
7 this part.

8 A Yes, I see it here, sir.

9 Q Oh, you have a screen. I didn't know that.

10 A Yes.

11 Q Thank you.

12 MR. NOOTER: Go ahead.

13 (Videotape played)

14 Q Mr. Salem, the fifth one, E, was what we just
15 looked at on this tape that was with subtitles, is that
16 correct?

17 A Yes, sir.

18 MR. NOOTER: If you can change back.

19 Q Doesn't that remind you that the sound was the
20 gun sound that was being made there, taking a clip in or out
21 or something like that?

22 A I will assume that it will hear different
23 completely because the way Mr. Amir Abdelgani was standing
24 at the door, away of the microphones, will give a different
25 click because when I was sitting here using the machine gun,

1 I was like four feet from the microphones. But Mr. Amir
2 Abdelgani was all the way at the end of the safe house, so
3 it won't be that clear, sir.

4 Q There were no microphones over at the end of the
5 safe house, or do you know for sure?

6 A I'm sorry, sir?

7 Q Do you know for sure that there were no
8 microphones at the other end of the safe house?

9 A In the location Mr. Amir Abdelgani was standing,
10 I believe there was no microphones, sir.

11 Q Now, the distance between the door and where
12 Mr. Wahid Saleh was sitting, would it be fair to say was
13 only about ten feet or so, isn't that true?

14 A I will say 20 to -- 20 feet, sir.

15 Q 20 feet?

16 A Yes, sir.

17 Q I don't mean the whole length of the room, just
18 from where Wahid Saleh was sitting to where Amir was
19 standing.

20 A I would say 18 feet, sir.

21 MR. NOOTER: OK, let's resume with video Exhibit

22 A.

23 (Videotape played)

24 MR. NOOTER: Stop there, please.

25 Q Mr. Salem, isn't it a fact this is the point

1 where you sort of waved and said, "They'll be loaded and
2 go"?

3 A That's the second time I pointed to the barrels,
4 sir.

5 Q You just kind of put your hand up like this, is
6 that right?

7 A No. Down like that. I said once the five cars
8 came, I'm ready, it will load and go.

9 Q Again, you don't say what it is. You just
10 indicate whatever is over there will be loaded and go, is
11 that right?

12 A I, I --

13 Q You don't use a word?

14 A I did not use a word, sir.

15 MR. NOOTER: OK. Let's go ahead.

16 (Videotape played)

17 Q Sir, in the section we are seeing is it not true
18 that Siddig Ali decided that he needed to be able to put the
19 cars in a parking lot someplace, a long-term parking lot, is
20 that right?

21 A The cars supposed to come, load the barrels or
22 the bombs, and go out in a parking lot until all of them
23 loaded, and then they will all move to separate targets in
24 one time to go off in one time, sir.

25 Q This plan had been discussed between you and him

1 before, is that right?

2 A Yes, sir. Between us, me and them.

3 Q OK. But not with Wahid Saleh --

4 A Not with Mr. Wahid Saleh, sir.

5 Q -- until now?

6 So Siddig Ali brings up the problem, "Where are
7 we going to find a parking lot for this?" is that correct?

8 A Yes, sir.

9 MR. NOOTER: OK. Let's resume.

10 (Videotape played)

11 Q So at that point Mr. Wahid Saleh suggested, "Why
12 don't you park it in the airport parking lot, the long-term
13 parking lot"?

14 A I didn't hear that part, sir.

15 Q Did you hear the word "Newark" in English?

16 A Yes, sir.

17 Q When Mr. Wahid Saleh moved his arm, he said,
18 "People park their cars and travel and go," is that right?

19 A Yes, sir.

20 Q When Mr. Wahid Saleh gave that suggestion,
21 Mr. Siddig went, like that, (making sound with lips), "Wow,
22 beautiful, in English, is that right?"

23 A He said, Mr. Wahid bowed to Mr. Siddig, whispered
24 something, in his ears, I didn't hear it.

25 Q Right.

1 A And then he said, and then (making sound with
2 lips), pow.

3 Q You said (making sound with lips), wow, beautiful
4 isn't that --

5 A No, sir.

6 MR. NOOTER: Let's play that.

7 Can you run that back a little bit. You hear
8 those words in English.

9 Q Did you hear that now?

10 A I am the one who said "beautiful," sir.

11 Q OK. But somebody said "beautiful." And
12 Mr. Siddig Ali said -- made the popping noise and said wow.

13 MR. McCARTHY: Objection.

14 Q Is that correct?

15 A I'm sorry, sir, say the question, please.

16 Q You said the word "beautiful"?

17 A Yes, sir.

18 Q Mr. Siddig Ali said "pop" or made a popping noise
19 with his mouth?

20 A Yes, sir.

21 Q And said "wow"?

22 A Not "wow." "Pow."

23 Q You think it's "pow"?

24 A "Pow," yeah.

25 Q All right. Let's just go ahead.

1 (Videotape played)

2 MR. NOOTER: Stop a minute.

3 Q After those noises they go on talking about
4 Newark Airport and leaving it in Newark Airport, is that
5 correct?

6 A Yes, sir.

7 Q You were not going to blow the bomb up in Newark
8 Airport, were you? That was not the plan?

9 A No, that was not the plan, sir.

10 MR. NOOTER: OK. Let's proceed.

11 (Videotape played)

12 Q During that part of the discussion, again the
13 idea came back that this should not be traced, so it should
14 be in the name of a Hindu or a Jew, did they say something
15 like that?

16 A Yes, sir.

17 Q Then Mr. Siddig Ali says, "OK. Now you can go,"
18 Is that right, to Wahid Saleh?

19 A No. Not, "You can go." "Now you can depend on
20 God." That's more like it, sir.

21 Q All right. At that point doesn't he get up and
22 get directions on how to get out of there?

23 A Yes, sir.

24 Q So he thinks he can go at this point, is that
25 right?

1 A Who? Mr. --

2 Q Well, you don't know what he thought. He gets up
3 as if he's going to leave, is that correct?

4 A Yes, sir.

5 Q Isn't it correct that you stop him and ask him
6 some questions? Is that right?

7 A Yes, sir.

8 Q And that's because he hasn't really said what
9 he's going to do, has he?

10 A He said that he want to do it, to be cut at his
11 end only. He don't want to involve some other thieves so
12 they don't give traces, sir.

13 MR. NOOTER: OK. Let's continue playing.

14 (Videotape played)

15 Q Your questions and his answers were mostly in
16 English, is that right?

17 A Yes, sir.

18 Q You asked him, what is your percent and what's
19 your time frame basically, is that right?

20 A Yes, sir.

21 Q But you didn't ask him to do what, did you?

22 A We already know what he's going to do, sir.

23 Q What was he going to do?

24 A Bring us five cars.

25 Q Was he going to bring cars, or was he going to

1 bring licenses or a guy in the garage?

2 A No, sir, he going to bring us cars.

3 Q You think that it was clear at that point that it
4 was now going to be cars and not forged licenses?

5 MR. McCARTHY: Objection, form.

6 MR. NOOTER: Withdrawn.

7 Q In the next piece of video we'll see him go out
8 this small door. I would just like to ask you, if you
9 recall, is one of the tapes you see, does it have the
10 picture in mirror image so it's actually the wrong side, the
11 wrong side?

12 A That's correct, sir.

13 Q What we're going to see is a piece of that so
14 when we see people coming from the right part of the screen,
15 it really should be from the left part of the screen, is
16 that correct?

17 A Yes, sir.

18 MR. NOOTER: Let's proceed.

19 (Videotape played)

20 Q You didn't see Wahid Saleh anymore that night, is
21 that correct?

22 A No, I did not sir.

23 Q Or any time at all after that other than here in
24 court, is that correct?

25 A That's correct, sir.

1 Q As you've told us, he was not arrested when he
2 walked out of this safe house, is that right?

3 A Not to my knowledge, sir.

4 Q Do you know whether the FBI had people
5 surveilling, surveillance agents around outside the safe
6 house?

7 A I know that there is agents somewhere around the
8 house because they are operating this equipment, sir.

9 Q You don't know where they were exactly?

10 A No, I have no idea, sir, at that time.

11 Q That was the whole conversation, what we just
12 saw, is that correct?

13 A That's correct, sir.

14 Q You mentioned before the small hadduta, which
15 you -- the thing with the duct tape, is that right?

16 A Yes, sir.

17 Q You never did pick that up for him, is that
18 right?

19 A No, I did not, sir.

20 Q You never pointed to it with him, is that
21 correct?

22 A No, I did not, sir.

23 Q You never used the word "bomb," is that right?

24 A No, I did not, sir.

25 Q You never asked him whether he loved jihad, is

1 that right?

2 A Personally, I did not, sir.

3 Q There was no discussion of jihad at all in what
4 we just saw, isn't that correct, not by use of the name, in
5 other words?

6 A The word jihad is not being mentioned, sir.

7 Q There was no discussion of Sheik Omar Rahman or
8 anything, is that right?

9 A It was not, sir.

10 Q There was no discussion of tunnels, is that
11 right?

12 A No, sir.

13 Q No use of the word "UN" or "United Nations," is
14 that right?

15 A No, sir, we did not.

16 Q Do you remember that a little earlier in that
17 evening you had a conversation with detective -- well, I
18 think detective what's his name Louis --

19 A Louis Napoli.

20 Q Right.

21 A Yes, sir.

22 Q Discussing some of the final things that were
23 about to happen before that evening progressed. Do you
24 recall that?

25 A Yes, sir.

1 Q Let me just show you for reference, if you need
2 it, Defendant's Exhibit K for identification, if I can
3 approach.

4 MR. NOOTER: Your Honor, this is a piece of the
5 CM62 transcript.

6 MR. McCARTHY: Objection, relevance.

7 THE COURT: May I see it.

8 MR. NOOTER: Well, let me ask one question and
9 that will make the relevance clear.

10 Q Mr. Salem --

11 A Yes.

12 Q -- during that time that Mr. Wahid Saleh was in
13 the safe house with you and Siddig Ali, did you ever ask him
14 for money?

15 A No, sir.

16 Q Then I would direct your attention to the
17 document I have just shown you, line 32, and ask you if you
18 remember saying to Detective Louis Napoli beforehand,
19 "Uh, he, whoever it is, took the van and he went to
20 bring the guy, his name is Wahid to show him and impress
21 him.

22 Napoli says: OK.

23 Salem: And ask him for money.

24 Do you recall telling him that?

25 A Yes, sir.

1 Q He was not asked for money, is that correct?

2 MR. McCARTHY: Objection. Unless he clarifies
3 when.

4 Q Mr. Wahid Saleh was not asked for money during
5 the time you met him in the safe house, is that correct?

6 A No, he did not -- he was not asked for money,
7 sir.

8 Q In fact, when Siddig Ali popped out with the word
9 "stolen cars" after you said, "Damn it, get to the point.
10 You're torturing him," you didn't even know what he was
11 going to ask him for, did you?

12 A One second, sir.

13 Can you give me that question --

14 Q Yes. In the tape we saw, there is a point where
15 you were saying, "You're torturing him get to the point,"
16 and Siddig Ali says, "We want stolen cars," is that right?

17 A Yes, sir.

18 Q Isn't it a fact you didn't even know that Siddig
19 Ali was going to ask him for that, is that right?

20 A I do know, sir, in that time.

21 Q At that point?

22 A Yes, sir.

23 Q Other people had been trying to get stolen cars,
24 is that correct?

25 A Yes, sir.

1 Q Is it not true that you also told Detective Louis
2 Napoli, "Wahid coming tonight, so just be patient, guys. We
3 are going to get Wahid also"?

4 Didn't you say that to him?

5 A I could have said it, sir, yes.

6 Q You had never even met the man yet, is that
7 right?

8 A I met him once, sir.

9 Q I'm sorry. I keep forgetting that. You had met
10 him way back, and there was no discussion about any
11 participation in a bomb project at that time, is that
12 correct?

13 A Yes, sir.

14 Q Between that time and the night that he came to
15 the safe house, you had never discussed any bomb project
16 with him, is that right?

17 A I did not, sir.

18 Q Most of the time he apparently wasn't even in the
19 city or in the country, is that right, he was in the
20 Caribbean or someplace?

21 A It came a time that he was in the Caribbean, yes,
22 sir.

23 Q But at this point, which is June 23, but earlier
24 in the day, you told the detective, "We'll get Wahid also.
25 Just be patient, we'll get Wahid also," isn't that correct?

1 A Yes, I said that, sir.

2 Q After Mr. Wahid Saleh left the discussion went
3 on, is that correct, between yourself, Mr. Siddig Ali, and
4 Mr. Amir Abdelgani, is that correct?

5 A Yes, sir.

6 Q And at the very last part of what we saw on the
7 tape, did you see that Mr. Amir Abdelgani said: "Well,
8 where are we going to get cars now?"

9 Did you see him ask that?

10 A No, I didn't hear that, sir.

11 Q If you would turn to the white video transcript
12 book, and the jurors as well, if you would like, to page 37?

13 Do you see at the top of that page at around line
14 4 or 5 a reference to Amir, "he left and we didn't get any
15 benefit"?

16 Did you hear that on the tape?

17 A I would like to hear it, please, sir, if it's
18 possible.

19 Q Actually, let me do this -- if we have a chance
20 tomorrow since I don't have that piece cued up. Maybe we
21 do. Maybe it's the very tail end.

22 MR. NOOTER: I think that's probably good.

23 (Videotape played)

24 Q Unfortunately, this exhibit cuts off a little
25 early. Did you hear him say something like that?

1 A No, sir.

2 Q Directing your attention, then, to line 19 of
3 page 37 of this video transcript, in that you say, "He's
4 saying that he recently sent to South America, 18 stolen
5 cars. He has kids who steal cars, and he exports them,
6 smuggle somehow, smuggles them to South America."

7 Is that correct?

8 A Yes, sir.

9 Q Did we hear him say that?

10 A That's the portion you are missing, sir.

11 Q The part that was -- that we indicated was
12 unintelligible?

13 A I heard it, and that's why I'm repeating it, sir.

14 Q OK. You didn't see Amir Abdelgani say: But --
15 or hear I'm sorry, "But who will bring us the cars"?

16 A I didn't hear that, sir.

17 Q OK. I would just note this is from the joint
18 portion of the transcript.

19 You said, "But he's telling us that within four
20 days he will bring us five cars."

21 Do you recall seeing that, hearing that?

22 A Yes, sir.

23 Q Do you recall that later, when Siddig Ali came
24 back into the safe house there was then a discussion about a
25 number of things, but one of the things was about Wahid

1 Saleh, do you recall that?

2 A Could be, sir.

3 Q I would like to direct your attention to page 46
4 of the video transcript. I have provided for you there both
5 Arabic and English, so whichever you can see. It starts at
6 the top, El Fadil --

7 Siddig Ali: El Fadil.

8 Amir: He is not going to know then.

9 Siddig Ali says: Wahid, and then a word in
10 English, which could be "shit" it could be "check,"
11 something like that, do you recall that --

12 A No, sir.

13 Q -- portion of the conversation?

14 A No, sir.

15 Q Do you recall that Amir then said: He could have
16 caused us a problem because he's a thief.

17 Siddig Ali: He's not a problem, but in the
18 future --

19 Salem: In English: How will he know?

20 Siddig: In English: I know.

21 In Arabic: He is not going to know how to reach
22 me, and doesn't know what is in my mind.

23 Amir Abdelgani: How can you bring people like
24 that here?

25 Siddig: Nobody disappointed me like Wahid. I

1 swear to God.

2 Amir Abdelgani: It's good you didn't tell him.

3 Siddig: This man is a crook. You could have
4 caused us serious problems. For this kind of work we need
5 clean, clean people, not people who work as car thieves.

6 Siddig: He's not clean, I know.

7 Do you recall a discussion like that developing,
8 maybe not these exact words but that --

9 A It's not exact words, sir, but there is something
10 similar to that, sir.

11 Q They were worried because he was a crook, someone
12 you couldn't really trust who had been now brought into the
13 safe house, is that correct?

14 A Yes, sir.

15 Q Then there is a discussion, I won't read it all,
16 but saying: This guy is materialistic. All he wants in
17 life is money?

18 Do you remember something like that?

19 A Could be, sir.

20 Q OK. Well, we will read on a little bit on the
21 third box there:

22 Amir: What is driving him? It's the money,
23 isn't it?

24 Siddig: Yes

25 Amir: What's driving him, isn't it the money?

1 Siddig: Correct.

2 Amir: Ah.

3 Siddig: Because this man has the ability to
4 steal things and to forge things and counterfeiting as well.

5 Amir: All right. But his mind is only on money.

6 Do you recall those lines?

7 A Yes, sir.

8 Q And they go on to talk about how his life style
9 is materialistic, is that correct?

10 A Something in that effect, yes, sir.

11 Q Now, if we go to page 49, at the top, do you
12 remember, then, that a discussion ensues about: How are we
13 going to go get cars? There may be another plan to get
14 cars?

15 And Siddig says: Do you have anyone who can
16 bring us cars?

17 Amir: You have already spoken to him. That's
18 it. It's over.

19 Siddig: When I spoke to him I was very careful
20 about what I said, and I really didn't tell him anything
21 and.

22 Then you say, in English: There's no
23 alternative, and he found himself in need.

24 Siddig: This man is an unbeliever, and he will
25 be scared that we will do something to his wife if he

1 doesn't respect his tongue.

2 And Siddig at that point made like a slashing
3 motion with his throat.

4 A No, sir.

5 Q You don't recall that?

6 A Absolutely not, sir.

7 Q The bottom line on that page: But we are not
8 going to tell him about the subject. You don't recall
9 anyone saying that?

10 A No, I didn't say that, sir.

11 Q I am going to read to you from the government
12 transcript. I don't have a copy for you.

13 MR. McCARTHY: Objection.

14 MR. NOOTER: The joint -- I don't know how else
15 to describe it.

16 MR. McCARTHY: Your Honor, may we approach for a
17 moment.

18 THE COURT: Yes.

19 (Continued on next page)

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1 (At the side bar)

2 MR. NOOTER: I thought this is what you wanted me
3 to do.

4 MR. McCARTHY: You are very selective about what
5 you think I want you to do. I don't think it is right to
6 do -- I understand he didn't want to have it the way that he
7 said he was going to do it this morning, which is to point
8 out to the jury the disputes. I don't understand how it is
9 that the jury has no idea what the disputed portions are,
10 but each time he purports to be reading from something that
11 is in agreement, I am basically being used for
12 cross-examination. I don't think it is fair to do it both
13 ways.

14 I haven't objected. I haven't tried to get him
15 to do what he said he was going to do first thing this
16 morning. But I don't think it is right to not point out the
17 disputes and then pepper it with what is supposedly the
18 agreed-upon portion, particularly when I have no way of
19 following what he's doing at all between agreements and
20 nonagreement.

21 THE COURT: So far as nonagreement, I pointed out
22 to the jury that all the places in the transcripts where the
23 Arabic was are disputed portions. That is number one.

24 Number two, when you read from an agreed-upon
25 transcript, point out the place. Clear?

1 MR. NOOTER: That I will do.

2 THE COURT: I have another matter.

3 MR. NOOTER: Do you have a copy of it to give
4 him? I was, in fact, not planning to use this transcript,
5 so I only brought one with me.

6 THE COURT: For crying out loud. How much more
7 of this do you have?

8 MR. NOOTER: I'm sorry. I highlighted four or
9 five key sentences and then --

10 THE COURT: How much more do you have?

11 MR. NOOTER: I realize there are a couple of
12 areas I really need to cover with respect to things he said
13 that I can dispute --

14 THE COURT: We are going to deal with that later.
15 I want them to be able to talk to him tonight
16 with regard to redirect because I am not going to have any
17 delays tomorrow.

18 MR. NOOTER: I have told him that I consent to
19 that.

20 THE COURT: Why don't we just stop now, and we
21 can deal with the rest tomorrow. OK?

22 MR. NOOTER: Good.

23 (Continued on next page)

24

25

1 (In open court)

2 THE COURT: Ladies and gentlemen, we are going to
3 break for the day. Please leave your notes and other
4 materials behind. Please don't discuss, or see or hear or
5 read anything about either this case or anything that sounds
6 related to this case. Have a pleasant evening, and we will
7 see you tomorrow at 9:30.

8 (The jury was excused)

9 THE COURT: You may step down.

10 (Witness excused)

11 (In open court, jury not present)

12 THE COURT: All right.

13 MR. NOOTER: Thank you, your Honor.

14 MR. SERRA: Your Honor, I asked Ms. Schwartz if I
15 may take a moment of the court's time on the record in the
16 robing room.

17 THE COURT: In the robing room, fine.

18 Mr. Jacobs?

19 MR. JACOBS: Your Honor, could I address the
20 government's letter of yesterday and its previous
21 correspondence, if your Honor feels this would be a good
22 time. If not, I can wait.

23 THE COURT: Since I don't know what you are going
24 to say, I don't know whether it is a good time.

25 MR. JACOBS: Your Honor, we had this back in

1 February. As your Honor knows, we submitted the letter, the
2 subpoena --

3 THE COURT: What is the antecedent of "this"?

4 MR. JACOBS: I submitted a letter back in
5 February. The government responded with a letter February
6 24. We had some resolution of it, which, your Honor, was
7 going to be submitted -- I'm sorry. This is the Denmark
8 letter and the World Trade Center evidence that was
9 submitted yesterday. I think your Honor said you would look
10 at the government's letter of yesterday.

11 THE COURT: I did look at the government's letter
12 of yesterday.

13 MR. JACOBS: This is the problem that I have and
14 counsel have: We raised these issues back in February, and
15 we took the position that nothing to do with the Salameh
16 evidence at that trial before Judge Duffy -- I understand
17 what that evidence is. We have no problem with the
18 government using what they want from that case. We raised
19 the issue of, I call it the postarrest seizures, arrests in
20 other countries.

21 The government in their letter to your Honor
22 February 24 stated as follows at the conclusion: The
23 defense is not entitled to evidence concerning the
24 activities of Yusef that postdate his involvement in the
25 World Trade Center bombing and flight thereafter.

1 In that letter they threatened that if persisted
2 with the Yusef defense that they may offer this Denmark
3 evidence, and they indicated something about that in their
4 February 24 letter. They said that the Denmark evidence
5 would directly link, concretely link Yusef to the defendant
6 Sheik Abdel Rahman.

7 If I'm misreading their letter, the government
8 would apparently now concede that the Denmark evidence, at
9 least the Philippine evidence, I assume the Pakistanian
10 evidence is relevant evidence under Rule 401 of the Federal
11 Rules of Evidence.

12 We have a document they gave us that now concedes
13 that Denmark, the post Yusef arrests, other people arrested,
14 all the physical evidence seized, somehow has something to
15 do with this case on trial. Why haven't we gotten documents
16 pursuant to Rule 16(c) and 16(d)? I made my demand 60 days
17 ago. I alerted your Honor to the fact that that there would
18 be --

19 THE COURT: You haven't gotten which documents?

20 MR. JACOBS: I'm sorry. I have one piece of
21 paper from Denmark at the present time. I don't have a clue
22 to what was seized there. I have gotten nothing on Yusef
23 other than the document he submitted to the various
24 newspapers.

25 THE COURT: You mean his press release?

1 MR. JACOBS: Yes. I read the "New York Times" to
2 find out other statements that he's making, but as far as
3 what's taking place overseas, I read the government's letter
4 as quite clearly indicating now that there is relevant
5 evidence under Rule 401.

6 If that's the case, and they seem to concede that
7 now in their letter -- even though they said 60 days ago I
8 was wrong -- then when do I get it? "Me" meaning the
9 lawyers, when do we get to translate documents, when do we
10 get to have examinations, and how do we proceed, let's say
11 Monday, but I am being optimistic. How do we proceed next
12 week with the World Trade Center evidence when the
13 government just isn't giving us proper disclosure. I
14 anticipated this problem two months ago. I alerted the
15 government.

16 THE COURT: Mr. Jacobs, you have said that
17 already.

18 MR. JACOBS: I'm waiting to see where we are.

19 THE COURT: Mr. Fitzgerald?

20 MR. FITZGERALD: Yes, your Honor. I would point
21 out that what simply happened here is we are giving defense
22 counsel advance notice that we are seeking to obtain
23 documents overseas. We expect to obtain a large number of
24 documents we don't have. Rather than wait the three weeks,
25 if a truck shows up with a bunch of documents, saying, "Now

1 we have them. Here's your notice," we gave them advance
2 notice that because he wants to steer the case in a
3 particular direction, we have look into it. We're happy to
4 go in that direction. We are going forward in that
5 direction, and we are giving you advance warning that this
6 is coming.

7 There are a number of documents and videotapes in
8 Denmark we are seeking to obtain. I told them that we had
9 one particular fax item, which I shared with them. I spoke
10 to one counsel yesterday, this wasn't directly raised, and
11 said that there may be a small handful of documents we can
12 share with you now, but the bulk is on its way. This is an
13 advance notice saying, "Be aware as you prepare your defense
14 that this is coming."

15 THE COURT: As I recall, the way this debate got
16 started, is you, Mr. Jacobs, argued that because Mr. Yusef
17 was involved in the World Trade Center bombing and because
18 he had certain allegiances, that suggested that somehow
19 people here were not involved. As I understand the
20 government's letter it is that they think there is
21 documentation available overseas showing that it is not
22 inconsistent for somebody to be connected to Mr. Yusef and
23 to be connected to people here. That is all I read the
24 letter to show.

25 MR. JACOBS: Your Honor, the problem we have now

1 is that the government now lists seven co-conspirators. I
2 think it is way beyond just rebutting my arguments on Yusef.

3 When I get a letter from the government
4 indicating that they think there is relevant evidence --
5 like I said, I am not here to put the blame on the
6 government. All I know is I asked for it 60 days ago. I
7 don't have a piece of paper. I have seven new
8 co-conspirators. I say, and apparently the government now
9 agrees, that there seems to be relevant evidence. How do I
10 try the World Trade Center --

11 THE COURT: You asked for two different things.
12 You asked for documents that were for specific items that
13 were seized in connection with the Yusef arrest --

14 MR. JACOBS: Correct.

15 THE COURT: -- and I think you asked for them to
16 determine whether they contained Brady material, generally
17 whether they were exculpatory.

18 MR. JACOBS: I am sorry. It was a general
19 subpoena pursuant to Rule 17(c), which we said had
20 relevant --

21 THE COURT: A general subpoena is not pursuant to
22 Rule 17(c). As you know, 17(c) doesn't provide discovery.
23 It has to be evidentiary. Right?

24 MR. JACOBS: In any event, I stated very clearly
25 in my letter why we felt Yusef was relevant evidence. Now

1 the government seems to concede I am right.

2 THE COURT: No, they are not conceding you are
3 right. What they are saying is, if you want to take the
4 argument in that direction, they have some things that will
5 disappoint you.

6 MR. JACOBS: Judge, I have to disagree. When
7 they say there are seven co-conspirators, that's not saying
8 it is the wrong direction. They are saying they think they
9 have a different theory.

10 We are saying, your Honor, we want to see
11 everything. How do I start to cross-examine FBI witnesses,
12 civilian witnesses, seizure witnesses next week when I don't
13 have a clue of what's out there that's coming?

14 THE COURT: Very carefully. Very, very
15 carefully.

16 MR. JACOBS: I understand, your Honor. But I
17 don't think the defense lawyers in the case --

18 THE COURT: No roundhouse swings is what I am
19 saying.

20 MR. JACOBS: I understand, your Honor. But that
21 is not the way we should be forced to try the case. The
22 government was on notice 60 days ago, and one piece of paper
23 in 60 days is not sufficient.

24 THE COURT: Do you want to say anything else?

25 Ms. Stewart?

1 MS. STEWART: I would also like to raise a
2 question of timing, since it is mainly perhaps my ox that is
3 being gored, since there was an address and some passport
4 information with regard to my client that wasn't produced in
5 January.

6 I just would point out that this search
7 apparently took place in April of '94, that it revealed this
8 document that apparently revealed the fingerprints that were
9 then compared with fingerprint cards and things in the
10 possession of the government. It would seem that they had
11 an entire year to get these things from Denmark.

12 I don't know whether they were sent by slow ship
13 or what they were sent by, but it would seem that copies of
14 whatever was seized, with the exception of one exceptionally
15 inflammatory piece of writing that is not ascribed to any
16 single person, what was found in an apartment, and that is
17 what is revealed to us, with no other evidence at all except
18 the bare fact that a fingerprint was identified in a book
19 carried by someone, and actually a book which was, to my
20 understanding, in the possession of the U.S. Attorney for
21 the Eastern District of New York at the time of the bombing.

22 THE COURT: Are you talking about the Ajaj book?

23 MS. STEWART: Yes.

24 THE COURT: A fingerprint, as I understand it,
25 was identified later. Mr. Fitzgerald.

1 MR. FITZGERALD: I can't give you the exact dates
2 when the fingerprint was identified. I can simply point out
3 that we did not know until Mr. Jacobs put the issue on the
4 table, and we had to try go about rebutting what we think is
5 an illogical theory, that Ramzi Yusef somehow was working
6 for Saddam Hussein, and, therefore, has nothing do with
7 these defendants. Now that we went looking there, we didn't
8 find Saddam Hussein's items in Denmark, but we found out
9 that there were people in this courtroom linked to that, and
10 now we are putting that together.

11 MS. STEWART: But was the Denmark evidence put in
12 before or after the arrest of the Ramzi Yusef?

13 THE COURT: Put in where?

14 MS. STEWART: Into evidence in this case. There
15 were papers found in the sheik's apartment, Judge, I believe
16 that was put in in late January before the arrest of Ramzi
17 Yusef that linked Denmark.

18 MS. AMSTERDAM: It was the first week of actual
19 trial date when we got discovery of evidence regarding the
20 address in Denmark.

21 MS. STEWART: That is not right.

22 MS. AMSTERDAM: That predates the Yusef arrest.

23 MR. FITZGERALD: Your Honor, I am pretty clear
24 that we put in evidence about that Denmark address before
25 the Ramzi Yusef arrest. The reason we did that was the

1 person whose address was on that piece of paper we had
2 reason to believe was affiliated with the Islamic group Al
3 Gama Islamiya. Thinking that may be an issue down the road,
4 we put that in when we did the search.

5 Now that the issue has turned around to become
6 more important, I advised in my letter that we are looking
7 to put more documents in from that search which show facts
8 showing connection between Pakistan, Denmark and New York.

9 But it is clear that we did offer one piece of
10 paper that had an address from Denmark prior to Ramzi
11 Yusef's arrest for a different reason: To show the links of
12 defendant Abdel Rahman to the Islamic group.

13 We are looking at more documents from that search
14 which shed greater light on the relationship between the
15 people in Denmark, the people in Pakistan, Ramzi Yusef and
16 the defendants.

17 MS. STEWART: All I am asking for, Judge, is the
18 ability to defend against that allegation by seeing the full
19 range of documents that were seized, if there is a full
20 range, or what that notion is predicated upon, because I
21 think it is a notion.

22 THE COURT: Whether it is a notion or something
23 more substantial, you are getting from Denmark what? All of
24 the documents that were seized?

25 MR. FITZGERALD: We are asking for everything.

1 We are trying to figure out what we will get and how
2 quickly.

3 THE COURT: OK. But the request that's gone from
4 the U.S. government to the Danes is for everything?

5 MR. FITZGERALD: We are putting in a request for
6 everything.

7 THE COURT: Fine.

8 MR. FITZGERALD: We are in the process.

9 MS. AMSTERDAM: That sounds like it's
10 conditioned. "We are putting in a request."

11 Is the request made?

12 MR. FITZGERALD: Your Honor, the request has to
13 be translated and sent through channels.

14 MS. AMSTERDAM: So the answer is no. It's
15 official that the request has not been made.

16 MR. FITZGERALD: If there is a request in
17 Denmark, no. That is what I said.

18 THE COURT: The Danes speak English.

19 MS. AMSTERDAM: I also think this is rather late
20 if you are putting in Danish evidence and you knew about it
21 two months ago --

22 THE COURT: Ms. Amsterdam, this issue was
23 introduced from the back, not from the front. The fact that
24 they happen to be responding to it now, it seems to me, may
25 be the doing of one of your colleagues.

1 MS. AMSTERDAM: Your Honor, in all the respect to
2 this court, I think it makes a great -- and I credit your
3 Honor's comment that you cross-examine the person quite
4 carefully, but I don't really think in the middle of a trial
5 that this should be going on.

6 I have been in cases where they have wanted
7 foreign documentation that was necessary for the government
8 to get, and we have had it from countries that we are allies
9 with in 24 hours. Denmark, Pakistan, you can't tell me --
10 and I don't mean you, your Honor -- but the system cannot
11 tell me that we cannot get these things more timely.

12 MR. FITZGERALD: We are doing everything we can
13 to get them here quickly. We are looking at this because
14 the issue was raised. We thought the issue was silly when
15 it was raised. We have looked into it and we have realized
16 there is inculpatory, not exculpatory evidence, and we are
17 doing our best.

18 MR. JACOBS: Your Honor, again, we are dealing
19 with --

20 THE COURT: When is it you are planning to start
21 that phase of the case?

22 MR. FITZGERALD: The World Trade Center phase
23 will begin next week. We are not offering, with the
24 exception of the documents already in the sheik's apartment,
25 we are not offering the Denmark phase. The new stuff

1 obviously isn't going in for a while. There are some faxes
2 that we will be offering showing phone calls between
3 defendant Abdel Rahman and Pakistan and Denmark which --

4 MS. STEWART: I am going to object to, at the
5 time of their offer, to the Denmark faxes that were found in
6 my client's apartment until I see a full range so that I may
7 have some scope from which to understand and object as to
8 whether or not this has any relevance to this case.

9 MR. FITZGERALD: They were relevant, your Honor,
10 before this issue was raised. They are people from the
11 Islamic group sending communications directly to Sheik
12 Rahman. That is why that paper was put in back in January.
13 We are simply pointing out to the defendants that they
14 should have their eyes open, that there is another angle
15 coming.

16 MR. JACOBS: Your Honor, so we are clear --

17 THE COURT: Yes.

18 MR. JACOBS: -- at least the accounts that I read
19 indicate that there are numerous FBI agents running around
20 Pakistan and the Philippines. I assume they have gotten
21 those documents here in the United States, or at least
22 copies of those documents.

23 THE COURT: Which documents are you talking
24 about?

25 MR. JACOBS: All the seizures that are made -- I

1 mean the government refers in their letter to things in the
2 Philippines. How do we try the World Trade Center phase of
3 the case when we don't have relevant documents to review
4 under Rule 16? That is all we've asked for.

5 I don't think -- we have made these requests
6 months ago -- that the government standing up saying that
7 they are still dealing and translating documents is really
8 sufficient. It is not fair to us. I mean, they are going
9 to put in the Duffy evidence, I call it, and we can't make
10 decisions on those exhibits when the government is
11 withholding all the documents --

12 THE COURT: Stop, Mr. Jacobs. You were the one
13 who started with this theory.

14 MR. JACOBS: The government seems to think my
15 theory makes some sense.

16 THE COURT: No. What they did was to pursue your
17 theory and find relevant evidence from their standpoint.

18 MR. JACOBS: If they know about it, why don't
19 they disclose it to us? The question is: Does the FBI have
20 documents today from Pakistan and the Philippines. Either
21 yes or no. If they have it, give it to us. That is the
22 simple question. I think your Honor should order the
23 government to make available forthwith what they've got,
24 Not two months.

25 THE COURT: I am not ordering open file discovery

1 simply because you stamp your Buster Browns on the sidewalk
2 and ask for it. Have a pleasant evening.

3 (Pages 7825 to 7827 were sealed by order of the
4 court)

5 (Proceedings adjourned to Thursday, April 13,
6 1995 at 9:30 a.m.)

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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,
a/k/a "Abu Fares,"
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 April 13, 1995
9:30 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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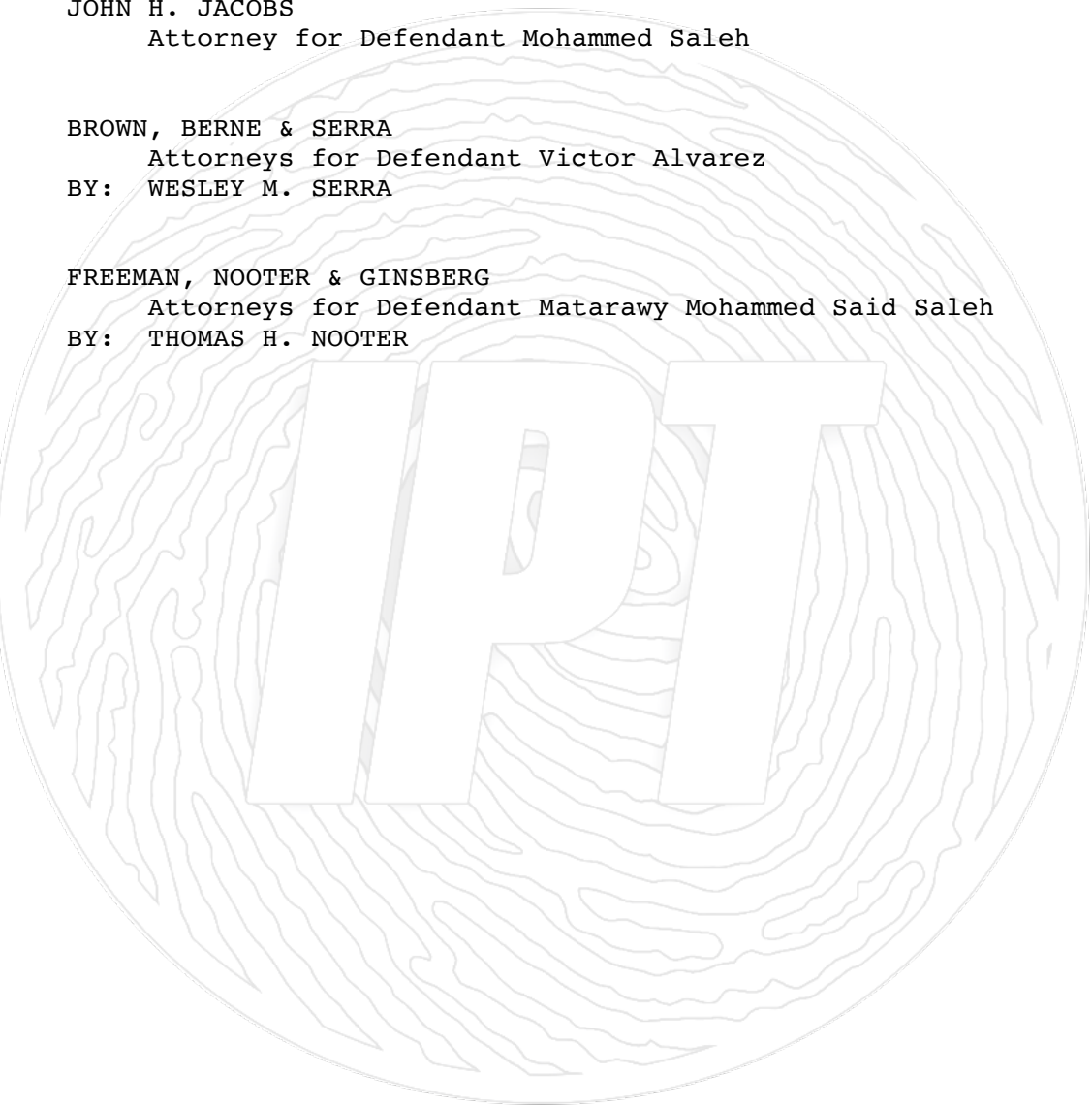
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1 (Pages 7832 through 7834 were sealed by order of
2 the court)

3 (Trial resumed)

4 EMAD SALEM, resumed.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 JURORS: Good morning.

8 THE COURT: Mr. Nooter.

9 MR. NOOTER: Thank you very much.

10 THE COURT: Mr. Salem, you are still under oath.

11 THE WITNESS: Yes, sir.

12 CROSS-EXAMINATION (Continued)

13 BY MR. NOOTER:

14 Q Mr. Salem, when we finished yesterday, we were
15 just starting to go into a piece of transcript that had some
16 English and Arabic in it.

17 I want to change transcripts for you now.

18 MR. NOOTER: If I may approach, your Honor, with
19 an exhibit which has been marked Wahid Saleh Exhibit M.

20 THE COURT: Yes.

21 MR. NOOTER: I will give it to the witness.

22 THE WITNESS: Thank you, sir.

23 MR. NOOTER: The jurors should all have that. It
24 is a thin, loose page like this, with a cover.

25 Q Mr. Salem, this is a different transcript of the

1 same portion we were discussing, if you would turn to page
2 2, looking at the large numbers on the top.

3 A Yes, sir.

4 Q Which is, for the record, page 41 of the Joint
5 Video V5, V8 transcript.

6 If you see down at the bottom at about line 51,
7 52, Siddig Ali says: No, no, no. Let us account for the
8 people who have knowledge of this.

9 Salem: Who?

10 Siddig Ali: El Fadil, Amir Abdelgani, he's not
11 going to know.

12 The next page:

13 Siddig Ali: Wahid check.

14 Amir Abdelgani: There's no problem with Wahid
15 because he is a thief.

16 Siddig Ali: There's no problem now, but how
17 about in the future?

18 Salem: How do I know?

19 Siddig Ali: I know inside in my heart.

20 Do you recall there were conversations something
21 along those lines?

22 A Well, it's not accurate, sir, but some of them,
23 yes; some of them, no, sir.

24 Q Roughly like that, though, is that correct?

25 There was a discussion about "who might be a problem for us

1 now"?

2 A Yes, sir.

3 Q OK. Then skipping one or two lines to 17, 18

4 Siddig Ali says something like: Nobody disappoints me more
5 than Wahid and Abdel Rahman.

6 Do you remember him saying something like that?

7 A No, sir.

8 Q Abdel Rahman would be Haggag?

9 A If so, I believe, yes, sir.

10 Q If it's in there?

11 A Yes, sir.

12 Q Do you remember that he said, "No one
13 disappointed me more than Wahid"?

14 A No, sir.

15 Q Going on, line 21:

16 Amir Abdelgani: Good thing you didn't tell him
17 anything.

18 Siddig Ali: We don't want to talk about him
19 behind his back.

20 Amir Abdelgani: This actions is for the sake of
21 Allah, right? Thus, for this type of work you should
22 recruit clean people. Never mind about people who deal in
23 stolen cars. Forget them completely.

24 Siddig Ali: Clean, yes.

25 Abdelgani: Isn't he driven by greed?

1 Do you remember that discussion ensuing?

2 A It's not accurate, sir, the part when he said,
3 "Thank God that you didn't tell him anything."

4 Q You don't believe that --

5 A It's not -- pardon me.

6 MR. NOOTER: Maybe we could play that piece of
7 videotape for you. There's no subtitles, but you could
8 listen and see. This is Saleh Exhibit B, and we will just
9 run it for a couple of minutes to see if you hear that
10 beginning part of the conversation. It is in Arabic. If
11 people would like to listen, that's fine. It is mainly for
12 Mr. Salem.

13 (Videotape played)

14 MR. NOOTER: Stop.

15 Q Were you able to hear anything more now that
16 refreshed your recollection?

17 A There is nothing about, "Thank God you didn't
18 tell him anything." This is not anywhere at all, sir.

19 Q I don't know because I don't speak Arabic how far
20 we got there. Did it get into the discussion about
21 counterfeiting?

22 A Not yet, sir.

23 Q There was a discussion about counterfeiting, is
24 that correct?

25 A Yes, sir.

1 Q Indeed, a few days ago you mentioned that someone
2 in this room had something to do with counterfeiting, is
3 that correct?

4 A Yes, sir.

5 Q Were you referring to Wahid Saleh?

6 A Yes, sir.

7 Q There was this discussion then, though, that he
8 is a materialistic man who's driven by money and by greed,
9 do you recall that?

10 A I'm sorry. The question, sir, please?

11 Q There was a discussion about Wahid Saleh being
12 someone driven by greed and money, that he was
13 materialistic, is that fair?

14 A Yes, sir.

15 Q And at line 42, 43 of page 3:

16 Siddig Ali: This man has the ability to steal
17 things and forge things and counterfeit as well.

18 Abdelgani: All right. But what consumes his
19 energy, money making, right?

20 Do you recall that?

21 A Yes, sir.

22 Q The conversation goes on like that. If we go to
23 page 4 -- is that correct? It went on for a while? I am
24 not going to read all of it.

25 A Yes, sir.

1 Q On page 4, line 6:

2 Abdelgani: Which means that he steals, concocts,
3 robs and picks pockets and things like that, so he can make
4 money.

5 Siddig Ali: That's correct.

6 Abdelgani: This is his modus operandi, or his
7 way of operating.

8 Siddig Ali: Do you have someone who can get cars
9 for us?

10 Amir Abdelgani: You already spoke to him.
11 That's it. It's over.

12 Siddig Ali: Even if I didn't talk to him, do you
13 have somebody else?

14 Salem: There are no alternatives before you now,
15 and you find yourself in need.

16 Do you recall that part of the discussion where
17 there was talk about seeing if there was an alternative way
18 to get cars?

19 A No, sir, we did not talk about alternatives at
20 all.

21 Q You pointed out there really weren't any more
22 alternatives, is that right, in the sentence I just read?

23 A I'm not sure that's what I said, sir. But we did
24 not talk about alternatives because I don't know, did I say
25 that?

1 Q You didn't want any more alternatives, is that
2 right?

3 A No, it was completely understood that he going to
4 deliver, sir.

5 Q All right. At line 24, 25:

6 Siddig Ali: Had I brought an infidel,
7 unintelligible.

8 MR. BERNSTEIN: Can we find out a page reference
9 as to what he is reading from.

10 MR. NOOTER: I'm sorry. This is now page 43 of
11 the joint transcript, about one-third of the way down.

12 Q Had I brought an infidel, unintelligible, and
13 watch his tongue.

14 Abdelgani: But we are not going to tell him
15 about the subject.

16 Siddig Ali: No, no, no. We didn't want to tell
17 him about it. No, we won't have a strong trust in him. He
18 is a street smart, but he is scared. I have had enough
19 experience with him. I'm not going to tell you what we
20 could do to him, and now he will say, how did I ever meet
21 this guy? Because we could do -- we could do anything to
22 him. He's the kind of person who is scared. One time he
23 told me a secret. Had I not been a decent person I would
24 have put him in hell, in hell for life. I could have -- I
25 could have him locked up for life.

1 Abdelgani: Correct.

2 Siddig Ali: Do you understand what I have said?
3 Do you recall when Siddig Ali started to say
4 that?

5 A I recall, sir, yes, Mr. Siddig Ali. Except that
6 he's scared, I don't know where this --

7 Q You are not sure about "scared"?

8 A I'm not sure about "scared."

9 Q OK.

10 A He said, yes, that he told me a secret, yes.

11 Q What the discussion was about is that: We don't
12 have to be afraid he's going to tell the officials because
13 he's in fact a criminal himself, doesn't trust the
14 government?

15 A And we have -- and Siddig has a secret against
16 him, sir.

17 Q Right. OK.

18 So we'll go on about the secret.

19 At line 49, 50:

20 Siddig Ali: He revealed a secret to me.

21 Abdelgani: Is that what you have against him?

22 Siddig Ali: That's what it is. If you don't
23 feel comfortable with the situation, and I find out that he
24 figured anything out, I will put him in jail forever.

25 Do you recall him saying something along those

1 lines?

2 A Again, sir, figure things out, this is -- I'm not
3 sure about it.

4 Q You're not sure if that's --

5 A I'm not sure about it. But, yes, he said that,
6 "I can put him in jail forever," I recall that, sir.

7 Q OK. Now, Amir Abdelgani, on this transcript it
8 says that it is a very good thing did you didn't tell him
9 anything.

10 Siddig Ali: Ah.

11 Abdelgani: I am afraid, because people like this
12 make deals, because he might confess to a bigger crime and
13 cut a deal that they punish him, unintelligible.

14 Do you recall that?

15 A The first part that it's very good that you did
16 not tell him, I'm not sure of that, sir.

17 Q OK.

18 A But the rest of that, yes, sir.

19 Q Because he's someone who's been in jail before,
20 he could be someone who's cooperating with the government?

21 A Yes, sir.

22 Q Then you ask about what it is.

23 Salem, at line 8: I mean, did he kill somebody.

24 Siddig Ali: No, no, no. With the infidels, the
25 American government. He did something against the

1 government. I mean he hit the government.

2 Salem: Meaning he cheated the government?

3 Siddig Ali: He cheated the hell out of them.

4 Do you recall that?

5 A Yes, sir.

6 Q That's when they started talking about the fact
7 that Siddig Ali started talking about the fact that he was
8 involved with counterfeiting, is that correct?

9 A I believe, yes, sir.

10 Q At line 23, 24:

11 Siddig Ali: Yeah, Emad, don't be suspicious of
12 him. He has no time for us. Believe me, he is, he is just
13 a punk. It's enough that the government is constantly
14 hunting him down, unintelligible.

15 Then, moving down a little bit, at line 41:

16 Siddig Ali: Do you think the penalty, the
17 punishment could be life without parole?

18 Salem: They call it counterfeiting.

19 Abdelgani: Terrible.

20 Siddig Ali: Life in prison, stay away. Here
21 they worship money. They worship it with their
22 Constitution, the American law and the constitution, anyone
23 who tampers with anything like this.

24 Amir Abdelgani: Even if he is pushed until he
25 bleeds, he cannot even say anything. Unintelligible.

1 That's along the same line, is that correct?

2 A Yes, sir.

3 Q Siddig Ali: He can't. As I've already told you,
4 he is afraid by the way we tortured him. He got so scared
5 he wanted to kneel in front of us and beg. The main thing
6 is we didn't tell him anything, so that's it.

7 Salem: What's this, what's this? What did you
8 say?

9 Do you recall those lines?

10 A That we tortured him, that's not true, sir.

11 Q You don't think it was said?

12 A No, sir. Because --

13 Q OK. What about, the main thing is we didn't tell
14 him anything? And you say: What's this? What's this?
15 What did you say?

16 You sound skeptical there, is that correct?

17 A I may said that, yes, sir.

18 Q Then they go on talking about some more details
19 of the counterfeiting, is that right?

20 A Yes, sir.

21 Q Then down at the bottom, at line 54, Siddig Ali
22 says: Because the way he does business is different than
23 the way you do business. Are you following me? When the
24 situation calms down, we will be talking about one person.
25 We're not going to talk about two or three. Why should we

1 involve two or three in it? Anyway, I will pay him a visit,
2 by God's will. I mean, better if we show him that he should
3 not be afraid.

4 Amir Abdelgani: The feeling I got it's not a
5 problem. When you talk to me inside, gesturing, that's it.
6 He was extremely scared, that's it. His face changed.
7 Leave him alone. That's enough.

8 Do you recall him saying that?

9 A No, sir.

10 Q You don't recall this whole discussion about how
11 the guy was so scared that we don't have to worry about him
12 telling about us?

13 A I recall, sir, that, yes, we don't have to worry
14 about him telling about us, because he's simply a criminal.
15 But scared, he never was scared, sir.

16 Q He goes on, Siddig Ali goes on at line 16, 17,
17 the second subject, this man was in jail before and he's now
18 on probation.

19 Salem: What's the crime?

20 Siddig Ali: I told you about it, the issue of
21 the liberation organization.

22 Then he goes on to talk about this Sultan. Do
23 you remember we talked about him yesterday?

24 A Yes, sir.

25 Q At line 35 Siddig Ali says: Yeah, he spent -- I

1 am sorry. Let's say line 30.

2 Siddig Ali: Five years.

3 Salem: Five years?

4 Siddig Ali: Yes. He spent two of it in jail.

5 That is another reason that he's discussing why
6 we don't have to worry about him telling anything, is that
7 correct?

8 A Yes, sir.

9 Q He's been in jail, he's on probation, something
10 like that?

11 A It is not that, sir. That he had been already
12 doing something with the PLO. So he is on the same line, we
13 don't have to worry about him telling about us. It's the
14 same line of work, sir.

15 Q Down at line 44, Siddig Ali says: If we want to
16 pressure him, you understand? Then believes me.

17 And then a part which may or may not be right,
18 and Sultan, he wears a beard and he prays and other things,
19 isn't that so? But he doesn't even understand anything
20 about jihad and his heart is weak. He tries to help the
21 Muslim. Are you following me? He's like that. He's also
22 like that and he doesn't know. And all his problems are
23 problems caused by his fighting.

24 Now, in fact they were talking about Wahid there,
25 not Sultan, is that right?

1 A I believe, yes, sir.

2 Q That is all I need from that.

3 A Yes, sir.

4 Q Sir --

5 A Yes, sir.

6 Q -- Wahid Saleh came in a few minutes, 10, 15
7 minutes before midnight, left about 15 minutes after
8 midnight, and then about an hour later many of the people in
9 this case were arrested, except him, is that right?

10 A Yes, sir.

11 Q Even you were in a sense put under arrest, is
12 that right?

13 A Yes, sir.

14 Q The FBI pretended to arrest you so that your
15 identity as being someone working with them would not be
16 known right away, is that correct?

17 A I don't believe that's right, sir.

18 Q Wasn't the purpose of making it look like they
19 were arresting you so no one would know you were an
20 informer?

21 A No, sir.

22 Q After they took you out, did they put handcuffs
23 on you?

24 A They handcuffed me in the safe house, yes, sir
25 and they took me out and they --

1 Q You don't think the reason was to make people
2 unaware that you're an informer?

3 A No, sir.

4 Q You certainly didn't stand up and say, "Aha, I
5 got you guys," did you?

6 You didn't announce you were working with the FBI
7 yourself, did you?

8 A No, I did not, sir.

9 Q Right away the FBI took steps to protect your
10 security, is that correct?

11 A Yes, sir.

12 Q To gather your family and that kind of thing?

13 A Yes, sir.

14 Q Would it be fair to say you were actually quite
15 frightened that once it became known you had been working
16 with the FBI you might be in danger, is that correct?

17 A I'm sorry. I'm not getting the question, sir,
18 please.

19 Q Sure. Let me break it down a little bit.

20 At some point you knew that it might become known
21 that you had been working with the FBI all along, is that
22 right?

23 A Yes, sir.

24 Q Up until then you didn't have to be in hiding or
25 anything like that, because nobody knew you were working

1 with the FBI, is that right?

2 A Yes, sir.

3 Q But at some point if it became public you felt in
4 danger, is that right?

5 A Yes, sir.

6 Q Therefore, you asked the FBI to help you take
7 precautions for the safety of yourself and your family, is
8 that right?

9 A That was discussed before, yes, sir.

10 Q Since then you've been moved, I think you said
11 now 18 times, something like that, 15 times, 18 times?

12 A Yeah, 15, sir.

13 Q That is all to protect your security and that of
14 your family, is that right?

15 A Yes, sir.

16 Q After the arrest went down, were you interested
17 in seeing when it might happen that it would be publicly
18 known that you were working with the FBI?

19 A It was already known, sir, by the time -- by the
20 time I left the hospital back home it was all over the news,
21 sir.

22 Q It became known in the news, is that right?

23 A Yes, sir.

24 Q Did you follow the news?

25 A I couldn't because in that time I was on the

1 move --

2 Q OK.

3 A -- with the FBI, sir.

4 Q That evening Mr. Wahid Saleh came into the safe
5 house, left the safe house and then was not arrested with
6 the others, is that correct?

7 MR. McCARTHY: Objection. Withdrawn if the
8 evening is clear.

9 Q That evening of June 23/24, is that correct?

10 A That's correct, sir.

11 Q As far as you know, he wasn't arrested for a
12 number of weeks, is that correct?

13 A I believe, yes, sir.

14 Q During that time did you see any press reports
15 about this --

16 MR. McCARTHY: Objection.

17 Q -- mysterious Wahid?

18 MR. McCARTHY: Objection.

19 THE COURT: Sustained.

20 Q During that time you yourself were frightened
21 about people --

22 MR. McCARTHY: Objection.

23 Q -- who might know that you had been an FBI
24 informer, is that correct?

25 THE COURT: Sustained.

1 Q Let me ask you this: When was the last time you
2 spoke to Siddig Ali?

3 A The night of the arrests, sir.

4 Q You haven't spoken to him since then?

5 A No, I never did, sir.

6 MR. NOOTER: I have no further questions, your
7 Honor.

8 THE COURT: Any redirect?

9 MR. McCARTHY: Yes, your Honor.

10 MS. STEWART: Your Honor, may we be heard at the
11 side bar before the redirect?

12 THE COURT: All right.

13 (Continued on next page)

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1 (At the side bar)

2 MS. STEWART: Judge, yesterday Mr. McCarthy gave
3 us a portion of a videotape of a news report involving the
4 sheik. It is purported to be a news conference in which
5 Mr. Salem escorts the sheik and in which Mr. Siddig Ali
6 translates.

7 This particular snippet has just one statement
8 which says, "America will pay for the sins of Mubarak."

9 Interestingly enough, this news conference was
10 also taped by Mr. Salem in its entirety using his recorder.
11 We can't find that statement anywhere in the news
12 conference, and I am just asking, before it is played,
13 before it is displayed to the jury and we have to deal with
14 it on some kind of cross-examination, I am just asking the
15 government, is that snippet from the June 17 news conference
16 or is it from some other news conference, or what is it
17 exactly?

18 MR. McCARTHY: It is from the June 17 news
19 conference. It is taken, as I believe I told Ms. Stewart
20 before, from a television report. This witness was present
21 and can authenticate it. I don't believe it is accurate
22 that Salem tape recorded the entirety of the sheik's press
23 conference on June 17. But it is from the June 17 press
24 conference.

25 THE COURT: How could he have been present and

1 taped it as well?

2 MS. STEWART: His briefcase.

3 THE COURT: In other words, he audiotaped it?

4 MS. STEWART: Audio. Not video, audio.

5 MR. McCARTHY: He audiotaped part of it. For
6 what it's worth, in the small section of the tape that he's
7 in, you don't see the briefcase, where he is helping
8 Dr. Abdel Rahman.

9 THE COURT: Is that the part where the comment is
10 made?

11 MR. McCARTHY: No. It is right after it.

12 MS. STEWART: Do you have a videotape of the
13 whole conference?

14 MR. McCARTHY: I do not. To fill out the record
15 a little bit, on 46, there is a lengthy discussion among
16 Siddig Ali, Emad Salem the sheik and maybe one other person
17 about what the sheik should say at the conference.

18 MS. STEWART: Right.

19 MR. McCARTHY: There is a post mortem about what
20 he did say at the conference.

21 MS. STEWART: Right.

22 MR. McCARTHY: There are some parts of the
23 conference -- we intend to play the entirety of 46 when we
24 get to it, or at least close to the entirety, so there is
25 not really much danger at this --

1 MS. STEWART: I think there is a great danger.
2 This is one statement taken completely out of context. It
3 is from a newscast on the day these men were arrested. So I
4 am not keen to play the entire news broadcast. It is one
5 statement, and we don't find it in this news conference. It
6 doesn't seem to me that if it wasn't --

7 THE COURT: If he can authenticate, then you can
8 cross on it. I don't understand how anybody could deny that
9 it was made if it is on videotape.

10 MS. STEWART: It may have been made, but not when
11 Emad Salem was there. The picture of the sheik saying this
12 is not with either Mr. Salem or Mr. Ali in the picture.

13 MR. McCARTHY: I obviously have to authenticate
14 it. If he says he didn't see it, then it can't come in. He
15 did see it.

16 THE COURT: All right. Let's go.

17 MR. McCARTHY: Your Honor, may I have one moment
18 with Mr. Patel?

19 THE COURT: Sure. On the record?

20 MR. McCARTHY: Yes.

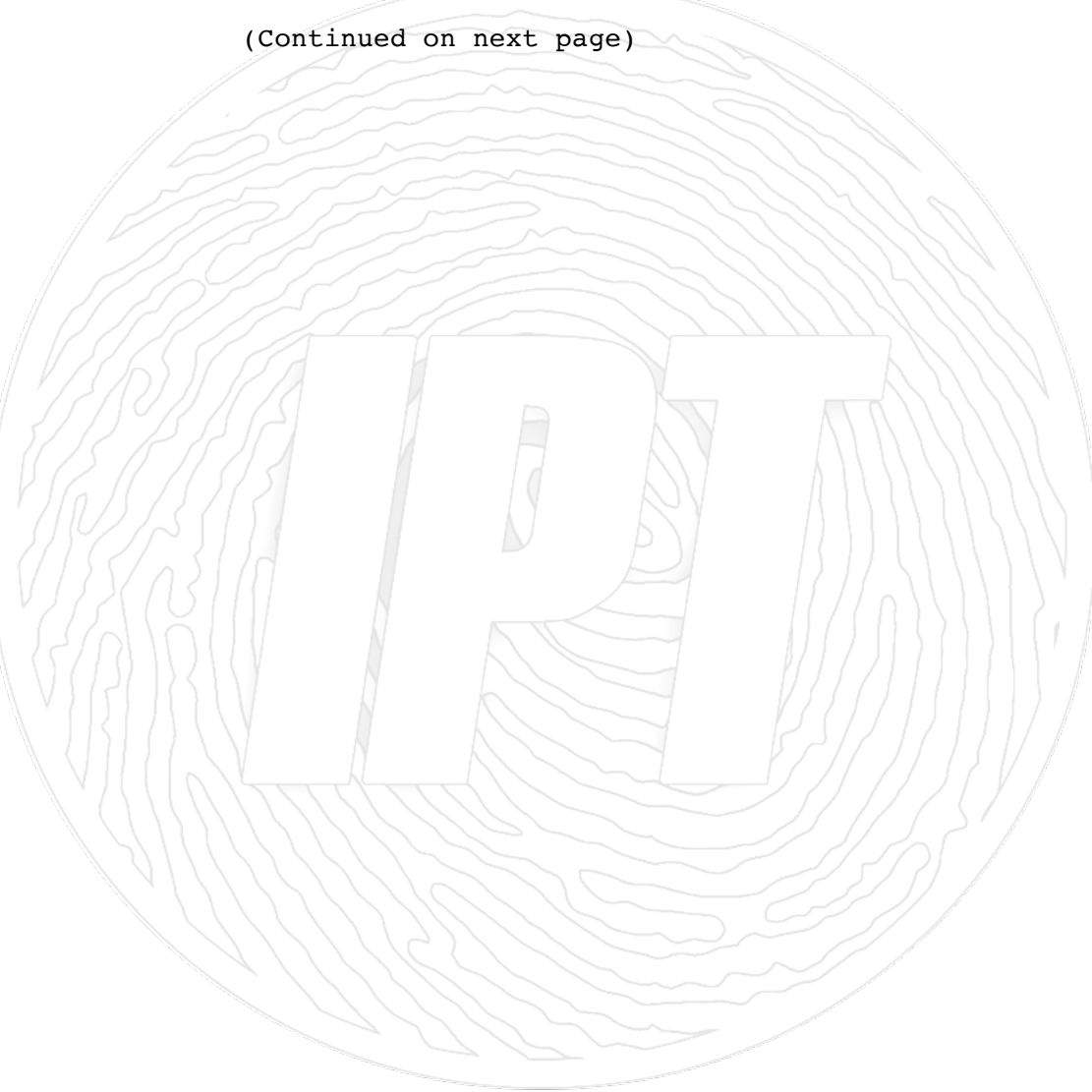
21 Mr. Nosair has his chair pointed at the jury and
22 is glaring at the jury as we proceed with the case. This
23 isn't the first time this has happened, but I want to bring
24 it to the court's attention and Mr. Patel's attention, and
25 ask him to have the seat moved around and not to look at the

1 jury.

2 MR. PATEL: I think he's been more looking at the
3 examiner than the jury, but I'm perfectly happy to have him
4 move it. Mostly I have been sitting on the other side of
5 him, so it is not a problem. OK. No problem.

6 (Continued on next page)

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1 (In open court)

2 MR. McCARTHY: Your Honor, at this time the
3 government would offer some tape recordings as to which I
4 believe rulings were deferred during direct examination.

5 Government's Exhibit 343E, which is six tapes,
6 comprising CM45; Exhibit 344E, which is four tapes,
7 comprising CM41; and Exhibit 355E, a single tape comprising
8 CM66.

9 MR. WASSERMAN: Your Honor, I don't have an
10 objection, but I don't think the six tapes were CM41.

11 THE COURT: 45. He said four were comprising
12 CM41.

13 MR. McCARTHY: I think you're wrong. I can
14 straighten the numbers out with Mr. Wasserman later.

15 MR. WASSERMAN: Subject to that correction, it's
16 fine. The CM41 transcript matches the six tapes. That is
17 what I want to know.

18 MR. McCARTHY: I should be clear, your Honor,
19 this is all subject to connection, the same way that the
20 other CM's were offered. We are not offering to read
21 anything or play anything at this time, just to offer the
22 tapes in through the foundation this witness can lay.

23 THE COURT: All right.

24 MS. AMSTERDAM: May we have one moment, please.

25 THE COURT: Yes.

1 (Counsel conferred)

2 MR. JACOBS: Mr. McCarthy, may we see you just
3 for one moment.

4 (Counsel conferred)

5 MR. McCARTHY: Thank you, your Honor.

6 THE COURT: Hearing no objection, 343, 344, and
7 355, are received subject to connection.

8 MR. McCARTHY: Thank you, your Honor.

9 (Government's Exhibits 343, 344 and 345 for
10 identification were received in evidence)

11 MR. McCARTHY: Next the government would also
12 offer, your Honor, 639-1 and 639-3, as to which rulings were
13 also awaiting counsel's review, but voir dire took place.

14 MR. WASSERMAN: Your Honor, with regard to 639, I
15 assume this has to take place out of the presence of the
16 jury.

17 THE COURT: That is as to 639-3.

18 MR. WASSERMAN: Yes, sir.

19 THE COURT: 639-1 is received subject to
20 connection. We will see with 639-3 at a later time.

21 (Government Exhibit 639-1 for identification was
22 received in evidence)

23 REDIRECT EXAMINATION

24 BY MR. McCARTHY:

25 Q Mr. Salem, for purposes of identification, I am

1 showing you now four tapes which were shown to you on direct
2 examination.

3 A Yes, sir.

4 Q I would ask you to take a look at those. Just
5 hold on for one moment.

6 MR. McCARTHY: For counsel's benefit, this is at
7 page 5354 through 5356, line 17.

8 THE COURT: These are which exhibits?

9 MR. McCARTHY: Your Honor, they are 601-4,
10 601-16, 601-19, and 604-1, which is a copy of the first
11 conversation on Mr. Salem's personal tape, which was marked
12 604.

13 Q Mr. Salem, would you please remind us of who the
14 participants are on each of these conversations.

15 A Yes, sir. The first one 601-4. This is a phone
16 conversation between my, Mr. Ibrahim El-Gabrownny and myself,
17 sir.

18 The second one, 601-16, is a phone conversation
19 between Mr. Ali Shinawy and myself, sir.

20 The third one, 601-19, it is a phone conversation
21 with Mr. Ahmed Abdel Sattar, his wife, and myself, sir.

22 604-1, it is a phone conversation between
23 Mr. Ahmed Abdel Sattar, Mr. Mohammed El-Gabrownny and myself,
24 sir.

25 Q Thank you.

1 A You're welcome.

2 Q Mr. Salem, I am also going to show you three
3 other tapes, which are conversations taken from your tape,
4 629 -- your tape 29, which is Government's Exhibit 629.
5 They are Exhibits 629-4, 629-26 and 629-36. I ask you to
6 take a look at them and tell us, please, who the
7 participants in those conversations are.

8 A 629-4, it is a phone conversation between Mr. Ali
9 Shinawy and myself, sir.

10 629-26, it's a phone conversation between Mr. Ali
11 Shinawy and myself, sir.

12 629-36, it's a phone conversation between
13 Mr. Ibrahim El-Gabrownly, his wife and myself, sir.

14 Q With respect to the last three tapes, the 629
15 series, 629-4, 629-26 and 629-36, have you reviewed those
16 conversations at my request prior to testifying?

17 A Yes, sir.

18 Q Do the recordings fairly and accurately record
19 conversations that you had with the persons you identified
20 in late June or early July, 1992?

21 A Yes, sir.

22 MR. McCARTHY: Your Honor, the government offers,
23 subject to connection, the three tapes marked 629.

24 MR. RICCO: Your Honor, I would request voir dire
25 on the tapes marked 629.

1 THE COURT: Go ahead.

2 MR. McCARTHY: Let me just announce the other
3 ones. I am also offering at this time, your Honor, on the
4 same condition, 601-4, 601-16, 601-19, and 604-1.

5 THE COURT: I think Mr. Ricco wants to voir dire
6 on the 629 series.

7 MR. RICCO: On both series, your Honor.

8 THE COURT: I thought the others have been the
9 subject of examination already, but go ahead.

10 MR. RICCO: They were not.

11 MR. McCARTHY: They were not the subject of voir
12 dire, your Honor.

13 THE COURT: Then I'm wrong. Go ahead.

14 MR. PATEL: Your Honor, I have an objection to
15 one of the 604 series.

16 THE COURT: Pardon?

17 MR. PATEL: I have an objection to 601-14, which
18 I believe was just offered.

19 THE COURT: Do you want to be heard at the side?

20 MR. PATEL: Yes, your Honor.

21 MR. RICCO: Your Honor, it may make sense to do
22 them all together after the voir dire.

23 MR. PATEL: That is fine, Judge.

24 VOIR DIRE EXAMINATION

25 BY MR. RICCO:

1 Q Mr. Salem, the tapes that have been marked
2 629-36, 629-26, and 629-4, are all telephone calls that
3 were recorded at your apartment, isn't that correct?

4 A Correct, sir.

5 Q These individual tapes that we have, the
6 different exhibits, the telephone calls themselves all were
7 at one time on one cassette, isn't that correct?

8 A I believe, yes, sir.

9 Q Do you know if they were on one cassette or not?

10 A I believe -- no, I'm not sure, sir.

11 Q Well, when you recorded the conversations I
12 thought you recorded them as they came in on a cassette and
13 put them in a box?

14 A Yes, sir.

15 Q Do you know the subject matter that is on the
16 tapes 629-36, 629-26 and 629-4?

17 A If I look at them, I can tell you, sir.

18 Thank you.

19 629-4, it is a phone conversation --

20 Q Mr. Salem. Let me ask the question.

21 A Yes, sir.

22 Q Do you know what the subject matter is, having
23 looked at the exhibit itself?

24 Do you know what it is? Yes or no.

25 A Yes, sir.

1 Q Can you look at the other exhibits, please.

2 A 629-26.

3 Q Having looked at that, do you now know what the
4 subject matter is of that telephone call?

5 A Yes, sir.

6 Q Will you please look at the other exhibit, the
7 remaining exhibit?

8 A Yes, sir. 629-36, yes, sir, I know.

9 Q The subject matter of those three calls was a
10 trip that you were taking to Attica, isn't that correct?

11 A Yes, sir.

12 Q You testified to that during your direct
13 examination, isn't that correct?

14 A Yes, sir.

15 Q Those individual cassettes, you didn't record
16 those on individual cassettes, did you?

17 A I recorded the originals, sir.

18 Q On one cassette, isn't that correct?

19 A I'm not sure, sir.

20 Q The calls were recorded on your answering
21 machine, isn't that right?

22 A No, sir.

23 Q Where were the calls recorded, if you know?

24 A On the recording device, sir.

25 Q That was attached to your telephone?

1 A Correct, sir.

2 Q You also recorded telephone calls on your
3 answering machine, isn't that correct?

4 A No, sir.

5 Q The calls that were made -- withdrawn.

6 There were other calls that were made that you
7 recorded concerning the trip to Attica that you testified
8 to, isn't that right?

9 A Could be, sir.

10 Q Well, last night did you listen to some tapes,
11 some other tapes other than these three concerning the trip
12 to Attica?

13 A There is some other tapes, I heard it, yes, sir.

14 Q So there are other conversations about that trip
15 to Attica, isn't that correct?

16 A Could be, sir.

17 Q Did you listen to tapes of other conversations
18 concerning the trip to Attica that --

19 MR. MCCARTHY: Objection, scope.

20 MR. RICCO: I will limit it, Judge. I will do it
21 on cross.

22 THE COURT: All right.

23 Q So you say there could be other conversations
24 about the trip to Attica?

25 A If you show me the tape, sir, I will tell you

1 what it is, sir.

2 Q Just so we are clear, these three conversations
3 come from a process that was set up by you, correct? You
4 attached a recording machine to your telephone and you
5 recorded conversations?

6 A Yes, sir.

7 Q These were part of what was called the
8 unauthorized recorded conversations, isn't that correct?

9 MR. McCARTHY: Objection.

10 THE COURT: Sustained.

11 Q These were your personal recorded telephone
12 conversations, right?

13 A Yes, sir.

14 Q The FBI didn't ask you to record these, isn't
15 that correct?

16 A No, they did not, sir.

17 Q The government exhibit marked -- well, it tapes
18 4-1, 1-19, 1-16, and 1-4, these were also your personal
19 tapes, isn't that correct?

20 A If I look at them, I will tell you, sir.

21 Q Please.

22 A Thank you.

23 601-4, yes, sir, it's my phone conversation.

24 601-16, yes, sir, it's my phone conversation,

25 sir.

1 601-19, it's a phone conversation, yes, sir.

2 Q Again, the four exhibits that you just -- I'm
3 sorry. Please continue.

4 A 604-1, yes, it's one of my personal phone
5 conversations, sir.

6 MR. RICCO: Your Honor, I don't have any further
7 voir dire on these tapes.

8 THE COURT: All right.

9 MR. RICCO: However, I would have an objection
10 with respect to several of the exhibits that the witness has
11 in front of him, and I would like to discuss it at the side
12 bar with the court.

13 THE COURT: Is there anyone else?

14 MR. PATEL: Yes.

15 THE COURT: Other than Mr. Patel?

16 MR. WASSERMAN: I'm sorry, Judge?

17 THE COURT: I asked if there was anyone other
18 than Mr. Patel. Mr. Patel, you simply had an objection,
19 correct?

20 MR. PATEL: Yes.

21 THE COURT: Mr. Wasserman?

22 MR. WASSERMAN: Short voir dire, your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. WASSERMAN:

25 Q Good morning.

1 A Good morning, sir.

2 Q Do you recall the subject matter of each of those
3 conversations?

4 A Yes, sir.

5 MR. WASSERMAN: Fine. Thank you.

6 No further questions.

7 THE COURT: All right. That is a short voir
8 dire.

9 Ladies and gentlemen, we are going to take a
10 short break. Please leave your notes and other materials
11 behind. Please don't discuss the case and we will resume in
12 a few minutes.

13 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 MR. PATEL: Your Honor, my objection was to
5 Exhibit 601-4T, which is a very brief conversation.

6 THE COURT: 14, did you say?

7 MR. PATEL: 4T. "T" for transcript.

8 THE COURT: OK.

9 MR. PATEL: A very brief conversation between
10 Mr. El-Gabrownny and Mr. Salem, which primarily consists of
11 Mr. Salem reporting or repeating news reports. My objection
12 is both on hearsay grounds and 403 grounds. As I am sure
13 your Honor will recall, this is a transcript dated March 4,
14 1993, shortly after the Trade Center.

15 There was a lot of speculation going on about who
16 was responsible and who was not. This is a conversation
17 talking about people connected with Kahane being arrested
18 and basically talking about this is what they are saying on
19 Channel 7, not on CNN.

20 This is not information that he has. This is
21 information that he heard over the TV that he's just
22 repeating.

23 THE COURT: I assume it is not being offered for
24 the truth, but simply to show --

25 MR. McCARTHY: Do you want me to address that?

1 THE COURT: May I see the transcript?

2 MR. McCARTHY: Yes, your Honor.

3 MR. PATEL: Are we on the same page?

4 MR. McCARTHY: I'm sorry. I gave your Honor
5 601-4, he's talking about 604-1, or vice versa.

6 THE COURT: You gave me 604-1.

7 MR. PATEL: I'm talking about 601-4.

8 MR. McCARTHY: He's talking about 601-4.

9 MR. PATEL: A dyslexic's nightmare.

10 THE COURT: OK.

11 MR. PATEL: My concern, Judge, is that the jury
12 accepting it, the fact that it was said doesn't seem to be
13 terribly relevant. Basically he's saying turn on the TV, if
14 you redact out what I would consider the objectionable
15 material. So the fact that it is said is not terribly
16 relevant and the potential that the jury would accept it for
17 the truth certainly outweighs any probative value that this
18 conversation has.

19 THE COURT: I think I know the theory, but why
20 don't I have Mr. McCarthy address it.

21 MR. McCARTHY: Your Honor, I think it has lots of
22 probative value. Obviously, it shows consciousness and
23 knowledge on Mr. El-Gabrownny's part. There is an issue with
24 respect to -- Mr. El-Gabrownny was arrested very shortly
25 after this conversation took place -- whether when he took

1 some of the actions that he took at the time that the agents
2 approached him, he was doing so for a particular purpose.

3 I think the defense is going to take one
4 position. We have another. This goes to part of his
5 knowledge. We are clearly not going to argue because there
6 was a news broadcast that Salameh is connected to the Kahane
7 homicide. We will make that argument on the basis of
8 relevant, admissible evidence. We plainly have no objection
9 to your Honor giving a curative instruction if that is what
10 is necessary. But I think that the exhibit is sort of
11 devoid of its sense if that part of it is not in there.

12 MR. PATEL: I certainly agree with the last part
13 of Mr. McCarthy's statement, which is without that this
14 exhibit doesn't make sense. Therefore, I would move to
15 exclude it in its brief entirety.

16 It seems that this is an invitation to confusion,
17 and I don't exactly understand Mr. McCarthy's proffer of
18 what it is being offered for, because Mr. Salem called
19 Mr. El-Gabrowny and Mr. El-Gabrowny may have watched
20 something on TV news, that he then did something that --

21 THE COURT: No. Mr. El-Gabrowny is arrested
22 later the same day, right?

23 MR. PATEL: Correct. I understand.

24 THE COURT: He's carrying at the time a number of
25 passports?

1 MR. PATEL: Correct.

2 THE COURT: Bearing photographs of your client,
3 right?

4 MR. PATEL: I understand.

5 THE COURT: With expiration dates, etc.?

6 MR. PATEL: Right.

7 THE COURT: You know all about that.

8 The assertion is made here that somebody has
9 drawn a connection between the World Trade Center and the
10 Kahane homicide.

11 MR. PATEL: Right, on Channel 7.

12 THE COURT: At the time that he is arrested, some
13 of the testimony at the suppression hearing indicates that
14 at the point where he is patted down and they pat the place
15 where those passports are, that's when the fracas erupts
16 that ultimately resulted in his arrest.

17 I assume the government is going to argue that
18 the reason he stuck the passports in his pocket was because
19 he heard that there was news around that there was some
20 connection being drawn between the World Trade Center and
21 the Kahane events, and he wanted to get those passports out
22 from under any search that might be conducted because his
23 address was on Salameh's license.

24 MR. PATEL: That assumes that he knew that his
25 address was on Salameh's license.

1 THE COURT: It does. Although I should tell you
2 that your predecessor -- no, that's not true. It's not your
3 predecessor. It's actually Mr. Ricco's predecessor in this
4 case who argued that he gave permission to use his address
5 for Salameh's license as an "accommodation." That's very
6 eloquent.

7 MR. PATEL: Your Honor, if this comes in, I would
8 ask that the jury be instructed that it is not --

9 THE COURT: They will.

10 MR. PATEL: -- being admitted against Mr. Nosair,
11 and that it is not admitted for the truth.

12 THE COURT: They will be instructed on both.

13 MR. PATEL: I don't want that to sound like a
14 concession. I think this is a land mine that the government
15 doesn't need, and it's an invitation to confusion that the
16 government has already said they have much clearer evidence
17 on. I think that this is a thorn we don't need to step on.
18 It is a small thorn.

19 MR. MCCARTHY: I don't think so. I think what
20 Mr. El-Gabrownny was doing out in front of his house is going
21 to be a hotly contested issue in this case.

22 THE COURT: Mr. Ricco doesn't have to tell me
23 he's going to hotly contest it. I assume he will hotly
24 contest it. He's nodding. The objection is overruled.

25 MR. RICCO: Your Honor, on the transcript that

1 Mr. McCarthy had mistakenly sent up to you, you need to take
2 a look at that one now.

3 THE COURT: OK.

4 MR. RICCO: That would be 604-1.

5 My objection --

6 MR. McCARTHY: Your Honor, if I may, there is a
7 redacted transcript that I intend to offer with the
8 interpreter and a complete one which has some extra pages.
9 I will hand the other one up to the court as well.

10 THE COURT: I'm sorry. Yes?

11 MR. RICCO: Your Honor, page 6, the top of the
12 document, this was a conversation between Mr. Salem and
13 Mr. Mohammed about Mr. El-Gabrowny's arrest. When we get to
14 page 6, Mr. Salem and Mr. El-Gabrowny are talking about the
15 passports that were recovered from Mr. El-Gabrowny. Salem
16 explains that he is watching television again and he makes a
17 statement that appears to be what the correspondent on the
18 television is saying about the passports that were recovered
19 from Mr. El-Gabrowny's person.

20 THE COURT: Right.

21 MR. RICCO: I would object to that portion of it
22 as not being within 801(a)(2).

23 THE COURT: This is with Mr. Mohammed
24 El-Gabrowny?

25 MR. RICCO: This is with Mr. Mohammed

1 El-Gabrowny.

2 THE COURT: All right.

3 MR. McCARTHY: That statement is the context for
4 Mr. Mohammed El-Gabrowny's later statement that the
5 passports are El Sayyid's. I don't know exactly the quote.

6 THE COURT: He says right afterwards to
7 Mr. Salem: "Yes, this one is El Sayyid's and his family."

8 MR. McCARTHY: We offer that as a co-conspirator
9 statement. I would want to point out to your Honor that
10 Mr. Ricco opened to the jury that the passports came from
11 Salem. This transcript is rebuttal to that argument.
12 Moreover, Mr. Stavis brought out in his cross-examination of
13 Salem that Salem didn't even know, other than Mr. Nosair,
14 the members of Mr. Nosair's family. This is essentially
15 being offered for the purpose of --

16 THE COURT: As I understand it, the objection is
17 to the suggestion that Mr. El-Gabrowny was intending to
18 flee?

19 MR. RICCO: No.

20 THE COURT: Or the statement that Mr. El-Gabrowny
21 was intending to flee?

22 MR. RICCO: The objection is to the admissibility
23 of the news correspondent's assessments of what
24 Mr. El-Gabrowny was intending to do or what Mr. Nosair was
25 intending to do with these passports. It sort of reads as

1 if he's relating a coconspirator's statement, but he isn't.
2 He's really explaining what he heard on the television
3 about --

4 THE COURT: What I am going to do is simply tell
5 them that in that portion of the transcript all he is doing
6 is conveying a news report which is not being offered to
7 show that it is true, but simply to show that Mr. Mohammed
8 El-Gabrowny, who is not Mr. Ibrahim El-Gabrowny, heard that
9 from Mr. Salem and responded as he did.

10 MR. RICCO: You see, your Honor, the only problem
11 with that is that we have been unable to determine whether
12 or not any news station ever uttered this on the day of
13 Mr. El-Gabrowny's --

14 THE COURT: It doesn't really matter whether they
15 did or not. The question is not so much whether there was
16 actually a news broadcast to this effect, but rather what
17 Mr. Mohammed El-Gabrowny's response was to hearing it.

18 MR. RICCO: OK.

19 THE COURT: If you want me to tell them that
20 there is no proof even that there was such a news report, I
21 will tell them that, too.

22 MR. RICCO: I would like that.

23 THE COURT: Fine. You don't object to that?

24 MR. McCARTHY: I have no objection, your Honor.

25 THE COURT: All right.

1 Anything else?

2 MR. RICCO: Also --

3 THE COURT: Yes.

4 MR. RICCO: -- Mr. McCarthy and I, I think we
5 agreed that the remainder of the conversation after that
6 would be redacted.

7 MR. McCARTHY: Your Honor, this won't come up
8 until Abdel Hafiz testifies, but we intend to go forward
9 with the redacted version rather than the unredacted
10 version. The pages that are taken out deal with
11 Mr. El-Gabrownny's counsel's situation and Mr. Kunstler and
12 Mr. Warren, which really doesn't have any relevance to the
13 purpose that it is being offered for.

14 (Continued on next page)

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1 THE COURT: Fine.

2 THE DEPUTY CLERK: Would you like me to get the
3 jury?

4 THE COURT: Is there some segment you can cover
5 in 15 minutes, or do you want to simply extend this until 11
6 o'clock and we will continue then?

7 MR. McCARTHY: I think if we extend it until 11
8 o'clock, I can be done --

9 THE COURT: By lunch?

10 MR. McCARTHY: Yes.

11 THE COURT: Fine. Then we will extend the break
12 until 11 o'clock and we will resume at 11 and go through
13 until lunch.

14 (Recess)

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1 (Jury present)

2 MR. McCARTHY: May I, your Honor?

3 THE COURT: Please.

4

5 EMAD SALEM, resumed.

6 REDIRECT EXAMINATION (continued)

7 BY MR. McCARTHY:

8 Q Hello again, Mr. Salem.

9 A Pardon me?

10 Q I don't think the mike is working.

11 A The bottom thing you just dropped, sir.

12 (Pause)

13 MR. McCARTHY: May I, your Honor?

14 THE COURT: Go ahead.

15 Q Mr. Salem, do you recall telling us on
16 cross-examination that you did not believe that the
17 videotape that you and Mr. Siddig Ali recorded of the
18 Lincoln and Holland Tunnels on June 23 was ever played in
19 the safe house?

20 A Yes, sir, I did.

21 Q Mr. Salem, I am showing you Government's Exhibit
22 382A-1 for identification. I would ask you to take a look
23 at that item and tell us if you have reviewed it prior to
24 testifying.

25 A Yes, sir.

1 Q With respect to the videotape that was made of
2 the Lincoln and Holland Tunnels, can you tell us whether
3 that item was ever played in the safe house on the basis of
4 your review of Government Exhibit 382A-1?

5 A Yes, sir, it did.

6 Q Can you describe for us when and who was present?

7 A That was right before -- the day of the arrest I
8 was in the safe house with Mr. Amir Abdelgani, and we played
9 the tape on the VCR or the surveillance for the tunnel and
10 we watched it, sir.

11 MR. McCARTHY: Your Honor, I would offer at this
12 time to play a short portion of 382A-1.

13 THE COURT: Go ahead.

14 (Tape played)

15 Q Mr. Salem, is it correct we are looking at the
16 portion of this videotape which is at approximately 10:51 to
17 10:52 p.m.?

18 A Yes, sir.

19 Q Can you describe for us, please, what section of
20 the -- can you stop the tape for a moment, please.

21 What section of the safe house are we looking at
22 in the tape, for the record?

23 A We are looking at the extreme right section of
24 the safe house, where is the bench I used to -- with the
25 timers and the videotape, and there is a TV and a VCR, and

1 the videotape for the surveillance tunnel -- tunnel
2 surveillance, is being played, and I can see Siddig Ali on
3 the smaller screen, sir.

4 Q Did you see somebody get up and walk a moment
5 ago?

6 A Yes, sir.

7 Q Who was that?

8 Q Mr. Amir Abdelgani, sir.

9 Q Can you tell us what is being played on the
10 monitor in the safe house?

11 I am not talking now, just to be clear, if I can,
12 I am not talking about the monitor that we are looking at in
13 the courtroom. I am talking about the monitor that is
14 depicted on the screen in the safe house. Can you tell us
15 what is being played at that time?

16 A Yes, sir, I can.

17 Q What is that?

18 Q That is the face of Mr. Siddig Ali inside my car
19 after we just get out of the tunnel, sir.

20 Q That is the tunnel videotape?

21 A That's correct, sir.

22 Q Thank you.

23 Mr. Salem, Mr. Jacobs asked you some questions on
24 cross-examination about the conversation that Siddig Ali and
25 you had with Mohammed Saleh in his home, do you recall that,

1 that is, at Mohammed Saleh's home?

2 A Yes, sir.

3 Q And specifically he asked you some questions
4 about whether the words "United Nations" were ever spoken by
5 Siddig Ali to Mohammed Saleh during the course of that
6 conversation. Do you recall that?

7 A Yes, sir.

8 Q Were the words "United Nations" spoken in your
9 presence by Siddig Ali to Mohammed Saleh at Mohammed Saleh's
10 home on June 4, 1993?

11 A Absolutely.

12 Q How many times?

13 A Twice, sir.

14 Q Can you explain to the ladies and gentlemen of
15 the jury the circumstances of that part of the conversation,
16 particularly with respect to whatever outside area noise
17 there was?

18 A I was sitting with Mr. Mohammed Saleh and
19 Mr. Siddig Ali in a triangle on the floor, and the two
20 children of Mr. Mohammed Saleh sitting right close to us.
21 They were still eating, so you can hear the utensils --
22 forks and the knives, the forks and spoons clicking with the
23 dishes, and at the same time the two wives were eating in
24 the kitchen. You hear their laughs and their clicks with
25 spoons and dishes in the kitchen. And at the same time I

1 believe there is an aeroplane passed by, sir.

2 Q You can hear the aeroplane on the tape?

3 A Yes, sir.

4 Q Can you tell us, please, at the time that the
5 words "United Nations" were spoken by Siddig Ali, what
6 physically he was doing at that time?

7 A He was writing down, first Elouman, Elmoutahedah,
8 means United Nations, but that is in Arabic, sir.

9 Q Mr. Salem, I am going to ask you to try to spell
10 that.

11 A Yes, sir.

12 Q And please correct me if I am wrong. Alouman,
13 A-l-o-u-m-a-n.

14 A Could be a-l or e-l, Elouman or Alouman, sir.

15 Q And then El Moutahedah?

16 A Yes.

17 Q A-l or e-l?

18 A El Moutahedah, sir.

19 Q M-o-u-t-a-h-e-d-a-h.

20 A Yes, sir.

21 Q Now, Alouman Al Moutahedah, is that correct?

22 A Yes.

23 Q That is how you say it slow if you want to get
24 every syllable out, correct?

25 A That is how you emphasize it, Elouman Al

1 Moutahedah, sir.

2 Q How would you say it in regular conversational?

3 A Elouman Al Moutahedah.

4 Q How did Mr. Siddig Ali say it?

5 A Elouman Al Moutahedah.

6 Q He was whispering it?

7 A He was whispering it and saying in the
8 conversations. He was not specifying each letter, sir.

9 MR. JACOBS: I am sorry, I missed that.

10 A Each letter, sir.

11 Q You tell us that he said it twice?

12 A Yes, sir.

13 Q Did Mr. Saleh make any response during the course
14 of Mr. Siddig Ali saying it twice?

15 A Yes, sir.

16 Q What word or words did Mr. Siddig Ali respond
17 with?

18 A When Mr. Siddig Ali said, Elouman Al Moutahedah,
19 Mr. Mohammed Saleh said nahm, nahm means yes, but yes here
20 coming as a question mark, sir. And then Siddig repeated
21 again, said Elouman Al Moutahedah, and then Mr. Mohammed
22 Saleh said nahm. The second nahm means yes also, but it is
23 confirmation for the reception of the word, sir.

24 Q In other words, the second time nahm is a
25 question, not a statement?

1 A Yes, sir.

2 Q What if anything do you recall Mr. Siddig Ali
3 responding at that point?

4 A He said Shouf. I mean Kolou. Shouf Yanee -- I
5 am sorry.

6 Q Let me stop you for a moment. Why don't you give
7 us the English first as you best remember it and then the
8 Arabic.

9 A All right, sir. He said look, I mean all of it.

10 Q When you said "all of it," you moved your right
11 hand in a sweeping motion from over your head down your
12 right side, is that right?

13 A Yes, sir.

14 Q Now, can you try to give us the Arabic that you
15 best recall he said?

16 A Look, I mean -- you want the Arabic?

17 Q I do.

18 A I am sorry, sir. Shouf Yanee Kolou.

19 Q Shouf?

20 A Shouf means look.

21 Q Could you try to spell that for us?

22 A S-h-o-u-f.

23 Q All right.

24 A Yanee, Y-a-n-e-e. Kolou, K-o-l-o-u, sir. That
25 is the best I can do.

1 Q Sir, have you reviewed Government Exhibit 333E,
2 which is the cassette tape recording of CM32?

3 A Yes.

4 Q Were you able to hear what you just described to
5 us?

6 A Yes, sir.

7 MR. McCARTHY: Your Honor, at this time, if I
8 may, I would like to play a very short portion of
9 Government's Exhibit 333E, which is CM32L, and ask the
10 jurors to put their headsets on.

11 THE COURT: All right.

12 Q Mr. Salem, I am going to play it once through. I
13 ask you to raise your hand when you hear the part where you
14 say you hear those words.

15 A Yes, sir.

16 THE COURT: Which words that you want him to
17 signal that he hears? United Nations or the other?

18 Q Mr. Salem, the portion of the conversation that I
19 just asked you about, is this all one conversation or one
20 portion of the conversation, that is, a statement by Siddig
21 Ali, a response by Siddig Ali, a statement and a response?

22 A Yes, sir.

23 Q About how long does it take to get through that
24 portion of it?

25 A The whole portion will take four, five seconds,

1 ten seconds could be.

2 Q When we get to that portion, when you have heard
3 it, could you please raise your hand?

4 A Yes, sir.

5 Q Thank you.

6 (Tape played)

7 A We already passed it, sir.

8 MR. McCARTHY: Your Honor, if I might from here.

9 Q Mr. Salem, that was the portion?

10 A Yes.

11 Q You just raised your hand at this point?

12 A Yes, sir.

13 Q Mr. Salem, Ms. Amsterdam asked you some questions
14 about a conversation that took place in the safe house that
15 was recorded on what is referred to in the record as CM58.
16 Do you recall that?

17 A Yes, sir.

18 Q And specifically she asked you about a portion of
19 the conversation where Mr. Fares Khallafalla has some
20 exchange of words with some of the other people in the safe
21 house?

22 A Yes, sir.

23 Q And again specifically he makes some remarks in
24 the nature of "shame on you" and that type of stuff. Do you
25 recall that?

1 A Yes, sir.

2 Q Can you tell us, Mr. Salem, your best
3 recollection of what was going on at that portion of the
4 conversation that is CM58?

5 A Yes, sir. We were sitting, that's like -- it's
6 one group sitting together, but we were having two separate
7 conversations. Mr. Siddig Ali, Mr. Tarig Elhassan, and
8 Mr. Victor Alvarez having a conversation, at the same time
9 Mr. Fares Khallafalla, Mr. Amir Abdelgani, and myself having
10 another conversation, but both conversation, of course,
11 being picked up in one time, sir.

12 Q Do you recall a portion of the conversation where
13 Mr. Fares Khallafalla makes the statement, "I'll give you my
14 opinion tomorrow"?

15 A Yes, sir.

16 Q Or words to that effect?

17 A Yes, sir.

18 Q Do you recall what was going on among the
19 participants in the conversations at that point?

20 A In that time Mr. Tarig Elhassan was talking to
21 Mr. Victor Alvarez, telling him, "Look, if you want to pull
22 out, that's the time for you to pull out. And we will still
23 trust you, you are still going to be our brother, and we can
24 do it somewhere else," he means the plan, "we can do it
25 different places so you won't know about it."

1 And then Mr. Fares Khallafalla overheard what was
2 going on between Mr. Tarig Elhassan and Mr. Victor Alvarez,
3 so he made fun of what was going on and said, "well, I will
4 give you my opinion tomorrow," and laughed at him.

5 Q Laughed at whom?

6 A Laughed at Mr. Tarig Elhassan and Mr. Victor
7 Alvarez, that they are saying to him, if you want to pull
8 out, you have to pull out now.

9 Q I need to stop you for a minute. That they are
10 saying to him if he wants to pull out he has to pull out
11 now. Who is the "him" you are talking about?

12 A Mr. Victor Alvarez, sir. And then Mr. Siddig Ali
13 told him no, no, no, that is a serious business, that is not
14 a joke.

15 Q Let me stop you again. When you say Mr. Siddig
16 Ali told him that is serious business, it is not a joke, who
17 is the "him" that you are referring to?

18 A Mr. Fares Khallafalla, sir. And he left, and
19 they start speaking Arabic. Mr. Fares said, Well, guys, we
20 better speak in English, it is a shame on us to speak in
21 Arabic in front of Mr. Victor Alvarez, since he does not
22 speak Arabic, sir.

23 Q Have you reviewed CM58?

24 A Yes.

25 MR. McCARTHY: Your Honor, at this point I would

1 like to play a very short portion of CM58. I believe the
2 jurors have been given the books that Ms. Amsterdam gave out
3 during her cross-examination, and I would ask the Court to
4 direct everyone's attention to the tab in that book, which
5 is CM58, at about page 49 of that transcript.

6 MS. AMSTERDAM: The only caveat I would add to
7 that, your Honor, is that at page 50 there are some
8 underlinings regarding Mr. Khallafalla, and the government
9 has agreed that those are Mr. Khallafalla. However, he is
10 stating he is going to tell them tomorrow, which is on page
11 50, which is still a disputed statement. The defense saying
12 that he said I will tell him tomorrow. The attributions are
13 correct. The one statement is still in dispute.

14 MR. MCCARTHY: That is correct, your Honor.

15 THE COURT: The statement on which page?

16 MS. AMSTERDAM: On page 50, the one, two, three,
17 four, five, six, seventh attribution down, when
18 Mr. Khallafalla says he is going to tell you to go. The
19 defense said -- that is the disputed portion -- the defense
20 says that that says, "Do you want me to go?" But the other
21 underlinings are not disputed.

22 THE COURT: Ladies and gentlemen, you recall that
23 I told you, as to the transcripts that you are looking at to
24 follow the tapes, that there are some portions that are in
25 dispute, and those portions generally have been signaled

1 with underlinings. When you listen to the excerpt that you
2 are going to listen to now, all of the underlined portions
3 are now agreed to except for the one on page 50 of
4 conversation 58 in the book that you should be looking at,
5 which says he's going to tell you to go. That one is still
6 in dispute. All the others are agreed to.

7 MR. McCARTHY: Your Honor, some of the
8 conversation is in English, some is in Arabic.

9 THE COURT: All right.

10 MS. AMSTERDAM: The book that the jurors should
11 be looking at is a black one that has a blue tab. It would
12 be under CM58, beginning at page 49.

13 THE COURT: Mr. McCarthy, where are you starting
14 the excerpt you are going to play now?

15 MR. McCARTHY: Your Honor, I believe it is at
16 approximately where Mr. Elhassan is quoted about midway up
17 page 49 in an underscored portion.

18 THE COURT: It says, "I mean he told you"?

19 MR. McCARTHY: Yes.

20 THE COURT: Page 49 under tab 58 in your books.

21 Go ahead.

22 (Tape played)

23 Q Mr. Salem --

24 A Yes, sir.

25 Q -- at the point in that transcript where the

1 words, "I'll give you my opinion tomorrow" were spoken by

2 Mr. Khallafalla, did you hear some laughter?

3 A Twice, sir.

4 Q Who was laughing?

5 A Mr. Fares Khallafalla, sir.

6 Q Who else?

7 A Mr. Siddig Ali, Mr. Fares Khallafalla, sir.

8 MR. McCARTHY: I am sorry, your Honor, I just
9 need one transcript.

10 (Pause)

11 We are going to try to do it without the
12 transcript. Let me direct counsel's attention to page 5697
13 of the record.

14 MS. AMSTERDAM: Would you tell us what transcript
15 it is in?

16 MR. McCARTHY: What I mean is the trial
17 transcript at 5697.

18 MS. AMSTERDAM: I see. 5697.

19 Q Mr. Salem, I am afraid I don't have the record in
20 front of me, but do you recall being asked some questions
21 about who was present in the safe house when Mr. Siddig Ali
22 was drawing on the piece of cardboard that came into
23 evidence?

24 A Yes, sir.

25 Q Do you recall that at one point you said that Mr.

1 Nosair was among those who was present in the safe house?

2 A No, sir.

3 Q Let me ask you this: Prior to your testimony
4 this morning, do you recall a portion of the record being
5 read to you where it is indicated that you listed Mr. Nosair
6 as among the people who were in the safe house?

7 A I did say -- I mean, yes, you read that to me,
8 but I don't recall that I said it, sir.

9 Q Was Mr. Nosair ever in the safe house, Mr. Salem?

10 A No, sir.

11 Q You testified about at least two occasions on
12 which you saw Mr. Siddig Ali draw on the cardboard in the
13 presence of other people. Do you remember that?

14 A Yes, sir.

15 Q Can you tell us on each occasion who you recall
16 being present?

17 A The first time was Mr. Siddig Ali, sitting on the
18 cardboard, Mr. Khallafalla sitting right in front of him,
19 and Mr. Amir Abdelgani. And I came and I lied down on my
20 side beside Mr. Siddig Ali. And that was the first time,
21 sir.

22 Q Can you tell us as best you recall what
23 conversation was going on at the time that Mr. Siddig Ali
24 was drawing on the cardboard in front of Mr. Amir Abdelgani
25 and Mr. Fares Khallafalla?

1 A Mr. Siddig Ali was telling them about the targets
2 and the plan and the tunnels, and he draw the two tunnels
3 and the direction of the traffic and where he want to put
4 the bomb with the pen pointing to the cardboard, and then he
5 made that gesture with his hands to explain to them how much
6 time he want to put between each bomb, sir.

7 Q Did he make any expression about bombs going off?

8 A Yes, sir.

9 Q What did he say?

10 A He said the first one will go boom, everybody
11 will go crazy what's going on. Then five minutes later the
12 second one, boom. Everybody will say, well, what's going
13 on. And then five minutes later, the third one boom,
14 everybody will go crazy and put his hands on his head, sir.

15 Q Mr. Salem, I am showing you a videotape marked
16 Government's Exhibit 370A for identification. I will ask
17 you if you have reviewed a portion of that item.

18 A Yes, sir.

19 Q Can you tell us what is depicted in the portion
20 of the item that you reviewed?

21 A This is the meeting between Mr. Siddig Ali,
22 Mr. Amir Abdelgani and Mr. Fares Khallafalla on the
23 cardboard when he is holding pen in his hand and making this
24 three gestures to explain to him when he blow up the three
25 targets, sir.

1 MR. McCARTHY: Your Honor, I would offer to play
2 that short portion of the videotape at this time.

3 THE COURT: All right.

4 MR. McCARTHY: Your Honor, I believe that the
5 video is now working with the headphones.

6 (Videotape played)

7 Q Mr. Salem, I stopped the tape for a moment.

8 MR. McCARTHY: Could we try to get those screens
9 clear?

10 Q Can you tell us, please, Mr. Salem, as we look at
11 the screen now, which is marked 527 93, and the time 23 56
12 14, who is depicted on the screen and one piece of clothing
13 that each is wearing, to be clear?

14 A On the left side of the screen, Mr. Fares
15 Khallafalla, wearing some reddish top or brownish top, sir.
16 That second one, from left to right, and his back to us,
17 Mr. Amir Abdelgani, wearing a bluish top, sir. The third
18 one, which he is facing us and pointing his hand, is
19 Mr. Siddig Ali, and wearing dark outfit, sir. The person on
20 the extreme right, just about to sit down, it's myself
21 wearing a black top, sir.

22 Q Mr. Salem, let me ask you to put your headset
23 back on and ask Detective Corrigan to start the tape.

24 (Tape played)

25 Q The tape has been stopped at 23 57 22. Mr.

1 Salem, is that the portion of the tape you just described in
2 your testimony?

3 A Yes, sir.

4 Q Tell us about the other occasion you recall
5 Siddig Ali drawing on the board in the presence of other
6 people?

7 A There came a time, sir, when Mr. Siddig Ali,
8 Mr. Fares Khallafalla, Mr. Victor Alvarez, Mr. Amir
9 Abdelgani, Mr. Tarig Elhassan and myself, sir, were sitting
10 in the safe house, and Mr. Siddig Ali was drawing on the
11 cardboard and explaining what he had already drawn in the
12 first tape, to them on the second occasion, sir.

13 Q When you say what he had already drawn on the
14 first tape, you are referring to the tape we just watched?

15 A That's correct, sir.

16 Q Mr. Salem, I am showing you Government's Exhibit
17 374A and I would ask you if you have reviewed that prior to
18 your testimony.

19 A Yes, sir, I did.

20 Q What is depicted on the portion of 374A that you
21 have reviewed?

22 A This is a meeting I just explained it that I was
23 sitting on the chair, Mr. Victor Alvarez sitting right to my
24 left-hand side, Mr. Siddig, Mr. Tarig, Mr. Fares and
25 Mr. Amir sitting on the cardboard and Mr. Siddig explaining

1 to them the targets and the plan, sir.

2 MR. McCARTHY: Your Honor, I would ask to play a
3 short portion of that tape at this time.

4 THE COURT: What exhibit is that?

5 MR. McCARTHY: 374A.

6 THE COURT: Go ahead.

7 (Tape played)

8 MR. McCARTHY: Detective Corrigan, would you stop
9 the tape for a moment.

10 Q Mr. Salem, directing your attention to the
11 screen, could you please, beginning with the gentleman
12 kneeling on the floor on the left with the white cap on, can
13 you please describe for us who is seated in the picture?

14 A Starting from the left to the right, sir, the
15 first individual with the white hat on the top of his head
16 is, that's Mr. Tarig Elhassan, sir. Next to him, myself
17 sitting on the chair with the denim shirt or jeans shirt,
18 sir. The third individual to my left is Mr. Victor Alvarez,
19 sitting on the chair, sir. The fourth individual with the
20 white top is Mr. Fares Khallafalla, sitting on the floor
21 between Mr. Victor Alvarez. And next to him is Mr. Siddig
22 Ibrahim Siddig Ali, sir. Next to Mr. Siddig, which is the
23 last individual towards us, is Mr. Amir Abdelgani, sir.

24 MR. McCARTHY: Your Honor, for the record it is
25 the portion of the tape for which the time is 12 56 59.

1 THE COURT: 6/20/93.

2 MR. McCARTHY: Yes, your Honor.

3 Detective Corrigan, could you roll the tape,
4 please.

5 (Tape played)

6 Q Mr. Salem, a moment ago on the tape, is it
7 correct that you threw an item toward Mr. Siddig Ali?

8 MS. AMSTERDAM: I am sorry, what is the question?

9 Q I am sorry. A moment ago on the tape is it not
10 correct that you threw an item in the direction of
11 Mr. Siddig Ali?

12 A Yes, sir.

13 Q Can you tell us what that was?

14 A A pen and a board after the pen.

15 Q Can you tell us what Mr. Siddig Ali did with the
16 pen?

17 A He took the pen and he start pointing to the old
18 drawing and start using it to show them what is the plan and
19 what is the target, sir.

20 MR. McCARTHY: Detective, would you run the tape
21 for about another minute.

22 (Tape played)

23 Q Mr. Salem, before I move on, do you recall this
24 morning when you began your redirect examination I showed
25 you several cassette tapes?

1 A Yes, sir.

2 Q And when Mr. Wasserman asked you some questions
3 on voir dire, he asked you whether you recalled those
4 conversations, whether it was your testimony that you
5 recalled the subject matter of those conversations?

6 A Yes, sir.

7 Q When did you review those conversations?

8 A This morning, sir.

9 Q Finally, do you recall that Ms. Stewart, when she
10 was questioning you, showed you some photographs of Dr. Omar
11 Rahman at a park?

12 A Yes, sir.

13 Q And do you recall, as you sit here now, who was
14 present in those photographs?

15 A I mean I believe Sheik Omar, myself, and some
16 other individuals, sir.

17 Q Do you recall she asked you whether there weren't
18 children running around the park that day?

19 A Yes, sir.

20 Q Do you recall that she pointed out to you that
21 there were no defendants on trial depicted in those
22 photographs?

23 A Something in that effect, sir.

24 Q Were you present, Mr. Salem, at Dr. Abdel
25 Rahman's apartment for a press conference in June 1993?

1 A There was more than one, sir.

2 Q Were you present at one in particular on June 17,
3 1993?

4 A Yes, sir.

5 Q Can you tell us whether Mr. Siddig Ali was also
6 present?

7 A Yes, sir.

8 Q Was he wearing anything unusual that day during
9 the press conference?

10 A Yes, sir.

11 Q What was that?

12 A He was hiding his face with a white veil, sir.

13 Q Do you recall Ms. Stewart asked you some
14 questions about the press conference?

15 A It could be, sir.

16 MR. McCARTHY: Directing counsel's attention to
17 page 6012 of the record, do you recall Ms. Stewart asking
18 you whether the conference had to do with the execution of a
19 number of people in Egypt by Mubarak?

20 A Yes, sir.

21 Q I am directing your attention to Government's
22 Exhibit 395, the videotape. I would ask you to take a look
23 at that item and tell us if you have reviewed it prior to
24 testifying.

25 A Yes, sir, I did.

1 Q Can you tell us what is depicted on that
2 videotape?

3 MS. STEWART: Objection.

4 THE COURT: Overruled.

5 A It's when Sheik Omar Rahman, giving a press
6 conference, and Mr. Siddig Ali --

7 Q Let me just stop you for a moment. Mr. Salem,
8 were you present during the press conference?

9 A Yes, sir.

10 Q Were you either in or did you witness the things
11 that are depicted on this videotape?

12 A Yes, sir.

13 Q Can you again describe for us what is on the
14 videotape?

15 A Sheik Omar Rahman was sitting giving a press
16 conference when Mr. Siddig Ali sitting 4 feet out of his
17 left hand covering up his head with a white veil, and I was
18 standing behind the camera people, and he was asked question
19 about United States, and Dr. Omar Rahman say that the United
20 States going to pay the price and the consequences for
21 supporting Mubarak and helping him, sir.

22 MR. McCARTHY: Your Honor, the government offers
23 Exhibit 395.

24 MS. STEWART: Objection, your Honor. May we
25 approach for a different ground?

1 THE COURT: Yes.

2 (At the sidebar)

3 MS. STEWART: Judge, I think it is improper
4 redirect.

5 MR. McCARTHY: I think it is responsive to --

6 THE COURT: When you say improper redirect, as
7 what? Beyond the scope of cross?

8 MS. STEWART: I don't think it is responsive to
9 anything that I said, or it is not contradicting anything
10 that I said or did on my cross-examination.

11 MR. McCARTHY: I think Ms. Stewart's entire cross
12 and entire opening and entire approach to the case is to
13 paint Dr. Abdel Rahman as one thing. The government has a
14 different contention. I think that the impression that she
15 created was that particularly with her questioning about the
16 Lincoln Park photographs, that he was one kind of a person;
17 the government's contention is that he is another kind of a
18 person. I respectfully think we are entitled to bring that
19 out.

20 MS. STEWART: I hardly see how a public press
21 conference, where there are 30 or 40 members of the press
22 proves that, and why wasn't it done on direct if it has been
23 in the case this long?

24 THE COURT: That is a different story. I think
25 it contradicts an impression that was sought to be created

1 on cross in two respects, one having to do with association
2 with defendants and the other having to do with general
3 position. Why wasn't it put on on direct?

4 MR. McCARTHY: Because we were going to get that
5 part of it in another part of the case. I don't think there
6 is any requirement that we squeeze out of this witness
7 everything he could possibly have testified to on direct, or
8 we would sure have been here a long time.

9 MS. STEWART: I say nothing.

10 THE COURT: I am going to overrule the objection.

11 (In open court)

12 MS. STEWART: May I have a brief voir dire,
13 Judge, on that?

14 THE COURT: Yes, you may.

15 VOIR DIRE EXAMINATION

16 BY MS. STEWART:

17 Q Mr. Salem, the press conference that we are
18 talking about on June 17, 1993, were you present during the
19 entire press conference?

20 A Yes, ma'am.

21 Q How long did that press conference take, if you
22 remember?

23 A I will say an hour, ma'am.

24 Q And the piece that is presented on this videotape
25 is perhaps 30 seconds, is that correct?

1 A It could be, ma'am.

2 MS. STEWART: I will save the rest, Judge. I
3 would say it is not a complete copy of the press conference.

4 THE COURT: That is apparent from his testimony
5 but it is also being offered only for the portion that he
6 testified about. The objection is overruled.

7 (Government's Exhibit 395 was received in
8 evidence.)

9 MR. McCARTHY: Your Honor, the government is
10 offering only the video portion of the first very short
11 portion of the tape. Then I would propose to have the
12 detective stop the tape and have everyone put headsets on
13 for the audio portion of Dr. Abdel Rahman statement on the
14 tape.

15 THE COURT: Go ahead.

16 MR. McCARTHY: Your Honor, I ask the Court to
17 advise the jurors not to put their headsets on for the first
18 part of the tape.

19 THE COURT: Do not put your headsets on until we
20 ask you to put your headsets on.

21 MR. McCARTHY: Thank you.

22 (Videotape played)

23 MR. McCARTHY: Stop the tape, please. Let it go
24 a little further and then stop it. A little more. Stop.
25 Thank you. I am sorry, rewind it just a bit.

1 Q Mr. Salem, looking at the screen, can you tell us
2 who is depicted, beginning with the left side of the screen?

3 A Yes, sir. From the left to the right, that first
4 individual with the white top on is myself on the left, sir.
5 The second individual, which is Sheik Omar Abdel Rahman,
6 with the red hat and white surrounding around it, sir. The
7 third individual, which is in between Sheik Omar's head and
8 myself, is the head of Mr. Siddig Ibrahim Siddig Ali,
9 covered up with the veil, sir.

10 MR. McCARTHY: Would you roll the tape, please.
11 Stop it there, please. I am sorry, Detective, a
12 little bit further back where Dr. Abdel Rahman appears to
13 begin to speak.

14 A little further forward. Thank you.

15 MR. McCARTHY: Your Honor, at this point I would
16 ask that the headsets be put on.

17 Stop it.

18 Q Mr. Salem, who was providing the English
19 translation?

20 A Mr. Siddig Ibrahim Siddig Ali, sir.

21 Q Showing you Government's Exhibit 386B for
22 identification, can you tell us who is depicted in that
23 photograph?

24 A In the left of that photograph, facing us, is
25 Sheik Omar Rahman, with the dark glasses, sir. Right to his

1 left, which is to our right, Mr. Siddig Ibrahim Siddig Ali,
2 sitting with his hands on his lap and covering up his head
3 with the white veil, sir.

4 Q Mr. Salem --

5 THE COURT: May I see counsel briefly at the
6 side.

7 (At the sidebar)

8 THE COURT: The tape that you showed, showed a
9 date of 6/24/93, across the bottom.

10 MR. McCARTHY: Right.

11 THE COURT: Do you intend to account for that at
12 some point?

13 MR. McCARTHY: It was not my intention to account
14 for it. The testimony was that it was June 17. The news
15 broadcast was June 24, which is the date that this was
16 recorded.

17 THE COURT: All right.

18 MR. McCARTHY: I don't think there is much
19 relevance to it. I think by the end of the case, after CM46
20 comes in, there is not going to be much issue about what the
21 date was.

22 THE COURT: All right.

23 (In open court)

24 Q Mr. Salem, you were asked some questions on
25 cross-examination about the conversation you had on May 23,

1 1993, in Dr. Abdel Rahman's kitchen. Do you recall that?

2 A Yes, sir.

3 Q Do you recall that you told us in that
4 conversation you discussed the possible bombing of the
5 United Nations and a plan to inflict damage on the American
6 military?

7 A Yes, sir.

8 Q The tape that we just watched, was that before or
9 after you had this conversation in the kitchen?

10 A It was after, sir.

11 Q Do you recall telling us on cross-examination or
12 being asked some questions on cross-examination about a
13 conversation that you and Siddig Ibrahim Siddig Ali had at
14 the Abu Bakr mosque with Dr. Abdel Rahman?

15 A Yes, sir.

16 Q Do you recall Dr. Abdel Rahman telling you in the
17 course of that conversation that the path was clear to
18 anyone who wanted to do a good work?

19 A Yes, sir.

20 Q The tape that we just saw, was that before or
21 after that occasion at the Abu Bakr mosque?

22 MS. STEWART: I object to the leading, Judge.

23 THE COURT: Overruled.

24 A It was after, sir.

25 Q How long, sir, if you recall, did the tape

1 recording that we just saw occur before Siddig Ibrahim
2 Siddig Ali and the others who were arrested on June 24 were
3 arrested at the safe house?

4 A A few days. It's not that long, sir.

5 MS. STEWART: Objection.

6 THE COURT: Overruled.

7 Q The exhibit that we just watched in evidence,
8 that is, the videotape of the press conference, were the
9 arrests in the safe house -- withdrawn.

10 How long after the press conference were the
11 arrests in the safe house?

12 A It wasn't that long, sir.

13 (Continued on next page)

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1 MR. McCARTHY: Your Honor, I have no further
2 questions.

3 THE COURT: Ms. Stewart.

4 MS. STEWART: Thank you, Judge.

5 RE-CROSS-EXAMINATION

6 BY MS. STEWART:

7 Q Mr. Salem, this press conference that took place
8 in Dr. Abdel Rahman's apartment, you were taping that entire
9 proceeding, is that correct?

10 A Not the entire proceeding, ma'am.

11 Q Well, were you there when a discussion was had
12 between you, Siddig, and the sheik about what would be the
13 content of the press conference?

14 A Yes, ma'am.

15 Q You recorded that, is that correct?

16 A Yes, sir.

17 Q And you recorded as people are beginning to
18 arrive and you are checking to make sure the press does not
19 have any weapons on them.

20 You recorded that, did you not?

21 A Yes, ma'am.

22 Q You recorded when the sheik is brought into the
23 living room where the press conference is to be held, did
24 you not?

25 A Yes, ma'am.

1 Q You recorded the press conference itself with
2 Siddig Ali's translations after Dr. Abdel Rahman answered
3 the questions of the reporters, isn't that right?

4 A The part about the press conference, ma'am, that
5 is a different press conference after the press conference.

6 After the main press conference is finished,
7 which I did not record, there is a New Jersey TV channel or
8 a radio channel, something that effect, came over and made
9 the interview with Sheik Omar. This I taped it, ma'am.

10 Q I would like you to try to remember, Mr. Salem.
11 At the beginning of the press conference,
12 Dr. Abdel Rahman first made a statement to the press, did he
13 not?

14 A Yes, ma'am.

15 Q You did record that, did you not?

16 A I think, yes, ma'am.

17 Q After that, he made certain further statements as
18 the press asked questions of him, isn't that correct?

19 A Yes, ma'am.

20 Q You recorded that, too, did you not?

21 A Could be, ma'am.

22 Q Do you remember at what point you turned off or
23 on your device?

24 A I believe I came to certain point, I just left
25 the conference and I turned the device off so, because I

1 would be wasting tape since it's being taped by the whole
2 press, ma'am.

3 Q Which device were you using on this day?

4 A The briefcase, ma'am.

5 Q Was the briefcase in this videotaped snippet that
6 we saw this morning, this little piece that we saw this
7 morning?

8 A No, ma'am.

9 Q Where was the briefcase?

10 A I put it all the way behind the whole press media
11 people, ma'am.

12 Q There is, is there not, on this -- well, strike
13 that.

14 If you know, did you review at all the tapes that
15 you made of the press conference before you testified here
16 today?

17 A All of it? No, ma'am.

18 Q Did you at any time review the tape which is
19 CM46, which would be, I guess, Exhibit 647 in evidence?

20 MS. STEWART: Is it one more or one less. Is it
21 647. CM46, whatever that is.

22 (Counsel conferred)

23 MS. STEWART: 348. I'm sorry. Wrong pre-number.

24 Q Exhibit 348 in evidence, the tape, did you review
25 the transcript or the tape itself?

1 A I believe I reviewed the tape itself, ma'am.

2 Q Did you indicate in your review the point at
3 which you turned off your recording device?

4 A I don't recall, ma'am.

5 Q Did you at any time indicate in any transcript
6 that you reviewed a point at which you turned off your
7 device?

8 A Could be, ma'am.

9 Q Would it be your testimony that you did not
10 record the questions of the reporter from New Jersey who
11 stayed later and asked to have an individual press
12 conference with the sheik?

13 A I'm sorry, ma'am, the question, please again?

14 Q A few moments ago you said that you did not
15 record that portion of the press conference which involved a
16 reporter from New Jersey who stayed after everyone had left.

17 MR. McCARTHY: Objection.

18 THE COURT: Sustained.

19 MS. STEWART: OK.

20 Q Did you record, if you remember, a portion of the
21 press conference involving a female reporter who stayed
22 later than everyone else?

23 A I believe I recorded all, ma'am, until she left.

24 Q When you say you recorded it all, what do you
25 mean by "all"?

1 A The whole interview, ma'am.

2 Q The whole interview with this female reporter
3 from a New Jersey news station?

4 A The best of my recollection, yes, ma'am.

5 Q Just directing your attention to the beginning of
6 the press conference --

7 A Which one?

8 Q -- do you remember the beginning of the press
9 conference in its entirety?

10 A Yes, ma'am.

11 Q Can you tell us approximately how many people
12 were there from the press.

13 A I will say 30, 35, ma'am.

14 Q This press conference began at noon, is that
15 correct?

16 A Something like that, ma'am, yes.

17 Q The press conference starts out, does it not,
18 with Dr. Abdel Rahman saying, "In the name of Allah, the
19 merciful, the compassionate"?

20 Do you remember that, that he started out by
21 invoking Allah?

22 A Yes, I remember, ma'am.

23 Q Then he went on to make a statement about the
24 Mubarak regime being one of the disasters of this century,
25 is that right?

1 A Yes, ma'am.

2 Q He said that Mubarak tells nothing but lies.

3 Do you remember him saying that?

4 A Yes, ma'am.

5 Q He said the first lie was that Mubarak said that
6 he dealt with the CIA, do you remember him saying that?

7 A Yes, ma'am.

8 Q And he said that the American Secretary of State
9 had refuted this, do you remember him saying that?

10 A I remember him saying that, ma'am.

11 Q Then he said that Mubarak told the Americans that
12 he had warned them about the bombing of the World Trade
13 Center and that the American President, Clinton, had refuted
14 that?

15 A Yes, ma'am.

16 Q He went on, Dr. Abdel Rahman, to speak to the
17 press and to say to them that Mubarak had said that he did
18 not torture Mahmud Abouhalima, but the medical proof showed
19 that his regime had tortured him, do you remember that?

20 A I remember, ma'am.

21 Q Then he talked about detaining people in Egypt,
22 did he not?

23 A What, ma'am?

24 Q Detaining, imprisoning people in Egypt?

25 A Yes, ma'am.

1 Q He went on to say, "So Egyptian people ought to
2 rise and to bring down this regime," do you remember him
3 saying that?

4 A Yes, ma'am.

5 Q You were recording all of this, is this correct?

6 A Yes, ma'am.

7 Q This was at the beginning portion of the press
8 conference, was it not?

9 A Yes, ma'am.

10 Q He said, did he not, "Didn't the American people
11 rise when there was one that oppressed them"?

12 Do you remember him saying that?

13 A I'm sorry, ma'am? The part again?

14 Q Yes. Didn't Dr. Abdel Rahman say to the press,
15 asking a question, "Didn't the American people rise when
16 there was one that oppressed them?"

17 Do you remember him saying that?

18 A I'm not getting the last portion of the question.
19 When one repressed them?

20 Q Oppressed. Oppression.

21 A Means?

22 Q You don't know the word "oppression"?

23 A No, ma'am.

24 Q It means deal with tyrannically, deal with
25 unfairly, oppress.

1 A Yes, ma'am. Yes, ma'am.

2 Q Was it at any point here that you stopped your
3 recorder?

4 A Could be. I don't recall when I did stop it, at
5 which point, ma'am.

6 Q Do you remember a female reporter asking him if
7 he had been treated unfairly in the United States, do you
8 remember that happening?

9 A It happened so many times, I don't recall which
10 one you are specifically asking me about, ma'am.

11 Q When you say "it happened so many times," there
12 was only one press conference in his apartment where 30
13 members of the press showed up, isn't that right?

14 A No, ma'am.

15 Q There were other press conferences at his
16 apartment?

17 A Yes, ma'am.

18 Q When were they?

19 A In that time. It was constantly press
20 conferences.

21 Q It was constantly press conferences?

22 A I shouldn't say "constantly." I'm sorry.

23 It was always -- I mean press conferences at
24 home, press conference -- because that's what I recall,
25 ma'am. It was a lot of media to Sheik Omar in that time.

1 Q If we were to give you a copy of the transcript,
2 you would not be able to say, "Oh, yes, it was after he said
3 this that I turned off the machine"?

4 You would not be, as you sit there today, able to
5 do that?

6 A Not from the transcript, but if I hear, I can --
7 once the individual reporter, female individual reporter
8 start asking separate individual questions, then that's the
9 separation between the first press conference and when the
10 female from New Jersey start to ask him, ma'am.

11 Q Do you remember if at the press conference where
12 everyone was there located, if there was a question to him
13 about the World Trade Center?

14 A Yes, ma'am.

15 MS. STEWART: Give me a minute here.

16 THE WITNESS: Yes, ma'am.

17 Q The question to him was, in part, and this is at
18 page 36: "Officials continue to talk between the lines, so
19 to speak, and implicate that you were the perhaps driving
20 force behind some of those who are due to stand trial almost
21 four months after the bombing. Would you respond to that?"

22 That was the question.

23 A Yes, ma'am.

24 Q Do you remember that being asked?

25 A Yes, ma'am.

1 Q He responded, "My response is the reply as from
2 the first day, the same very reply since the first day this
3 incident took place, which is that Islam rejects this and
4 does not agree on it. And I had mentioned the saying of the
5 exalted Allah saying, 'Do not commit aggression. Allah does
6 not love the aggressors.' And I had mentioned this is all,"
7 Dr. Abdel Rahman speaking, "and --

8 A Yes, ma'am.

9 Q -- "I had mentioned that millions of Muslims live
10 in America and they ought to keep the place at which they
11 live. And I had mentioned that we have come to America to
12 defend our case and to spring through America. So is it
13 logical that we target or to squander the place on which we
14 stand?"

15 Do you remember him answering this reporter in
16 that way?

17 A Yes, ma'am.

18 Q The portion that you heard this morning, the
19 portion -- I didn't get all the words -- America is going to
20 be held accountable before the whole world, do you remember
21 whether that question was asked at the press conference
22 where all the press was there?

23 A Yes, ma'am.

24 Q It does not appear in the transcript or in the
25 tape that you made of the press conference, isn't that fair

1 to say?

2 A I wouldn't know, ma'am.

3 Q You did not review that tape at all, is that
4 right?

5 A I reviewed it long time ago, but I wouldn't know
6 if I -- if that portion is being recorded or not, ma'am.

7 Q Do you remember that the sheik said, "The
8 American people ought to pressure their government so that
9 they do not stand behind the puppet Egypt regime because the
10 American people love to uphold human rights, so how could
11 America become a cause in the loss of human rights"?

12 Do you remember him asking that at the press
13 conference?

14 A Yes, ma'am, he said that.

15 Q You referred to Dr. Abdel Rahman's hat.

16 A Hat?

17 Q Hat that he's wearing?

18 A Yes. Yes.

19 Q He's wearing that same hat today, is he not?

20 A Yes, ma'am.

21 Q That hat has a name, doesn't it, in Arabic?

22 A Yes, ma'am.

23 Q What is that name?

24 A "Imma and Taqiyya," ma'am.

25 Q And it is a hat that is worn by an imam, a

1 scholar, is that correct?

2 A That's correct, ma'am.

3 Q No one is entitled to wear that hat except
4 someone who has a degree or who is known to be a scholar, is
5 that right?

6 A Any imam, yes, ma'am.

7 MS. STEWART: I think I have nothing else, Judge.
8 Just give me a minute.

9 THE COURT: Do you want a moment?

10 MS. STEWART: Yes, just one moment.

11 (Pause)

12 MS. STEWART: I have nothing further.

13 THE COURT: Mr. Patel, may I see you briefly.

14 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I really wanted to know whether you
3 had a ten-minute slice or you were going to be longer.

4 MR. PATEL: I don't even think -- I may have
5 nothing if I could --

6 THE COURT: Do you want time to think about it?

7 MR. PATEL: Yes.

8 THE COURT: Let's say the ball goes to you. Do
9 you have ten minutes or longer?

10 MR. RICCO: I am not sure, but Mr. Salem has to
11 listen to three short tapes to do cross.

12 THE COURT: Why don't we break now.

13 MR. PATEL: All right.

14 (In open court)

15 THE COURT: Ladies and gentlemen, we are going to
16 break now for lunch. Please leave your notes and other
17 materials behind. Please don't discuss the case, and we
18 will resume at about 2 o'clock. See you then.

19 (The jury was excused)

20 THE COURT: You may step down.

21 (Witness excused)

22 THE COURT: Mr. Jacobs?

23 MR. JACOBS: I would move for a mistrial, or, in
24 the alternative, to strike Mr. Salem's redirect concerning
25 my client on the grounds that the government has violated

1 the agreement that was reached between the parties and told
2 to the jury on March 21, 1995 starting at page 5595, where
3 at the time the government was proposing to put in the
4 transcript into evidence. I rose and indicated on the
5 record that there was only one disputed line. I asked for
6 an instruction to be given to the jury concerning that.

7 Your Honor asked me if there was an attribution
8 or a substantive line. I then indicated there was a
9 substantive line, I forget the page, but it is not page 52.
10 I indicated that I wanted the same instruction given to the
11 jury that was given previously. Your Honor said that would
12 be correct.

13 Your Honor then paraphrased to the jury the
14 instruction given at page 5367 concerning Government Exhibit
15 301-2. You did that on the basis of the representations of
16 the government that there was no dispute between the parties
17 as to the transcripts. Your Honor then told the jury at the
18 moment 32 was read to them with the witness on the stand,
19 and your Honor made the following statement: That basically
20 there was no dispute other than one line, and that one line
21 would be litigated at a later point.

22 I believe the government's redirect examination,
23 without informing counsel previously that there was in fact
24 a serious dispute between the parties concerning the
25 attribution, the substantive line "UN," which is twice, I

1 believe is grounds for a mistrial.

2 Had the government had that view, had the witness
3 indicated that to them -- and I assume he has -- counsel
4 should have been informed, your Honor should have been
5 informed, and we could have dealt with the agreement between
6 the parties. I thought we had -- I will call it a
7 gentlemen's agreement for want of a better word. It is not
8 a formal stipulation.

9 But I relied on your Honor's statements to the
10 jury that there was nothing in dispute, and I proceeded with
11 my examination on that basis in good faith. I don't think
12 the government was in good faith at that point proceeding
13 with the examination of the witness. I think I was
14 "sandbagged" by the government. I think they knew that
15 there was a problem with that, and they deliberately didn't
16 tell your Honor or me, or the jury at the time.

17 I certainly would have asked for the government
18 interpreter at the time they offered it. I would have
19 cross-examined the government interpreter at that point. We
20 allowed 32 coming into evidence with no dispute before the
21 jury.

22 I think at this time, in light of the
23 government's redirect on the point, that I am entitled to a
24 mistrial, or, in the alternative, to strike that portion
25 out. To begin with, at the least, I would like some

1 clarification from the government as to what the value is of
2 the transcript in evidence.

3 Is the government standing behind it, that there
4 is no dispute, or are they now saying there is a dispute,
5 and your Honor's comments to the jury were in error?

6 That is my application.

7 MR. McCARTHY: The government's position, your
8 Honor, is if there is a sandbag, the sandbag is on the other
9 foot. This case would have gone to the jury with the
10 transcript that did not have "United Nations" in it.

11 Mr. Jacobs, was well aware of the facts, because
12 this was brought out on the endless voir dire examination of
13 this witness, that this witness participated in the process
14 of draft transcripts. He had plenty of notice that this
15 witness's position was that "United Nations" was in there.
16 In the process of drafts being exchanged between the
17 parties, it is true that Mr. Jacobs made a proposal of a
18 transcript without "United Nations" in it, and whichever
19 interpreter of the many interpreters that we had reviewing
20 defense changes, didn't hear "United Nations." We agreed to
21 it.

22 Had Mr. Jacobs not gone after a witness on
23 something he had every reason to know he was going to get
24 clocked with, had he not gone after him, this wouldn't have
25 been an issue at all. This case would have gone to the jury

1 on the transcript that there was.

2 As far as Mr. Jacobs' point about not knowing
3 what the government's position is, I think he will recall
4 that I asked him yesterday whether he was maintaining the
5 right to argue in summation that Salem was lying when he
6 said "United Nations" on the basis of the transcript that
7 came into evidence.

8 He told me that he was. As long as he was
9 maintaining that position, as long as he was maintaining
10 that he should be able to argue that Salem was committing
11 perjury or inventing "United Nations," we did the only thing
12 that we could responsibly do, in view of a cross-examination
13 that never, ever should have been done, and never, ever had
14 to be done.

15 THE COURT: Do you want to respond at all?

16 MR. JACOBS: Briefly, your Honor.

17 What is the government's position with respect to
18 the transcript and your Honor's instruction? Is that
19 statement accurate or not? If it is not accurate --

20 THE COURT: They don't have to respond. I am not
21 going to put him on the witness stand to respond to your
22 cross-examination. The fact is that the issue of whether
23 "United Nations" was in or out came out on cross-examination
24 when you swung from the heels and asked Mr. Salem, "Isn't it
25 a fact that the words 'United Nations' appear nowhere on

1 that tape?" You are shaking your head. That is the way it
2 happened.

3 MR. JACOBS: First of all, your Honor, I don't
4 swing from the heels. I rely on an agreement that I have
5 with the United States Attorney's Office. That is not
6 swinging from the heels as far as I'm concerned. I relied
7 on your Honor's comments. I don't mean your Honor was
8 involved in it, but I asked for it because I wanted to make
9 sure that there were no problems.

10 All the government had to say was, You know, Mr.
11 Jacobs, we are not going to stand by 32 because, you know,
12 that there's problems with it. And I am not going to let
13 this jury be misrepresented to what this agreement is
14 between the parties.

15 I want to know, and I think I am entitled to,
16 because I don't know what I am going to do on
17 recross-examination. Does the government live by the
18 statement your Honor made to the jury or not? If they say
19 no, then I would like a mistrial or it be stricken. If they
20 say they are not, then your Honor should tell the jury what
21 the government agreed was not correct. I think at this
22 point I am entitled to it. Whether I opened the door or
23 not, do they live with their agreement that they made to
24 this jury, or do they say they are not living with it?

25 MR. McCARTHY: We didn't make an agreement to the

1 jury, first of all. Second of all, Mr. Jacobs knew from the
2 beginning of this trial, and certainly throughout Salem's
3 testimony, that this transcript was not Salem's transcript.
4 I didn't offer a single transcript through Salem. Every
5 lawyer in the case knew that that was what the situation
6 was.

7 He asked him not about the transcript. He asked
8 him about the tape. Then he tried to put me in the position
9 of being locked into what was on the transcript when I had a
10 witness on the stand who was a participant in the
11 conversation, and when, frankly, if this were an English
12 case, the evidence would be the tape, not the transcript.
13 He had every reason to know that where he was going was
14 troubled waters and he went anyway. That is not our fault.

15 MR. JACOBS: As I said before, the government
16 still hasn't answered what I think is a very valid point. I
17 am prepared to have no further questions if your Honor is
18 going to repeat the instruction to the jury. If the
19 government's position is that statement that the court made
20 to the jury that there is no dispute is no longer accurate,
21 then I think I am entitled to have that before the jury at
22 this point. I mean either that, or I think I have a right
23 to stand up, show the witness the transcript, and ask your
24 Honor to repeat the instruction to the jury.

25 The government can't have it both ways. If they

1 want to say they don't want to live with their transcript,
2 let's tell the jury that and we will start from square one.

3 MR. McCARTHY: As Mr. Jacobs knows, it is not our
4 transcript. The agreement that we made with the lawyers was
5 that we would stipulate, as I did, when he, in a great
6 theatrical rush, made this point. I stipulated that he had
7 accurately read from the transcript that the parties had
8 agreed to. The transcript, as everybody knows, is a joint
9 accommodation. That didn't mean that he could freely go
10 after a witness who was a participant in the conversation on
11 the tape. If he did that, that's his own fault.

12 MR. JACOBS: Your Honor, that is absolute
13 nonsense. I asked for an instruction. The government
14 allowed your Honor to make the instruction. I rose, and
15 your Honor gave a very clear instruction to the jury.

16 The government can't have it both ways. Your
17 Honor told this jury there is no dispute. Is that statement
18 correct or not? What do we tell the jury when this case
19 goes to summation?

20 MR. McCARTHY: There is no dispute. However, if
21 he goes after a witness who is a participant in the tape
22 with his eyes open --

23 THE COURT: Mr. Jacobs, there was no dispute
24 until you started one. I am not going to grant your
25 mistrial motion. You can both argue the point as to that

1 transcript to the jury.

2 MR. JACOBS: The question is this: Am I entitled
3 at this point on recross, crossing the witness, brief as it
4 might be, to have this witness look at the page ask him,
5 "You heard 'UN' twice?" ask your Honor to repeat the
6 instruction to the jury that was previously given, and I can
7 sit down? I think at that point, in light of the redirect
8 examination by the government and your Honor's instruction
9 previously given to the jury, I think I am entitled to that.

10 THE COURT: Do you want to tell the jury the
11 truth?

12 MR. JACOBS: Yes, sure.

13 THE COURT: Fine. Let's tell them that the
14 transcript was prepared by an interpreter who did not put
15 those words in because he apparently did not hear them, and
16 it is the interpreter's version that the government has
17 offered.

18 MR. JACOBS: Correct.

19 MR. McCARTHY: I am afraid that is not completely
20 accurate. The transcript is prepared by a number of people,
21 and is the product of negotiation by the government and the
22 defense.

23 THE COURT: At some point you got an interpreter
24 who in response to something said that it is not there.

25 MR. McCARTHY: Your Honor, what we had on the

1 stand was an interpreter who testified only to the
2 underlying portions of the transcript. Otherwise they went
3 to the jury without objection.

4 No one got on the stand and said that that was
5 his version other than with the underscored portions as to
6 which there was dispute. It is just absolutely not correct
7 that this is the government transcript. As the letter that
8 we sent to counsel before any of this went into evidence
9 made everybody on notice of, and as all the negotiations
10 that went on and on ad nauseam about this issue put
11 everybody on notice of, the transcripts were going to the
12 jury as an accommodation. The government got the case to
13 trial in a more expeditious way than otherwise, but
14 everybody knew that there was a lot of inculpatory stuff on
15 that those tapes that didn't come out because we didn't put
16 somebody in the chair. Everybody knew that. It is in
17 writing. Everybody got it.

18 MR. JACOBS: Your Honor, Mr. McCarthy and I, we
19 have been talking for months. The government could have
20 easily said, "Mr. Jacobs, we hear you, and we are putting it
21 down. We will have a dispute on that. They have a disputed
22 line." We argued about it. I went back and forth with
23 them. They said, "You know, John, we are going to dispute
24 that before the jury."

25 They didn't do it here. I want your Honor to

1 tell the jury what your Honor just said. I think that is
2 fair.

3 THE COURT: That is what I am going to tell them.

4 MR. JACOBS: Thank you.

5 THE COURT: Mr. Serra? Is it on this point?

6 MR. SERRA: Yes. With another reference other
7 than Mr. Jacobs', which perhaps will serve to focus the
8 discussion.

9 I think perhaps the problem is the problem of
10 going to trial without a final version from the government
11 as to what's on the tapes. What just happened on redirect
12 with Mr. Alvarez was playing a portion, Mr. Salem testified
13 about the cardboard on the floor. Mr. Salem said what's
14 going on is that is Siddig Ali explaining the targets and
15 what is written on the cardboard.

16 I sat in Mr. Fitzgerald's office about a month
17 ago going over that precise portion of the tape. We didn't
18 have the video. We had the audio version of that
19 conversation. I intend to recross the witness on how that's
20 not what's going on in that conversation. I don't know what
21 the government is going to do.

22 There was no negotiation, your Honor, as the
23 government claims, with Arabic and Mr. Jacobs because I have
24 the government's previous version of that transcript, and it
25 contains nothing that was negotiated out about targets and

1 tunnels and bridges.

2 MR. McCARTHY: Mr. Serra has always taken the
3 position, as I understand it, that with his conversations,
4 which are English conversations, the transcript is only an
5 aid to the jury. It is not the evidence. The only issue is
6 what's on the tape. If he wants to cross-examine him on
7 what's on the tape, that's fine.

8 MR. SERRA: Your Honor, that is not my position.
9 That is the law.

10 THE COURT: I think that's right.

11 MR. SERRA: The question I am asking is, if I
12 read from a -- your Honor said let's tell the jury the
13 truth. I thought Mr. Fitzgerald and I spent hours trying to
14 determine what is actually on those tapes. If I read to
15 Mr. Salem on recross from the transcript, play the tape,
16 read the transcript, play the tape, read the transcript,
17 play the tape, and he said, "That's not what I said," what
18 is the government's position going to be?

19 No one says that these tapes are a clear roadmap.
20 Frequently they are extremely difficult to hear, even when
21 in English. But if we are talking about the truth, I
22 thought I had agreed with Mr. Fitzgerald as to what the
23 truth was. The problem here, your Honor, is that there
24 simply was never from the government a final version which
25 we could cross-examine their witnesses on.

1 I didn't have access to Mr. Salem to say, "Look,
2 Emad, let's sit down and figure out what's on the tape."
3 The government did. I have to cross-examine him on what I
4 thought was something that the government was going to stand
5 by after I spent hundreds of hours on the tape and then many
6 hours with Mr. Fitzgerald.

7 MR. McCARTHY: If he is cross-examining him on an
8 English tape, it really doesn't matter what the government's
9 position is. The tape is whatever the tape is. If he's
10 cross-examining him on an Arabic tape, we have the same
11 commitment that we always did, which is that we acknowledge
12 that we agreed to a version and we stipulate that counsel's
13 read accurately from the agreed-upon version. I don't think
14 that gives a lawyer license to use what essentially is
15 another person's statement to cross-examine a witness, aware
16 of the fact that the witness may have a different position,
17 and he is going to be stuck with the witness' answer. I
18 can't change what Salem's view of the world is.

19 MR. SERRA: Your Honor, I am not asking
20 Mr. McCarthy to change Salem's view of the world. I am
21 asking Mr. McCarthy to stand by something that I thought we
22 had agreed on and spent a long time trying to do it and
23 spent that time to avoid courtroom arguments. Whatever
24 argument Mr. McCarthy may have with Mr. Jacobs, there was no
25 government transcript in which words were negotiated away on

1 this one.

2 MR. McCARTHY: I just don't understand what the
3 distinction that Mr. Serra is drawing is. If it is an
4 English transcript, I cannot negotiate the truth. If it
5 happens that counsel and us get together and we agreed to
6 something that turns out to be wrong and the person who is
7 the repository of the correct story gives what the truth is,
8 I can't negotiate the truth away.

9 MS. LONDON: Your Honor, if I may add to Mr.
10 Serra's point?

11 THE COURT: Yes.

12 MS. LONDON: The transcript that we are talking
13 about and the video segment that they are talking about is a
14 tape that contains a mixture of Arabic and English. In the
15 segment that was played to the jury on redirect, there are
16 no disputed versions at this point in the transcript other
17 than some of Mr. Alvarez's versions, which are in English.
18 But the Arabic version with the transcript is basically
19 undisputed. Therefore, on recross, we would certainly ask
20 the government to stand by --

21 THE COURT: If the Arabic portions of the
22 transcript do not betray anything about discussion of
23 targets -- or do they? I gather they don't.

24 MR. McCARTHY: I would have to take a look again,
25 your Honor, I am sorry.

1 THE COURT: You are certainly going to stand by
2 that?

3 MR. McCARTHY: Yes, your Honor.

4 THE COURT: With respect to his testimony about
5 the English portion, I want to think it through over lunch.
6 I am tempted to strike it.

7 MR. McCARTHY: His testimony about the English?

8 THE COURT: Yes.

9 MR. McCARTHY: No objection if your Honor wants
10 to do that. The tape is the tape.

11 THE COURT: I am going to strike his testimony
12 about the second tape.

13 MR. McCARTHY: Yes, your Honor.

14 THE COURT: OK? By "OK" I don't mean does
15 everybody in the room accept what I have just said, it's
16 simply does everybody understand Ms. London?

17 MS. LONDON: Just to clarify your ruling as to
18 what testimony you are striking, is the court striking his
19 entire testimony about the second episode with the cardboard
20 box?

21 THE COURT: I am striking his entire testimony
22 with respect to 374A, which is the June 20, 1993 meeting on
23 the cardboard.

24 MS. LONDON: Thank you, your Honor.

25 MS. AMSTERDAM: I just spoke with Mr. Serra, and

1 with the court's agreement we would like to speak about it
2 over lunch, because it does strike me that that's a portion
3 of the conversation where in fact the truth is there is no
4 discussion about targets. It might be preferable to have
5 the witness say that than just have the testimony stricken.
6 So I would like an opportunity to speak with Mr. Serra about
7 that.

8 THE COURT: All right. Everybody bear in mind
9 that you can talk about what you would prefer, but I am not
10 simply a piece of machinery at the end of the string. I
11 would not like to simply be faced with some agreement on
12 some artificial construct that they are going to be told.

13 MR. SERRA: Judge, I don't mean to belabor the
14 point. I think the defense counsel who are interested in
15 what we have been discussing, the safe house video, need to
16 confer or need to watch the video together.

17 (Continued on next page)

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1 THE COURT: Let me do this: We will start this
2 this afternoon's session at 2:30 rather than 2 so as to give
3 you time to do that and still get something to eat.

4 MS. AMSTERDAM: Thank you.

5 MR. SERRA: Thank you, Judge.

6 THE COURT: All right. I will also draft at some
7 point over lunch an instruction on the point that Mr. Jacobs
8 raised. I will clear it with you, which is to say I will
9 get input from both of you before I give it. OK?

10 MR. McCARTHY: Yes, your Honor.

11 THE COURT: Thank you very much.

12 (Luncheon recess)

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1 AFTERNOON SESSION.

2 (Trial resumed; jury not present)

3 THE COURT: Mr. Jacobs and government, I have
4 an instruction that I would like to read to you. All
5 right?

6 MR. JACOBS: Sure.

7 THE COURT: It would read as follows --

8 MR. SERRA: Your Honor, the defendants are not
9 here.

10 THE COURT: That is all right. This goes to a
11 legal issue, and Mr. Jacobs' client is here.

12 The instruction is as follows: Ladies and
13 gentlemen, you heard testimony from Mr. Salem during
14 cross-examination and also during the redirect examination
15 this morning that when he was meeting with Mr. Siddig Ali
16 and Mr. Mohammed Saleh in Mr. Saleh's house, that Mr. Siddig
17 Ali had said the words "United Nations" when he was speaking
18 with Mr. Saleh. Part of the tape of that meeting, where Mr.
19 Salem said those words were spoken, was played for you, and
20 Mr. Salem indicated where he believed those words, as well
21 as other words he referred to, could be heard on the tape.
22 However, the transcript you received did not contain those
23 words.

24 Let me explain briefly how that came about and
25 what your role is as to this specific issue. The transcript

1 was prepared with the assistance of interpreters --

2 MR. JACOBS: I am sorry, your Honor?

3 THE COURT: The transcript was prepared with the
4 assistance of interpreters, including a government
5 interpreter who said he did not hear those words on the
6 tape. The witness, Mr. Salem, as you have heard, said he
7 did hear them. Although in other instances, when we deal
8 with foreign language tapes, it is the transcript rather
9 than the tape that is the evidence, in this instance it will
10 be for you to decide whether those words appear on the tape,
11 based on everything you have heard and seen, including the
12 transcript which does not have those words in it, the
13 testimony of Mr. Salem who says those words are on the tape,
14 and the tape itself which you heard as Mr. Salem has
15 testified. End of instruction.

16 MR. JACOBS: Could I have thirty seconds, your
17 Honor, to talk to my client briefly?

18 THE COURT: Yes.

19 (Pause)

20 MR. JACOBS: Your Honor, I have no objection to
21 the instruction. I think it adequately covers the issue I
22 have raised at the moment. I would have no recross based
23 upon that instruction. However --

24 THE COURT: I am glad your tone of voice gave
25 away the fact that there was going to be something else, but

1 go ahead.

2 MR. JACOBS: I would be content to leave the
3 record where it is at the moment. However, the government
4 informed me a few minutes ago that they now want to call an
5 interpreter to talk about this. My position is as follows:
6 I think they are precluded, based upon the instruction
7 previously given and to the extent that this instruction
8 covers it. The interpreter was called previously --

9 THE COURT: Wait a second. You want to call an
10 interpreter to talk about this issue?

11 MR. McCARTHY: Yes, your Honor.

12 THE COURT: No.

13 MR. McCARTHY: Your Honor, he is maintaining the
14 right, as I understand it, to argue that the words are not
15 there. There was nobody who testified about that part of
16 the transcript. The only testimony that was given about
17 that part of the transcript was the underscored portions.
18 Now, I take it that Mr. Jacobs is going to argue in
19 summation that it didn't really happen, and had it happened,
20 obviously the government would have called another witness
21 besides the --

22 THE COURT: No, he is not going to say you would
23 have called another witness.

24 MR. JACOBS: No.

25 THE COURT: He is going to say that at one point

1 you were content to take the position that it didn't happen.
2 I assume he may argue that.

3 MR. JACOBS: I am sorry. I will live with the
4 instruction given to the jury previously and the instruction
5 your Honor is giving now and argue from that. I would not,
6 based upon --

7 THE COURT: The previous instruction -- excuse
8 me -- the previous instruction was not crafted with this
9 particular issue in mind.

10 MR. JACOBS: I understand that, I understand
11 that.

12 THE COURT: So I don't think that an argument
13 based on the previous instruction as to this specific
14 issue -- we are talking only about this particular issue --
15 would be legitimate. An argument based on this instruction
16 would be entirely legitimate.

17 MR. JACOBS: I have no objection to the argument.
18 I will agree that my sole argument -- If I would call my own
19 interpreter, obviously the government can do what it wanted.
20 In my case, and I choose, and I am not saying at this point
21 I won't, but if I call an interpreter who is going to say it
22 is not there, obviously Mr. McCarthy can do what he wants at
23 that point. But based upon what we have had before, your
24 Honor's, I believe, proper instruction, I am content with
25 the record. Both sides can argue it as they wish. But I

1 don't think the government should be permitted to now call
2 an interpreter on this particular point. I believe your
3 Honor's statement is that that will not happen, so I have
4 nothing further.

5 MR. McCARTHY: Your Honor, let me just say: He
6 wants to put us in a box that he doesn't want to get in
7 himself. He just said that if he calls somebody, then we
8 can do it in rebuttal. Why would it be that the issue is
9 such that it is still available for him to put on --

10 MR. JACOBS: I didn't say that.

11 MR. McCARTHY: I think you did.

12 THE COURT: What he is saying is that he is not
13 going to do that, and if he did, then it would be entirely
14 open to you to rebut.

15 MR. JACOBS: Yes. Your Honor, I mean, I haven't
16 presented my case yet, but if I were to try to do it, I
17 think the Court would say to me that if you want to do it,
18 you do it at your own peril at that point.

19 THE COURT: Something like that.

20 MR. JACOBS: Yes.

21 MR. McCARTHY: Your Honor, I just think that this
22 is an issue that the defense created. We have proof to meet
23 it, and it doesn't seem to me --

24 THE COURT: It seems to me the only proof you
25 have to meet it is somebody who is going to get up and

1 testify. The jurors have had their attention focused on
2 this. Ordinarily the reason for having the transcript be
3 the evidence when you are dealing with a foreign language
4 tape is that the jurors are not competent to decide the
5 issue. However, we are talking only about two words and a
6 couple of phrases that have been teed up to them with
7 exquisite specificity. Now they are competent to deal with
8 it, which is to say either they do or they don't. So I
9 think that, in essence, we are back to the rule that applies
10 to English language tapes, which is it is the tape which is
11 the evidence. That is what I am telling them here.

12 MR. McCARTHY: Yes, your Honor. I won't press
13 that point any further. May I ask the Court to consider one
14 modification to the instruction?

15 THE COURT: Which is what?

16 MR. McCARTHY: There was more than one government
17 interpreter who participated in the process. I am a little
18 concerned by the way that the instruction is worded, that
19 the jury may conclude that the only interpreter they heard
20 may be the interpreter who didn't hear United Nations --

21 THE COURT: I said the transcript was prepared
22 with the assistance of interpreters, plural, including a
23 government interpreter who said he did not hear those words
24 on the tape.

25 MR. McCARTHY: Would your Honor consider to

1 change it to government interpreters with a "s"?

2 THE COURT: Who said they did not hear it?

3 MR. McCARTHY: I mean, the truth of the matter
4 is, some heard it and some didn't, and we ultimately
5 agreed --

6 THE COURT: Then I will change it to plural.

7 MR. JACOBS: No objection.

8 THE COURT: Fine.

9 With regard to the other issue, where are you?

10 MR. SERRA: Your Honor, we have an agreement
11 which the affected parties and the government have reached.
12 If it is agreeable to the Court, this is what it is: that
13 the testimony, which is found in the transcript between page
14 7896, line 4, and 7898, line 22, will be stricken.

15 THE COURT: Is that this morning's testimony?

16 MR. SERRA: Yes, sir, that is the testimony this
17 morning.

18 THE COURT: You have the pages, in other words?

19 MR. McCARTHY: Yes, your Honor.

20 THE COURT: However, what I propose to tell them,
21 along with that, is this: It may be that some of them were
22 taking notes on that. That is the testimony that is going
23 to be stricken. It is testimony with regard to the second
24 videotape?

25 MR. SERRA: Yes, sir.

1 THE COURT: What I will tell them is that his
2 testimony this morning about that videotape may not be
3 considered by them in deciding the issues in the case,
4 although the tape itself is in evidence and they can use
5 that to decide any issue they think they have to use it for.
6 But they should note in their notebook, if they took any
7 notes with regard to his testimony on that issue, that that
8 testimony may not be considered, and so during their
9 deliberations they may not consider it.

10 MR. SERRA: Your Honor, that is fine. That is
11 very similar to the language we were going to propose. In
12 addition, there is one other thing which the government has
13 agreed to, and that is that the Court inform the jury that
14 there is a transcript which will be available during the
15 deliberations which reflects the parties' agreement as to
16 what the intelligible portions of that conversation are.

17 THE COURT: There will be or there is?

18 MR. SERRA: It is not in evidence yet, your
19 Honor. There is, but it is not yet in evidence.

20 THE COURT: Do you have something written out?

21 MR. SERRA: We don't, but we could do it in short
22 order.

23 THE COURT: This is not something where the
24 particular choice of words has to be so precise, I think,
25 other than the numbers. I don't think I have to tell them

1 that, actually.

2 MR. SERRA: No, sir. That was just for the
3 record, your Honor. I was going to suggest pursuant to our
4 discussion that you tell them something very similar to what
5 you said you would.

6 THE COURT: Good. What else do we have?

7 MR. McCARTHY: Your Honor, can I just go back to
8 the instruction?

9 THE COURT: Yes.

10 MR. McCARTHY: I am afraid that I may have made
11 it worse instead of better.

12 THE COURT: You want to go back to singular?

13 MR. McCARTHY: The truth of the matter is that it
14 is plural and some heard it and some didn't. If it is not
15 reflected that some heard it and some didn't, making it
16 plural is actually worse.

17 THE COURT: How about: The transcript was
18 prepared with the assistance of interpreters, including
19 government interpreters, some of whom said they did not hear
20 the words on the tape.

21 MR. McCARTHY: That is acceptable.

22 MR. JACOBS: I would object to that, your Honor,
23 absolutely object to that, because that is not what this was
24 about. Your Honor's first instruction I accepted, I have no
25 problem with that, but that is not what I can agree to, I am

1 sorry. I have to concede Mr. McCarthy is right, it probably
2 makes it worse for the government, the latter. I agree with
3 that. But I think the first way --

4 THE COURT: Let's remember we are dealing here
5 with a lay jury. I am not giving them a copy of this
6 instruction. It is going to sail past.

7 MR. JACOBS: It is going to what?

8 THE COURT: It is going to sail past. The net
9 effect of this is going to be you are the fact finders here.
10 Absent an agreement, I am going to leave it the way I had it
11 initially, which is an interpreter, one, and leave it at
12 that, as I read it off.

13 MR. JACOBS: Yes.

14 MR. SERRA: Mr. Patel points out something that
15 is worth mentioning to the Court. If the Court says the
16 second video, in point of fact the first video on redirect
17 was Dr. Abdel Rahman.

18 THE COURT: No, I am going to give the exhibit
19 number.

20 MR. SERRA: How about the second safe house
21 video?

22 THE COURT: The second safe house video.

23 MR. McCARTHY: Your Honor, can I take a second
24 with Mr. Ricco while the jury is coming in?

25 THE COURT: Sure.

1 THE COURT: That is 374A.

2 MR. McCARTHY: That's right, Judge.

3

4 EMAD SALEM, resumed.

5 MR. McCARTHY: Judge, there is an exhibit in the
6 witness room, actually some tapes, that Mr. Ricco needs. I
7 would like to go back and get them.

8 THE COURT: Fine.

9 (Pause)

10 (Jury present)

11 THE COURT: Good afternoon, ladies and gentlemen.

12 JURORS: Good afternoon.

13 THE COURT: Sorry for the delay in getting
14 started this afternoon, but we had some legal issues to
15 resolve.

16 I need to give you a couple of instructions with
17 regard to some of the evidence that you heard.

18 First, you heard testimony from Mr. Salem during
19 cross-examination and also during the redirect examination
20 this morning that when he was meeting with Mr. Siddig Ali
21 and Mr. Mohammed Saleh at Mr. Mohammed Saleh's house, that
22 Mr. Siddig Ali had said the words "United Nations" when he
23 was speaking with Mr. Saleh. Part of the tape of that
24 meeting, where Mr. Salem said those words were spoken, was
25 played for you, and Mr. Salem indicated where it was that he

1 believed those words as well as other words that he referred
2 to, could be heard on the tape. However, the transcript
3 that you received did not contain those words.

4 Let me explain briefly how that came about and
5 what your role is as to this specific issue.

6 The transcript was prepared with the assistance
7 of interpreters, including a government interpreter who said
8 he did not hear those words on the tape. The witness, Mr.
9 Salem, said he did hear them. Although in other instances,
10 when we deal with foreign language tapes, it is the
11 transcript rather than the tape that is the evidence, in
12 this instance it will be for you to decide whether those
13 words appear on the tape, based on everything you have heard
14 and seen, including the transcript which does not have those
15 words in it, the testimony of Mr. Salem who says those words
16 are on the tape, and the tape itself which you heard as Mr.
17 Salem was testifying. So you will be the ones to resolve
18 those issues based on that evidence.

19 There was also testimony this morning about two
20 videotapes of conversations that went on in a safe house,
21 including conversations about what was on a piece of
22 cardboard in the safe house. Mr. Salem's testimony with
23 regard to the second of those videotapes, which is Exhibit
24 374A, his testimony on redirect examination this morning may
25 not be considered by you in resolving any issue in this

1 case. The tape itself is in evidence and you can decide
2 what it means and the lawyers may argue to you what it
3 means. But his testimony this morning about that particular
4 videotape, the second of the two videotapes like that that
5 you saw, may not be used by you in resolving any issue in
6 the case. I would ask you, if you took any notes this
7 morning about that specific testimony about that exhibit,
8 which was 374A, to indicate that you may not consider that
9 at the time that you deliberate.

10 OK?

11 Mr. Patel.

12 MR. PATEL: No questions.

13 THE COURT: Ms. London? I am sorry, Mr. Ricco.

14 MS. LONDON: May I confer with Mr. Serra?

15 MR. SERRA: And with Mr. McCarthy, your Honor.

16 (Pause)

17 MR. SERRA: May we approach the sidebar?

18 (At the sidebar)

19 MS. LONDON: The second half instruction, that
20 there will be a transcript.

21 THE COURT: Of the audio, which will be what the
22 parties agree to.

23 MR. McCARTHY: What the parties agree can be
24 heard.

25 MS. LONDON: Right.

1 THE COURT: Thank you very much.

2 (In open court)

3 THE COURT: Just one more thing with regard to
4 Exhibit 374A that I instructed you on a moment ago, and that
5 is that there will be available to you later on in the case
6 a transcript of the audio portion of that exhibit which will
7 tell you what it is the parties agree can be heard on that
8 exhibit. But, again, there will be the exhibit itself and
9 that will be for you to decide.

10 Mr. Ricco.

11 MR. RICCO: Thank you.

12 RE-CROSS-EXAMINATION

13 BY MR. RICCO:

14 Q Mr. Salem, during the voir dire this morning I
15 asked you some questions about some of the government
16 exhibits. Do you recall those questions?

17 A No, sir.

18 Q I had asked you if you were familiar with the
19 subject matter that was on government exhibits, and I think
20 that you looked at them and said that you were. Is that
21 right?

22 A Yes, sir.

23 Q During the lunch hour did you have an opportunity
24 to review some tape recordings?

25 A Yes, sir.

1 Q My question is: There are in fact other tape
2 recordings concerning the trip to Attica that you testified
3 to on your redirect, isn't that right?

4 A Could be, sir.

5 Q During the lunch hour did you in fact listen to
6 conversations about the trip to Attica?

7 A Yes, sir.

8 Q So when you say "could be," you mean that there
9 are conversations, aren't there?

10 A That what I heard, yes, sir.

11 Q And you had an opportunity to listen to --

12 MR. RICCO: Your Honor, I would have this marked
13 as El-Gabrowny's, the first one would be El-Gabrowny's
14 L28A -- I am sorry, withdrawn. It will be L29-28. The
15 second exhibit would be El-Gabrowny's LA, like in apple,
16 dash 20.

17 MR. McCARTHY: A dash?

18 MR. RICCO: -- 20.

19 Q The two exhibits, El-Gabrowny LA-20 and
20 El-Gabrowny L29-28, you have both of those tape recordings
21 before you?

22 A Yes, sir.

23 Q And you got an opportunity to listen to those
24 during the lunch hour?

25 A I believe, yes, sir.

1 Q Were those taped conversations a fair and
2 accurate representation of the -- let me do one at a time.
3 LA-20 was a conversation that you had with Mr. Ibrahim
4 El-Gabrowny, isn't that correct?

5 A I wouldn't know, sir, by looking at the tape.

6 Q Did you listen to it?

7 MR. RICCO: Would the government stipulate to
8 that?

9 MR. McCARTHY: Yes. Your Honor, that is
10 stipulated.

11 THE COURT: That is, that LA-20 is a conversation
12 with Mr. Ibrahim El-Gabrowny.

13 MR. RICCO: Yes.

14 Q And when you listened to that tape recording, was
15 it a fair and accurate representation of the conversation
16 that you had with him back at the time you made it?

17 A Yes, sir.

18 MR. RICCO: I would move that tape into evidence.

19 MR. McCARTHY: No objection.

20 THE COURT: El-Gabrowny's LA-20 is received in
21 evidence.

22 (El-Gabrowny's Exhibit LA-20 was received in
23 evidence.)

24 MR. RICCO: Thank you. Also I would submit
25 LA-20T to be added to the jury's book at later time as an

1 aid.

2 THE COURT: That being the transcript?

3 MR. RICCO: The transcript, yes.

4 THE COURT: Of the conversation?

5 MR. RICCO: Yes, your Honor.

6 THE COURT: That will be something presumably you
7 will go over with the government, correct?

8 MR. RICCO: Yes, definitely.

9 Q With respect to Mr. El-Gabrowny's Exhibit L29-28,
10 Mr. Salem, did you have an opportunity to listen to that
11 tape during the lunch hour?

12 A Yes, sir.

13 Q Is that in a conversation between Mr. El-Gabrowny
14 and recorded on your machine?

15 A Yes, sir.

16 MR. RICCO: At this time I would move that tape
17 into evidence.

18 MR. McCARTHY: No objection.

19 THE COURT: L29-28 is received without objection.
20 (El-Gabrowny Exhibit L29-28 was received in
21 evidence.)

22 MR. RICCO: And also, with respect to that tape,
23 your Honor, I would offer a transcript, agreed upon with the
24 government, at a later date to be added to the jury's book.

25 THE COURT: All right.

1 Q Mr. Salem, before we move away from that: The
2 trip to Attica was planned in advance, isn't that correct?

3 A Yes, sir.

4 Q This trip involved the imam who worked at the
5 Attica Correctional Facility, isn't that correct?

6 A Yes, sir.

7 Q And there were several conversations between
8 Mr. El-Gabrowny and yourself concerning this trip, isn't
9 that correct?

10 A Yes, sir.

11 Q And there were several conversations between
12 Mr. El-Gabrowny and the imam at Attica concerning this
13 particular trip, isn't that correct?

14 A Yes, sir.

15 Q What was going to happen in this trip was that
16 some Muslim brothers were going to go up to Attica and it
17 was going to be a day-long schedule of activities, isn't
18 that correct?

19 A Yes, sir.

20 Q There was going to be a morning activity, isn't
21 that correct?

22 A No, sir.

23 Q There was a plan to have a morning event, isn't
24 that correct?

25 A It's noon prayer, sir.

1 Q I didn't get to Jummah yet. Before Jummah, there
2 was going to be a speaking that was going to take place at
3 the facility, isn't that correct?

4 A Yes, sir.

5 Q And then after the speaking event, there was
6 going to be a Jummah service, an afternoon prayer service,
7 right?

8 A Yes, sir.

9 Q And Siddig Ali was going to give the sermon?

10 A Yes.

11 Q And then, after that, the brothers who came up
12 from New York were going to go to the imam's mosque in the
13 Attica area for dinner, isn't that correct?

14 A No, sir.

15 Q That is not correct.

16 A That is not correct.

17 Q Is it that you just don't remember?

18 A What I recall, sir, that we should leave Attica
19 at 3 o'clock to have enough time to come back.

20 Q And that is your recollection of it?

21 A That is my recollection, sir.

22 Q This trip was specially coordinated, isn't that
23 right?

24 A Yes, sir.

25 Q Because inmates are not allowed to receive

1 visitors on Friday, isn't that correct?

2 A Yes, sir.

3 Q And you had to get a special permit to visit?

4 A Yes, sir.

5 Q And the brothers that were coming up from New
6 York to go to this service, you did a lot of the
7 coordinating of getting those brothers together, isn't that
8 correct?

9 A No, sir.

10 Q Well, you rented the car -- you were supposed to
11 rent the car?

12 A Yes, sir.

13 Q And all of the testimony that you gave us during
14 your direct about the car not being available, it was around
15 this event, isn't that correct?

16 A Yes, sir.

17 Q And you were supposed to get the car, right?

18 A I said yes, sir.

19 Q And Mr. El-Gabrowny asked you which brothers are
20 going to go up on the trip; do you recall that?

21 A Yes, sir.

22 Q And you told him the brothers that were going to
23 go on the trip, isn't that correct?

24 A Yes, sir.

25 Q You told him that Siddig was going to go, isn't

1 that correct?

2 A Yes.

3 Q And you told him that Imad Abdou was going to go
4 also?

5 A Yes.

6 Q And it was you who told El-Gabrowny of the other
7 brothers had who were coming going up to the trip, isn't
8 that correct?

9 A Yes, sir.

10 Q And that was something that you had worked out
11 with the other brothers, isn't that correct?

12 A No, sir.

13 Q Did Mr. El-Gabrowny know who was going up to
14 Attica before you told him?

15 A Yes, sir.

16 Q Do you recall having this conversation during --
17 the conversation that was taped, El-Gabrowny LA-20, the
18 conversation went as follows, and it will be on page 2,
19 Mr. McCarthy: Mr. El-Gabrowny states -- are you ready?

20 MR. McCARTHY: I am. Thank you.

21 Q Mr. El-Gabrowny states: A meeting that will be a
22 full day, but if you want, there can be dinner served in the
23 mosque.

24 And you say: Great, so it can be Friday, Allah
25 willing.

1 And Mr. El-Gabrownny says: Yeah, but you should
2 give us the names of the people.

3 And you say: OK, put down Imad Abdou, Sheik
4 Siddig. Do you recall him asking you that question and you
5 giving him that answer?

6 A Yes, sir.

7 Q And your testimony is that he knew who the people
8 were before he asked you that question?

9 A Yes, sir.

10 MR. RICCO: Now we refer you to the same
11 document, Mr. McCarthy, last page.

12 MR. MCCARTHY: I have it. Thank you.

13 Q Mr. El-Gabrownny asked you, at the end of the
14 conversation: How many people accepted now?

15 And you say: Now we have Imad Abou, Sheik
16 Siddig, both ready, myself, and that's it. Only three. But
17 Imad Abdul told me there are many people there, but also
18 I -- he -- I didn't get the OK to bring their names.

19 Do you recall Mr. El-Gabrownny asking that
20 question and you giving him that answer?

21 A Yes.

22 Q And your testimony is that he knew that these
23 people were coming before he asked you those questions?

24 A That's what we discussed in the mosque, sir.

25 Q Now, I think you testified on your direct that

1 Mr. El-Gabrowny was upset because the car could not be
2 rented.

3 A Yes, sir.

4 Q Mr. El-Gabrowny was upset because a lot of
5 planning had gone into making this trip, isn't that correct?

6 A I am sorry, sir?

7 Q A lot of planning had gone into making this trip,
8 isn't that correct? A lot of planning, arrangements?

9 A Yes, he was upset because of the planning?

10 Q Yes.

11 A Yes, sir.

12 Q Just one other point before we move away from
13 this subject. Mr. El-Gabrowny also told you during the
14 tape-recorded conversation that he, being Mr. El-Gabrowny,
15 was going to bring Sayyid's transcripts up to him, isn't
16 that right?

17 A Yes, sir.

18 Q The trial transcripts from his state court case,
19 isn't that right?

20 A Yes.

21 Q I would like to move away from this subject, OK?

22 A tape recording was introduced this morning
23 concerning a conversation that you had with Mr. Mohammed
24 El-Gabrowny.

25 A Yes.

1 Q Do you recall that conversation?

2 A Which one, sir?

3 Q That would be the conversation where you
4 discussed with Mr. Mohammed El-Gabrowny the passports that
5 were seized from Mr. Ibrahim El-Gabrowny at the time of his
6 arrest.

7 A Yes, sir.

8 Q And in that recording, which is in evidence, you
9 were telling Mr. Mohammed El-Gabrowny about what you heard
10 on the television, isn't that correct, concerning those
11 passports?

12 A Yes, sir.

13 Q And he was telling you what he knew about the
14 passports, isn't that correct? He said, for example, those
15 are -- I want to get it right, so give me one second -- he
16 said to you, this is El Sayyid's and his family. Do you
17 remember Mr. Mohammed El-Gabrowny saying that over the
18 telephone about the passports?

19 A Yes, sir.

20 Q Now, during this discussion with him, you
21 indicated to him that you had heard that the news
22 correspondent was reporting that the passports were to be
23 used to flee the country.

24 A Yes, sir.

25 Q Do you recall relating that to Mr. Mohammed

1 El-Gabrowny?

2 A Yes, sir.

3 Q Now, when you made that statement, you were
4 talking about what you had heard on the television set,
5 isn't that correct?

6 A No, sir.

7 Q You were not?

8 A No, sir.

9 Q You were not. So when you said --

10 A I am sorry, excuse me, sir. I shouldn't say I am
11 not, because, yes, it is part of what I heard from the TV
12 and part what I know, sir.

13 Q When you said: According to the correspondent's
14 report, he said that he was preparing him to flee the
15 country to Nicaragua with a phony passport, you were talking
16 about something which you had heard on television, isn't
17 that correct?

18 A Correct, sir.

19 Q Mohammed Saad, you know that name, correct?

20 A Yes, sir.

21 Q He is the fellow that came to you in the spring
22 of 1992 with this escape plan, isn't that correct?

23 A Yes, sir.

24 Q And you testified to the jury about that, right?

25 A Yes, sir.

1 Q And he gave this elaborate escape plan that
2 included him being to Buffalo and getting an apartment and
3 all that; right?

4 A Yes, sir.

5 Q And at some point you talked to Mr. El-Gabrowny
6 about that escape plan, right?

7 A Yes, sir.

8 Q That was in the spring of 1992, correct?

9 A I wouldn't recall.

10 Q Well, it was before you left the FBI, wasn't it?

11 A Yes, sir.

12 Q And when you had that conversation with
13 Mr. El-Gabrowny about Mr. Saad's plan, did Mr. El-Gabrowny
14 say to you, that's good because I have some passports that
15 he could use to flee the country with?

16 A No, sir, he did not say that.

17 Q And did you at any time ever report to the FBI
18 that Mr. El-Gabrowny had phony passports or phony Nicaraguan
19 passports?

20 A No, sir.

21 MR. RICCO: No further questions, your Honor.

22 Thank you very much.

23 THE COURT: Thank you, sir. Ms. Amsterdam?

24 RE-CROSS-EXAMINATION

25 BY MS. AMSTERDAM:

1 Q Good afternoon, sir. I just have a few brief
2 questions I want to go over with you. The first video that
3 we saw today, of the safe house; do you recall that?

4 A Yes, ma'am.

5 Q And that was on May 24; that was, as you have
6 testified, the first day that you met Mr. Khallafalla,
7 correct?

8 MR. McCARTHY: Objection. May 27.

9 Q I am sorry, May 27.

10 MS. AMSTERDAM: I apologize. Thank you
11 Mr. McCarthy.

12 Q That was on May 27, was it not, the first night
13 that you had met Mr. Khallafalla?

14 A Yes, ma'am.

15 Q And that was also the first time that you had
16 been to the safe house, correct?

17 A I believe yes, ma'am.

18 Q And this is the evening --

19 A I am sorry, ma'am. I shouldn't say yes, because
20 I was in the safe house before that, ma'am.

21 Q With the FBI?

22 A Yes, ma'am.

23 Q And this is the evening where en route to the
24 safe house there is no recording of that conversation,
25 correct?

1 A Correct, ma'am.

2 Q And this is also, I believe you testified --
3 withdrawn.

4 I believe that you testified that on
5 cross-examination that you do not know what if anything
6 Mr. Siddig Ali told Mr. Khallafalla about the purpose of
7 going to the garage in Queens; correct?

8 A Prior to the safe house?

9 Q Prior to that.

10 A I don't know, ma'am.

11 Q And in fact you testified on cross-examination
12 that you did not know whether or not he told Mr. Khallafalla
13 that they were going for training to Bosnia, correct, prior
14 to going there?

15 A He never mentioned that, ma'am.

16 Q But you did testify on cross-examination that you
17 had spoken to numerous people about your willingness to
18 train people to go to Bosnia; correct?

19 A I will train people to go to Bosnia?

20 Q Yes.

21 A I believe yes, ma'am.

22 Q The videotape that we saw today in court, that
23 was recorded at the safe house; correct?

24 A Correct, ma'am.

25 Q But there is also a Nagra record of that

1 conversation, correct?

2 A Correct, ma'am.

3 Q And I believe you testified on cross-examination
4 that the videotape started before the Nagra, right?

5 A Correct, ma'am.

6 Q That at sometime after getting to the safe house
7 you turned the Nagra on. Right?

8 A Right, ma'am.

9 Q And that the portion of the videotape that we saw
10 today in court was actually recording before you turned the
11 Nagra on; correct?

12 A I think yes, ma'am.

13 MS. AMSTERDAM: I will direct the jurors
14 attention to CM19, page 7.

15 THE COURT: In the book marked Khallafalla A,
16 under tab 19. Is that right?

17 MS. AMSTERDAM: Under tab 19.

18 Q The Nagra conversation, sir, of the events of the
19 safe house is recorded in CM 19, correct, sir?

20 A Could be.

21 MS. AMSTERDAM: I think the government will
22 stipulate to that?

23 MR. McCARTHY: I am sorry?

24 MS. AMSTERDAM: CM 19.

25 MR. McCARTHY: I didn't catch the beginning.

1 MS. AMSTERDAM: That that is the Nagra recording
2 of the events of the first night in the safe house.

3 MR. McCARTHY: Yes.

4 Q I direct your attention, sir, the jurors'
5 attention, to the bottom of page 7. Isn't it a fact, sir,
6 that Siddig Ali said to you -- I am sorry. Page 7, CM 19,
7 one, two, three, four, five attributions from the bottom.
8 Isn't it correct, sir, that Saddig Ali said to you, after
9 the events that we saw in the videotape, the following
10 conversation: I am thinking about other things. I
11 consulted him about the same operation we are talking about,
12 the target that you and I spoke about, which they don't know
13 about.

14 Now, the "they" that Mr. Siddig Ali was referring
15 to was Mr. Amir Abdelgani, Mr. Khallafalla; correct?

16 A I don't know if that is exactly what is being
17 said on the tape, ma'am.

18 MS. AMSTERDAM: Will the government stipulate
19 that I am reading accurately?

20 MR. McCARTHY: I stipulate that you have read
21 accurately.

22 Q And thereafter you say, sir: Fine, that's it.
23 It's up to you.

24 And Siddig says: But I will tell them in a
25 little bit.

1 A Yes, ma'am.

2 Q And you say God willing.

3 And Siddig says, I will tell them in a little
4 bit.

5 Then onto the next page. You say God willing,
6 and Siddig says, or in a suitable day, as there is no reason
7 to tell, there is no reason to talk about it at all.
8 Correct?

9 A Yes, ma'am.

10 Q And he is referring to the targets, correct?

11 A Yes, ma'am.

12 Q Now turning lastly to the events of June 21,
13 which is CM58, I believe this morning, sir, that you
14 testified that the transcript that I had referred to you,
15 where -- withdrawn.

16 In CM58 there is a conversation in which Mr.
17 Elhassan says: Any one of you that want to pull out, it's
18 time, you will still be our brother -- or words to that
19 effect. Do you recall that?

20 A Mr. Who?

21 Q Mr. Elhassan said that?

22 A Yes.

23 Q And it is your testimony now that that
24 conversation, that statement, was directed towards Victor
25 Alvarez, correct?

1 MR. McCARTHY: Objection to form.

2 Q It was your statement on redirect that that
3 portion of the conversation was directed toward Mr. Victor
4 Alvarez, is that correct?

5 A Yes, ma'am.

6 Q And in fact you testified this morning, I
7 believe, that there were two overlapping conversations going
8 on simultaneously; would that be fair to say?

9 A Yes, ma'am.

10 Q Turning to page 49: But I would be correct in
11 saying, however, Mr. Salem, that in fact it is
12 Mr. Khallafalla who answers not once but three times, I'll
13 give you my opinion tomorrow. Is that correct?

14 A Yes, ma'am.

15 Q It is him saying it, right?

16 A I beg your pardon?

17 Q It is Mr. Khallafalla who says that, correct?

18 A Correct, ma'am.

19 Q And indeed it is Mr. Khallafalla who does not
20 come back on June 22, correct?

21 A Yes, ma'am.

22 (Continued on next page)

23

24

25

1 Q Indeed, it is Mr. Khallafalla who does not come
2 back on June 23, correct?

3 A I'm not sure of that, ma'am.

4 Q Indeed, it is Mr. Khallafalla who is not there in
5 the early morning hours of June 24 when the arrests occur,
6 correct?

7 A Correct, ma'am.

8 Q Indeed, it is not Mr. Khallafalla who is present
9 when the oil is obtained, correct?

10 A No, he wasn't in the safe house on that time,
11 ma'am.

12 Q Mr. Khallafalla was not present when the mixing
13 took place, correct?

14 A He did not help with mixing, no, ma'am.

15 Q Mr. Khallafalla was not present when you and
16 Siddig Ali tested the firecracker, was he?

17 A In Connecticut, no, ma'am.

18 Q Mr. Khallafalla was not present when the machine
19 gun was brought to the safe house, correct?

20 A No, ma'am.

21 Q Indeed, at the end of this conversation, you say
22 to Siddig Ali, "Fares, he is not a Fares," correct?

23 A That's not correct, ma'am.

24 Q You don't say that?

25 A No, ma'am. I'm sorry. I shouldn't say, no, if I

1 will listen to it, I will tell you if I said it or not,
2 ma'am.

3 Q I direct your attention to page 56 of the
4 transcript. Isn't it a fact, sir, that you have the
5 following conversation with Siddig Ali:

6 Siddig Ali says: Let's ask them one by one,
7 Fares come over here.

8 Did you see where I am?

9 A No.

10 Q All right. Page 56, the third attribution from
11 the top.

12 A Yes, ma'am.

13 Q Siddig -- withdrawn. The fourth attribution from
14 the top.

15 A Yes, ma'am.

16 Q Siddig says: Let's ask them one by one. Fares
17 come over here.

18 Do you see that?

19 A Yes, ma'am.

20 Q You say: Wait, I didn't finish, correct?

21 A Could be.

22 Q And Siddig Ali says: OK. All right. Leave the
23 door open. Listen, listen, Fares, we will come to you.

24 Do you see that?

25 A I see it.

1 Q Isn't it a fact, sir, that Fares Khallafalla
2 walked out of the safe house and did not come over to you
3 and Mr. Siddig Ali when you called him?

4 A I cannot confirm that unless I see or hear the
5 tape, ma'am.

6 MS. AMSTERDAM: Mr. McCarthy, you will stipulate
7 that I am reading accurately?

8 MR. McCARTHY: I will stipulate that it is being
9 read accurately.

10 Q Thereafter, in the transcript you see that the
11 doors open and close in the middle of the page?

12 A Yes, ma'am.

13 Q And thereafter, Siddig Ali says, Fares. Not
14 anyone else, he says, Fares, we thought he was a Fares.

15 Do you see that?

16 A I see it, ma'am.

17 Q And you say, "No, he is not a Fares," correct?

18 A I cannot say correct, until I hear it, ma'am.

19 MS. AMSTERDAM: Mr. McCarthy, will you stipulate
20 that I am reading that correctly.

21 MR. McCARTHY: I stipulate that the transcript --

22 Q Isn't it a fact, sir, that you were asked to
23 review this portion of the transcript?

24 A Yes, ma'am.

25 Q You were asked to listen to this portion of the

1 transcript, were you not?

2 A Yes, ma'am.

3 Q And you did indeed say, "Fares, he is not a
4 Fares," correct?

5 A I cannot say that until I review it, ma'am.

6 Q What does "Fares" mean, again, sir?

7 A It means horseback rider.

8 Q A warrior, right? A fighter?

9 A Could be.

10 Q All right. Could be.

11 One last thing, sir --

12 A Yes, ma'am.

13 Q -- in this conversation which you indicated was
14 directed at -- withdrawn.

15 You indicated that there were two simultaneous
16 conversations going on, at the same time, right?

17 A Yes, ma'am.

18 Q And that you were actually party to one of the
19 conversations, correct?

20 A Yes, ma'am.

21 Q You remember taking part in that conversation?

22 A Yes, ma'am.

23 Q Weren't you in fact sleeping during that period
24 of time?

25 A No, ma'am.

1 Q I direct your attention, sir, to page 52 of the
2 transcript. Actually, let's go to page 50 first. 50 is the
3 part of the conversation where Mr. Khallafalla says three
4 times, "I'll give you my opinion tomorrow," correct?

5 Do you see that on page 50, at the top of the
6 page? "I'll give you my opinion tomorrow"?

7 A Yes, ma'am.

8 Q And then Mr. Siddig Ali says, "This is not a
9 joke. Not a joke, serious, serious"?

10 A That's right, ma'am.

11 Q And three times Mr. Khallafalla says, "Shame on
12 us," correct?

13 A Yes, ma'am.

14 Q Turn the page over to the next page. At the
15 bottom of the next page Siddig Ali says, one, two, three,
16 four, five, six attributions from the bottom, Siddig Ali
17 says to Fares Khallafalla, "Fares, please, Khallafalla,
18 ah" -- Siddig says: "Take a vacation. Three, four extra
19 days, OK?"

20 He told Fares Khallafalla to get lost, didn't he,
21 Mr. Salem?

22 A No, ma'am, he did not say that. He was talking
23 to Mr. Victor Alvarez, ma'am.

24 Q He said, "Fares, take a vacation. Three, four
25 days," and it was directed at Victor?

1 A You're mixing up the words. He said, "Fares,"
2 means slow it down, because he was kidding. And then he
3 talked to Mr. Victor Alvarez, "Take three, four days
4 vacation," ma'am.

5 Q You're clear about this, right?

6 A Yes, ma'am.

7 Q Let's go to the next page, sir.

8 One, two, three, four, five, six attributions
9 from the top, Siddig Ali says, "Let me ask him now, sheik."
10 And right after it, it says, "Trying to wake up Salem."

11 You're Salem, correct?

12 A I beg your pardon?

13 Q You are Salem, correct? Salem?

14 A Yes, ma'am.

15 Q The transcript indicates that Siddig Ali was
16 trying to wake you up at that portion, correct?

17 A That is incorrect, ma'am.

18 Q Does the transcript indicate that, sir?

19 A The transcript, that's what that trans -- the
20 translator wrote down. I never slept in the safe house,
21 ma'am.

22 Q Did you participate in the preparation of these
23 transcripts?

24 A No, ma'am.

25 MS. AMSTERDAM: No further questions.

1 THE COURT: Mr. Jacobs?

2 MR. JACOBS: No questions.

3 THE COURT: Anybody else?

4 Mr. McCarthy, anything else?

5 MR. McCARTHY: Briefly.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. McCARTHY:

8 Q Ms. Stewart asked you some questions about the
9 rest of the press conference before, do you recall that?

10 A Yes, sir.

11 Q She mentioned to you that when the television
12 cameras were there in the apartment that Dr. Abdel Rahman
13 mentioned that it would be illogical for him to attack
14 America, do you recall that?

15 A Yes, sir.

16 Q And that he rejected aggression?

17 A Yes, sir.

18 Q When you were speaking to him on May 23 in his
19 kitchen, without the television cameras there, did he
20 mention any of that stuff about how much he liked America?

21 A No, sir.

22 MR. McCARTHY: No more questions.

23 THE COURT: All right. You're excused. Thank
24 you.

25 THE WITNESS: Thank you, sir.

1 MS. STEWART: Judge. No, thank you.

2 THE COURT: As I said, you're excused.

3 (Witness excused)

4 THE COURT: Mr. McCarthy?

5 MR. McCARTHY: Yes, your Honor, the government
6 calls Gamal Abdel-Hafiz.

7 THE DEPUTY CLERK: Please step into the witness
8 box and raise your right hand.

9 THE COURT: I will ask everybody to pay attention
10 when a witness is being sworn, please.

11 MS. AMSTERDAM: I'm sorry, your Honor.

12 GAMAL ABDEL-HAFIZ,

13 called as a witness by the Government,
14 having been duly sworn, testified as follows:

15 MR. McCARTHY: May I, your Honor.

16 THE COURT: Please.

17 DIRECT EXAMINATION

18 BY MR. McCARTHY:

19 Q Mr. Abdel-Hafiz, I realize it's been a while, but
20 you've testified in this proceeding before, have you not?

21 A Yes, sir.

22 Q Sir, I am placing before you first Government's
23 Exhibit 639-1T and I would ask you to take a look at this
24 transcript with particular attention to the underscored
25 portions.

1 MS. AMSTERDAM: I'm sorry, Mr. McCarthy. Could
2 you say the number again?

3 MR. McCARTHY: Yes, 639-1T.

4 Q Have you reviewed that item, sir?

5 A Yes, sir, I have.

6 Q With respect to the underscored passages, do
7 those underscored passages fairly and accurately reflect the
8 Arabic that you heard on the tape that is 639?

9 A Yes, sir, it does.

10 MR. McCARTHY: Your Honor, the government would
11 offer the transcript 639, and, in particular, the
12 underscored passages that the witness has testified to.

13 THE COURT: All right. 639-1T is received
14 without objection.

15 Go ahead.

16 MS. STEWART: Judge, may I have a brief voir dire
17 on that?

18 THE COURT: I am sorry. He made the offer. Do
19 you want to voir dire?

20 MS. STEWART: Yes.

21 THE COURT: Go ahead.

22 VOIR DIRE EXAMINATION.

23 BY MS. STEWART:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q We meet again.

2 A Yes.

3 Q I just would like to direct your attention to one
4 word that is translated in this transcript. It is on the
5 first page and it is the last attribution.

6 A Can I have a copy, please?

7 MR. McCARTHY: I'm sorry.

8 MS. STEWART: Here.

9 MR. FITZGERALD: I will give it to him.

10 THE WITNESS: Thank you.

11 Q It is the last attribution to Dr. Abdel Rahman
12 on -- the next to the last on the first page?

13 A Yes, ma'am.

14 Q The word that is underlined is "front"?

15 A Yes, ma'am.

16 Q The Arabic word -- you must excuse my
17 pronunciation -- on the tape was "wagiha," is that correct?

18 A "Wagiha," yes.

19 Q Is another, alternative interpretation for that
20 the word "symbol"?

21 A No, ma'am, it cannot ever be.

22 Q Well, what is your understanding of the word
23 "front" as you interpreted it here?

24 A Well, I can have an understanding to it, it's
25 somebody who will be standing as a front --

1 Q Maybe I can help you.

2 A OK.

3 Q Is it your understanding someone who is in the
4 forefront, someone who is like the leader?

5 A Forefront or a leader, yes.

6 MS. STEWART: I have no further questions.

7 THE COURT: The exhibit has been offered.

8 MS. STEWART: Yes, the exhibit is marked with the
9 usual underlines, Judge, where we have a dispute. I assume
10 that will be resolved at some other time.

11 THE COURT: All right. The exhibit is received.
12 639-1T is received.

13 (Government's Exhibit 639-1T for identification
14 was received in evidence)

15 DIRECT EXAMINATION

16 BY MR. McCARTHY:

17 Q Mr. Abdel-Hafiz, is there a resource that you go
18 to when you have an issue about an Arabic word?

19 A Yes. I use my dictionaries.

20 Q What kind of dictionary is that?

21 A I have Al-Mawrid.

22 Q Pardon me?

23 A It's called Al-Mawrid. It's Arabic dictionary,
24 Arabic-English dictionary.

25 Q Is that a standard dictionary?

1 A Yes. It's the most widely used dictionary among
2 Arabs.

3 Q I don't want to slay the word, which I
4 undoubtedly will if I pronounce it.

5 Can you give us again what the word is.

6 A "Wagiha."

7 Q Did you have occasion to look that up in your
8 dictionary?

9 A Yes, sir, I have.

10 Q Does the word "symbol" appear in the definition?

11 A No, it cannot ever be "symbol."

12 Q What is the definition that you saw in the
13 dictionary?

14 A Front, forefront, in the front of.

15 Q Is there an Arabic word for symbols?

16 A Ramz.

17 Q Can you spell that for the reporter and for the
18 rest of us.

19 A R-A-M-Z.

20 Q Showing you another series of exhibits, sir,
21 directing your attention to 629-4T, 629-26T, 629-36T,
22 601-16T, 601-19T, and 601-4T. I am also directing your
23 attention at the same time to what have been received in
24 evidence as cassette tapes 604-1, 601-19, 601-16, 601 --
25 601-4 --

1 MR. McCARTHY: Your Honor, I feel like I may have
2 misspoken. Did I say 604-1 or 601-4?

3 THE COURT: You said 601-4, but not 604-1.

4 MR. McCARTHY: I misspoke. I apologize.

5 THE COURT: I'm sorry. You did say 604-1. That
6 was the first.

7 MR. McCARTHY: I haven't succeeded in confusing
8 you, which is pretty good.

9 Q Also, Mr. Abdel-Hafiz, 629-4, 629-26 and 629-36.
10 Let me ask you, sir: Have you compared the
11 transcripts with the numbers that I read to the
12 corresponding tapes with the numbers that I have read?

13 A Yes.

14 Q First of all, did you prepare those transcripts?

15 A Yes.

16 Q You have to answer into the microphone.

17 A Yes, I have.

18 Q Do the transcripts that you prepared fairly and
19 accurately reflect an English version of the Arabic
20 conversation that is recorded on the cassette tapes?

21 A Yes, sir, it does.

22 MR. McCARTHY: Your Honor, at this time we offer
23 the transcripts.

24 MR. RICCO: Your Honor, I have a voir dire with
25 respect to the exhibits 629 series, just a brief voir dire.

1 THE COURT: The 629 series includes 4, 26 and 36,
2 right?

3 MR. RICCO: Yes.

4 THE COURT: All right. Go ahead.

5 VOIR DIRE EXAMINATION

6 BY MR. RICCO:

7 Q Mr. McCarthy asked if you prepared the English
8 text of those tapes for these three exhibits.

9 A Yes, sir.

10 Q And you did?

11 A Yes, sir.

12 Q The source that you used to make the English
13 text, did you use individual cassettes or were they on one
14 cassette?

15 A That cassette, that individual cassette, the one
16 that has my initial on it, that is the one I reviewed.

17 Q So you only translated those tape recorded
18 conversations that were given to you in a cassette form?

19 A Yes, sir.

20 MR. RICCO: I have no further questions, your
21 Honor.

22 THE COURT: All right.

23 MR. RICCO: I have no objection, your Honor.

24 THE COURT: All right.

25 MR. PATEL: Your Honor, I would renew my

1 objection to 601-4.

2 MS. STEWART: I can't hear you.

3 MR. PATEL: It was a 403 objection that was
4 raised.

5 THE COURT: That objection is overruled.

6 MR. McCARTHY: Let me read the numbers.

7 629-4T, 629-26T, 629-36T, 601-16T, 601-19T,
8 601-4T, and 604-1T.

9 THE COURT: Those transcript exhibits are
10 received.

11 (Government Exhibits 629-4T, 629-26T, 629-36T,
12 601-16T, 601-19T, 601-4T, and 604-1T for identification were
13 received in evidence)

14 MR. McCARTHY: Your Honor, I have no further
15 questions at this time of Mr. Abdel-Hafiz.

16 THE COURT: Any cross?

17 MS. AMSTERDAM: May I have a moment with Ms.
18 Stewart, please, your Honor.

19 MS. STEWART: I have no questions, your Honor.

20 THE COURT: You are excused, thank you.

21 (Witness excused)

22 THE COURT: Mr. McCarthy.

23 MR. McCARTHY: Yes, your Honor, at this time we
24 would propose to read some of the transcripts.

25 THE COURT: OK. Do the jurors have the exhibits?

1 MR. McCARTHY: They do, your Honor.

2 THE COURT: Go ahead.

3 MR. McCARTHY: Your Honor, 639-1T would be the
4 first transcript we are going to read from.

5 THE COURT: I'm sorry 639?

6 MR. McCARTHY: Yes, your Honor, 639-1T.

7 Your Honor Mr. Khuzami will be reading the lines
8 attributed to Mr. Salem; Mr. Fitzgerald will be reading the
9 lines attributed to Mr. Siddig Ali; I will be reading the
10 lines attributed to the defendant Abdel Rahman; and Ms. Chu
11 will read the lines attributed to "Unidentified Male."

12 THE COURT: We are all squared away. Let's go.

13 MR. McCARTHY: Thank you, Judge.

14 (Government Exhibit 639-1T was read to the jury)

15 THE COURT: OK. Ladies and gentlemen, we are
16 going to take a short break. Please --

17 MS. STEWART: Judge?

18 THE COURT: Yes.

19 MS. STEWART: May I ask that they read that last
20 paragraph.

21 THE COURT: The end?

22 MR. McCARTHY: Sure.

23 (Government Exhibit 639-1T was read from to the
24 jury)

25 THE COURT: OK. We are going to take a break.

1 Please leave your notes and other materials behind. Please
2 don't discuss the case, and we will resume in a few minutes.

3 (The jury was excused)

4 (Recess)

5 (Jury not present)

6 MR. SERRA: Your Honor, Mr. Alvarez is not
7 feeling well. Even though there is only however much there
8 is left to the day, he would prefer to return to the MCC.
9 He understands he has a right to be present, and he waives
10 that.

11 THE COURT: Is that satisfactory to you
12 Mr. Alvarez.

13 DEFENDANT ALVAREZ: Yes, your Honor.

14 MR. NOOTER: Your Honor, my client is in much the
15 same situation and would ask to be excused under the same
16 circumstances and would waive his presence for the rest of
17 the day.

18 THE COURT: I hope you both feel better.
19 Thank you very much.

20 MR. NOOTER: Thank you, your Honor.

21 THE COURT: Excuse me. Is Ms. Amsterdam going to
22 be returning?

23 MR. LAVINE: I am going to cover for her. She
24 will be returning.

25 THE COURT: Is that satisfactory,

1 Mr. Khallafalla?

2 DEFENDANT KHALLAFALLA: Yes, your Honor.

3 THE COURT: Thank you.

4 (Jury present)

5 THE COURT: OK. Mr. McCarthy?

6 MR. McCARTHY: Yes, your Honor. Mr. Fitzgerald

7 and Mr. Khuzami are going to read from the 629 series,

8 beginning with 629-4 and then proceeding to 629-26 and

9 finally 629-36.

10 MR. FITZGERALD: The first one, your Honor, will
11 be 629-4T.

12 THE COURT: Let's wait until everybody has it.
13 There is a Tab 629 in your binders. It is just behind Tab
14 604. Starting with which 629?

15 MR. FITZGERALD: Dash 4.

16 THE COURT: Dash 4. That is the first one.

17 A JUROR: T.

18 THE COURT: 4T, right. It is good to be precise.
19 Go ahead.

20 MR. FITZGERALD: Mr. Khuzami will read the voice
21 of Emad Salem, and I will read the voice of Ali El Shinawy.

22 (Government Exhibit 629-4T was read to the jury)

23 MR. FITZGERALD: We will read the voices in the
24 same way for the next transcript, which is 629-26T.

25 (Government Exhibit 629-29T was read to the jury)

1 MR. PATEL: Mr. McCarthy, one second.

2 MR. McCARTHY: Your Honor, may I have a moment
3 with Mr. Patel?

4 THE COURT: Yes.

5 (Counsel conferred)

6 MR. McCARTHY: Your Honor, may I advise the court
7 and the jury of a stipulation?

8 THE COURT: All right.

9 MR. McCARTHY: Your Honor, the parties have
10 stipulated that Nagi Allah is the imam or the Muslim
11 chaplain at Attica State Prison.

12 THE COURT: OK. The jury will accept that fact
13 as proved.

14 MR. FITZGERALD: One last transcript, your Honor.
15 It is 629-36T. Mr. Khuzami will again read the voice of
16 Emad Salem; I will read the voice of Ibrahim El-Gabrownny;
17 and Ms. Chu will read the voice of the unidentified female.

18 (Government Exhibit 629-36T was read to the jury)

19 MR. McCARTHY: We are done reading, Judge.

20 THE COURT: All right.

21 Ladies and gentlemen, we are going to break for
22 the week. Have a happy Easter.

23 JURORS: Same to you.

24 THE COURT: Please don't discuss the case or
25 think or read about the case and we will see you Monday

1 morning. Good night.

2 (The jury was excused)

3 (In open court; jury not present)

4 MR. KHUZAMI: Your Honor, one short matter.

5 Dr. Nunn, the doctor who treated Mr. Nosair, is
6 tentatively scheduled to testify on Monday. Mr. Patel
7 indicated that his response to the government's letter would
8 be submitted tomorrow.

9 MR. PATEL: A brief response.

10 THE COURT: All right.

11 Do you want me to deal with it first thing Monday
12 morning?

13 MR. KHUZAMI: That will be fine. We will be
14 prepared. We can put him on or we can delay --

15 THE COURT: I will be here tomorrow. I will have
16 it and I will review what I have. I am sure I have the
17 government's letter someplace.

18 MR. KHUZAMI: Thank you.

19 THE COURT: See you Monday morning.

20 MR. JACOBS: Your Honor?

21 THE COURT: Yes.

22 MR. JACOBS: The government is going --

23 THE COURT: Do you want to use the microphone.

24 MR. JACOBS: I am sorry. The government is going
25 to call Paul Ginsberg, the tape expert, on their case on

1 Wednesday.

2 THE COURT: Right.

3 MR. JACOBS: Just to let you know. So some of
4 your fears about -- he will be turning the machine on and
5 off some more.

6 THE COURT: So we will hear from Mr. Ginsberg
7 afterward. I can't wait.

8 OK. Thank you.

9 (Proceedings adjourned to Monday, April 17, 1995
10 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,
4 v.

5 OMAR AHMAD ALI ABDEL RAHMAN,
6 a/k/a "Omar Ahmed Ali,"
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 CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
16 a/k/a "Abdul Rashid Abdullah,"
17 a/k/a "Abdel Rashid,"
18 a/k/a "Doctor Rashid,"

19 AMIR ABDELGANI,
20 a/k/a "Abu Zaid,"
21 a/k/a "Abdou Zaid,"

22 FARES KHALLAFALLA,
23 a/k/a "Abu Fares,"
24 a/k/a "Abdou Fares,"

25 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.

20 -----x
21 April 17 1995
22 9:30 p.m.

23 Before:

24 HON. MICHAEL B. MUKASEY,

25 District Judge

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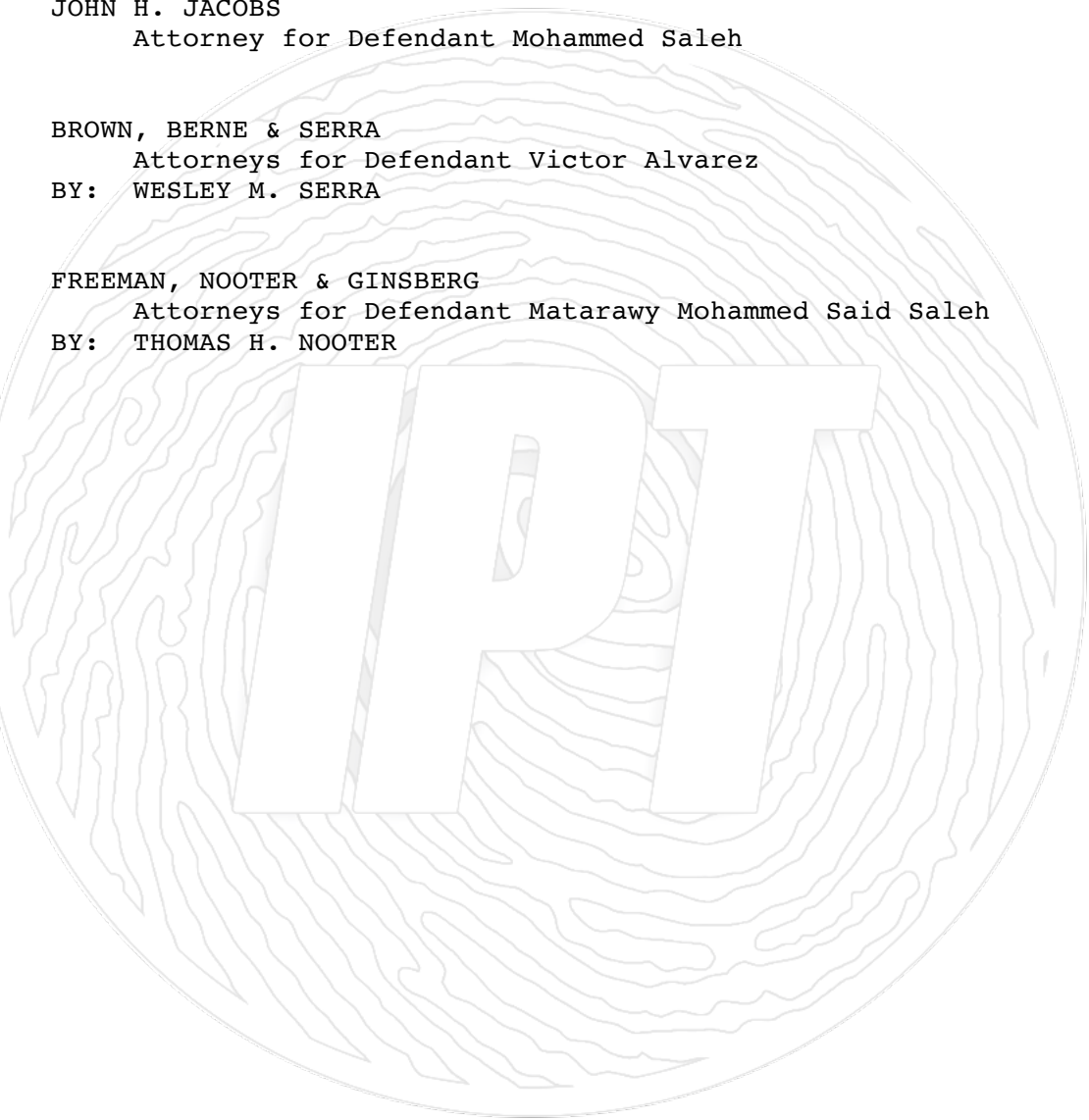
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1 (Jury not present)

2 THE COURT: Good morning.

3 MR. McCARTHY: Good morning, your Honor.

4 THE COURT: I have had correspondence from the
5 government and Mr. Patel on the subject of Dr. Nunn's
6 testimony.

7 MR. PATEL: Yes, your Honor.

8 THE COURT: This situation, it seems to me, is
9 really a fortiori from Panza, where the witness himself was
10 an informant in the case under indictment and nonetheless
11 the testimony was admitted. You have asked for a hearing.

12 MR. PATEL: Correct, your Honor.

13 THE COURT: What disputed issue of fact am I to
14 hear?

15 MR. PATEL: It seems to me, your Honor, that we
16 are making certain assumptions about how this happened, and
17 your Honor is determining admissibility of the evidence on
18 those assumptions. It would seem to me it would be a wise
19 course of conduct, respectfully, to have a hearing on this
20 so your Honor has --

21 THE COURT: It is not simply an airy assumption.
22 I am taking a proffer in essence from the government that
23 this man is a physician, that he was not connected with law
24 enforcement, and wasn't put up to it by law enforcement.

25 MR. PATEL: I think that is a critical point, and

1 that is something that could be explored briefly at a
2 hearing whether or not he had any prior -- the fact that he
3 didn't report this stuff for four years doesn't mean it
4 hadn't been sought by law enforcement. The fact that he did
5 a poor job of reporting it goes to other issues.

6 THE COURT: I don't see anything under the
7 circumstances to suggest that it was, but let me hear from
8 the government.

9 MR. KHUZAMI: Your Honor, I don't believe that I
10 a hearing is necessary, but we would have no objection to
11 bringing Dr. Nunn out and asking him one question outside
12 the presence of the jury, that is, whether or not he had any
13 contact with law enforcement prior to his conversation with
14 Mr. Nosair.

15 THE COURT: All that is going to do is burn time.
16 Do you have any reason to believe that he has?

17 MR. KHUZAMI: None at all, your Honor.

18 THE COURT: Have you asked him that?

19 MR. KHUZAMI: Discussions with him have confirmed
20 the substance of the government's proffer in its letter.
21 The only thing we can do is go forward --

22 THE COURT: Have you asked him that question?

23 MR. KHUZAMI: Yes, your Honor.

24 THE COURT: And his answer was?

25 MR. KHUZAMI: His answer was that he had no

1 contact with law enforcement at the time of the
2 conversation.

3 THE COURT: I am going to take the proffer and we
4 can just go ahead.

5 MR. KHUZAMI: I might also add, your Honor, that
6 Dr. Nunn called this morning and had some emergency surgery
7 come up for a patient, so we don't expect him to be the
8 first witness, but hopefully he will be here later this
9 morning or in the afternoon.

10 THE COURT: If he is here at a time when it is
11 convenient to ask him the question, I suppose we can ask him
12 the question, but there is nothing in the circumstances to
13 indicate that he was affiliated with law enforcement, and it
14 seems to me that it would just be spending time.

15 On another subject, though, I did get a letter
16 from Mr. Patel this morning saying that some evidence that
17 you propose to offer relates to the Uncle Charlie's
18 incident. Does it?

19 MR. KHUZAMI: No, your Honor. The government
20 would put forth this morning evidence of items seized from
21 Mr. Nosair's work locker at 111 Centre Street, including
22 particles of smokeless powder and a wire ring that the
23 testimony will show came from an M60 fuse lighter.

24 This is relevant to the charges in the indictment
25 and not to any 404(b) proof. Mr. Nosair is charged with a

1 bombing conspiracy. The testimony of Mr. Salem --

2 THE COURT: You say it came from an M60 fuse
3 lighter?

4 MR. KHUZAMI: Yes, your Honor.

5 THE COURT: This is an upgrade in the testimony
6 since the last time I heard about it, when it was simply
7 consistent with that, and was also consistent with a key
8 ring, as I understand it.

9 MR. KHUZAMI: I don't recall it ever being
10 consistent with a key ring. I think the evidence will show
11 that in fact it is -- they don't use the word "identical"
12 simply because that would mean identical in every respect
13 and every property, but the testimony will show that this
14 expert, who has significant experience, has never seen this
15 particular item on anything other than an M60 fuse lighter,
16 and that he compared it to military specifications for an
17 M60 fuse lighter and it matched.

18 THE COURT: All right. I guess we will find out
19 whether he compares it with a key ring.

20 MR. PATEL: According to my brief review of the
21 military specifications, which we just received this
22 morning, it is outside the tolerance of the military
23 specifications. Your Honor, we are talking about, as I said
24 in my letter, nine minute grains of powder that were seized
25 from the locker four years after it's been closed. I don't

1 want to say "sealed," because it's certainly not an airtight
2 locker. It has vents in it. Where these things came from,
3 we don't know. We don't know whether they were there
4 before; we don't know whether Mr. Nosair brought them; we
5 don't know whether they came in after.

6 This is such a minute amount of material and
7 these individual things are so small, and I would ask your
8 Honor to exclude it under 403, even if it did relate to a
9 charge in the indictment and was not purely 404(b) evidence,
10 which I still maintain that it is not.

11 MR. KHUZAMI: Your Honor, Mr. Salem testified
12 there were discussions between Mr. Nosair and himself about
13 pipe bombs and about powder. I think that makes it clear
14 that it is relevant to the charges in the indictment. The
15 issue of the quantity that was uncovered and other
16 explanations of how it might have gotten there clearly go to
17 weight but not to admissibility.

18 MR. PATEL: Mr. Salem's testimony, as I recall
19 it, was Mr. Nosair talking to Mr. Salem to talk to other
20 people about building pipe bombs, not Mr. Nosair himself
21 building pipe bombs.

22 MR. KHUZAMI: I think there was testimony that
23 Mr. Nosair indicated that he had experimented before with
24 these items and that the discussion was that, as I read from
25 page 4923 of the transcript, Mr. McCarthy asked Mr. Salem

1 was there any description of the kind of bombs it would be.
2 The answer was: When he asked me what kind of materials you
3 need, I told him pipes and powder and fuses and timers, and
4 the plan was for 12 pipe bombs typically manufactured with
5 smokeless powder and those types of items would be made.

6 I don't understand the argument that it is not
7 relevant to the charges in the indictment.

8 THE COURT: I don't understand what it is you say
9 that testimony shows other than that they discussed it. Who
10 is saying that those are the typical ingredients according
11 to the testimony?

12 MR. KHUZAMI: This is Mr. Salem speaking to
13 Mr. Nosair.

14 THE COURT: Right. And according to Mr. Salem
15 who was it who said those are the typical ingredients?

16 MR. KHUZAMI: Mr. Nosair.

17 THE COURT: Do you have the page?

18 (Pause)

19 THE COURT: Quite the opposite. Mr. Salem
20 testifies when he -- meaning Mr. Nosair -- asked me what
21 kind of materials you need, I told him pipes and powder and
22 fuses and timers. Meaning that Mr. Salem told Mr. Nosair
23 rather than the other way around.

24 MR. KHUZAMI: But additional testimony by
25 Mr. Salem indicated that Mr. Nosair told him that he had

1 experimented --

2 THE COURT: Where? It is not here.

3 MR. KHUZAMI: Page 4753 of the transcript.

4 THE COURT: OK. I don't have that.

5 MR. KHUZAMI: I'm sorry, your Honor. We don't
6 have that page of the transcript with us.

7 I would also note that there was testimony
8 concerning the carpenter nails that Mr. El-Gabrowny gave
9 which contained smokeless powder. Those all go to the
10 question of --

11 THE COURT: Is this the first witness?

12 MR. KHUZAMI: Yes, your Honor.

13 MR. PATEL: Your Honor, I don't mean to
14 interrupt, Mr. Nosair's work locker, according to my
15 understanding, had a number of these carpenter nails right
16 there that I assume he used for work.

17 We don't go to the ends of talking about
18 Mr. El-Gabrowny, talking about building bombs or Mr. Salem
19 and stretch it out. It is a more immediate potential source
20 of this material.

21 MR. KHUZAMI: I am not aware of any such items
22 being in the locker. I would also note that there was
23 testimony by Mr. Salem that Mr. El-Gabrowny said that they
24 shouldn't keep any explosives or items at home, and
25 testimony by Mr. Salem that Mr. Nosair told him also not to

1 keep these items at home, and the fact that these items are
2 in his work locker, away from their homes, also serves to
3 corroborate Mr. Salem and is relevant.

4 MR. PATEL: Your Honor, I believe those bullets
5 were introduced into evidence at this trial from the first
6 locker search. That item is already in evidence.

7 MR. KHUZAMI: I would have to check that, your
8 Honor. I'm not sure if there were any bullets introduced
9 from the first search.

10 MR. STAVIS: Your Honor, it was during my
11 cross-examination of detective someone or other.

12 THE COURT: I remember you came up with a box on
13 your own.

14 MR. STAVIS: That is correct. What was
15 introduced had been represented as .22 caliber bullets from
16 the work locker in the 1990 search. It was our
17 contention -- this is before the issue arose with regard to
18 Mr. Salem -- that those were carpenter nails --

19 THE COURT: OK. But then it seems to me that
20 there is no prejudice at all from introducing the smokeless
21 powder at any rate because you have an argument that says
22 that it came from the carpenter nails. The question is
23 whether those things leak or not.

24 In any event, I'm principally concerned about
25 whether it is the Uncle Charlie's business, and, if it is

1 not that, I am going to let it in.

2 MR. PATEL: Your Honor, there is also the matter
3 of, your Honor, the fact that there is a potential source of
4 this -- for lack of a better word -- contamination, from the
5 locker. That is an explanation, not necessarily a basis for
6 admission.

7 I still think the fact that there is stuff down
8 at the bottom, this minute amount of stuff is unfairly
9 prejudicial. There is also this testimony about this ring.
10 There has been no testimony that I can recall about
11 Mr. Nosair having anything to do with hand grenades.

12 THE COURT: I don't think he said "hand grenade."
13 I think he said a fuse lighter. I am sure I'm betraying my
14 ignorance of --

15 MR. PATEL: My understanding is that's the
16 technical term for some kind of military explosive device,
17 be it a hand grenade ring or whatever.

18 MR. KHUZAMI: Your Honor, I will hand up page
19 4753 of the transcript indicating that the testimony was
20 that Mr. Nosair had tried bombs.

21 THE COURT: All right. That is what it says.
22 Do you want to show it to Mr. Patel.

23 (Pause)

24 THE COURT: All right. I am going to allow the
25 testimony.

1 Get the jury.

2 MR. PATEL: Your Honor, may I approach at the
3 side bar very quickly just for a clarification.

4 (At the side bar)

5 MR. PATEL: Your Honor, Agent Veyera was involved
6 in receiving certain information, Attica records and
7 information about comings and goings --

8 THE COURT: Is that who this is?

9 MR. PATEL: Yes. I assume you are not going into
10 that at all.

11 MR. KHUZAMI: Just the seizures.

12 MR. PATEL: And any cross --

13 THE COURT: Will await his testimony about that.

14 MR. PATEL: Would be on a re-call, whether on our
15 case or some subsequent time.

16 THE COURT: OK.

17 MR. PATEL: I just wanted to make sure. I didn't
18 want to go into an area --

19 MR. KHUZAMI: He will be available.

20 MR. PATEL: Great. Thank you.

21 (Continued on next page)

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25

1 (In open court)

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: I am sorry for the delay in getting
6 started, but we had some matters to resolve. We've gotten
7 them resolved. We are now ready to go ahead.

8 Mr. Khuzami?

9 MR. KHUZAMI: Your Honor, the government calls
10 Steve Veyera as its next witness.

11 JAY STEVEN VEYERA,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 THE COURT: OK.

15 MR. KHUZAMI: Thank you.

16 DIRECT EXAMINATION

17 BY MR. KHUZAMI:

18 Q Mr. Veyera, how are you employed?

19 A I am a supervisory special agent with the Federal
20 Bureau of Investigation.

21 THE COURT: Could you speak into the microphone.

22 Point the other one towards you as well if it
23 moves. Thank you.

24 Q Could you just repeat that answer, please.

25 A I am a supervisory special agent with the Federal

1 Bureau of Investigation.

2 Q How long have you been a supervisory special
3 agent?

4 A Since early April.

5 Q What was your position prior to that?

6 A I was a special agent assigned to the New York
7 Joint Terrorist Task Force.

8 Q How long were you with the Terrorist Task Force?

9 A Approximately six years.

10 Q What was your title at that time?

11 A I was a special agent at that time.

12 Q Directing your attention to December of 1994,
13 where were you assigned at that time?

14 A I was assigned to the Joint Terrorist Task Force
15 in New York City.

16 Q In particular on December 20, 1994, did you have
17 occasion to serve a subpoena on that date?

18 A Yes, myself and other agents did.

19 Q Where did you serve that subpoena?

20 A At 111 Centre Street in the City of New York.

21 Q Whom did you serve the subpoena on?

22 A The subpoena was served on a Malcolm Rice.

23 Q Do you know who Malcolm Rice is?

24 A Mr. Rice was the facilities manager or the
25 supervisor there at the physical plant located in the Centre

1 Street building.

2 Q Do you recall what the subpoena directed Mr. Rice
3 to do?

4 A To provide the access to the lockers 13 and 14
5 that were in the mechanics' locker room in the basement of
6 the building.

7 Q Do you know whose lockers those were?

8 A The lockers previously were assigned to Mr. El
9 Sayyid Nosair.

10 Q You indicated you were with others when you
11 served the subpoena. Do you recall who those other persons
12 were?

13 A Yes. Special Agent Mike Ernst, Detective Louis
14 Napoli, Special Agent Paul Galvydis, Detective Donald
15 Sidowy, myself, and Mr. Stavis, the attorney, was present,
16 and also Mr. Rice was present.

17 MR. PATEL: I'm sorry.

18 Q Could you hold that microphone a little closer,
19 please and speak a little louder, if you could.

20 A OK.

21 Q Why don't you just quickly run through again who
22 was with you at the time you served the subpoena?

23 A Special Agent Mike Ernst, Special Agent Paul
24 Galvydis, myself, Detective Don Sidowy, Detective Louis
25 Napoli, Mr. Rice was present, and Mr. Stavis was present.

1 Q Did you in fact seize certain contents of lockers
2 13 and 14 on that day?

3 A Yes, sir, we did.

4 Q Can you describe how you gained access to the
5 lockers.

6 A We gained access through a key to unlock the
7 locks. The locks were locked when we arrived. The lock
8 shop had created a duplicate key and we unlocked the locks.

9 Q You indicated that the lockers were locked when
10 you arrived, is that correct?

11 A Yes, sir, that's correct.

12 Q Were they secured in any other way?

13 A There was a white Police Department, City of New
14 York paper seal glued across the border of the locker and
15 the frame on the left side of both lockers.

16 Q Was that seal intact at the time that you
17 arrived?

18 A Yes, sir, it was.

19 MR. KHUZAMI: Your Honor, may I approach.

20 THE COURT: Yes.

21 Q Special Agent Veyera, I wonder if you might open
22 the binder and take a look at what's been marked as
23 Government Exhibit 73A for identification. I ask you to
24 take a look at that. It is just 73A.

25 A Yes.

1 Q Do you see that?

2 A Yes, sir, I do.

3 Q Without telling us what you see, do you recognize
4 the scene that's depicted in that photo?

5 A Yes, sir, I do.

6 Q Does that photo fairly and accurately depict the
7 way the lockers 13 and 14 looked on December 20, 1994 when
8 you arrived?

9 A Yes, sir, they do.

10 MR. KHUZAMI: Your Honor, I would move Government
11 Exhibit 73A into evidence.

12 MR. PATEL: No objection.

13 THE COURT: 73A is received without objection.

14 (Government's Exhibit 73A for identification was
15 received in evidence)

16 Q Can you describe, Special Agent Veyera, what you
17 did after you opened up the lockers.

18 A After the lockers were opened, we did a view
19 quickly through just to see what the contents were, and then
20 we began examining the contents of the locker. We started
21 with locker 13 first.

22 Q What was your role in serving the subpoena and
23 reviewing the items in the lockers?

24 A My role was to assist in the collection of any
25 evidence that might be left in the locker.

1 Q What role did the others serve?

2 A Special Agent Galvydis was responsible for
3 logging, recording and taking custody of the evidence.

4 Special Agent Ernst was in charge of the overall
5 service of the subpoena, and Detective Napoli took
6 photographs. Detective Sidowy assisted me.

7 Q Did you keep a record of the items that you
8 seized from the lockers?

9 A Yes, sir, we did.

10 Q How do you do that?

11 A Special agent Ernst made a handwritten log and
12 then produced a formal report of the items that were seized.

13 Q Can you describe generally for the members of the
14 jury what items you seized from the lockers.

15 A Generally, there was some cement, some batteries,
16 some springs, a metal ring, some clothing, some newspaper
17 from the bottom of the locker and from the shelf of the
18 locker, and some tape. And there was some swabbings taken
19 of some stains inside the locker and some white powder that
20 was on the bottom of the locker.

21 Q Can you describe the clothing that you said you
22 seized.

23 A The clothing appeared to be generally like
24 work-type clothing. There was a set of gray shirt and gray
25 pants, a pair of dark blue pants, and then a light blue

1 shirt and a dark blue pants.

2 Q Can you describe the swabs that you indicated you
3 took.

4 A We took a sterile cotton swab, and there was some
5 staining on the inside of locker 14. The swab was rubbed
6 against the wall of the stain and it was then placed inside
7 a sealed in a plastic bag. Also, there was some white
8 powder that was on the floor of the locker that was selected
9 the same way with a sterile swab and placed in a plastic
10 bag.

11 Q Did you seize everything that was in the lockers?

12 A No, sir, we did not.

13 Q What items did you leave?

14 A There were several books and manuals on, as I
15 recall, it had to do with the boiler plant operations,
16 technical engineering booklets, along that line, that we did
17 not seize.

18 MR. KHUZAMI: Your Honor, may I approach.

19 THE COURT: Go ahead.

20 Q Special Agent Veyera, did you seize some
21 newspapers from the locker?

22 A Yes, sir, I did.

23 Q Can you take out of that Redweld what's been
24 marked as Government Exhibit 74A for identification. I ask
25 you if you recognize it.

1 A Yes, sir, I do.

2 Q What is it?

3 A This is the newspaper --

4 MR. PATEL: Objection.

5 A -- with a paper --

6 MR. PATEL: Objection.

7 THE COURT: There's been an objection.

8 The objection is overruled. Go ahead.

9 Q Go ahead.

10 A It's a piece of newspaper with -- accompanying a
11 piece of brown paper, like a bag stock, that I removed from
12 the bottom of locker No. 14.

13 Q How do you recognize it as the newspaper and
14 brown paper that you removed from the bottom of locker 14?

15 A The paper was marked, or the brown paper had been
16 painted over with a black paint, and which I had noted on
17 here, on the paper as well as the newspaper appeared to be
18 from the "Daily News."

19 Q What did you do after you seized it from the
20 locker?

21 A I folded it up toward the center, the edges of
22 the paper toward the center and then placed it in this
23 plastic bag. The bag was then marked by Special Agent
24 Galvydis, who took the evidence bag over to 26 Federal
25 Plaza.

1 MR. KHUZAMI: Your Honor, I would move Government
2 Exhibit 74A into evidence.

3 MR. PATEL: Objection.

4 THE COURT: Well, may I see you at the side.

5 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Are you offering these things subject
3 to connection? I don't understand what the relevance of it
4 is.

5 MR. KHUZAMI: These are items that were
6 subsequently taken to the lab and tested, and they came from
7 Mr. Nosair's locker, as the testimony indicated. These are
8 the items that had the particles of smokeless powder.

9 THE COURT: I see.

10 MR. PATEL: There is one other item that -- we
11 might as well deal with that now -- the can.

12 THE COURT: Yes.

13 MR. PATEL: I assume the government is going to
14 argue that that is a pipe bomb to be. Otherwise, it is a
15 soda can with the top taken off. There was no powder found
16 in it. Other than the top taken off, there is nothing
17 extraordinary about this other than its presence in this
18 locker.

19 MR. KHUZAMI: Your Honor, the can was at the
20 bottom of the locker. The top was cleanly sheared off about
21 half an inch down from the top, and the two pieces were
22 laying open in the locker. I think it is relevant because
23 it is usable as a container for a pipe bomb.

24 THE COURT: All right. Let's go.

25 Overruled.

1 (In open court)

2 THE COURT: The objection is overruled. 74A is
3 received. Go ahead.

4 (Government's Exhibit 74A for identification was
5 received in evidence)

6 Q Special Agent Veyera, do you know whether or not
7 the newspaper in Government Exhibit' 4A was subsequently
8 sent to the FBI lab in Washington?

9 A Yes, sir, it was.

10 Q If you would take a look in the binder of
11 photographs. Take a look at Government Exhibits 73B and C.
12 I ask you if you recognize those pictures.

13 A Yes, sir, I do.

14 Q Without telling us what is in those pictures, do
15 you recognize the scene that is depicted in them?

16 A Yes, sir, I do.

17 Q Do those pictures fairly and accurately reflect
18 the way the newspaper containing Government Exhibit 74A was
19 when you found it in the locker on December 20, 1994?

20 A Yes, it does.

21 MR. KHUZAMI: I would move Government Exhibits
22 73B and C into evidence.

23 MR. PATEL: Let me just see them. May I
24 approach?

25 THE COURT: Yes.

1 MR. PATEL: No objection.

2 THE COURT: 73B and C are received without
3 objection.

4 (Government's Exhibits 73B and 73C for
5 identification were received in evidence)

6 Q Special Agent Veyera, if you would take out of
7 the Redweld Government Exhibit 74B, I ask you --

8 THE COURT: Was that 73B or 74?

9 MR. KHUZAMI: 74B.

10 THE COURT: And C?

11 MR. KHUZAMI: Just about, your Honor --

12 THE COURT: Which exhibits were offered just now?

13 MR. KHUZAMI: I am sorry. The photographs are
14 73B and C. That is correct.

15 THE COURT: You are asking him to take out 74B?

16 MR. KHUZAMI: That's correct.

17 THE COURT: All right.

18 MR. PATEL: Your Honor, the physical items are
19 the 74 series. The photographs are the 73 series.

20 THE COURT: Thank you.

21 Q Do you recognize that, Special Agent Veyera?

22 A Yes, I do.

23 Q What is it?

24 A This is a piece of the tape that was removed from
25 the bottom of locker No. 14.

1 Q How do you recognize it as the tape that was
2 removed from locker 14?

3 A From the way it is in the original pouch as it
4 was packaged, and we put a piece of paper in to keep the
5 tape from trying to stick to itself.

6 Q Do you recognize any of the handwriting on the
7 package?

8 A Yes, sir, I do. The handwriting is that of Agent
9 Galvydis who initialed the bag and marked it as I put the
10 tape in it.

11 MR. KHUZAMI: Your Honor, I would move Government
12 Exhibit 74B into evidence.

13 MR. PATEL: Same objection, your Honor.

14 THE COURT: Same ruling. 74B is in.

15 (Government's Exhibit 74B for identification was
16 received in evidence)

17 Q Did you subsequently send the contents of
18 Government Exhibit 74B to the lab in Washington?

19 A Yes, sir, I did.

20 Q If you would take a look at Government Exhibit
21 73D in the binder, do you recognize that scene?

22 A Yes, sir, I do.

23 Q Is that the way the duct tape in Government
24 Exhibit 74B appeared when you removed it from the locker on
25 December 20, 1994?

1 A Yes, sir, it was.

2 MR. KHUZAMI: I would move Government Exhibit 73D
3 into evidence.

4 MR. PATEL: No objection.

5 THE COURT: 73D is received without objection.

6 (Government's Exhibit 73D for identification was
7 received in evidence)

8 Q Special Agent Veyera, would you now take out of
9 the Redweld Government Exhibit 74C. I ask you if you
10 recognize it.

11 A Yes, I do.

12 Q What is it?

13 A This is the newspaper that was on the top shelf
14 of locker 14.

15 Q How do you recognize it as the newspaper on the
16 top shelf?

17 A I recognize it from when I first viewed it on the
18 top shelf, there was a television listing present. It was
19 from the "Daily News." And this is the paper as I placed it
20 in the bag.

21 MR. KHUZAMI: OK. Your Honor, I would move
22 Government Exhibit 74C into evidence.

23 MR. PATEL: Same objection.

24 THE COURT: Same ruling. 74C is in over
25 objection. Go ahead.

1 (Government's Exhibit 74C for identification was
2 received in evidence)

3 Q Could you again look in the binder. Take a look
4 at the binder, I'm sorry. Take a look at what's been marked
5 as Government Exhibit 73F. I ask you if you recognize the
6 scene in that photo.

7 A Yes, I do.

8 Q Is that the way the newspaper in 74C appeared
9 when you removed it from the locker on December 20?

10 A Yes, it was.

11 MR. KHUZAMI: I would move Government Exhibit 73F
12 into evidence.

13 MR. PATEL: May I just see that.

14 MR. KHUZAMI: Sure.

15 MR. PATEL: May I have a brief voir dire, your
16 Honor?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. PATEL:

20 Q Special Agent Veyera, the photograph, does that
21 depict the way you found the newspaper or the way you
22 removed the newspaper?

23 A That depicts me removing the newspaper.

24 Q So this photograph does not reflect how you found
25 the newspaper when you first opened the locker?

1 A No, sir. That reflects my action with the
2 newspaper.

3 Q I would object, your Honor.

4 MR. KHUZAMI: Your Honor, may I approach.

5 THE COURT: Yes.

6 BY MR. KHUZAMI:

7 Q Special Agent Veyera, how was the newspaper
8 positioned when you first saw it in the locker?

9 A It was flat across the top of the locker with
10 several -- there were some items on top of the newspaper.

11 Q What did you do in removing it?

12 A As the items were removed from on top of the
13 newspaper, then the newspaper was folded from the ends and
14 from the back to front toward the middle, then folded on to
15 itself and then placed into the bag.

16 Q Are you personally depicted in that photograph?

17 A Yes, sir, I am.

18 Q What is it that you are doing?

19 A I'm folding the newspaper from the front to the
20 back after I had already folded the sides.

21 MR. KHUZAMI: Your Honor, I would renew my offer
22 of Government Exhibit 73F.

23 MR. PATEL: Same objection.

24 THE COURT: I am going to let it in only insofar
25 as it proves that 74C is the same newspaper. 73F is

1 received.

2 (Government's Exhibit 73F for identification was
3 received in evidence)

4 Q Special Agent Veyera, would you now take out of
5 the Redweld Government Exhibit 74D. I ask you if you
6 recognize it.

7 A Yes, I do.

8 Q What is it?

9 A It's a wire ring that was removed from the top of
10 locker No. 14.

11 Q How do you recognize it as the wire ring that was
12 removed from the top of locker 14?

13 A These are my notations on the bag where I removed
14 the wire ring and placed it into the bag myself and then
15 sealed it.

16 MR. KHUZAMI: Your Honor, I would move Government
17 Exhibit 74D into evidence.

18 THE COURT: Subject to connection?

19 MR. KHUZAMI: Yes, your Honor.

20 THE COURT: Subject to connection I will take it.

21 (Government's Exhibit 74D for identification was
22 received in evidence)

23 Q Special Agent Veyera, was Government Exhibit 74D,
24 the ring, sent to the lab in Washington?

25 A Yes, it was.

1 Q Lastly, if you would take out of the binder
2 Government Exhibit 74E. Do you recognize that?

3 A Yes, I do.

4 Q What is it?

5 A This is an aluminum drink can that I found in the
6 bottom of locker 14 that had the top removed.

7 Q Did you personally seize that item?

8 A Yes, I did, and placed it in the --

9 MR. KHUZAMI: Your Honor, I would move Government
10 Exhibit 74E into evidence.

11 MR. PATEL: Objection.

12 THE COURT: Overruled. 74E is received.

13 (Government Exhibit 74E for identification was
14 received in evidence)

15 Q Special Agent Veyera, the can contained in 74E,
16 is it intact?

17 A No, it's not.

18 Q How many pieces is it in?

19 A It's in two pieces.

20 Q What pieces are contained in the exhibit?

21 A The body of the can and then the top of the can
22 which had been previously removed from the can.

23 Q Is that the way you found it in the locker,
24 separated into those two pieces?

25 A Yes, this is the way I find it.

1 MR. KHUZAMI: No further questions.

2 THE COURT: Cross, Mr. Patel?

3 CROSS-EXAMINATION

4 BY MR. PATEL:

5 Q Three FBI agents and two detectives went,
6 including yourself, to search this locker, right?

7 A That's correct.

8 Q To your knowledge, when you went in there, you
9 knew that this locker had been sealed up for about four
10 years, right?

11 A Yes, sir.

12 Q It had been previously searched and items had
13 previously been seized from it?

14 A Yes, sir.

15 Q You went to 111 Centre Street to serve the
16 subpoena, which was really just a document to get you into
17 those lockers, right?

18 A Into 111, yes, sir, that is where I went.

19 Q And that is a courthouse?

20 A I'm not familiar with what building it is, as far
21 as --

22 Q You don't know that 111 Centre Street is the
23 Civil Court of the City of New York, which also has Supreme
24 Court parts in it?

25 A No, sir.

1 Q Let's see. How long have you been in the FBI
2 field office in New York?

3 A Six years.

4 Q 26 Federal Plaza is about what -- that's where
5 your office for the FBI is, right?

6 A Yes, sir.

7 Q And that's about what, three, four blocks from
8 111 Centre Street?

9 A If you say it is. I'm not real familiar with
10 that area. I very seldom work in downtown Manhattan here.

11 Q That's where your office is, though?

12 A Yes, sir.

13 Q You go to your office every once in a while?

14 A Yes, sir.

15 Q Go have lunch in Chinatown?

16 A No, sir.

17 Q Never been to Chinatown?

18 A Once.

19 Q Ever been to Canal Street?

20 A I believe I did go to Canal Street on one
21 occasion, yes.

22 Q You never took a walk up Centre Street?

23 A No, sir.

24 Q Didn't notice on that day the big sign that said
25 judge's entrance?

1 A No, sir.

2 Q Did you have to get directions to 111 Centre
3 Street?

4 A I was with the group that went there, sir.

5 Q Which one of the five of you knew how to get
6 three blocks from your office?

7 A I imagine Mr. Ernst knew. I went into the side
8 of the building. The building said, "Employee Entrance."

9 Q Employee --

10 A That is all I know.

11 Q Employee entrance?

12 A Yes, sir.

13 Q What is the name of the street that you entered
14 on?

15 A I don't know.

16 Q You know where the Criminal Court building is in
17 Manhattan?

18 A I believe I do.

19 Q That is 100 Centre Street, right?

20 A I don't know the street address.

21 Q It is the old building right across the street
22 that the Tombs used to be in, right?

23 A I don't know what the Tombs are. Sir, I'm not
24 from New York, so the names that you are saying don't mean
25 anything.

1 Q But you have been in the New York office for six
2 years in this very neighborhood?

3 A Yes, sir.

4 Q I mean, if we could look out this window, we
5 could see your office, right?

6 A Yes, sir, you could.

7 Q And if we went out in front of this building, we
8 could see 111 Centre Street, right?

9 A If you say we could, we could.

10 Q How long did it take you to get from your office
11 to 111 Centre Street?

12 A Around five, ten minutes.

13 Q You walked?

14 A Yes, sir.

15 Q That is the first time you had ever walked up
16 there?

17 A Yes, sir.

18 Q You didn't notice the sign that said "Civil Court
19 Building"?

20 A No, sir, I did not.

21 Q You went into a locker room, Mr. Rice took you
22 into a locker room, right?

23 A Yes, sir, that's correct.

24 Q You told him you wanted to see lockers 13 and 14,
25 right?

1 A Agent Ernst told him that, yes.

2 Q What exactly did Agent Ernst tell him?

3 A He showed him the subpoena, and then I don't know
4 exactly what the conversation was. Mr. Rice then led us to
5 a locker room in the basement of the building we were in.

6 Q Do you have a copy of that subpoena with you?

7 A No, sir, I do not.

8 Q Mr. Ernst took you into a room, right?

9 Excuse me. Mr. Rice took you into a room?

10 A Yes, sir, he did.

11 Q And it's a room with lockers on what, three or
12 four of the walls, right?

13 A Yes, sir, I believe all four walls.

14 Q And you have no idea whether just the mechanics
15 in the building used that locker room, do you?

16 A No, sir.

17 Q You don't know whether corrections officers,
18 police officers use that?

19 A I don't know, no, sir.

20 Q You don't know whether court officers use that
21 locker room?

22 A I do not know.

23 Q So when you say that it is the mechanics' locker
24 room, that is an assumption that you are making?

25 A That's the way it was described by Mr. Rice.

1 Q You said that a duplicate key was made in the
2 lock shop.

3 A Yes, sir, that's correct.

4 Q Is that the FBI lock shop?

5 A Yes, sir, it is.

6 Q Had you tried to get the keys from the New York
7 City Police Department?

8 A I was not involved with that part of the process.
9 I was only there to assist in the search.

10 Q You wore gloves during this search, right?

11 A Yes, sir, I did.

12 Q The reason for wearing gloves is so that you
13 don't transfer your fingerprints onto anything that you
14 touch, is that fair to say?

15 A That's one of the reasons, yes.

16 Q Did you request fingerprint examinations of any
17 of these items?

18 A No, sir, I did not.

19 Q Do you know if any of your colleagues did?

20 A No, sir, I do not know.

21 Q You were a special agent at that time, correct?

22 A Yes, sir, that's correct.

23 Q Now you're a supervisor?

24 A That's correct.

25 Q Did you see any carpenter nails in the locker?

1 Do you recall seeing that?

2 A I don't recall.

3 Q By the way, the swabs that you sent off to the
4 lab, that all came back of no interest shall we say?

5 A I don't recall them, seeing a report with any
6 finding on the swabs, right.

7 Q You went with five agents and police officers,
8 went and conducted a search, you sent some stuff down to
9 Washington, and you say you never saw a report from
10 Washington?

11 A No, sir. I saw the report. I said I don't
12 recall seeing any specific results on the swabs.

13 MR. PATEL: May I approach the witness.

14 THE COURT: Yes.

15 MR. PATEL: Thank you.

16 Q Government Exhibit 74A is the newspaper from the
17 bottom of locker 14, is that correct?

18 A I don't have it in front of me. I can't remember
19 which Exhibit 74A, B or C was.

20 Q Is that your handwriting?

21 A No, sir, that's not.

22 Q OK. Showing that --

23 A That's 74A, that's the paper from the bottom.

24 Q OK. There are also some cockroach traps?

25 A Yes, sir.

1 MR. PATEL: Can I do this from here, your Honor?

2 THE COURT: Yes. If you pull the microphone
3 over.

4 MR. PATEL: Sure. How is that?

5 THE COURT: That's fine.

6 Q Do you know when this was put, talking about 74A,
7 do you know when this was put in locker 14?

8 A No, sir, I do not.

9 Q 74B, that's the tape from the bottom of locker
10 14, right?

11 A Yes, sir, that's correct.

12 Q That kind of went around and sealed the edges of
13 locker 14, right?

14 A Yes, sir, that's correct.

15 Q Is it fair to say you have absolutely no idea
16 when that went into locker 14?

17 A That's correct.

18 Q And you have no idea whether anything that may
19 have been recovered off of that went into locker 14?

20 A That's correct.

21 Q And there's all kinds of dirt and hair and
22 cockroach parts and other pleasant stuff on there, isn't
23 there?

24 A Yes, sir.

25 Q 74C, this is from the top shelf of locker 14,

1 right?

2 A Yes, sir, that's correct.

3 Q You have no idea when this got into locker 14, do
4 you?

5 A No, sir.

6 Q This was a liner on the top of locker 14, on top?

7 A Yes, sir, that's correct.

8 Q These lockers have vents on them, don't they?

9 A Yes, sir, they do.

10 Q Those vents are above the top shelf, right?

11 A Looking by the picture, yes, sir, I would say
12 that's correct.

13 Q This metal ring, which is item 74D in evidence,
14 that was found on the top shelf of locker 14, right?

15 A Yes, sir, that's correct.

16 Q You have absolutely no idea when this was put in
17 locker 14, do you?

18 A No, sir, I do not.

19 Q You sent this can down to the lab for analysis?

20 A No, sir, I don't believe the can was submitted.

21 Q How about for fingerprints?

22 A No, sir, it was not.

23 Q You didn't want to know if Mr. Nosair had ever
24 touched this can?

25 MR. KHUZAMI: Objection to form.

1 THE COURT: Sustained.

2 Q As part of your investigation, I mean, you were
3 wearing gloves to keep evidence from being --

4 A Contaminated.

5 Q Contaminated, thank you.

6 Didn't you want to do some kind of examination of
7 this?

8 MR. KHUZAMI: Objection.

9 THE COURT: Sustained.

10 Q You didn't send it to the lab for fingerprints?

11 A No, sir, I did not.

12 Q How about for a metallurgical examination?

13 A No, sir, I did not.

14 Q How about for any kind of ballistics examination?

15 A No, sir, I did not.

16 Q Do you know how many lockers there were in that
17 room?

18 A I do not know exactly, no, sir.

19 Q But there are --

20 A There are quite a few, yes, sir.

21 Q Do you have any idea of how many people use that
22 room?

23 A No, sir, I don't.

24 Q You certainly don't know how many people have
25 used that room since those lockers had initially been

1 locked?

2 A No, sir, I don't.

3 MR. PATEL: One moment, your Honor.

4 No further questions, your Honor.

5 THE COURT: Anything else?

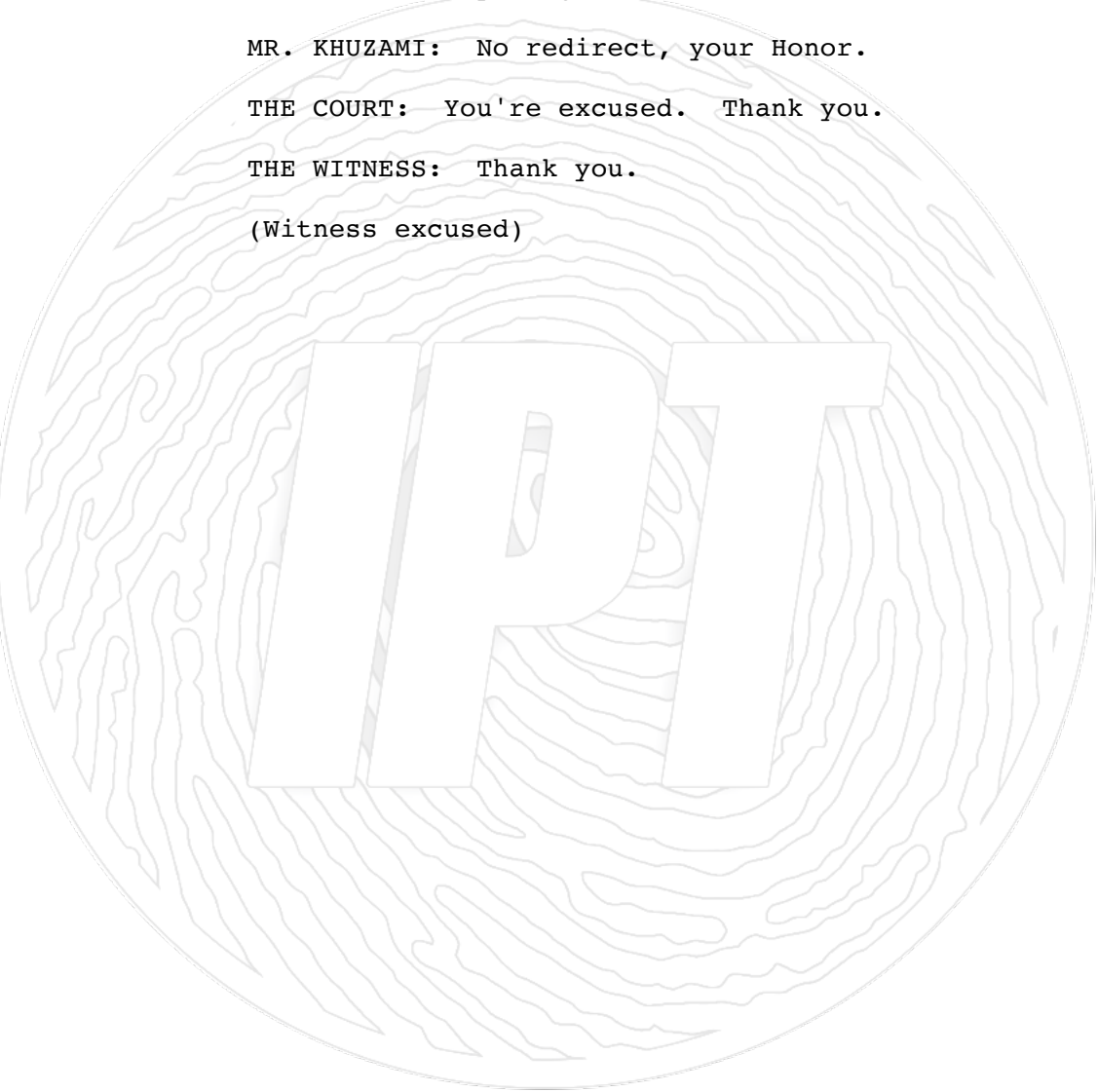
6 MR. KHUZAMI: No redirect, your Honor.

7 THE COURT: You're excused. Thank you.

8 THE WITNESS: Thank you.

9 (Witness excused)

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1 MR. KHUZAMI: The government calls Steve
2 Burmeister.

3

4 STEVEN G. BURMEISTER,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KHUZAMI:

9 Q Mr. Burmeister, if I might get you to speak into
10 the microphone so everyone can hear you.

11 Mr. Burmeister, how are you employed?

12 A I am employed as a Special Agent with the FBI in
13 Washington, D.C., and I am assigned to the chemistry
14 toxicology unit at the FBI laboratory as a forensic chemist.

15 Q Can you explain to the ladies and gentlemen of
16 the jury what a forensic chemist is and does?

17 A A forensic chemist is an individual who examines
18 materials related to criminal cases and examines the
19 chemical nature of the materials that are submitted.

20 Q How long have you been with the FBI lab?

21 A Since January of 1992.

22 Q Can you give us a brief summary of your
23 educational background and training as forensic chemist?

24 A I started off, I have a bachelor of science
25 degree in chemistry from Susquehanna University, and a

1 master of science degree in forensic chemistry as well as
2 chemistry from the University of Pittsburgh. After
3 receiving my master's degree at the University of
4 Pittsburgh, I worked for a short while at the Allegheny
5 County Crime Laboratory in the trace evidence section, where
6 I conducted the examination of explosives as well as other
7 trace material.

8 After leaving the crime laboratory, I went to
9 work for a private forensic and toxicology laboratory in
10 Pittsburgh, Pennsylvania, where I conducted forensic
11 analysis for that particular lab. While working there, I
12 worked for both the prosecution and the defense on various
13 cases, including cases involving explosives work.

14 After leaving the private practice in the
15 forensic toxicology area, I entered into the FBI in March of
16 1987 as a Special Agent, where I conducted criminal
17 investigations until entering the FBI laboratory in 1992.

18 In 1992, at the laboratory, I trained under the
19 tutelage of an experienced examiner in the area of
20 explosives analysis, continued that training, and became
21 qualified as an examiner of explosive residue as well as
22 explosives.

23 Currently I continue my work, through courses and
24 extended training and research in the areas of explosives
25 analysis, as well as attending international conferences as

1 well as domestic, and teaching courses.

2 Q Do you have any specialty within your work with
3 the FBI lab?

4 A My expertise is in the area of explosives
5 analysis, as well as the analysis residues produced after an
6 explosion takes place.

7 Q Special Agent Burmeister, have you ever heard the
8 term smokeless powder?

9 A Yes.

10 Q What is smokeless powder?

11 A Smokeless powder is a material defined as a
12 propellant, also low explosive.

13 Q What are the properties of smokeless powder?

14 A Smokeless powder, when you consider it as being a
15 low explosive, primarily it is a material that is in a
16 category where it deflagrates, and deflagration is just a
17 rapid burning of a material. When it rapidly burns, it
18 produces a gas, and that gas production causes an explosion
19 to take place. If I laid a low explosive out on the table,
20 it will rapidly burn, but you confine that material, you
21 actually have an explosion. It is mainly because it is
22 producing a gas.

23 You go into other explosives that are high
24 explosives, there you are dealing with a smoke wave that is
25 formed and produced. It is different than a low explosive.

1 Q Are there different types of smokeless powders?

2 A Yes. There is primarily three different areas of
3 smokeless powders. There's an area, one, you will have a
4 single-based smokeless powder, double-based smokeless
5 powder, and a triple-based smokeless powder.

6 There are ways of differentiating the three
7 different powders. They are mainly through the chemical
8 analysis of each one of those powders, but typically our
9 environment, what we would see normally, are single- and
10 double-based powders because the triple-based powders are
11 primarily those found in military and rocket applications,
12 so we don't usually see those.

13 Q Can you distinguish the components of
14 single-based versus double-based smokeless powder?

15 A Single-based powders are mainly composed of
16 nitrocellulose and other stabilizing materials.
17 Double-based smokeless powder is primarily composed of
18 nitrocellulose and nitroglycerin as well as other
19 stabilizing components. The triple-based powder has the
20 nitrocellulose, the nitroglycerin, and one third component
21 called nitroguanidine, as well as stabilizers.

22 MR. KHUZAMI: Your Honor, may I approach?

23 THE COURT: Yes.

24 Q Special Agent Burmeister, can you pick up what
25 has been received in evidence as Government Exhibit 74A. I

1 ask if you have seen that before.

2 A Yes, I have.

3 Q Where have you seen it?

4 A I examined this at the FBI laboratory.

5 Q How do you know that you examined that at the
6 laboratory?

7 A My initials are on it as well as other
8 identifying marks are on the package.

9 Q What condition was the item contained in Exhibit
10 74A when you received it in the lab?

11 A This is how I saw it when I received it in the
12 laboratory.

13 Q Was it sealed?

14 A Yes (indicating).

15 Q Were you or other persons at the lab requested to
16 conduct any tests on the item contained in that exhibit?

17 A The request was to examine the material to see if
18 there were any traces of explosive material on the item
19 itself.

20 Q Were in fact tests conducted?

21 A Yes.

22 Q Were you involved in that testing?

23 A Yes.

24 Q What was your role?

25 A I examined the evidence and the actual data after

1 the examination was conducted.

2 Q Were others involved as well?

3 A Yes.

4 Q What was their role?

5 A They conducted examinations of the material and
6 ran certain chemical tests on the material as well.

7 Q Can you describe the tests that you conducted on
8 the newspaper contained in Government Exhibit 74A?

9 A The initial test that was conducted was an actual
10 visual observation of the evidence itself, that is, looking
11 it over, opening it up to see if there was any
12 macroscopic -- and when I say macroscopic, is there
13 something that I can physically pick off with our naked eye.
14 The next test is to actually examine the material underneath
15 the microscope to see if there is anything microscopic on
16 the material that I can then remove and examine with
17 chemical analysis techniques or microscopic techniques.

18 Q Did you first obtain particles from that exhibit,
19 from the item contained in that exhibit?

20 A Yes. There were several particles --

21 THE COURT: Sustained as to form.

22 MR. KHUZAMI: I will rephrase it.

23 Q Did you make any attempts to collect any
24 materials from that exhibit?

25 A Yes. Like I said, the initial step is to do a

1 macroscopic examination. The next step is to actually take
2 the material and place it over a piece of paper and remove
3 anything that actually comes off of the paper itself, and
4 then examine that paper afterwards. There were several
5 particles that were removed and examined, both
6 microscopically and then chemically.

7 Q What was the result of your microscopic analysis
8 or viewing of the particles from Exhibit 74A?

9 A There were two types of particles that were
10 actually removed from the item here, and that was what
11 appeared to be a ball, a flattened ball-type smokeless
12 powder.

13 MR. PATEL: Objection, your Honor. May we be
14 heard at the sidebar?

15 THE COURT: Yes.

16 (At the sidebar)

17 MR. PATEL: Your Honor, my concern is that he
18 testified that he did the microscopic analysis but that he
19 did not do the chemical analysis. I don't know whether the
20 information or the testimony he is giving now is based
21 purely on the microscopic or is based in part on the
22 chemical analysis, which he is not competent to testify
23 about.

24 THE COURT: I understand him at this point simply
25 to be testifying to what he saw -- macro.

1 MR. PATEL: He is getting into some conclusions
2 in here and I don't know whether his conclusions are based
3 on what he subsequently reviewed or that it is something
4 that is obvious if you look at the stuff.

5 MR. KHUZAMI: I think the witness's testimony is
6 that he personally viewed the slides containing actual
7 particles and viewed them under a microscope, and then
8 reviewed the data results from certain testing that was
9 conducted by other technicians in the lab. He is competent
10 to testify about all of those items, not only what he
11 personally did but also the results of the tests, because he
12 reviewed that data and he is entitled to rely on the test
13 procedures of other technicians in the laboratory.

14 MR. PATEL: He may be able to rely, but I can't
15 cross-examine him about how these other tests were
16 performed.

17 MR. KHUZAMI: You can examine him on --

18 MR. PATEL: He didn't do it.

19 MR. KHUZAMI: He reviewed the results. All of
20 the results were contained in his report which was turned
21 over, and the you can conduct cross-examination on whether
22 or not he relied on other testers. It goes to the weight of
23 his testimony. He reviewed the results. He looked at the
24 graphs, he looked at the charts. I don't think we are
25 required to call every single technician.

1 THE COURT: Does he know the procedures for
2 conducting the tests?

3 MR. KHUZAMI: Absolutely. It is no different
4 than an expert relying on information in a book.

5 THE COURT: Sure it is. An expert relies on
6 information in a book for the purpose of drawing a
7 conclusion based on something he has done himself. Here he
8 is relying on a procedure that somebody else engaged in,
9 with a specimen that he didn't test, he didn't observe how
10 they did it, unless what they did is evident from what he
11 observed.

12 MR. KHUZAMI: I think it is the latter point that
13 is correct: it is evident based on the results that he
14 reviewed, including the graphing of the results of the
15 tests.

16 THE COURT: I am going to send the jury out. I
17 don't understand enough of this to feel comfortable making
18 the ruling.

19 (In open court)

20 THE COURT: Ladies and gentlemen, we are going to
21 take a short recess. Please keep your notes and materials
22 behind. Please don't discuss the case. We will recess for
23 a few minutes.

24 (The jury left the courtroom.)

25 (The witness was temporarily excused.)

1 THE COURT: As I said at the side, I don't
2 understand entirely what procedure was followed here. The
3 specimen is sent down to the lab, and people other than this
4 witness conduct some test; correct?

5 MR. KHUZAMI: That's correct, your Honor.

6 THE COURT: And the results are given to him in
7 what form?

8 MR. KHUZAMI: The results, I believe, are given
9 to him in mathematical analysis graphs that show how certain
10 properties were refracted and other technical results that
11 are on paper that he then reviews. He is familiar with the
12 procedures.

13 THE COURT: Are these results generated by the
14 test itself or are they prepared by other people?

15 MR. KHUZAMI: They are both. There is an
16 operator who conducts the test and records the results on
17 paper, which is then reviewed by this witness. He, in
18 addition, physically examined the properties, the items
19 themselves. I don't see how it is any different than a
20 doctor, for example, relying on an x-ray conducted by a
21 technician. He sees the results, he has worked in the lab,
22 he is familiar with the procedures, he knows the
23 qualifications of the people who conduct the test. It seems
24 to me that anything else would go to weight.

25 MR. PATEL: Your Honor, the problem with

1 Mr. Khuzami's analogy is that an x-ray is foggy or clear.
2 That is evident from the results. In other words, if you
3 have an x-ray picture that isn't good, you know that it
4 wasn't done correctly. There is no way, in my understanding
5 of how these things work, for once he gets this printout or
6 this report from spectroanalysis, or whatever, there is a
7 human element that goes into the front half of that, and
8 there is no way for him to tell, just looking at the back
9 half, whether it was done correctly.

10 THE COURT: The kind of medical evidence that he
11 is talking about generally comes in because it is usual for
12 physicians to rely on what other physicians do in the course
13 of making their diagnoses and treatment, and so forth. I
14 don't see that the same rule holds for technicians. The
15 reliance of one physician on another is something that takes
16 place outside the setting of a courtroom. This procedure is
17 something that has absolutely no reason for being conducted
18 other than in the setting of a courtroom, and therefore
19 there is no other procedure on the outside that you could
20 call on to establish the reliability of what these other
21 people did.

22 If what they did produced something physical that
23 he then looked at and can testify to, that is one thing.
24 But if what they did produced a result that they observed
25 and wrote down and that he then passes on, I don't see that

1 that isn't hearsay.

2 MR. KHUZAMI: Just to make clear, my
3 understanding is that what was done by the other technician
4 is not the result, that is, that this item is smokeless
5 powder, as would be relevant in this case. It is data from
6 tests that were performed.

7 THE COURT: Whatever it is, they conduct a test
8 and they examine the results. They write down what the
9 results are, according to their examination. They then show
10 that to him. But his testimony as to what is in their
11 results or what he concludes from their results, it seems to
12 me, is hearsay.

13 MR. KHUZAMI: One moment, your Honor.

14 THE COURT: Mr. Patel can't cross-examine him on
15 the initial test that was done, because he didn't do it.

16 MR. KHUZAMI: Your Honor, I would refer to Rule
17 703. It seems that experts are permitted to rely on --

18 THE COURT: One second. Experts as a general
19 matter?

20 MR. KHUZAMI: Yes. Rule 703.

21 THE COURT: Mr. Patel?

22 MR. PATEL: May we have just a moment, your
23 Honor.

24 (Pause)

25 MR. PATEL: Your Honor, the problem is that we

1 don't know, and I can't produce a witness to examine,
2 whether the data that he relied on -- in other words, this
3 is not data from a chart, a book, a textbook. If that is
4 what it was, we wouldn't be here, or we wouldn't be having
5 this conversation, rather. This is part of a testing
6 process which he then builds on. It seems to me it is
7 different from what Rule 703 is talking about.

8 THE COURT: I would like to take a short break
9 and take a closer look at this. I will see you in a few
10 minutes.

11 (Recess)

12 (Jury not present)

13 THE COURT: A couple of things. First of all,
14 the reports of these tests were available before trial,
15 correct?

16 MR. KHUZAMI: Yes, your Honor, they were.

17 THE COURT: They have been made available?

18 MR. KHUZAMI: Yes, your Honor.

19 THE COURT: Is this witness competent to testify
20 to the underlying tests that were conducted?

21 MR. KHUZAMI: Yes, your Honor.

22 THE COURT: That is, that the technicians
23 conducted?

24 MR. KHUZAMI: That's correct.

25 THE COURT: As I understood initially at the

1 sidebar, you had an objection based on his competence to
2 testify to chemical tests, which as I understand it are not
3 going to be introduced; is that right?

4 MR. KHUZAMI: I am sorry, your Honor?

5 THE COURT: Mr. Patel had an objection to
6 chemical tests, the chemistry, that he said this witness is
7 not competent to testify about. I think you said that that
8 kind of test was not going to be introduced; is that right?

9 MR. KHUZAMI: I am not sure what he means by
10 chemical tests. My understanding is, there were two types.
11 In addition to visual examination through the microscope,
12 there was an infrared test and a gas spectrometer test,
13 where a specimen was put in and it spits out a printout or a
14 plot of how the material reacted to the test.

15 THE COURT: And he analyzes the data?

16 MR. KHUZAMI: He analyzes the data. The
17 technician who conducts the test may arrive at certain
18 conclusions, but those conclusions are not things he relies
19 on. He reviews the data, combined with his physical
20 examination, and arrives at his own independent conclusion.

21 THE COURT: Mr. Patel?

22 MR. PATEL: My concern, your Honor, is he is
23 relying --

24 THE COURT: You are going to have to talk into
25 the microphone, please.

1 MR. PATEL: -- he is relying on the work of those
2 technicians in reaching his conclusion that this is or is
3 not what he is now testifying to. It seems to me that we
4 are missing that interim step. The analogy would be, your
5 Honor, if a doctor received a report saying that someone had
6 a .1 on a breathalyzer exam, and he comes in and testifies
7 that that person was intoxicated. But what we don't have is
8 the calibration and analysis that went into that report
9 getting in to him, which is an essential step in his
10 reaching the conclusion that the person was intoxicated.

11 THE COURT: I don't think that is the analogy. I
12 think the analogy is a technician takes a blood sample, and
13 runs a chemical test that produces a readout. The doctor
14 looks at the readout and says, based on that readout there
15 is .1, or whatever there is, and that person is intoxicated.

16 MR. PATEL: If someone does a blood test, then it
17 seems to me that I would be entitled to cross-examine the
18 person who did the actual test that the conclusion is based
19 on. He is working on a presumption of proper procedure, and
20 there is no way for me to test that or confront that.

21 MR. KHUZAMI: First of all, I believe the rule in
22 the Advisory Notes indicates that in fact as long as it is a
23 type of test or procedure that is reasonably relied upon by
24 the experts, the conclusions of other persons can in fact be
25 inadmissible, but the expert is still entitled to rely on

1 them and testify about them in court.

2 Second of all, in this particular case, counsel
3 can cross-examine this witness and it goes to weight as to
4 whether or not he knows that those machines were calibrated
5 properly, the qualifications of the technician. And, of
6 course, they can call their own expert. They have all the
7 underlying data. I don't believe it goes to admissibility
8 but only to weight.

9 MR. PATEL: I believe it does go to
10 admissibility, your Honor, and not to weight, because it is
11 a predicate for his conclusion.

12 THE COURT: "It" being what? The accuracy of the
13 reading?

14 MR. PATEL: Exactly.

15 THE COURT: And that depends upon whether the
16 machine is properly calibrated?

17 MR. PATEL: Improperly used. And what was put in
18 there and where it came from, and there is a whole series of
19 steps in there.

20 MR. KHUZAMI: I just don't think that is the
21 rule, your Honor. If independently inadmissible conclusions
22 can be relied upon by an expert, then I don't understand how
23 the fact that this witness may not be able to testify
24 personally when the last time the machine was calibrated,
25 although he may know that, why that would mean that the

1 information was not admissible.

2 MR. PATEL: The conclusions --

3 MR. KHUZAMI: These are not subjective
4 evaluations by the technicians. That might present a
5 different situation. Maybe somebody testifying about a
6 market value or something like that, although I am not sure
7 that would be inadmissible as well. These are scientific
8 tests, and this witness is reviewing the raw data and the
9 raw compilation.

10 MR. PATEL: Judge, with all due respect to
11 Mr. Khuzami, these are subjective tests that are performed
12 by human beings. This is not just some machine that spits
13 things out. There is a human factor, there is a human
14 element, and this witness has no idea what that human factor
15 was. He can say what usually happens, he can say what is
16 supposed to happen, but he doesn't know in this case what
17 actually happened. This is not just a conclusion that he is
18 relying on; this is a process.

19 MR. KHUZAMI: It is just not in the rule. Rule
20 703 is explicit. As long as it is the type of information
21 or procedure that experts reasonably rely upon, it is
22 admissible. I think the notes make it clear that it is a
23 notion of judicial economy to prevent you from having to
24 trot out every single person involved, A to Z, in an
25 expert's opinion, in the formation of the opinion. Under

1 Mr. Patel's theory, I don't think a doctor in an operating
2 room could look at an EKG monitor and could testify about a
3 cause of death if that opinion was based on what he read on
4 the monitor, because he didn't know whether or not the
5 monitor had been serviced recently.

6 THE COURT: I take it that the technicians who
7 did these tests are or would be available if Mr. Patel
8 wanted to call them?

9 MR. KHUZAMI: Absolutely.

10 THE COURT: I am going to let it in. We are
11 talking about one technician or several?

12 MR. KHUZAMI: I believe there were two
13 technicians, one for each of the two tests.

14 THE COURT: And he can testify, for example, he
15 is competent to run the test himself; right?

16 MR. KHUZAMI: That's correct.

17 THE COURT: I am going to let it in. If you want
18 to call the technician, you are free to do it.

19 I want you to elicit, however, from him the
20 underlying reliability of the information and the fact that
21 reliance is frequently placed on tests of this kind, because
22 I believe I have to make some kind of threshold finding on
23 reliability, although I am not going to make that to the
24 jury. I will make it to you at the sidebar, if you like, or
25 in my own mind, if you like, but I am not going to make it

1 to them.

2 MR. BERNSTEIN: Judge, I just want to take up a
3 matter while the jury comes back.

4 THE COURT: No. They will be in in two minutes.

5 MR. BERNSTEIN: Just this afternoon I am not
6 going to be here. I have to be in state court on something.
7 My client is prepared to waive now, assuming you take care
8 of that now, and Mr. Jacobs will sit in for me.

9 THE COURT: Is that satisfactory, Mr. Abdelgani?

10 DEFENDANT ALBEGANI: Yes.

11 MR. BERNSTEIN: Thank you.

12 STEVEN BURMEISTER, resumed.

13 (Jury present)

14 DIRECT EXAMINATION (Continued)

15 BY MR. KHUZAMI:

16 Q Special Agent Burmeister, I wonder if you might
17 pick up what has been received in evidence as Government
18 Exhibits 74B and C. I ask if you received those in the
19 laboratory as well.

20 A Yes, I did.

21 Q How do you know that?

22 A Based on my initials on both these items as well
23 as other laboratory identification numbers.

24 Q Were particles also obtained from those exhibits
25 as well?

1 A Yes.

2 Q How were those obtained?

3 A From specimen K6, it was examined
4 microscopically, and particles were actually mechanically
5 removed from the specimen. And when I say mechanically
6 removed, that is, taking a pair of forceps and looking
7 underneath the microscope, and actually physically removing
8 particles from the surface.

9 Specimen K13, items were removed off of that
10 surface and placed onto a piece of paper, and then that
11 paper was examined underneath the microscope for particles.

12 Q Did you personally review the particles taken
13 from those exhibits under a microscope?

14 A Yes, I did.

15 Q Will you describe for the jury what you observed?

16 A Under item K5, there were two types of particles
17 that were actually found. They were small, flattened,
18 ball-type particles, as well as a cylinder-type particle.

19 Under specimen K6, there was actually a
20 cylinder-type particle.

21 And under K13, there were cylinder particles
22 removed.

23 Q When you say K5, can you indicate what exhibit
24 number that is?

25 A K5 is Government Exhibit No. 74A.

1 Q And K6?

2 A K6 is Government Exhibit 74B.

3 Q And K13?

4 A K13 is Government Exhibit 74C.

5 Q Does this microscope magnify items when viewed?

6 A When we do an examination of material that is
7 removed from a specimen, the first thing that we will
8 actually do is look at it underneath the microscope. And in
9 doing so, we are looking for particles which have the
10 characteristics which we have seen before as explosives or
11 actually stand out as unusual materials. And this is
12 particles. For example, little chunks of material that look
13 like pieces of coal can sometimes be black powder. Other
14 particles that have crystal in nature, things that we would
15 look at, and looking at various chemical tests in examining
16 these particles. Certain characteristics stand out.

17 For example, smokeless powder has certain
18 physical characteristics that we can observe. Smokeless
19 powder comes from a variety of different shapes. They can
20 actually be little tiny balls very much like little BB
21 bullets, or they can be flattened balls, very much like if
22 we took a ball and pressed it down. We can have cylinders
23 that look like little cylinders, sort of like macaroni-type
24 cylinder, or we can have flake, which is an irregular-shaped
25 flake-type powder. Or actually there is another one, a

1 disk, which is a circular, looks like a flattened hamburger
2 patty.

3 These characteristics are pretty unique to
4 smokeless powder.

5 Q Did you observe any of those characteristics on
6 the particles removed from Government Exhibit 74A, B and C?

7 A Yes. The one that is 74A, specimen K5, that
8 appeared to be particles that looked like flattened balls,
9 smokeless powder, and also cylinder-type smokeless powder.
10 Specimen 74B, which is K6, had a particle that
11 looked like a cylinder smokeless powder.

12 And then specimen K13, 74C, had cylinder-type
13 smokeless powder particles.

14 Q Aside from the shape, was there anything else
15 that you observed under the microscope that led you to
16 believe that these items might be smokeless powder?

17 A Well, then the shape, size, the type of surface
18 that it actually has, led me to believe that it is not
19 typically what I would find as dirt or just normal
20 background material. These particles would then have to be
21 taken for further testing.

22 Q Did you take any photos of what you observed
23 under the microscope?

24 A I didn't personally take the photos, but photos
25 were taken of these items.

1 MR. KHUZAMI: May I approach, your Honor?

2 THE COURT: Yes.

3 Q Will you take a look at what has been marked as
4 Government Exhibit 74F-1, F2 and F3, and ask you if you
5 recognize those pictures.

6 A Yes. These are the photographs that were taken
7 of the particles that were removed from these items.

8 Q Do those photographs fairly and accurately
9 depict --

10 MR. PATEL: Objection, your Honor.

11 Q If you would not hold them -- thank you.

12 Do those photos fairly and accurately depict what
13 you personally observed under the microscope when you
14 reviewed the particles taken from Government's Exhibits 74A,
15 B and C?

16 A Yes.

17 MR. KHUZAMI: I would move Government's Exhibits
18 74F1, 2 and 3 in evidence.

19 MR. PATEL: Objection, your Honor. May I have a
20 voir dire?

21 THE COURT: Yes.

22 MR. PATEL: May I approach? Actually, to save
23 time, may I do this here, Judge.

24 THE COURT: Yes.

25

1 VOIR DIRE EXAMINATION

2 BY MR. PATEL:

3 Q The items that you observed through the
4 microscope were much smaller than the items taken in this
5 photograph, is that correct?

6 A Yes. These are magnifications of the actual
7 particles themselves.

8 Q So that the items themselves do not actually
9 appear as they appear in these photographs, do they?

10 A That's correct, yes.

11 MR. PATEL: Objection, your Honor.

12 THE COURT: Overruled. It doesn't purport to be
13 a naked-eye photograph. It is a magnified photograph.

14 MR. PATEL: Your Honor --

15 THE COURT: 74F-1, 2 and 3 are received.

16 (Government Exhibits 74F-1, 2 and 3 were received
17 in evidence.)

18 THE COURT: Go ahead.

19 (Continued on next page)

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1 MR. KHUZAMI: May I approach, your Honor.

2 THE COURT: Yes.

3 DIRECT EXAMINATION (Continued)

4 BY MR. KHUZAMI:

5 Q Special Agent Burmeister, if you might pick up
6 what's been marked as Government Exhibit 74G, let me ask
7 you, prior to your testimony today, have you had an
8 opportunity to observe what's contained in the bag marked
9 Government Exhibit 74G?

10 A Yes.

11 Q What do you recognize those items to be?

12 A Inside these little cardboard folders are glass
13 slides with the actual particles that were removed off of
14 the specimens. They were placed onto the slides, another
15 slide placed over the top of it, and taped together and
16 actually housed inside of a little cardboard folder.

17 Q Were the items in those slides in approximately
18 the same condition as they were when you were observing them
19 in the laboratory in Washington?

20 A Yes, sir.

21 Q Were those the actual items that you observed
22 under the microscope?

23 A Yes.

24 Q I would move Government Exhibit 74G into
25 evidence.

1 MR. PATEL: Your Honor, may I have a very brief
2 voir dire.

3 VOIR DIRE EXAMINATION

4 BY MR. PATEL:

5 Q The slides in 74G, did you prepare those slides?

6 A No.

7 Q Were you present when they were prepared?

8 A No.

9 Q Do you know where they were prepared?

10 A They were prepared at the FBI laboratory.

11 Q Who prepared them?

12 A They were prepared by Fred Whitehurst.

13 Q When were they prepared?

14 A I would have to review the actual case notes to
15 find out the actual day that they were prepared, but at the
16 time that the specimen was examined, the particles were
17 removed and placed onto a slide.

18 Q You didn't prepare these slides, though, am I
19 correct?

20 A The particles themselves were removed off of the
21 specimens and placed on --

22 Q Let me just stop you right there.

23 Who removed the items, the particles?

24 A The particles would have been removed by
25 Dr. Whitehurst.

1 Q What part of the examination did you do?

2 A The part of the examination that I performed was
3 actually reviewing the data that was obtained in the case,
4 reviewing these slides of the material that were reviewed,
5 recommending any additional work which needed to be done,
6 and concurring with the final report that went out.

7 Q You didn't do any of the physical examination of
8 the items that were seized and sent to the FBI lab?

9 A Yes, I did.

10 Q But only at a later stage after they had been
11 processed by others in the lab?

12 A That's correct. I physically examined the
13 individual specimens, every single one that was actually
14 physically entered into the laboratory --

15 Q But only after they were in slide form?

16 A No, I physically reviewed each one of the items.
17 Then I also reviewed each one of these specimens that was
18 prepared onto a slide.

19 Q So you looked at the newspaper, but you didn't
20 process the newspaper?

21 A That's correct.

22 Q You looked at the slide, but you didn't process
23 the slide?

24 A That's correct.

25 Q So you don't know if what's on the slide came

1 from that newspaper?

2 A I have the notes that were taken by
3 Dr. Whitehurst, who extracted the particle off of the --

4 Q Sir, you have no --

5 A -- specimen.

6 Q -- no personal knowledge of where those items
7 came from, do you? You weren't there?

8 A I was not there at the time that the particle was
9 actually removed off of the specimen. I did review this and
10 it's been within the custody and control of the FBI --

11 Q How many thousands of people work for the FBI?

12 A They don't all have access to these articles.

13 Q How many hundreds of people work in the FBI lab?

14 A Again, they don't have access to these particular
15 specimens.

16 Q Well, how many people have access to those
17 specimens?

18 A Are you saying at the time that it was checked
19 into my locker?

20 Q We can put any time frame on you want on this.
21 I'm trying to figure out -- you didn't process this stuff
22 you didn't make the slides. You are making an assumption
23 here, are you not, that what you have in your hand came from
24 that newspaper, and there's a hole in your information,
25 isn't there? You are kind of relying on the normal

1 practices of the FBI?

2 A No, we do this on other cases as well.

3 Q I assume that you do it all the time. The
4 question is: Do you, as you sit in this witness stand
5 today, have any personal information as to whether those
6 particles on those slides came from those newspapers?

7 A I have the word and notes that Dr. Whitehurst --

8 Q Dr. Whitehurst is not here. He is not
9 testifying --

10 THE COURT: May I see counsel at the side
11 briefly.

12 (Continued on next page)

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1 (At the side bar)

2 THE COURT: This is basically a chain of custody
3 problem. I will do it one of two ways: Either you will
4 establish it first, or you will make a proffer and establish
5 it later on. If you don't establish it, his testimony is
6 going to get stricken.

7 MR. KHUZAMI: Why don't we do this: Can we
8 simply admit the slides for the limited purpose that they
9 are the ones that he reviewed under the microscope from that
10 point forward?

11 THE COURT: Fine.

12 MR. KHUZAMI: I can also elicit from him regular
13 procedures in maintaining the custody of the exhibits
14 received at the lab.

15 THE COURT: That is fine, too. But it is not
16 coming in unless and until we have the dear old
17 Dr. Whitehurst, wherever he or she may be, or whoever picked
18 these things up off the newspaper.

19 MR. KHUZAMI: I understand that the exhibit
20 doesn't come in until that point, or that his testimony is
21 still admissible.

22 THE COURT: I am saying the testimony is subject
23 to being stricken unless and until you establish the chain
24 of custody.

25 MR. KHUZAMI: Is it sufficient to solicit from

1 this witness the standard chain of custody?

2 THE COURT: No. It is not enough to establish
3 the "standard chain of custody" until you establish who
4 picked it off. He will testify that they follow a standard
5 procedure. Generally, for example, in narcotics cases,
6 people stipulate to this sort of thing. They don't want to
7 stipulate. That is fine. Prove it.

8 (Continued on next page)

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IPT

1 (In open court)

2 DIRECT EXAMINATION (Continued)

3 BY MR. KHUZAMI:

4 Q Special Agent Burmeister, where were Government
5 Exhibits 74A, B and C when you first obtained them?

6 A They were at the FBI laboratory, in the
7 explosives unit at the FBI laboratory.

8 Q When you say "in the explosives unit," where were
9 they? Can you describe where in the explosives unit they
10 were.

11 A They were with Special Agent Heckman, who had
12 control of that evidence, and when I had requested to
13 actually examine that evidence, it was brought to me at the
14 FBI laboratory. So it was housed at the explosives unit in
15 their custody.

16 Q Where within the explosives unit were those items
17 housed?

18 A I am not sure exactly where he actually houses
19 that evidence. It was brought to me. They have evidence
20 storage areas themselves, whereas I have my own evidence
21 storage area, so when evidence is brought to me I place it
22 into a storage locker --

23 MR. PATEL: Objection.

24 THE COURT: Overruled.

25 He's testifying to what he does.

1 MR. PATEL: What he normally does.

2 THE COURT: Yes. What he normally does, his
3 routine practice. He can testify to that. Go ahead.

4 Q You can proceed.

5 You place it in a storage locker?

6 A Yes. When evidence comes to me, I receive the
7 evidence, and I will place it into my evidence locker, and
8 it's locked -- actually, it's two doors locked.

9 Q Who has access to that evidence locker?

10 A Only the person who has the key to it. And I
11 have a key to the locker myself, it's only one key. There
12 is another key, but that's in a locked key box which is in
13 my unit chief's office in a combination housing.

14 Q When Government Exhibits 74A, B, and C were first
15 received in the lab, do you know where they went to, in
16 which evidence locker they were placed?

17 A When the evidence originally arrived, it was sent
18 to the explosives unit under the custody of Special Agent
19 Heckman. That evidence was then brought to me for
20 examination purposes, and that is when I received custody of
21 the evidence and placed it into my evidence locker, where it
22 was locked up.

23 Q Did there come a time when you removed Government
24 Exhibits 74A, B, and C from your evidence locker?

25 A Yes, there was a need for the evidence to be

1 examined. Permission was given that Special Agent
2 Whitehurst could use the key to open up the locker and
3 extract the evidence out of the locker, which he did.

4 Q Do you know whether or not after Dr. Whitehurst's
5 examination those items were placed back in your evidence
6 locker?

7 A No. They were taken back to the explosives unit
8 and given back to Special Agent Heckman.

9 Q Did there come a time where you again obtained
10 Government Exhibits 74A, B, and C?

11 A Yes.

12 Q Whom did you obtain them from?

13 A Special Agent Heckman.

14 Q Then did you conduct tests on those items?

15 A Visual examinations of the items and actually
16 examined the particles underneath the microscope.

17 Q After you completed your testing, what did you do
18 with those exhibits?

19 A They were returned to Special Agent Heckman.

20 Q Special Agent Burmeister, after conducting the
21 microscopic examination of the particles removed from
22 Government Exhibits 74A, B, and C, were any additional tests
23 conducted?

24 A Yes. A particle from specimen K5 and a particle
25 from specimen K13 were subjected to instrumental analysis

1 techniques and further conclusions were derived from that.

2 Q Can you indicate for the jury what type of tests
3 were conducted on K5 and K13, which I believe are Government
4 Exhibits 74A and 74C.

5 A Yes. Both materials were subjected to -- it's an
6 instrumental technique called gas chromatography, mass
7 spectrometry. It is an examination of the actual chemical
8 composition of the material. That is by placing it into a
9 solvent, and then that solvent extract is placed into an
10 instrument for analysis and a result is yielded at the end
11 of it.

12 Q Before you go any further, have you personally
13 conducted tests with the gas spectrometer?

14 A Yes.

15 Q Are you trained in use of that device?

16 A Yes.

17 Q Do forensic chemists and other persons in your
18 field, including explosives experts, rely on gas
19 spectrometry to conduct tests in that field?

20 A Yes.

21 Q Are you familiar with who conducted the gas
22 spectrometry tests on Government Exhibits 74A, B, and C?

23 A We have a mass spectroscopist, his name is Ron
24 Kelly, who routinely works with this particular instrument
25 on a daily basis. He understands and knows the protocol

1 that we have for actual examination of smokeless powders.
2 He is the one that actually ran the particular powder
3 samples on the instrument.

4 Q Is he trained in the use of that equipment?

5 A Yes.

6 MR. KHUZAMI: Your Honor, I am prepared to move
7 forward from the foundation questions, if that is acceptable
8 to the court.

9 MR. PATEL: Objection.

10 THE COURT: I am going to allow it subject to
11 connection.

12 MR. KHUZAMI: Thank you.

13 Q Special Agent Burmeister, did you review the
14 results of the gas spectrometry tests done on Government
15 Exhibit 74A and 74C.

16 A Yes.

17 Q Did you conclude anything from your review of
18 those tests?

19 A Yes.

20 Q What did you conclude?

21 A The chemical analysis, the instrumental analysis
22 results, the mass spectral analysis was indicative for
23 specimen K5 -- I'm not sure offhand what Government Exhibit
24 that is,

25 Q 74A.

1 THE COURT: That is 74A.

2 A Thank you.

3 It would have been -- yielded chemicals that were
4 actually consistent for me to show a smokeless powder
5 particle.

6 Q On what do you base that conclusion?

7 A Present in the sample was nitroglycerine, also a
8 material called ethyl centralite, and also diphenylamine,
9 and also ethylate, which is a plasticizer material. These
10 components are actually materials which are not only
11 stabilizers for the actual smokeless powder particle, but
12 the nitroglycerine also is an explosive material.

13 Q Did the results from the gas spectrometry aid in
14 your conclusion that the particles obtained from
15 Government's Exhibit 74A and C were in fact smokeless
16 powder?

17 A There was an examination of the cylinder from C,
18 which yielded chemical information of a diphenylamine, which
19 is a preserver for the particular smokeless powder. Then we
20 took it one step further for some additional chemical
21 analysis information.

22 Q What additional testing was done?

23 A Both of the particles were subjected to FT-IR,
24 which is Fourier Transform Infrared Spectroscopy. It is a
25 technique for actually examining the material. You subject

1 it to a beam of infrared radiation, and you measure
2 absorbance of that radiation. It can actually yield
3 chemical information about the structural nature of a
4 material.

5 It is an excellent tool for doing nitrocellulose,
6 and nitrocellulose was present in both of those components.

7 Q Are you personally familiar with the infrared
8 spectroscopy, if I am saying that right, test?

9 A Yes, I am.

10 Q Is that a test that is relied upon by forensic
11 chemists and explosives experts in aid of their analysis and
12 research?

13 A Yes.

14 Q Are you familiar with the person who conducted
15 the particular infrared spectroscopy test on Government
16 Exhibits 74A, B, and C in this case?

17 A Yes. It was Ron Kelly.

18 Q Is Mr. Kelly trained in the use of that device?

19 A Yes.

20 MR. KHUZAMI: Your Honor, I am prepared to move
21 forward on the foundation.

22 THE COURT: Again, subject to connection. Go
23 ahead.

24 Q Did you review the results from the infrared
25 spectroscopy test?

1 A Yes, they indicated the presence of
2 nitrocellulose in the K5 and also K13 specimen.

3 THE COURT: That is 74A and 74C.

4 Q What is the significance, if any, of the presence
5 of nitrocellulose in these particles?

6 A Nitrocellulose is an explosive material, and it
7 is a component in the smokeless powders. When we talked
8 about single-, double- and triple-base smokeless powder, the
9 common denominator in each one of these three powders
10 happens to be nitrocellulose. So just strictly
11 nitrocellulose in a particular smokeless powder indicates a
12 single base. And where I have present nitroglycerine with
13 nitrocellulose, it is a double-base smokeless powder.

14 Q So the record is clear, which of the tests that
15 you have testified about were utilized in connection with
16 the analysis of Government Exhibit 74B, which is K6?

17 A That was a microscopic examination that was
18 performed on that particular specimen.

19 Q Was there any additional testing done on that
20 specimen?

21 A No. The reason for that is it was a sole piece
22 of sample. The types of chemical analysis, with the
23 instrumental work it's placed into a solvents, and it's a
24 destructive technique and it would have destroyed the
25 specimen completely. We wanted to keep it intact in its

1 nature as it is.

2 Q Based on the microscopic evaluation of Government
3 Exhibit 74B, the K6 specimen, did you reach any conclusion
4 about what it was?

5 A It has the physical characteristics of being a
6 cylinder-type smokeless powder.

7 Q As to Government Exhibit 74 -- withdrawn.

8 As to the particles obtained from Government
9 Exhibits 74A and C, what is your level of certainty that
10 those items are in fact smokeless powder?

11 MR. PATEL: Objection.

12 THE COURT: Sustained.

13 Q Based on your testing and review, could the
14 particles obtained from 74A and C be items other than
15 smokeless powder?

16 A Based on the physical characteristics that I see
17 and the chemical analysis results, they can only be
18 smokeless powder. I have never seen anything else that has
19 those characteristics on the planet that I know of.

20 Q What about the particles obtained from Government
21 Exhibit 74B?

22 A B would be the physical characteristics are very
23 unique to smokeless powder.

24 Q Based on your knowledge and experience, could the
25 particle from that exhibit be anything other than smokeless

1 powder?

2 A Based on the physical characteristics alone, it's
3 very characteristic of a smokeless powder. I am not aware
4 of anything that has those kind of characteristics.

5 MR. KHUZAMI: No further questions.

6 THE COURT: Mr. Patel?

7 CROSS-EXAMINATION

8 BY MR. PATEL:

9 Q It is Agent Burmeister, correct?

10 A Yes.

11 Q You have an undergraduate degree in chemistry?

12 A Yes.

13 Q That is a B.S. degree, right?

14 A Yes.

15 Q You obtained that in what year?

16 A That would have been in 1982.

17 Q Then you got a master's in forensic chemistry?

18 A Yes.

19 Q Is that a one-year or two-year program?

20 A That is a two-year program.

21 Q You got that in '84?

22 A That's correct.

23 Q Your dissertation had something to do with
24 explosives, is that correct?

25 A Yes.

1 Q Was it while you were in grad school or after you
2 got out of grad school that you worked in Allegheny County
3 Crime Lab?

4 A It was actually a combination. The course work
5 was conducted at the county crime lab as well. So that was
6 where the training took place. It was a dual program that
7 was in combination with the University of Pittsburgh and the
8 Allegheny County Crime Lab. The criminalists within the
9 laboratory taught you specific courses in forensic science
10 that ranged from serology examinations to firearms and tool
11 marks, to trace evidence examination.

12 Then, during the daytime -- most of these courses
13 took place at night because the instructors who were
14 criminalists were working their normal job during the day.
15 During the daytime I would be taking graduate courses at the
16 University of Pittsburgh.

17 Q Was this like a work study program?

18 A No. It is a full -- was, it's no longer in
19 existence because of disagreement with the school system. I
20 don't know how it cancelled out, but the program itself was
21 a full forensic master's-degree-level program offered by the
22 school.

23 Q You were in that program for two years doing
24 forensic work at the graduate school level, right?

25 A Yes.

1 Q Then after you got your degree in '84 you went to
2 work for the Allegheny County lab, right?

3 A For a short period, about 6 months.

4 Q Allegheny County, is that the city of Pittsburgh?

5 A It encompasses the City of Pittsburgh.

6 Q How long did you work at the lab after you got
7 out of grad school?

8 A For a short period of time.

9 Q A year?

10 A No, about six months.

11 Q Six months.

12 So you were working in and around that lab during
13 the time you were in school and after school for two and a
14 half years?

15 A For a period of six months after graduating from
16 the masters --

17 Q Your entire period of time working in the
18 Allegheny crime lab was about two and a half years, two
19 years in school, six months out of school, two and a half
20 years, fair to say?

21 A At that particular lab, yes.

22 Q Then you went to work for Pharmakon?

23 A Yes.

24 Q That's another forensic lab, right?

25 A Yes.

1 Q How long were you there?

2 A Until March of 1987.

3 Q Well, let's run the dates. You got your master's
4 degree let's say June of '84?

5 A I think it was May, but, yes.

6 Q OK. Spring of '84.

7 You went to work for Pharmakon in early in '85?

8 A No.

9 Q Or early '84?

10 A No -- approximate, yes. The exact dates I'm real
11 foggy on right now.

12 Q OK. You joined the FBI, and that's when you left
13 Pharmakon, right?

14 A That's correct, yes.

15 Q That's March of '87?

16 A Yes.

17 Q So you had been working in a forensic lab for
18 about five years, maybe longer?

19 A If that's what the calculation comes to,
20 approximate.

21 Q Specifically, you had done graduate work, your
22 dissertation was in the area of explosives, right?

23 A Explosives analysis and also residue analysis.

24 Q You don't have a Ph.D.?

25 A No.

1 Q You are not in a Ph.D. program?

2 A No.

3 Q You are not currently working on a dissertation
4 about anything to do with explosives, are you?

5 A Not for a Ph.D., but I'm currently doing research
6 for a publication on explosive residue analysis. That is
7 ongoing, continuing research at Quantico.

8 Q You joined the FBI in March of '87 and they sent
9 you off to Quantico, right?

10 A Yes.

11 Q You learn how to do all the FBI stuff that they
12 teach you how to do there, right? You are just another
13 agent?

14 A You learn how to become an agent, yes.

15 Q They send you to the Washington, Alexandria field
16 office?

17 A Yes.

18 Q Where actually is that? That's not in
19 headquarters, is it?

20 A No. It's in Alexandria, Virginia. It is near
21 where Old Town Alexandria -- it was actually in Old Town
22 Alexandria.

23 Q That's across the river from Washington, D.C.,
24 right?

25 A Yes.

1 Q How many agents are there in the Alexandria
2 office? How many were there?

3 A At the time I want to guess there might have been
4 50 agents, maybe less than that in the actual Alexandria
5 field office.

6 Q Your job when you were down there was doing the
7 stuff that any field agent does, right?

8 A I did background investigations, and then also
9 went on to white collar crime investigations.

10 Q So you're doing some surveillance, and you're
11 doing some bank record checks and stuff like that?

12 A Yes.

13 Q You're going to bank robbery crime scenes and
14 doing backup work like any other agent has to do?

15 A Yes.

16 Q It's not until five years later that they let you
17 into the FBI lab, right?

18 MR. KHUZAMI: Objection to form.

19 THE COURT: Sustained.

20 Q You were an agent for five years when you were
21 transferred to the FBI lab, is that correct?

22 A Well, a slot opened up in the FBI laboratory and
23 I applied for that position.

24 Q Had you --

25 A That particular slot pertained to actual

1 explosives analysis. That is what made that particular slot
2 appealing to me.

3 Q After working in a forensic lab for approximately
4 five years, had you applied previously to work in the FBI
5 forensic area?

6 A State that one more time. I'm sorry.

7 Q Let me withdraw that question.

8 You arrived at the FBI and you have five years,
9 you had a master's degree in forensic chemistry under your
10 belt, right? Wouldn't it be natural for you to go work
11 in the FBI lab?

12 MR. KHUZAMI: Objection to form.

13 THE COURT: Sustained.

14 Q When you went to the FBI, before you went to
15 Quantico, when you filled out the application, did you say,
16 "I want to work in the lab"?

17 A I originally had requested with the recruiter to
18 actually work in the laboratory. At that time there were no
19 positions available in the laboratory. And I recall the
20 recruiter saying that there may be a time in the future
21 where something may open up, and would you be interested in
22 becoming a special agent with the FBI? At that time it
23 seemed to appealing to me.

24 Q The short answer to my question is, yes, you did
25 apply to work in the lab when you joined the FBI?

1 A I had originally gone to the recruiter to ask if
2 there were positions in the FBI laboratory. At this time
3 they said there were no positions available in the lab, and
4 had asked me if that would be something, becoming a special
5 agent would be something I would be interested in. At the
6 time it was interesting to me.

7 Q Let's try this one more time.

8 THE COURT: Let's not.

9 MR. PATEL: OK.

10 THE COURT: Let's move on to something else.

11 MR. PATEL: All right.

12 Q Now, you are an expert for the FBI, is that
13 correct?

14 A Well, I'm knowledgeable in the area of explosives
15 an explosive residue examination.

16 Q Your job as an FBI special agent now is that you
17 work in the lab, right?

18 A Yes.

19 Q Then you write reports about what happens in the
20 lab?

21 A Yes.

22 Q Then you go out and you testify in front of
23 juries about what you did in the lab?

24 A Yes.

25 Q That is a large part of your job, traveling

1 around the country giving testimony, isn't it?

2 A Actually, for somebody in my position, the number
3 of bombing cases that actually warrant testimony is sort of
4 small compared to somebody like serology or DNA work.

5 Q How many times have you testified?

6 A Probably about 15 times.

7 Q Since 19 -- where were we? When did you join the
8 lab?

9 A '92.

10 Q '92. That's five times a year.

11 You received these items for testing,
12 Government's Exhibits 74A, B, and C?

13 A Yes.

14 Q You received a bunch of other stuff, too, didn't
15 you?

16 A There were other specimens involved in this
17 submission, yes.

18 Q There was some powder from your specimen, K1,
19 which was powder from locker 13, and you didn't find
20 anything of interest there?

21 A Well, that's one of the things, you take that
22 material that's removed, you place it underneath a
23 microscope and particle by particle you go --

24 THE COURT: The question is whether you found
25 anything of interest there, did you as to that specimen?

1 THE WITNESS: Oh, there was nothing removed that
2 warranted further examination.

3 THE COURT: All right.

4 THE WITNESS: Sorry.

5 Q You got item K2, which was clothing.
6 Again, yes or no, anything of interest?

7 A No.

8 Q Item K3, another item of clothing.
9 Yes or no. Anything of interest?

10 A No.

11 Q K4 was a swab. A swab is a Q-tip, right?

12 A I would have to double check to see that
13 specimen, but if you're saying it is a Q-tip, then I will
14 rely on what you said.

15 Q I am just asking the question.

16 A I don't know. I would have to look at that
17 particular specimen to say if it is a Q-tip or not.

18 Q It is some kind of sterile item, is that what a
19 swab usually is?

20 A Typically that's what it would be, a clean
21 surface that is void of any contamination materials. You
22 swab or wipe a particular surface and then that particular
23 material is submitted into the examination either chemical
24 or microscopic examination.

25 Q Agent, you were a field agent, you swab things

1 that look of interest to you, that you think might be
2 suspicious, is that correct?

3 A Yes.

4 Q Swab K4 had nothing of interest, is that correct?

5 A Yes.

6 Q It there was nothing of evidentiary value, would
7 that be fair to say?

8 A That I determined to be of any value.

9 Q Let me ask you that question: Did you do the
10 analysis of K4?

11 A I examined the material that was removed from it.

12 Q Does that mean you looked at it?

13 A I looked at material, yes.

14 Q Did you do any kind of chemical analysis of it?

15 A No.

16 Q Did you ask Ron to do it, or Ron Kelly, is
17 that --

18 A No.

19 Q K5 is a newspaper?

20 A Yes.

21 Q You got this plastic bag -- you actually got it
22 from someone else, right? It went to someone else before it
23 went to you, right?

24 A The original evidence was submitted into the
25 explosives unit originally under the custody of Special

1 Agent Heckman. Special Agent Heckman then brought that
2 evidence to me, which I placed it into my evidence locker.
3 It was in a sealed bag like these bags.

4 Q Was it in that bag?

5 A It was in -- for example, Government Exhibit 74C,
6 arrived to me in a condition, in this condition, in this
7 bag.

8 Q 74C is K what?

9 A K13.

10 Q Let's talk about K5.

11 A Government Exhibit 74A? K5?

12 Q Right. That arrived to you in your lab in that
13 condition?

14 A It arrived to me in this condition from Special
15 Agent Heckman.

16 Q Do you know what Special Agent Heckman had done
17 with it before you got it?

18 A No.

19 Q You said that somebody took that bag and opened
20 the bag and took the newspaper out, right?

21 A A technician did, yes.

22 Q Were you there when that happened?

23 A No.

24 Q What is the technician's name?

25 A That would be Dr. Whitehurst.

1 Q Dr. Whitehurst is a technician?

2 A He was on this particular case.

3 Q So you don't know whether the powder came from
4 the top of the paper or the bottom of the paper?

5 A Unless there is something specific in his notes,
6 which I would have to review now, that would be the only way
7 I can tell. Offhand right now, I don't know.

8 Q So the answer to my question is no, you don't
9 know, you don't know whether it came from the top of the
10 paper or the bottom of the paper?

11 A Without reviewing whether or not
12 Dr. Whitehurst --

13 THE COURT: Do you know whether it came from the
14 top or the bottom?

15 THE WITNESS: No. Not right now, no.

16 THE COURT: Thank you.

17 Q K6 I guess is Government Exhibit 74B, is that
18 right?

19 A Government Exhibit 74B, K6.

20 Q That also came to you from this other agent,
21 correct?

22 A Special Agent Heckman, yes.

23 Q Again, Dr. Whitehurst was the technician who
24 examined the actual contents?

25 A Initially, the specimen was examined by a

1 technician named Monica Knuckles.

2 Q Monica Knuckles?

3 A Yes.

4 Q She is the one who got the powder off it?

5 A No. It was Dr. Whitehurst who actually removed
6 the powder particle.

7 Q What did Monica Knuckles do?

8 A She examined the material, and it was her
9 conclusion that she didn't find anything on the particular
10 material. When Dr. Whitehurst examined the material, a
11 particle was found to be adhering to the adhesive side of
12 the piece of paper.

13 Q Monica Knuckles got the exhibit from you?

14 A No. It would have been given to her by
15 Dr. Whitehurst.

16 Q I just want to follow this for a minute.
17 Heckman gets it from where?

18 A It would have been who was the contributing
19 agency in this particular matter, the FBI.

20 Q I'm confused. You are the FBI, right?

21 A It would have been the collecting arm of the FBI
22 in the field who collected the material, sent it to the FBI
23 laboratory, and it was then sent to the explosives unit
24 where it was processed and brought to me.

25 Q When you were a field agent and you wanted to

1 send something to the lab, you put it in an envelope like
2 that, a plastic envelope, you seal it up, and you send it to
3 the lab, right?

4 A Typically, unless there was an unusual specimen.

5 Q How would you send something to the lab?

6 A The material would be sealed up and placed in a
7 particular condition that they could be mailed to the FBI
8 laboratory or personally delivered.

9 Q So, as far as you knew, this was put in the mail,
10 and it was sent by U.S. Mail to the FBI lab in Washington,
11 right?

12 A I don't know how it actually arrived at the FBI
13 laboratory.

14 Q Do you know what happens to these items after
15 they get to the mail room in the FBI headquarters building?

16 A Well, individual mail that is actually of
17 evidentiary nature is brought to the evidence control
18 center. The evidence control center logs it into their
19 computer and makes a determination which particular unit
20 that evidence is designated to go to.

21 The package is not opened at that point unless
22 there is a need to actually gain entrance into the package
23 to receive a cover letter describing what type of analysis
24 is to be performed. Contributors are supposed to put the
25 cover requesting letter on the outside so that the evidence

1 people do not have to gain entry into the box or package.

2 Q Do you know --

3 A I don't know how that was brought into the
4 laboratory in this particular condition.

5 Q So in this case you don't know whether they had
6 to open this thing in the evidence room or not?

7 A No. Special Agent Heckman is the one who
8 received it. The condition at which it was received, he
9 would know the condition. I wouldn't be on that end of
10 actually receiving the evidence, but what I was commenting
11 on is the actual typical nature on a day-to-day operation
12 how evidence is received into the laboratory.

13 Q But we don't know what happened to these actual
14 exhibits here?

15 A The time that -- I don't know how they actually
16 did --

17 Q Do you know, yes or no, what happened to these
18 exhibits?

19 A -- it from the time that they actually arrived in
20 the laboratory.

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained. Let him finish.

23 A I don't know how these items arrived into the
24 laboratory. Special Agent Heckman would be the one to
25 describe that. I can describe the condition at which I

1 received these pieces of evidence from Special Agent
2 Heckman.

3 Q I just want to stay on K6 for a while, which is
4 64B.

5 A Right.

6 Q Heckman gives it to you?

7 A Yes.

8 Q You give it to Whitehurst?

9 A No. The evidence was placed into my evidence
10 locker. Permission was granted to Special Agent Whitehurst,
11 Dr. Whitehurst, and he gained entrance into the locker and
12 obtained the evidence.

13 Q You were out of town?

14 A Yes.

15 Q Whitehurst got permission from your supervisor,
16 not from you, right?

17 A I was in touch with Whitehurst at the time, and
18 the final go ahead would have been through the supervisor,
19 yes.

20 Q Whitehurst gets a thing out of your evidence
21 locker, and you really don't know what happened to it after
22 that, do you?

23 A No, I was in touch with Dr. Whitehurst as far as
24 some of the work that he was performing.

25 Q Other than Monica Knuckles, who else handled

1 that?

2 A The only other person would have been
3 Dr. Whitehurst that I am aware of.

4 Q You were not in town when these examinations were
5 done?

6 A That's correct.

7 Q Were you in town when the examinations were done
8 on K5?

9 A No.

10 Q How about K13?

11 A No.

12 Q You weren't even in the City of Washington, D.C.
13 when this work was done?

14 A That's correct.

15 Q As to items K7 or K8 or K9, you were out of town
16 when those things were examined?

17 A By Dr. Whitehurst, yes.

18 Q You are relying on some report or what someone
19 else tells you to even know that Dr. Whitehurst examined
20 these things?

21 MR. KHUZAMI: Objection to form. What items is
22 he referring to?

23 Q The items -- well, let's see.

24 You produced a report on February 15, 1995, is
25 that correct?

1 A That would be the date I would assume, yes.

2 Q That report talks about items K1 through 13,
3 correct?

4 A 1 through 10 and 13.

5 Q The other items were not examined by your lab?

6 A They were not submitted for examination for us,
7 for chemical analysis.

8 Q But they are on your report, aren't they?

9 A You would have to show me. I don't understand.

10 MR. PATEL: May I approach, your Honor.

11 THE COURT: Yes.

12 A That is a summary list of all of the specimens,
13 and then further along there is an actual dictation with the
14 specific type of analysis that was done.

15 Q But this report that I just showed you mentions
16 all 13 items?

17 A It is a summary of all of the specimens that were
18 submitted in that matter, yes.

19 Q OK. You were not in town when these items were
20 examined?

21 A Initially examined, yes.

22 Q Let's see. Your group was asked to examine K1
23 through 10 and 13, right?

24 A Yes.

25 Q Most of the stuff had nothing of interest, it was

1 only the three items that we have here that were of
2 interest, right?

3 A That's correct, yes.

4 Q Your group was never asked to examine a soda can,
5 were you, as part of this case?

6 A Repeat that?

7 Q Were you asked to examine a soda can?

8 A I don't know. Does that have a special K number
9 to it? I don't know of a soda can.

10 Q If I may.

11 MR. KHUZAMI: Your Honor, the government will
12 stipulate that particular exhibit was not submitted to the
13 explosive unit for examination.

14 THE COURT: Fine.

15 Q Mr. Khuzami described -- perhaps you did, too.
16 Your unit is the explosives unit?

17 A No. I am assigned to the chemistry toxicology
18 unit. The explosives unit is a separate unit.

19 Q The can wasn't submitted to your unit either?

20 A I don't know that.

21 MR. KHUZAMI: So stipulated.

22 THE COURT: Fine.

23 Q Smokeless powder -- withdrawn.

24 There are two general classifications of
25 explosives: High explosives and low explosives, correct?

1 A Yes.

2 Q High explosives, I think you testified when you
3 set them off it produces a shock wave, right?

4 A That's correct, yes.

5 Q Low explosives, which are things like smokeless
6 powder, basically are materials that burn quickly and
7 produce gas?

8 A Smokeless powder is an interesting specie in the
9 sense that under the right conditions you can get smokeless
10 powder to detonate which almost mimics what would occur with
11 a high explosive. But classically speaking smokeless
12 powders are defined as propellants or low explosives, and
13 they do burn, which is a term, deflagration.

14 Q The right conditions would require a special
15 temperature?

16 A Right conditions to detonate smokeless powder?

17 Q Yes. Is there a temperature factor involved?

18 A I don't know if a temperature is necessary, but
19 there's proper loading and pressures that need to be --

20 Q In other words, it has to be tightly squeezed
21 into a small space?

22 A You need to have some sort of shock or something
23 like that to initiate it.

24 Q You found in total nine particles of what you
25 have determined to be smokeless powder here, correct?

1 A Yes.

2 Q How large a container would you have to put those
3 in for them to explode?

4 THE COURT: Those particular particles?

5 MR. PATEL: Those particular particles.

6 MR. KHUZAMI: Objection to relevance.

7 THE COURT: Sustained.

8 Q We are talking about a very small quantity of
9 material, aren't we?

10 A It's a small quantity, yes.

11 Q Could you see it with the naked eye?

12 A I think so, yes.

13 Q Could you identify it for what it was without the
14 use of a microscope?

15 A No, I don't think so.

16 Q Otherwise, it just looks like the dirt and dead
17 cockroaches that were in among the rest of the stuff?

18 A Yes.

19 Q These particles, how much do they weigh?

20 A They are extremely light. Offhand I'm not sure
21 what the actual weight would be.

22 Q So they are capable of being airborne?

23 A I really don't think they are that light that you
24 could disperse it into the air. I think if you took it and
25 threw it up, it would drop down on to the ground. They

1 wouldn't float into the air like a powder that you would
2 think --

3 Q If you brush it off from clothes, it wouldn't
4 drop necessarily like a stone, though?

5 A Well, for example, the ball smokeless powder, it
6 has a tendency to want to roll very easily. So you could
7 transfer it onto a table and it would roll across, so it
8 would drop down.

9 Q Is there any way that you can tell from the
10 analysis that you or your colleagues did as to when the
11 particles that you found got onto the items that are in
12 evidence?

13 A No, there is no way to tell that.

14 Q There is nothing unique about the nature of these
15 particles that they might not have been manufactured prior
16 to 1995 or '94?

17 A Well, there is current research ongoing right now
18 to try to do just that, to age smokeless powders. The
19 reason there are --

20 THE COURT: Is it possible to do it now?

21 THE WITNESS: Not now, no. Not that I am aware
22 of.

23 Q Cylindrical powder, those grains that you
24 described, when they are manufactured, they are manufactured
25 with a hollow inside, aren't they?

1 A Some are, not all.

2 Q Well, in order to find out just exactly what kind
3 of cylindrical powder it was, if in fact it was cylindrical
4 powder, you would have to do a cross-section, wouldn't you?

5 A No.

6 Q Did you do a cross-section?

7 A It wasn't necessary.

8 Q Did you do one?

9 A No.

10 Q I want to go back and talk about Ms. Knuckles for
11 a minute. She got the tape from Dr. Whitehurst?

12 A Yes.

13 Q She said nothing of interest, is that correct?

14 A That's what I understand, yes.

15 Q How do you understand that? Who told you?

16 A Through the notes.

17 Q Excuse me?

18 A Through the laboratory notes that were taken.

19 Q Then, when she was done with the exhibit, what
20 happened to it?

21 A She provided that back to Dr. Whitehurst.

22 Q Did he put it in his evidence locker or your
23 evidence locker?

24 A He would have been under the care and control of
25 that evidence, so he would have lock it up himself.

1 Q So it stayed with him for a while?

2 A Yes.

3 Q Then he examined it how long after Ms. Knuckles
4 examined it?

5 A I'm not sure. I would imagine it would be
6 shortly thereafter. I am not sure of that. I don't know
7 for a fact.

8 Q You don't know?

9 A Right.

10 Q Do you know if anyone else examined it between
11 the time Ms. Knuckles examined it and the time
12 Dr. Whitehurst examined it?

13 A I am not aware of anybody else doing any
14 examinations on it.

15 Q That means you don't know whether anyone did, or
16 you know that they didn't? Let me rephrase that question.

17 As you sit here today, you don't know whether
18 anyone else looked at that exhibit between the time
19 Ms. Knuckles did and Dr. Whitehurst did?

20 A That's correct, yes.

21 Q You don't know if it was in anyone else's locker,
22 right?

23 A That's correct.

24 Q How often do you clean out your locker?

25 A In what respect?

1 Q Well, you have a locker with all kinds of
2 exhibits in there, right?

3 A Yes.

4 Q You take this stuff out of your locker, right?

5 A Yes.

6 Q And you take it over to some table where you do
7 examinations?

8 THE COURT: Mr. Patel, would you come to a
9 convenient break point.

10 MR. PATEL: I can get back into this. We can
11 stop now if you want.

12 THE COURT: Ladies and gentlemen, we are going to
13 break for lunch. Please leave your notes and other
14 materials behind. Please don't discuss the case. We will
15 resume at 2 o'clock.

16 THE DEPUTY CLERK: Follow me.

17 (The jury was excused)

18 THE COURT: You may step down.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Ms. Amsterdam, are you going to be
22 absent for some period this afternoon?

23 MS. AMSTERDAM: This afternoon at 4 o'clock I'm
24 leaving, your Honor. I have a doctor's appointment.

25 THE COURT: OK. We can deal with it later on,

1 then.

2 MS. AMSTERDAM: Fine.

3 THE COURT: OK.

4 (Luncheon recess)

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AFTERNOON SESSION

2:10 p.m.

(Trial resumed; jury not present)

MR. RICCO: Mr. Ibrahim El-Gabrowny has a sprained back and is not feeling well, and he would like permission not to be here this afternoon.

THE COURT: You understand you have a right to be here, Mr. Ibrahim El-Gabrowny?

DEFENDANT IBRAHIM EL-GABROWNY: Yes.

THE COURT: I hope you feel better.

DEFENDANT IBRAHIM EL-GABROWNY: Thank you.

THE COURT: Ms. Amsterdam?

MS. AMSTERDAM: I have an appointment at 4:30 and I will be leaving around 4 o'clock, quarter after 4. My associate will be sitting in for me. However, he is not admitted to the Southern District, so I am going to have Mr. Lavine act as counsel for Mr. Khallafalla.

THE COURT: Mr. Khallafalla, is that satisfactory to you?

DEFENDANT KHALLAFALLA: Yes.

THE COURT: Thank you.

STEVEN BURMEISTER, resumed.

(Jury present)

THE COURT: Good afternoon ladies and gentlemen.

JURORS: Good afternoon.

1 THE COURT: Mr. Patel?

2 MR. PATEL: Thank you, your Honor.

3 CROSS-EXAMINATION (continued)

4 BY MR. PATEL:

5 Q Mr. Burmeister, are you familiar with carpenter
6 nails?

7 A Repeat that? Carpenter nails?

8 Q Nails. Kind of look like a small 22-caliber
9 bullet with a plastic head on them?

10 A I may be able to picture in my mind what you are
11 talking about, but unless I saw one, I wouldn't be able to
12 recognize it.

13 Q Did anyone give you one of these things to
14 analyze during this case?

15 A Not that I recall, no.

16 Q Smokeless powder is something that one can buy
17 without a license?

18 A Yes.

19 Q You mentioned on your direct testimony black
20 powder. You didn't find any black powder?

21 A No.

22 Q We also discussed that there were a total of nine
23 particles that you said had the characteristics of smokeless
24 powder.

25 A Yes.

1 Q It would be fair to say that, for example, a
2 38-caliber bullet would have many thousands of particles of
3 powder in it?

4 A Yes.

5 Q These photographs, 74F-1 through 3, the
6 enlargements of these particles, did you take these
7 photographs?

8 A No. An individual who operates our scanning
9 electron microscope photographed those particular particles.

10 Q Do you know the amount of magnification of these
11 photographs?

12 A I am not sure what the X value or the
13 magnification value is actually there. I am not sure what
14 that would be. But there is a scale in that picture in
15 millimeters, and that would be the scale that you would use
16 for the actual size.

17 Q This scale would also be magnified, wouldn't it?

18 A Well, it would all be progressively magnified.
19 If you have a scale of a known measurement, and you enlarge
20 the sample, you are also enlarging the scale, so the scale
21 is coming up at the same rate, so, yes, the scale is being
22 enlarged, but still the calibration on that scale doesn't
23 change.

24 Q So you don't know if this is a hundred times or
25 what the magnification is?

1 A Offhand I am not sure what that would be.

2 Q Is it fair to say that you weren't present when
3 items in these photographs were taken from anything?

4 A I was not there when the items were removed off
5 the specimens, yes.

6 Q You have no personal knowledge that in fact the
7 things depicted in these photographs came from those
8 specimens?

9 A Again, from what I know from the notes and
10 talking with Dr. Whitehurst, that is my information.

11 Q Before we broke for lunch, we were talking a
12 little bit about the lab itself. Now, you mentioned that
13 you had an evidence locker in the lab?

14 A Yes.

15 Q And you work in the chemical analysis section of
16 the lab?

17 A It's called the chemistry toxicology unit of the
18 FBI laboratory.

19 Q Does that comprise one room, basically, one large
20 room?

21 A The chemistry toxicology unit?

22 Q Right.

23 A Well, it's a centralized laboratory with
24 laboratory benches, and off from that are office spaces.
25 And there may be several closets or larger rooms that are

1 locked which have housing for special instruments or
2 particular evidence.

3 Q Basically, your work area where your evidence
4 locker is is under a lab bench?

5 A No, no.

6 Q The lab benches, how many lab benches are there
7 in this lab?

8 How many people do the kind of stuff that you do?

9 A Currently I am the active examiner doing
10 explosive residue examination as well as examinations of
11 explosives.

12 Q Dr. Whitehurst is no longer there?

13 A Dr. Whitehurst used to work the explosive cases
14 along with me, but he is now doing paint analysis and
15 plastics and volatile material.

16 Q And Ms. Knuckles is no longer there?

17 A She is now training to become an examiner in
18 paint analysis.

19 Q You are the only person, then, who works in this
20 lab?

21 A No, I am the only person who is doing explosive
22 examinations -- examinations of explosives and explosive
23 residues.

24 Q Are there other people who are working in the
25 same room there?

1 A There are other people that occupy the laboratory
2 but not my particular office space. I have an office where
3 I do examinations in the office.

4 Q These examinations were done in the laboratory
5 area, is that correct, to the best of your knowledge?

6 A I am not sure exactly which particular area they
7 were conducted.

8 Q Your evidence locker, that is in -- is that in
9 the lab?

10 A It's in a room that is separate from the
11 laboratory area.

12 Q In that room, other people have evidence lockers
13 as well?

14 A Yes.

15 Q How many evidence lockers are there in that room?

16 A There may be seven lockers with shelf area.

17 Q What do you mean by shelf area?

18 A Occasionally some of the people who do paint
19 analysis, since this particular space is occupied by people
20 who do paint analysis as well, and they may actually get in
21 larger pieces of evidence, such as an automobile bumper or a
22 hood to a car, this item that still needs to be locked up
23 would have to be stored on a shelf area. But the room
24 itself is locked.

25 Q You have a key to the room, right?

1 A Yes.

2 Q And all the other people who have evidence
3 lockers in that room have keys to the room?

4 A To the main door to that room, yes.

5 Q And you have a key to your evidence locker and
6 your supervisor has a key to your evidence locker?

7 A In his lockbox, yes.

8 Q When you go and retrieve a piece of evidence that
9 is in a sealed envelope, you then bring it to a work area;
10 right?

11 A Well, usually, and in this particular case the
12 evidence provided to me is in a plastic bag, like what we
13 saw, but that is housed inside of a box which is closed up.
14 So that box is then taken to my work area, the items are
15 taken out of that box.

16 Q And you didn't do the actual examinations in this
17 case, not the initial ones; correct?

18 A Right. But I recall receiving the box with the
19 evidence initially prior, or once I checked it in to my
20 evidence locker. So that's the last, prior to the actual
21 examination, I saw the box, and I placed it into the
22 evidence locker myself.

23 Q When you are working on doing an examination of
24 some piece of evidence, there are other people in the room
25 doing some variation, other examinations on other pieces of

1 evidence?

2 A Not in my room. When I have an examination that
3 I am conducting, I am usually the only person in that room
4 conducting explosive residue examination or explosive
5 examinations.

6 Q I am not limiting this to explosive residues.
7 There are other people in the room doing other kinds of
8 examinations as well; is that fair to say?

9 A No, not in my office.

10 Q What about in your lab?

11 A If it is in the -- if the work is being conducted
12 in the laboratory, there may be other examinations being
13 conducted, but that is on a case-by-case basis.

14 Q When Ms. Knuckles did her examination of the
15 tape, she wasn't in your office, was she?

16 A I don't know exactly.

17 Q You don't know where she was?

18 A Yes.

19 Q You don't know whether that tape was contaminated
20 after she examined it?

21 A You are saying contaminated. I don't know that
22 to be the case.

23 Q In other words, you don't know whether that
24 particle got on that tape after she did her examination?

25 A I am not sure how that particle got there. I

1 can't attest to that fact, other than the actual work that
2 has been done on that particular specimen.

3 Q You have no idea, you can't tell us, when any of
4 these particles got into that locker, can you?

5 A I don't know how those particles actually got to
6 that evidence. No, I have no knowledge of that, no, I can't
7 say that.

8 Q There is nothing that forensically enables you to
9 tell how they got there or when they got there?

10 A That's correct.

11 MR. PATEL: Thank you. No further questions.

12 THE COURT: Anything else?

13 MR. KHUZAMI: Just briefly, your Honor.

14 THE COURT: All right.

15 REDIRECT EXAMINATION

16 BY MR. KHUZAMI:

17 Q Special Agent Burmeister, in your experience as
18 an explosives expert have you had occasion to work with
19 bullets?

20 A On occasion I have had cases involving bullets,
21 yes.

22 Q Are you familiar with how they are constructed?

23 A Generally so, yes.

24 Q Can you explain where the powder is that is
25 contained in, let's say, a 38-caliber bullet?

1 A There is a shell portion and then you have the
2 bullet itself. The charge or the propellant that actually
3 propels the bullet portion is housed within the shell. Then
4 the bullet is actually inserted into the shell. And then
5 down on the end of the bullet is a primer, and the primer is
6 the actual portion that the hammer strikes the primer,
7 initiates a little charge inside the bullet casing there,
8 and that initiates that block of propellant, causing the
9 expansion of the gas, and it shoots out the bullet out the
10 end.

11 Q In your experience, in a bullet that hasn't
12 otherwise been altered, is powder able to leak out of the
13 back end where the primer is?

14 A No.

15 Q Is that a complete seal?

16 A That is sealed up on the back end, yes.

17 Q And how about the seal in the front where the
18 bullet enters the casing? Is that sealed as well?

19 A I don't know if there is a seal actually sealing
20 it, but it is a very snug fit and it is tight in there. And
21 the reason it is tight is to create enough pressure build up
22 within that casing so that there is a pressure, enough to
23 propel the bullet out very rapidly.

24 MR. KHUZAMI: No further questions.

25

1 RE-CROSS-EXAMINATION

2 BY MR. PATEL:

3 Q When a bullet is fired, it is fair to say that
4 not all the powder burns, is that correct?

5 A That's correct, yes.

6 Q And after the bullet has been fired, there is
7 nothing preventing that powder from falling out of that
8 bullet, is there?

9 A Most of the charge is propelled out. If you are
10 going to find a charge, it is most likely not in the casing
11 itself, it's usually in the gun barrel, or if you are up
12 against the clothing or something, it is usually deposited
13 on the clothing. It is something that has to be close by
14 the end of that barrel. That is where you usually see the
15 powder.

16 Q In the bullet itself, if there was unburnt powder
17 in the shell casing, there is nothing preventing it from
18 falling out after the bullet has been fired, is there?

19 MR. KHUZAMI: Objection to form.

20 THE COURT: Sustained as to form.

21 Q After a bullet has been fired, if there --
22 withdrawn.

23 There may be unburnt powder contained within the
24 casing, is that correct?

25 A I would say that in my experience I have not seen

1 unburnt powder in the casing. I have seen it in the gun
2 barrel or on objects that are close to the barrel after it
3 has been fired.

4 Q Have you ever examined a bullet casing for
5 unburned powder?

6 A Yes.

7 Q And you never found it?

8 A Not inside the casing, no. It has been on
9 objects that have been on the other end, because of all this
10 blowing forward out of the cartridge casing. I have seen it
11 in the barrel and on objects that are close by the barrel.

12 Q And if the seal on the bullet is not very tight,
13 the powder could leak out, could it not?

14 MR. KHUZAMI: Objection to the form.

15 THE COURT: I will allow it if he knows.

16 A The fit of the bullet into the cartridge casing
17 is a very snug fit. If it is loose enough for particles to
18 spill out of the cartridge case, most likely the bullets are
19 going to fall right out of your cartridge case.

20 Q You are talking about a metal bullet?

21 A I am sorry?

22 Q A metal bullet?

23 A Well, there's copper jacketed, there's lead
24 bullets, there's a variety. They are still tight fits.

25 MR. PATEL: No further questions.

1 THE COURT: Anything else?

2 MR. KHUZAMI: No further questions.

3 THE COURT: You are excused.

4 (Witness excused)

5 MR. KHUZAMI: The government calls Robert
6 Heckman.

7 THE COURT: Excuse me. When a witness is being
8 sworn, do not talk.

9
10 ROBERT J. HECKMAN,
11 called as a witness by the government,
12 having been duly sworn, testified as follows:

13 MR. KHUZAMI: May I proceed?

14 THE COURT: Go ahead.

15 MR. KHUZAMI: Thank you.

16 DIRECT EXAMINATION

17 BY MR. KHUZAMI:

18 Q Mr. Heckman, how are you employed?

19 A I am a supervisory special agent of the Federal
20 Bureau of Investigation.

21 Q I ask you to speak into the microphone so
22 everyone in the courtroom can hear. Thank you.

23 How long have you been a supervisory special
24 agent?

25 A For a little over four and a half years.

1 Q Do you have a current assignment at this time?

2 A Yes. I am currently assigned to the explosive
3 unit of the FBI laboratory as a hazardous devices examiner.

4 Q What are the duties and responsibilities of a
5 hazardous devices -- sorry, technician?

6 A Examiner.

7 Q -- examiner, excuse me.

8 A My duties are to examine items of evidence from
9 either bombing crime scenes or bombing-related
10 investigations in order --

11 MS. AMSTERDAM: I can't hear the witness.

12 Q Could you try speaking up, perhaps moving the
13 second microphone closer to you as well.

14 MS. AMSTERDAM: Thank you.

15 A As I was saying, it is my responsibility to
16 examine items of evidence that are sent to me in
17 bombing-related or bombing crime scene investigations, to
18 examine those items, to identify them, and to determine
19 their use in the device.

20 Q What is your educational background?

21 A I have a bachelor of science degree from Duquesne
22 University, in Pittsburgh. After graduating from college, I
23 entered on duty with the U.S. Army as an ordnance officer
24 and attended the naval explosive ordnance explosives school
25 at Indian Head, Maryland.

1 Q Excuse me. When you say ordnance, what do you
2 mean by the word "ordnance"?

3 A Ordnance applies to items of military hardware
4 used for combat, such as explosive items, artillery shells,
5 hand grenades, mines, bombs, etc., and fusing systems.

6 Q Continue with your education.

7 A OK. Well, that course is a six-month-long course
8 that I attended, which trained me, first of all, in the
9 physics of explosives, the composition of explosives, the
10 explosives that are available both military and commercial;
11 also trained me in all of U.S. and foreign military ordnance
12 that is available, and their fusing systems and functioning
13 systems. I was trained on safety disposal and "render safe"
14 procedures of ordnance. In addition to that, I was also
15 trained in the render safe and disposal of improvised
16 explosive devices as well.

17 Q Did you receive any training within the FBI as
18 well?

19 A Yes. After leaving the military -- I was on
20 active duty for a little under seven years -- I entered on
21 duty with the Federal Bureau of Investigation. After
22 completing basic agent training, I was assigned to the
23 Cincinnati division. Shortly after that, I was sent to the
24 hazardous devices school at Redstone Arsenal, which is a
25 month-long course where public safety bomb technicians are

1 trained. Following that, I worked in the field for
2 approximately twelve years as an investigator investigating,
3 among other things, bombings and bombing-related matters.

4 Q Directing your attention to January 10 of this
5 year, did you receive certain items, including a wire ring,
6 from the New York office of the FBI?

7 A Yes, I did.

8 Q Can you tell the ladies and gentlemen of the jury
9 what you did when you received those items?

10 A Well, when those items are received at
11 headquarters, they are received by a unit called the
12 evidence control center. That is the first area within the
13 laboratory that receives any evidence. At that point they
14 are logged in, and then the evidence and the case is
15 assigned to one of the units within the laboratory. If it
16 is explosive related in any way, it is assigned to the
17 explosives unit. That particular case was assigned to our
18 unit and was eventually initially assigned to me as primary
19 examiner. Upon receiving the evidence, my job is to
20 inventory the evidence and mark it with either a Q, meaning
21 question, or a K meaning known item number, and also a
22 laboratory case number.

23 MR. KHUZAMI: Your Honor, may I approach?

24 THE COURT: Go ahead.

25 Q Special Agent Heckman, I show you what was

1 received in evidence as Government's Exhibit 74A, B, and C.
2 Let me ask you if those three items are three of the items
3 that you received in connection with the materials you
4 received around January 10.

5 A Yes, they are. They all have my symbol number on
6 them.

7 Q They have your what?

8 A My symbol letters on them.

9 Q What did you do with those three items after you
10 wrote the symbol number and inventoried them?

11 A Well, there's four items.

12 Q I am sorry, referring now just to 7 A, B, and C.

13 A These four items, after I inventoried them and
14 put them in these evidence bags, marked the bags --

15 THE COURT: Three of them 74A, B, and C. Forget
16 the fourth for the moment.

17 A The three items were then conveyed over to
18 another unit of the laboratory, the chemical toxicology
19 unit, where explosive residue analyses are made. These
20 items were conveyed to Agent Steven Burmeister as an
21 auxiliary examiner, and he accepted these items on that date
22 and performed certain exams on these items, and then
23 provided his results to me.

24 Q Did there come a time when you received those
25 materials back?

1 A Yes. They were received back from Mr. Burmeister
2 upon completion of his exams, and I maintained control of
3 these items until such time as I completed my report, and
4 then transferred these back to the New York office of the
5 FBI.

6 Q Special Agent Heckman, are you familiar with an
7 item referred to as an M60 fuse lighter?

8 A Yes, I am.

9 Q What is an M60 fuse lighter?

10 A An M60 fuse lighter is a piece of military
11 equipment that is utilized for lighting a safety fuse. It
12 is utilized in explosive demolition work.

13 Q Can you describe what it looks like?

14 A It's a cylindrical item, approximately a half
15 inch in diameter, and probably about 4 to 5 inches in
16 length. It has a rod protruding from one end with a
17 circular ring in the rod.

18 Q Can you describe how it operates?

19 A Yes, I can. The opposite end from the rod --
20 MR. PATEL: Objection.

21 THE COURT: Objection overruled.

22 A The opposite end from the rod has an opening in
23 the fuse lighter. In shipment there is a plastic plug in
24 that end. You remove that plastic plug and unscrew the end
25 of the fuse lighter about two turns to release tension

1 inside. You slide the piece of time fuse into that end
2 until it seats up against the primer, which is inside the
3 fuse lighter, and then you screw down the end of the fuse
4 lighter until it locks down on the fuse, sealing it in place
5 and making it waterproof. At that point, when you are ready
6 to fire or light the fuse, there is a positive safety pin
7 that goes transversely through the end of the fuse lighter
8 where the rod protrudes, holding that rod from being pulled
9 out. You remove that pin and you grab the ring and pull the
10 ring out. As you do, it pulls the rod. There is a firing
11 pin inside the cylinder that is friction fitted into the end
12 of that rod. There is a spring around that firing pin. As
13 you pull the rod back, the spring is compressed until the
14 tension of the spring overcomes the friction holding the
15 firing pin into that rod, thereby sending the firing pin
16 home into a primer, firing the primer, a spit of flame
17 igniting the time fuse.

18 Q Have you personally used M60 fuse lighters?

19 A Yes, many times.

20 Q Do you know how, in general, one could obtain M60
21 fuse lighters?

22 MR. PATEL: Objection.

23 THE COURT: Sustained as to form.

24 Q Have you had an opportunity in your work, either
25 in the military or with the FBI, to obtain M60 fuse

1 lighters?

2 A Yes, I have.

3 Q What procedures did you follow to obtain them?

4 A The only place that I have ever been able to
5 obtain an M60 fuse lighter is from the military itself.
6 Even within the FBI, when we use them for demolition
7 procedures and training, we still have to obtain them from
8 the military system. It is the only facility for obtaining
9 those items.

10 Q I wonder if you might pick up what has been
11 marked, it is on the witness rail, marked as Government
12 Exhibit 74D, and I ask if you recognize that.

13 A Yes, I do.

14 Q What is it?

15 A This is a steel ring that was sent to me to
16 examine, and I determined that this ring is an M60 fuse
17 lighter ring.

18 MR. PATEL: Objection.

19 THE COURT: Overruled.

20 Q Did you receive that as part of the same shipment
21 that you testified to earlier?

22 A Yes, I did.

23 Q Is this ring, as you see it today in Government's
24 Exhibit 74D, in substantially the same condition as it was
25 when you received it in the FBI lab in January?

1 A Yes, it is.

2 Q Did you see anything on the container that you
3 recognize?

4 A Yes, my laboratory number, my symbol numbers, and
5 the K number that I put on the bags is on it.

6 MR. KHUZAMI: Your Honor, I would move
7 Government's Exhibit 74D in evidence.

8 MR. PATEL: Objection, your Honor.

9 THE COURT: Overruled.

10 MR. PATEL: May we be heard?

11 THE COURT: Yes.

12 (At the sidebar)

13 MR. PATEL: Your Honor, we have here what I call
14 a classical example of someone coming in and testifying, "I
15 killed a grizzly bear with a pencil. Here is the pencil."
16 We have gone from a ring to a whole fuse lighter which is
17 only available in the military. The small piece of evidence
18 is now completely out of proportion. I move to not only
19 exclude this but strike this witness's testimony.

20 MR. KHUZAMI: I don't know that I understand the
21 objection.

22 THE COURT: Neither do I.

23 MR. PATEL: I am sorry. This went from being a
24 ring that was consistent with a hand grenade or some kind of
25 explosive device. Now we have this whole fuse mechanism

1 coming into evidence.

2 THE COURT: I don't know whether this witness
3 knows what he is talking about or not. He has testified
4 that this thing is an M60 fuse lighter ring. He has
5 testified to the way the M60 fuse lighter works. He has
6 testified you get it from the military. If you want to
7 cross-examine him on whether it is some plain old metal ring
8 that you could buy at the five-and-dime, then fine.

9 MR. PATEL: OK. I understand.

10 THE COURT: So far, all I know is that we have
11 this whizbang expert who testifies that this thing, he
12 swears to God, is an M60 fuse lighter ring.

13 MR. PATEL: OK.

14 (In open court)

15 THE COURT: 74D is received. Go ahead.

16 (Government Exhibit 74D was received in
17 evidence.)

18 Q Special Agent Heckman, did you conduct any tests
19 of the ring contained in Government Exhibit 74D?

20 A Yes, I did.

21 Q Can you tell us what you first did?

22 A Well, the first thing I did is to examine it
23 visually, to look at it and compare it to a known M60 fuse
24 lighter pull ring. I compared it side by side for shape and
25 size, color, and the amount of twist of the wire or amount

1 of rotation of the wire. Secondly, I measured it with a
2 micrometer, measuring the diameter of the wire and the inner
3 and outer diameter of the ring itself, and compared that to
4 a known standard and measured that as well, and it compared
5 within tolerance to the known standard.

6 Q You mentioned that you compared it to a known
7 standard. What do you mean by the term "known standard"?

8 A Well, I obtained an actual known M60 fuse lighter
9 and removed the ring from that fuse lighter and compared it
10 side by side to this ring and then measured both.

11 Q Where did you obtain the known standard from?

12 A We have an explosive reference file in our
13 laboratory, which is both text material and actual items.
14 We have one of every explosive wrapper, explosive accessory
15 and component that is made in the United States.

16 MR. KHUZAMI: May I approach, your Honor?

17 THE COURT: Yes, go ahead.

18 Q Special Agent, I believe if you would open up
19 what is contained in the bag marked Government Exhibit
20 74D -- excuse me -- 74G. I may have the wrong number. The
21 items that you have in your hand.

22 A 74H.

23 Q 74H, excuse me. I ask you if you recognize it.
24 Don't pull it out. Just take a look at it through the bag,
25 if you would.

1 A Yes, I do.

2 Q Have you had an opportunity to look at that
3 before your testimony here today?

4 A Yes, I did.

5 Q What do you recognize that to be?

6 A This is the --

7 MR. PATEL: Objection, your Honor.

8 THE COURT: Overruled.

9 A This is the actual known standard that I used to
10 compare the ring that was sent to me for examination.

11 Q How do you recognize that particular item as the
12 known standard you used in your examination?

13 A This is the --

14 MR. PATEL: Objection.

15 THE COURT: Overruled. Go ahead.

16 A -- the same item that I -- well, this is the item
17 that I sent to you in your office upon your request, the
18 same one you showed to me when I was in your office.

19 Q Did you place that item in that package?

20 A Yes, I did.

21 MR. KHUZAMI: Your Honor, I move Government
22 Exhibit 74H into evidence.

23 MR. PATEL: Objection, your Honor.

24 THE COURT: Overruled. 74H received.

25 (Government Exhibit 74H was received in

1 evidence.)

2 Q Special Agent Heckman, you indicated the first
3 thing you do is compare the shape with the wire ring you
4 received in January -- withdrawn.

5 You indicated that you examined the shape of the
6 wire ring contained in Government Exhibit 74D. Is there
7 anything about the shape that supported your conclusion that
8 the ring came from an M60 fuse lighter?

9 A Well, it is the same shape as the M60 fuse
10 lighter, but the main thing is the fact that the wire
11 overlaps only half a turn, in other words, one-and-a-half
12 revolution turn of wire, which is consistent with an M60
13 fuse lighter ring, as opposed to any other similar type ring
14 that I am experienced with, like, for instance, a key ring.
15 Key rings generally have a greater overlap than that.

16 Q You indicated that the color of it was also
17 something that you indicated --

18 MR. PATEL: Objection.

19 THE COURT: Overruled.

20 Q -- that supported your conclusion that this was a
21 wire ring of an M60 fuse lighter.

22 THE COURT: He didn't say supported his
23 conclusion. He said one of the things he looked at.

24 Q I will rephrase it.

25 Was there anything about the color of the wire

1 ring that led you or supported your conclusion that this was
2 a wire ring from an M60 fuse lighter?

3 A Yes. The fact that it is coated in an olive drab
4 color would generally indicate that it is probably military.
5 That is a very common color of military equipment in
6 ordnance because it is easily concealable in the bush, and
7 so forth.

8 Q In connection with your examination, did you
9 obtain any specifications on the manufacture of M60 fuse
10 lighters?

11 A Yes, I did. I contacted the AMC Com, which is
12 the Army Materiel and Chemical Munitions Command in Rock
13 Island, Illinois, and asked them for the military spec on
14 this particular ring. All items of ordnance within the
15 military system have a specification for their construction,
16 size, and I received the military spec on this which gave me
17 the specifications of diameter of the ring, the number of
18 turns, and the diameter of the wire.

19 Q Did these specs dictate the color requirement?

20 A Yes. They also did dictate that the ring would
21 be coated chemically to give it an olive drab appearance.

22 (Continued on next page)

23

24

25

1 Q Is the wire rim in fact coated in an olive drab
2 color?

3 A Yes, it is.

4 Q You indicated that the twist is also something
5 you looked at, is that correct?

6 A Yes.

7 Q What do you mean by "the twist"?

8 A Well, if I can open this up, this ring is
9 basically a piece of wire that is turned in a circular
10 motion. It is turned one time and a half revolution again
11 so you have a half overlap. The specification itself
12 specifies it will be a one-and-a-half-turn wire.

13 Q You also indicated that you measured the ring
14 with a micrometer, is that correct?

15 A That's correct.

16 Q What is a micrometer?

17 A A micrometer is a measuring tool that measures
18 diameters, or internal -- the other tool I used was a
19 caliper, which measures the internal diameter of something.

20 Q Once you obtained those measurements, did you
21 compare those measurements to anything else?

22 A Well, yes, I did. I compared them to the known
23 standard, which I also measured with the same tool, and then
24 later on I compared them to the mil. spec that I received.

25 Q By "mil. spec," you mean military specification?

1 A Military specification, correct.

2 Q What were the results of your comparison of the
3 measurements of the wire ring with the known standard and
4 with the military specifications?

5 A The measurements of the wire ring sent to me
6 compared very closely to the measurements of the known
7 standard, and comparison to the military spec they were
8 within the parameters of the spec, taking into consideration
9 the fact that it was not brand-new.

10 Q Which particular measurements did you take of the
11 wire ring?

12 A I measured first the diameter of the wire to see
13 how thick the wire was. Secondly, I measured the inner
14 diameter of the ring itself, the diameter on the inside, and
15 I measured the outer diameter. The military spec only gives
16 an inner diameter and a diameter of the ring, but on the
17 known standard I measured both inner and outer and compared
18 those as well as the diameter of the wire itself.

19 Q Based on your analysis, Special Agent Heckman,
20 and your experience, is the wire ring, Government Exhibit
21 74D, have you ever seen such an item in anything other than
22 on an M60 fuse lighter?

23 MR. PATEL: Objection.

24 THE COURT: Sustained.

25 Q Based on your analysis, the wire ring in

1 Government Exhibit 74D, could it be anything other than a
2 wire ring from an M60 fuse lighter?

3 MR. PATEL: Objection.

4 THE COURT: Sustained.

5 MR. KHUZAMI: No further questions, your Honor.

6 At this time I would ask for an opportunity to
7 publish to the jury the wire ring and the known standard
8 example.

9 THE COURT: All right.

10 MR. PATEL: Your Honor --

11 THE COURT: Yes.

12 MR. PATEL: -- as to the standard, I have no
13 objection to the portion that he compared, but I would
14 object to the whole item being published.

15 THE COURT: All right. May I see the item?

16 MR. KHUZAMI: Yes, your Honor.

17 THE COURT: Thank you.

18 May I see counsel at the side briefly.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: The objection is what, that it is
3 going to be inflammatory to show them what the thing looks
4 like?

5 MR. PATEL: Yes.

6 THE COURT: He's already testified how it works.

7 MR. PATEL: Bad news twice is still bad news.

8 THE COURT: I understand that. For the record,
9 what you are talking about is an item that is, I would say,
10 approximately 6 inches in length, counting the ring, and
11 consists of a ring through a metal cylinder, actually a
12 metal rod, embedded in what looks like a piece of plastic
13 with serration at both ends colored olive drab. It is not
14 very inflammatory looking, and he has testified as to how it
15 works.

16 MR. PATEL: This truly is an inflammatory item,
17 your Honor.

18 THE COURT: Thank you. The objection is
19 overruled.

20 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is overruled. Go
3 ahead.

4 (Government Exhibits 74H and 74D were published
5 to the jury)

6 MR. PATEL: Your Honor, may I?

7 THE COURT: Yes, please, Mr. Patel.

8 CROSS-EXAMINATION

9 BY MR. PATEL:

10 Q You said that Items 74A, B, and C, the stuff
11 right there, the newspaper and the tape, you initially
12 received that from the inventory control unit, or control
13 center, have I got the right term there?

14 A Evidence control center.

15 Q Evidence control center.

16 It was conveyed, I believe was the term you used,
17 from you to Special Agent Burmeister?

18 A That's correct.

19 Q Does that mean you brought it over to him?

20 A Either myself or my technician.

21 Q Do you remember who that was?

22 A I don't specifically remember whether I
23 personally brought it over or my technician did.

24 Q When was it brought over?

25 A I would have to look on the evidence control

1 sheet that I don't have with me, but it would have been
2 probably that day or the next day. There would be no reason
3 for me to hold onto it.

4 Q Where was it kept prior to it being brought over
5 to Special Agent Burmeister?

6 A It was kept under lock and key in my examination
7 area.

8 Q You said you had a technician that works with
9 you, is that correct?

10 A That's correct.

11 Q Who is that?

12 A The technician? His name is Mr. Rogers.

13 Q I'm sorry?

14 A Mr. Rogers.

15 Q Mr. Rogers.

16 You said you did a visual examination?

17 A That's correct.

18 Q That means you looked at it?

19 A Yes.

20 Q It had a shape that caught your attention?

21 A Yes.

22 Q It's round?

23 A Yes.

24 Q I mean, that is the shape, it's round, am I
25 right?

1 A That's correct.

2 Q There is nothing terribly unusual about round
3 pieces of wire, is there?

4 A No, not necessarily.

5 Q Round wire is used as pipe clamps, key rings, all
6 sorts of uses, right?

7 A Yes.

8 Q You measured this with a Starrett micrometer, is
9 that right?

10 A Micrometer and caliper, yes.

11 Q Starrett that is the name of the manufacturer of
12 the tool, right?

13 A That's correct.

14 Q This is basically just a ruler that measures
15 thicknesses, right?

16 A Yes, it's a precision instrument.

17 Q It's a good ruler?

18 A If you want to put it that way, yes.

19 Q I'm just trying to -- that's what it is, right?

20 A Yes.

21 Q You measured the thickness of the wire from the
22 ring on 74D, right?

23 A That's correct.

24 Q Did you measure the wire thickness of 74H?

25 A Yes, I did.

1 Q You also compared this with the standard, the
2 drawing you got from the Army, right?

3 A That's correct.

4 Q This wire is thicker than the other ones, isn't
5 it?

6 A Pardon me.

7 Q Thicker, not much, but it's thicker?

8 A About a thousandth of an inch or a hundredth of
9 an inch.

10 Q A hundredth of an inch about?

11 A About that, yes.

12 Q These things are made to very tight tolerances,
13 aren't they?

14 A Well, they have to be made to a tolerance so that
15 the ring will fit through the hole in the pull rod.

16 Q Again, the inner diameter of this is -- "this"
17 being 74D -- is larger than the known sample?

18 A Very slightly larger, yes.

19 Q You said that the military requirement required
20 that it be coated in some kind of olive drab color, right?

21 A That's correct.

22 Q Did you send this to the paint examination lab to
23 determine the chemical composition of the coating?

24 A No, I did not.

25 Q That is in the same unit, right there, with

1 Mr. Burmeister? There are people right there to do that,
2 right?

3 A Well, it's a different unit, but it's in close
4 proximity.

5 Q Same room?

6 A No, it is a different room.

7 Q Same hall?

8 A Yes.

9 Q This thing -- that is, 74H, the M60 fuse
10 lighter -- when you activate this thing -- by the way, this
11 one is silver in color, right?

12 A No, it isn't.

13 Q This one?

14 A Yes.

15 MR. PATEL: May I approach.

16 THE COURT: Yes.

17 A It's been worn off, but there is specks of the
18 olive drab paint still upon it. It was originally, but now
19 it is quite old.

20 Q Now it's silver in color.

21 You haven't had any examinations done on this
22 paint for comparison purposes?

23 A No.

24 Q When you activate this device, in some way you
25 pull this ring and the pin comes out, right?

1 A No, you remove the pin first.

2 Q Which?

3 A The safety pin.

4 Q You pull this pin out?

5 A And that enables you to pull the pull rod out
6 with the other pin.

7 Q Let's cut to the chase?

8 When I pull the ring, you end up with a pin on
9 it?

10 A Pardon?

11 Q You end up with a pin on the ring when you
12 activate this device?

13 A The firing pin.

14 Q Yes.

15 A Right.

16 Q In other words, this metal part comes out of the
17 plastic part, and you have two devices, one that's green and
18 probably about to explode, and one that's metal and headed
19 with you south?

20 A No, they don't separate. The rod is captive. It
21 only goes just so far.

22 Q It only goes so far?

23 A Far enough to compress the spring to overcome the
24 friction fit of the firing pin.

25 Q So this would stay as one unit when you activated

1 this device?

2 A That's correct.

3 Q There's no pin or device on Government Exhibit
4 74D?

5 A That's correct.

6 Q Did you send this device to the -- you have a
7 tool marking examination unit in the FBI lab, don't you?

8 A Yes.

9 Q Did you send this down to see if there was any
10 kind of marks from any kind of contact with any other metal
11 surface?

12 A No, I did not.

13 Q Rings like this, you can get them in any hardware
14 store or Army-Navy store, right?

15 A Rings like that?

16 Q Yes.

17 A Not to my knowledge, no.

18 Q Have you gone and looked?

19 A I have been to Army-Navy stores, yes.

20 Q And you have never seen a ring like this?

21 A No, I haven't.

22 Q Not on like any kind of dummy device of any kind?

23 A The only ring that I have seen that is even close
24 to that is a hand grenade fuse safety pin ring, and it's
25 different than that.

1 Q In what way is it different?

2 A Well, the wire is about a good twice the
3 diameter. The diameter of the ring is quite larger than
4 that.

5 Q What about a key ring?

6 Have you seen key rings about this size and
7 shape?

8 A Key rings are about that size, and as far as the
9 inner diameter of the ring, yes, but I have never seen a key
10 ring that only had a one and a half turn to it.

11 Q Your specialty is in explosives, not in key
12 rings, is that correct?

13 A That's correct.

14 Q What other kinds of tests were performed on this?

15 A Other than measuring it and comparing it
16 physically, none.

17 Q That's it. Just the physical comparison?

18 A That's correct.

19 Q You say that these are available -- this is a
20 military item?

21 A Yes, it is.

22 Q In the military would it be fair to say that such
23 devices were fairly broadly distributed?

24 A Yes, I think you could say that.

25 Q Certainly you could get something like this at

1 Fort Bragg?

2 A Yes, but you couldn't purchase it.

3 Q No, but they have them down there?

4 A Yes.

5 Q Going back to those items for a minute, after you

6 gave them to Special Agent Burmeister, you don't know what

7 actually happened to them, do you?

8 A No, I don't.

9 Q You don't know how many other people may have
10 looked at them or where they were stored?

11 A No, they were under Mr. Burmeister's control at
12 that time.

13 Q My understanding is for part of that time he was
14 not in the lab, he was out of town, is that correct?

15 A To my knowledge, that's correct.

16 MR. PATEL: May I have a moment, your Honor.

17 THE COURT: Yes.

18 (Pause)

19 MR. PATEL: Nothing further, your Honor.

20 Thank you.

21 THE COURT: Anything else?

22 MR. KHUZAMI: No redirect, your Honor.

23 THE COURT: You are excused.

24 Thank you.

25 (Witness excused)

1 MR. KHUZAMI: Your Honor, the government calls
2 Malcolm Rice as its next witness.

3 MALCOLM RICE, JR.,

4 called as a witness by the Government,
5 having been duly sworn, testified as follows:

6 THE COURT: Try to keep your voice up, please.

7 THE WITNESS: Sure.

8 THE COURT: Thank you.

9 BY MR. KHUZAMI:

10 Q Mr. Rice, I wonder if you might move the
11 microphone a little closer to your mouth so everyone in the
12 courtroom can hear you. Thank you.

13 A You're welcome.

14 Q Mr. Rice, how are you employed?

15 A I am a senior stationery engineer with the New
16 York City Department of General Services.

17 Q How long have you had that position?

18 A Since 1988.

19 Q Where is that located?

20 A At 111 Centre Street, New York.

21 Q Do you know an individual by the name of El
22 Sayyid Nosair?

23 A Yes.

24 Q Do you see him in the courtroom today?

25 A Yes.

1 Q Can you point him out and indicate what he is
2 wearing.

3 A The second man over there. He's wearing a suit
4 with a reddish tie.

5 THE COURT: Indicating Mr. Nosair. Go ahead.

6 Q How is it that you know Mr. Nosair?

7 A We worked together for a couple of summers at 111
8 Centre Street.

9 Q Did he ever work for you?

10 A Yes.

11 Q Were you his supervisor?

12 A Yes.

13 Q Do you know whether or not Mr. Nosair ever had a
14 locker or lockers assigned to him at 111 Centre Street?

15 A Yes, he had two lockers in the locker room there.

16 Q Do you remember what those numbers are?

17 A No. 13 and No. 14.

18 Q Directing your attention to November of 1990, do
19 you recall whether or not the lockers were searched at that
20 time?

21 A Yes, they were.

22 Q Do you recall whether or not they were sealed
23 after they were searched?

24 A They were sealed with tape and padlocks.

25 Q Do you recall the locker being searched a second

1 time in approximately December of 1994?

2 A Yes.

3 Q Between November of 1990 and December of 1994,
4 were those lockers sealed?

5 A Yes, they were.

6 Q Did those locks that were on in November of 1990
7 remain on through December of 1994?

8 A Yes.

9 Q Were there also paper seals on those lockers?

10 A Yes.

11 Q To your knowledge, at any time were those paper
12 seals broken?

13 A No, they were not, no.

14 Q To your knowledge, at any time did anyone else
15 enter those lockers?

16 A No.

17 Q Were any other employees ever assigned those
18 lockers?

19 A No.

20 MR. KHUZAMI: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q Mr. Rice, I wonder if you might pick up what is
23 in that clear plastic bag marked Government Exhibit 74D.

24 Do you see that? I wonder if you might open that
25 up and take out the ring that is inside. Have you had an

1 opportunity to see that ring before your testimony here
2 today?

3 A I observed when they searched the lockers, they
4 took this out of the locker, something that looked like this
5 anyway.

6 Q Can you tell the ladies and gentlemen of the jury
7 what type of equipment is contained at 111 Centre Street?
8 Let me withdraw that question.

9 The engineers that work at 111 Centre Street,
10 what type of equipment are they responsible for maintaining
11 or operating?

12 A Air conditioning machines, central ventilating
13 equipment, pumps, fire apparatus, sprinkler standpipe.

14 Q Are you familiar with that equipment?

15 A Yes.

16 Q Have you operated it?

17 A Yes.

18 Q To your knowledge, is that wire ring a device or
19 an item that is used in connection with any of the equipment
20 at 111 Centre Street?

21 A Not that I know of. I haven't seen it on
22 anything.

23 Q How long have you worked there?

24 A Since 1988.

25 MR. KHUZAMI: No further questions.

1 THE COURT: Cross, Mr. Patel?

2 CROSS-EXAMINATION

3 BY MR. PATEL:

4 Q How are you, Mr. Rice?

5 A OK.

6 Q Mr. Rice, I see you have a U.S. Attorney's
7 visitor pass on your lapel there.

8 You spent some time talking with Mr. Khuzami
9 before you testified here today?

10 A No, not today.

11 Q On a previous occasion?

12 A Yes, I did.

13 Q And you were kind enough last Friday to spend
14 some time talking with me and my investigator over at 111
15 Centre Street, weren't you?

16 A Yes.

17 Q You worked with Mr. Nosair for two summers you
18 say?

19 A Yes, that's correct.

20 Q It is somewhat customary for the engineering
21 staff to move from building to building as they are needed
22 from season to season, is that correct?

23 A That's correct.

24 Q Do you know who had those lockers, 13 and 14,
25 before Mr. Nosair came to work at 111 Centre Street?

1 A No, I don't.

2 Q Were you there before him or was he there before
3 you?

4 A I was there before him.

5 Q He had worked at one of the other buildings, one
6 of the other city buildings before coming to 111 Centre
7 Street, right?

8 A Yes, I believe so.

9 Q 111 Centre Street, that is a courthouse, right?

10 A Yes, it is.

11 Q It is a civil court and it has some Supreme Court
12 parts, is that correct?

13 A Yes, that is correct.

14 Q How many lockers are in that locker room where --
15 let me withdraw that. Let me go back.

16 To get into the locker room where lockers 13 and
17 14 are, you have to go through a locked door, right?

18 A Yes.

19 Q And the people who work in the building who are
20 assigned lockers in that room have keys to that room,
21 correct?

22 A That's correct.

23 Q How many people are assigned lockers in that
24 room?

25 A Eight or nine.

1 Q Over the last four years, it hasn't been the same
2 eight or nine people, is that fair to say?

3 A It's changed, yes.

4 Q So since 1990 how many people would you say have
5 had access to that room?

6 A Whoever has the key; maybe 15, maybe 20 people.
7 It is hard to say.

8 Q In addition to the maintenance people, there are
9 also some court officers who are assigned lockers in that
10 room, is that correct?

11 A I know of one correction officer who has lockers
12 in that room.

13 Q I'm sorry. Corrections officer?

14 A Corrections officer, yes.

15 Q Over the last few years, have there been any
16 court officers assigned to that room?

17 A No.

18 Q When you say that these lockers are sealed, these
19 lockers have vents on the top, right?

20 A Yes, they do, yes.

21 Q If somebody wanted to put something the size of
22 that ring into a locker they could do that even if the
23 locker was locked, is that correct?

24 A Sure, they could, yes.

25 Q There is no video surveillance in that room, is

1 there?

2 A Not that I know of.

3 Q You are not in there 24 hours a day, are you?

4 A No.

5 Q The building is active 24 hours a day?

6 A No, it's not, no.

7 Q Was there a gentleman named James Skidmore who
8 worked in your department at 111 Centre Street?

9 A Yes, he's since deceased.

10 Q I'm sorry to hear that.

11 MR. PATEL: Can I approach, your Honor.

12 THE COURT: Yes.

13 Q I would like to show you what's been marked
14 Government Exhibit 98 and -- this one is not marked. 98A?

15 MR. PATEL: Excuse me, I'll be right back. A
16 moment with the government, your Honor?

17 (Counsel conferred)

18 MR. KHUZAMI: OK. No objection.

19 MR. PATEL: Thank you. May I offer them in
20 evidence?

21 MR. KHUZAMI: I am sorry?

22 MR. PATEL: In evidence?

23 MR. KHUZAMI: Sure.

24 THE COURT: They are in. All right. 98 and 98A
25 are in without objection by stipulation. Go ahead.

1 (Government's Exhibits 98 and 98A for
2 identification were received in evidence)

3 Q 98 is "Guns & Ammo," and could you read the
4 person who has the subscribing --

5 THE COURT: Can you talk into a microphone so the
6 interpreters can hear you.

7 Q Who is that mailed to?

8 A James Skidmore. The address?

9 Q No, we don't need that.

10 A OK.

11 Q Thank you.

12 James Skidmore is the person you said worked in
13 your office, in your department?

14 A Yes.

15 Q Magazines like this, "Guns & Ammo" and "Soldier
16 of Fortune," are the kinds of things that he used to bring,
17 you would see them around the locker room?

18 A For sure "Guns & Ammo." "Soldier of Fortune" I
19 can't really say. I haven't seen him with that.

20 Q Thank you.

21 How long did Mr. Skidmore -- well -- let me put
22 it this way: When did Mr. Skidmore work in your department
23 at 111 Centre Street?

24 A The entire time I worked there until he passed
25 away. It may have been September '91, September '92.

1 Q So he was there when Mr. Nosair was there?

2 A Yes.

3 Q Mr. Skidmore used to talk about going shooting or
4 hunting?

5 A He was not a hunter, no.

6 Q He was into guns, though?

7 A Yes.

8 Q Do you know if he ever reloaded ammunition?

9 A Not to my knowledge.

10 Q That ring, Government Exhibit 74E? D?

11 THE COURT: D.

12 MR. PATEL: Thank you.

13 Q That is consistent with a key ring, is it not?

14 MR. KHUZAMI: Objection to form.

15 THE COURT: Sustained.

16 Q That is a wire ring?

17 A It is a wire ring, yes.

18 Q Have you ever seen wire rings used as key rings?

19 A Yes.

20 Q People who work at 111 Centre Street tend to
21 carry quite a number of keys, is that correct?

22 A Yes, that's true, yes.

23 Q Usually you have a number of key rings that you
24 have to carry with you to get access to various and sundry
25 places?

1 A Yes.

2 Q Part of the reason that there is security is not
3 only is that a courthouse, but there are criminal parts at
4 111 Centre Street, is that correct?

5 A Yes, there are.

6 MR. PATEL: Thank you, your Honor. I have no
7 further questions.

8 MR. KHUZAMI: Just one question, your Honor.

9 THE COURT: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. KHUZAMI:

12 Q Mr. Rice, did Mr. Skidmore have his own locker at
13 111 Centre Street?

14 A His locker was in the underground refrigeration
15 plant.

16 Q Where is that?

17 A It is attached to 111 Centre Street. It is on
18 the other side of the garage.

19 MR. KHUZAMI: No further questions.

20 THE COURT: Anything else, Mr. Patel?

21 MR. PATEL: No.

22 THE COURT: Thank you, Mr. Rice. You are
23 excused.

24 Ladies and gentlemen, we are going to take a
25 short break. Please leave your notes and other materials

1 behind. Please don't discuss the case. We will resume in a
2 few minutes.

3 (Witness excused)

4 (Jury excused)

5 (Recess)

6 MR. NOOTER: Your Honor, before we get started,
7 my client would like to be excused for the balance of the
8 afternoon, if it is all right with the court.

9 THE COURT: Is there a basis or he would just
10 rather not --

11 MR. NOOTER: There is a basis. They moved a new
12 person into his cell at 2 in the morning last night. He
13 couldn't get any sleep because the guy was getting settled
14 in, and he feels exhausted.

15 THE COURT: Do you understand you have a right to
16 be here, Mr. Saleh?

17 DEFENDANT W. SALEH: Yes, your Honor.

18 THE COURT: You are excused.

19 MR. NOOTER: Thank you, your Honor.

20 (Defendant Wahid Saleh was excused)

21 THE COURT: We are going to be breaking at 4:30
22 today, so that whoever is cross-examining --

23 MR. SERRA: Your Honor, I am sorry. I couldn't
24 hear.

25 THE COURT: I said we are going to be breaking at

1 4:30 today.

2 (Jury present)

3 THE COURT: Mr. Khuzami.

4 MR. KHUZAMI: Your Honor, the government calls
5 Lawrence Hoinski as its next witness.

6 LAWRENCE HOINSKI,

7 called as a witness by the Government,
8 having been duly sworn, testified as follows:.

9 MR. KHUZAMI: May I proceed, your Honor?

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MR. KHUZAMI:

13 Q Mr. Hoinski, how are you employed?

14 A I am employed by the New York State Department of
15 Corrections.

16 Q Are you employed at a particular facility with
17 the New York State Department of Corrections?

18 A I am currently working at the Attica Correctional
19 Facility.

20 Q How long have you been at Attica?

21 A Off and on approximately 12 years.

22 Q What is your current rank?

23 A I am a corrections sergeant.

24 Q How long have you been a sergeant?

25 A Since 1988.

1 Q What assignments have you had as a sergeant at
2 Attica Correctional Facility?

3 A I have had various assignments, from being the
4 kitchen sergeant, the C block supervisor on the 3-to-11
5 shift, the A block supervisor on the 3-to-11 shift. Then I
6 went onto the 7-to-3 shift as the hospital supervisor, and I
7 just recently transferred to the C block supervisor on the
8 day shift.

9 Q You mentioned that you were a sergeant in the
10 hospital, is that correct?

11 A Correct.

12 Q Can you describe what the hospital is at Attica.

13 A It is basically an infirmary. We can take care
14 of the inmates' problems at the facility as long as they are
15 not too serious.

16 Q Are there ever in your experience occasions where
17 inmates are taken outside of Attica for medical treatment?

18 A Yes, there is.

19 Q Under what circumstances does that happen?

20 A Severe injuries or outside clinics to providers
21 at different hospitals in the area.

22 Q What clinics in your experience have inmates been
23 taken to outside of Attica for such problems?

24 A There are some dental clinics, orthopedic
25 clinics, ear, nose and throat, eye clinics. The services

1 that we can't provide inside the institution we are taking
2 inmates to the outside providers for.

3 Q Are you familiar with a treatment facility
4 referred to as the Erie County Medical Center?

5 A Yes, I am.

6 Q Where is that located?

7 A That is inside the confines of the City of
8 Buffalo.

9 Q How far is that approximately from the Attica
10 Prison?

11 A Approximately 40 miles.

12 Q While you were a hospital sergeant at Attica, did
13 you have any contact with an inmate by the name of El Sayyid
14 Nosair?

15 A Yes, I did.

16 Q What kind of contact did you have with him?

17 A I took him for routine visits from his housing
18 unit, the Special Housing Unit, to the facility infirmary to
19 see either a doctor, a dentist, a PA, and I took him on one
20 trip to the Erie County Medical Center.

21 Q Approximately how many times did you take him to
22 the infirmary within Attica?

23 A About three times.

24 Q Do you remember for what reason you took him to
25 the Erie County Medical Center?

1 A He was scheduled to appear at a clinic, I am not
2 sure which one it was.

3 Q Do you recall the date that you accompanied
4 Mr. Nosair to the Erie County Medical Center?

5 A I believe it was 4/1/92 or '93.

6 Q Are you sure about that date?

7 A Not entirely.

8 Q Is there anything that would refresh your
9 recollection as to what that date was?

10 A There is a trip itinerary that we keep on record
11 at the facility.

12 MR. KHUZAMI: Your Honor, may I approach.

13 THE COURT: Yes.

14 Q Sergeant Hoinski, what is that document?

15 A It is a copy of the trip itinerary that we use to
16 take the inmates to outside trips.

17 Q Looking at that, does that refresh your
18 recollection --

19 A Yes, it does.

20 Q -- of the date that you took Mr. Nosair to the
21 Erie County Medical Center?

22 A Yes, it does.

23 Q Without reading the document, what is your
24 current recollection now of the date that you took
25 Mr. Nosair to the center?

1 A 5/1/92.

2 Q Were there other persons that went along with you
3 on that trip?

4 A There were three other correctional officers.

5 Q Do you remember what their names are?

6 A They are Officer Gaudagno, Officer Glendinning,
7 and Officer Cavalli.

8 Q What was your function as the sergeant on that
9 trip?

10 A I was there to supervise the escort, make sure
11 the proper security measures were used, and to make sure
12 that the officers were actually doing their jobs as
13 assigned.

14 Q What were the duties of the correction officers
15 that were with you?

16 A I believe Officer Glendinning and Officer Cavalli
17 were assigned to put the restraint equipment on Inmate
18 Nosair in the Special Housing Unit, and Officer Gaudagno
19 drew the appropriate equipment and the vehicle to bring
20 around to the front of the institution.

21 Q How did you transport Mr. Nosair from Attica to
22 the Erie County Medical Center?

23 A We used a state van.

24 Q What kind of -- withdrawn.

25 Can you describe what occurred once you arrived

1 at the medical center?

2 A We arrived at the medical center and we entered
3 through a side door where there is a holding area for the
4 inmates brought in from the different institutions.

5 I don't think we stopped there, but we went
6 through that area, and it was into a male locker room. We
7 exited into a corridor and snaked our way through the
8 medical center until we got to the appropriate clinic.

9 Q Do you recall approximately how long it took you
10 to walk from the entrance to the clinic?

11 A No longer than five minutes.

12 Q During that walk did you notice anything about
13 Mr. Nosair's behavior?

14 A As we walked through the corridors, I did notice
15 Mr. Nosair was looking down the different corridors to see
16 where they led to. As we passed different doors, he would
17 peek in to see what the door actually led to --

18 MR. PATEL: Objection.

19 THE COURT: Overruled.

20 A -- be it a doctor's office, and the like.

21 Q What happened when you arrived at the particular
22 clinic or doctor's office that you went to?

23 A The doctor was not there, and I was told we would
24 have to wait; the doctor did want to see the individual.
25 So, if my memory serves me correctly, we waited

1 approximately an hour to an hour and a half for the doctor
2 to see Mr. Nosair.

3 Q Where did you wait?

4 A In a waiting room.

5 Q How far away was the waiting room from the
6 closest outside exit of the medical center?

7 A No more than 20 yards.

8 Q Did there come a time when the doctor arrived?

9 A The doctor did arrive, and we escorted Mr. Nosair
10 to the doctor's office.

11 Q What happened when you went to the doctor's
12 office?

13 A I believe the two unarmed officers were inside
14 the office with the doctor and the inmate. The other armed
15 officer and myself were outside the room.

16 Q When you say "armed," what sort of weapons were
17 you carrying?

18 A Officer Gaudagno and myself were armed with .38
19 caliber revolvers.

20 Q The two of you were outside of the doctor's
21 office during Mr. Nosair's examination, is that correct?

22 A That's correct. We were just outside the door.

23 Q And the other two officers who were inside with
24 him, were they armed or not?

25 A No, they were not.

1 MR. KHUZAMI: No further questions.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. PATEL:

5 Q Good afternoon, Mr. Hoinski.

6 Am I pronouncing your name correctly?

7 A Hoinski.

8 Q Hoinski?

9 A Yes, sir.

10 Q Sorry. As a corrections officer you have
11 training, do you not, in security measures, is that fair to
12 say?

13 A Yes, it is.

14 Q Where did you receive this training?

15 A The training academy in Albany, New York.

16 Q Is it fair to say that one of the primary
17 purposes of your training is to make sure that there are no
18 escapes?

19 A That's true.

20 Q On this trip that you described there were no
21 escapes?

22 A That's true.

23 Q There were four officers -- that is, a sergeant
24 and three officers -- who went with Mr. Nosair to the
25 hospital, is that correct?

1 A That's correct.

2 Q Two of the officers were, yourself and one of the
3 other officers, armed with a .38 caliber revolver, correct?

4 A Correct.

5 Q In the van did you have any other weapons?

6 A No, there were not.

7 Q Is that standard procedure, that there are two
8 armed officers and two unarmed officers?

9 A No, it is not.

10 Q What is the standard procedure?

11 A Standard procedure is two officers armed and one
12 inmate, possibly two inmates.

13 Q So because Mr. Nosair was a high-profile inmate,
14 you had two additional officers with you, is that correct?

15 A Because Mr. Nosair was a high-profile inmate
16 there was a sergeant and one additional officer.

17 Q Now, when Mr. Nosair came -- well, let's --
18 withdrawn.

19 In addition to the officer, you had certain other
20 security measures that you used, for example, Mr. Nosair was
21 handcuffed, was he not?

22 A That's true.

23 Q He had a belt going around his waist?

24 A Yes.

25 Q That belt has a ring on it, correct?

1 A No, it does not have a ring on it.

2 Q The handcuffs are in some way attached to the
3 belt, is that correct?

4 A Yes, they are.

5 Q Is that what a device called a black box is for?

6 A The black box actually covers the locking devices
7 and the chain on the handcuffs themselves.

8 Q So in addition to being handcuffed, the locks on
9 that day were covered by this device which is separately
10 locked, is that correct?

11 A That's true.

12 Q Mr. Nosair was in leg irons?

13 A Yes, he was.

14 Q He was on what's called a lead chain, right?

15 A This is true.

16 Q What is a lead chain?

17 A A lead chain is a length of chain that goes from
18 the handcuffs to the leg irons.

19 Q So his hands are cuffed, and they are covered in
20 a black box that is secured to his belt or a strap going
21 around his waist; his legs are essentially in leg cuffs; and
22 there is a chain connecting the belt to the cuffs; right?

23 A That's true.

24 Q When you got to the hospital, you said that there
25 was a holding area. Is that a jail cell?

1 A No, it is actually a large room where inmates are
2 kept waiting for the clinics.

3 Q But you didn't stop there. You took him right to
4 where he was supposed to go see this doctor, is that
5 correct?

6 A That's correct.

7 Q When you made this trip on May 1, how long had
8 Mr. Nosair been at Attica, if you know?

9 A I don't know.

10 Q Do you know if he had been out of Attica on any
11 other occasion?

12 A I don't know.

13 Q To the best of your knowledge, this was the first
14 time he had anyplace to look around at all?

15 A It was the first time I took him out.

16 Q You mentioned proper security measures.

17 Is that what you meant by having the additional
18 two officers with you?

19 A Can you clarify that, please?

20 Q In your direct testimony you said part of your
21 job was to make sure that proper security measures were
22 used. I don't want to misstate your testimony. Is that
23 correct?

24 A Yes.

25 Q So the proper security procedures were, in

1 addition to these restraints on Mr. Nosair, the number of
2 officers that you had with you, correct?

3 A Correct.

4 Q This van that -- all four of you went in one van?

5 A That's correct.

6 Q This van had a radio?

7 A Yes.

8 Q Telephone?

9 A No.

10 Q You had a means of communicating and getting help
11 if you needed it?

12 A Yes.

13 Q Did you make any such calls?

14 A No, I did not.

15 Q In addition to the security, that is, you and the
16 three officers under your command, there was security in the
17 hospital itself, is that correct?

18 A There is a contingent of security at the medical
19 center itself, yes.

20 Q There is a security officer assigned to the
21 entrance that you were near?

22 A No, there was not.

23 Q Is there supposed to be?

24 A I don't have that information.

25 Q Do you know if Mr. Nosair was going to the

1 hospital to see a neurologist?

2 A I don't know what his appointment was for. I
3 can't remember.

4 Q But it was for something that was beyond the
5 means of the Attica infirmary?

6 A That's correct.

7 Q Are there doctors that rotate into the Attica
8 infirmary from outside hospitals?

9 A There are some outside providers that provide our
10 infirmary with some clinics and consultations.

11 Q But Mr. Nosair's medical needs were not covered
12 by any such arrangement?

13 A Apparently whatever clinician he saw felt it
14 necessary for him to be transported to the Erie County
15 Medical Center for further treatment.

16 Q Would it be fair to say that someone in
17 administration has to approve the scheduling of such a trip,
18 is that correct?

19 A That's correct.

20 Q Did Mr. Michael Urban approve this trip to the
21 Erie Medical Center?

22 A If I'm not mistaken, I believe all trips to the
23 medical center are approved by the deputy superintendent for
24 security.

25 Q Who is that?

1 A That's deputy superintendent Edward Donnely.

2 Q OK. Do you know why Mr. Urban's name appears on
3 your report?

4 A No, I do not.

5 Q Did you send a copy of this report to Mr. Urban?

6 A No, I did not.

7 Q Do you know who Mr. Urban is?

8 A I believe he works out of the Inspector General's
9 office.

10 Q Is that at Attica or in Buffalo?

11 A He's not in Attica. I believe he works out of
12 Albany.

13 Q This whole trip took a little bit over -- well,
14 you left a little after 12 and you got back around 5:30,
15 right?

16 A That's correct.

17 Q There was essentially nothing remarkable about
18 this trip, is that fair to say?

19 A It is fair to say nothing out of the ordinary.

20 MR. PATEL: Thank you, no further questions.

21 MR. KHUZAMI: No redirect, your Honor.

22 THE COURT: You are excused.

23 Thank you.

24 (Witness excused)

25 MR. FITZGERALD: Your Honor, the government calls

1 Avril Fugger, F-U-G-G-E-R.

2 AVRIL FUGGER,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FITZGERALD:

7 Q Ms. Fugger, it's been a while, but have you
8 testified in this proceeding before?

9 A Yes, I have.

10 Q Are you still employed as a paralegal with the
11 U.S. Attorney's Office?

12 A Yes.

13 MR. FITZGERALD: Your Honor, at this time by
14 prior arrangement I would like to offer Government Exhibits
15 505 and 506.

16 THE COURT: Hearing no objection, they are
17 received without objection. Go ahead.

18 (Government's Exhibits 505 and 506 for
19 identification were received in evidence)

20 Q If I could just describe Government Exhibit 505,
21 it is the visiting records for the Rikers Island facility.
22 506 are the visiting records for the Attica facility. If I
23 may approach --

24 MR. STAVIS: Excuse me.

25 (Counsel conferred)

1 MR. FITZGERALD: If I may approach the witness
2 with Government Exhibits 505, 506, and then 505A and 506A.

3 THE COURT: Go ahead.

4 Q Ms. Fugger, have you reviewed Government Exhibits
5 505 and 506, the Rikers Island and Attica visiting records,
6 prior to coming to court today?

7 A Yes, I have.

8 Q Have you also reviewed and to some extent
9 corrected Government Exhibits 505A and 506A?

10 A Yes.

11 Q What is 505A?

12 A 505A is a chart listing dates of visits,
13 visitors' names, their relationship and their address,
14 visitors to Mr. Nosair at Rikers Island, and it is
15 information taken from 505, which are the underlying
16 records.

17 Q Government Exhibit 505, the underlying records,
18 have some records of other inmates' visits and you did not
19 include those in 505A, is that correct?

20 A That's correct.

21 Q Can you tell the jury what 506A is.

22 A 506A is a chart with similar information listing
23 visits to Mr. Nosair at Attica, listing the date of the
24 visit, the name of the visitor, the relationship to
25 Mr. Nosair, the address of the visitor, and their telephone

1 number. That information was taken from 506, which are the
2 underlying records.

3 Q To the best of your ability, does 505A reflect
4 all the visits listed in the records to Mr. Nosair when he
5 was at Rikers Island for the time period covered?

6 A Yes.

7 Q To the best of your ability, does 506A reflect
8 all the visits listed in the records to Mr. Nosair while he
9 was at Attica during the time period covered?

10 A Yes.

11 Q In identifying who signed in, was it at times
12 difficult to read signatures?

13 A For the Rikers Island facility, the names are
14 listed by signature. They are not printed. So at times it
15 was difficult.

16 Q Did you consult with others, consult with other
17 records to try to determine what name corresponded to a
18 particular signature?

19 A Yes.

20 Q Other than that, did you carry the dates out and
21 the addresses as listed?

22 A Yes, I did.

23 Q Does 505A fairly and accurately reflect a summary
24 of the underlying visits to Mr. Nosair at the Rikers Island
25 facility?

1 A Yes, it does.

2 Q Does 506A fairly and accurately reflect a summary
3 of the records of visits to Mr. Sayyid Nosair when he was at
4 the Attica facility?

5 A Yes.

6 MR. FITZGERALD: Your Honor, I would offer 505A
7 and 506A.

8 MR. STAVIS: No objection, your Honor.

9 THE COURT: 505A and 506A are received without
10 objection.

11 (Government's Exhibits 505A and 506A for
12 identification were received in evidence)

13 Q Prior to coming to court today, did you review
14 505A to see how many times it is indicated in the records
15 that Mr. Ibrahim El-Gabrownny visited Mr. Sayyid Nosair at
16 Rikers Island?

17 A Yes, I did.

18 Q Can you tell us approximately how many times?

19 A 32 times.

20 Q Can you tell us how many times Mahmud Abouhalima
21 visited Sayyid Nosair at the Rikers Island facility?

22 A 19 times.

23 Q Who was that?

24 A Mr. Abouhalima visited him five times.

25 Q And who visited 19 times?

1 A Mr. Salameh.

2 Q Do you know Mr. Salameh's first name?

3 A Mohammed.

4 Q Did you check the records to see if Nidal Ayyad
5 visited Mr. Nosair while at the Rikers Island facility?

6 A Yes, he did. He visited three times.

7 Q Did you check the records to see if a Bilal
8 Alkaisi visited Mr. Nosair while at the Rikers Island
9 facility?

10 A At Rikers he visited twice.

11 Q Did you check to see if a Siddig Ali visited
12 Mr. Nosair while at the Rikers Island facility?

13 A Yes, he visited once.

14 Q Finally, did you check whether or not an Emad
15 Salem visited Mr. Nosair while at the Rikers Island
16 facility?

17 A Yes, he also visited once.

18 Q Looking at 506A -- what time period was covered
19 by 505A, the record for Rikers Island?

20 A From November 18, 1990 to November 26, 1992.

21 Q And 506A, the Attica visiting records, what time
22 period did they cover?

23 A February 24, 1992 through June 23, 1993.

24 Q Did you determine on how many occasions
25 Mr. Ibrahim El-Gabrownny visited Sayyid Nosair while

1 Mr. Nosair was at the Attica facility during that time
2 period?

3 A At Attica he visited him nine times.

4 Q Did you determine how many times Mr. Mohammed
5 Salameh visited Mr. Sayyid Nosair at Attica during the time
6 period?

7 A I believe he visited him four times, but I am not
8 sure. I have to check.

9 Q If you can just check the date of the last visit
10 that Mr. Salameh paid to Mr. Nosair at the Attica facility.

11 A The last visit at Attica for Mr. Salameh was
12 February 13, 1993.

13 Q On that occasion what address did Mr. Salameh
14 provide?

15 A 57 Prospect Park, Brooklyn, New York 11215.

16 Q If you can just look at the one visit earlier and
17 tell us what address Mr. Salameh provided on the prior
18 occasion?

19 A That visit was on August 2, 1992, and the address
20 given was 36-05 30th Street, Apartment 6, Long Island City
21 New York, 11106.

22 Q If I could ask you on how many occasions Mahmud
23 Abouhalima visited El Sayyid Nosair at the Attica
24 Correctional Facility.

25 A Three times.

1 Q Can you give us the date of the last visit by
2 Mahmud Abouhalima to Sayyid Nosair at Attica?

3 A February 7, 1993.

4 Q Did you check the records to determine whether or
5 not Siddig Ali visited Mr. Nosair at the Attica facility?

6 A Yes, he visited him one time.

7 Q How about Mohammed Abouhalima?

8 A He also visited him one time at Attica.

9 Q Finally, did you check the records to determine
10 on how many occasions the records indicate Emad Salem
11 visited Sayyid Nosair at Attica facility?

12 A Three times.

13 Q Can you tell us the closest visit to the date of
14 May 1, 1992?

15 A For Mr. Salem?

16 Q Salem. If you look at May 1, 1992, how long
17 afterward is the first visit by Mr. Salem?

18 A '92 or --

19 Q '92.

20 A '92. May 5, 1992.

21 MR. FITZGERALD: I have nothing further, Judge.

22 THE COURT: Cross, Mr. Stavis?

23 Before you start, do you want to come up to the
24 side briefly.

25 (Continued on next page)

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(At the side bar)

MR. STAVIS: Five minutes ought to do it, Judge.

THE COURT: OK. That was my question.

(Continued on next page)



1 (In open court)

2 CROSS-EXAMINATION

3 BY MR. STAVIS:

4 Q Ms. Fugger, drawing your attention to 505A, that
5 is the Rikers visiting list. You said that Mr. Siddig Ali
6 visited one time, is that correct?

7 A Yes.

8 Q You also testified that Mr. Salem visited one
9 time, is that correct?

10 A Yes.

11 Q Those were different dates, isn't that correct?

12 A I believe so.

13 Q They didn't visit together, did they?

14 A No.

15 Q Drawing your attention to 506A, you testified
16 that Mr. Salameh visited Attica Prison on four occasions, is
17 that correct?

18 A Mr.?

19 Q Mr. Mohammed Salameh.

20 A I think, yeah, four times, yes. I would have
21 to -- I can go through and add them up, but I think four
22 times at Attica.

23 Q Why don't you take a look at that, because it
24 will help you answer my next question.

25 A Sure. Four.

1 Q The first time Mr. Salameh visited Mr. Nosair at
2 Attica prison was on April 5, 1992, is that correct?

3 A That's correct.

4 Q He went with a person by the name of Abdalhareed
5 Abdou?

6 A They are signed in as visiting on the same day.
7 I don't know if they went together.

8 Q A person by the name of Ziad Hassan went on that
9 same day?

10 A Yes.

11 Q And a person by the name of Abdel Mahroud went on
12 that same day, is that correct?

13 A Yes.

14 Q In the records for that day there is no
15 indication that Mahmud Abouhalima visited Mr. Nosair on the
16 same day as Mohammed Salameh, is that correct?

17 A That's correct.

18 Q There is also no indication that Nidal Ayyad
19 visited Mr. Nosair on the same day with Mohammed Salameh, is
20 that correct?

21 A That's correct.

22 Q The next day was April 6, 1992. I draw your
23 attention to that. Visiting on that same day was Khadijah
24 Nosair, is that correct?

25 A Yes.

1 Q And she visited at the same time as Mohammed
2 Salameh on the same date, is that correct?

3 A Yes.

4 Q Mahmud Abouhalima did not visit Mr. Nosair with
5 Mohammed Salameh on April 6, 1992, did he?

6 A No.

7 Q And Nidal Ayyad did not visit Mr. Nosair along
8 with Mohammed Salameh on April 6, 1992, did he?

9 A No.

10 Q The next visit for Mohammed Salameh is on August
11 2, 1992, is that correct?

12 A Yes.

13 Q And Mohammed Salameh visited Mr. Nosair alone on
14 that date, is that correct?

15 A Yes.

16 Q Mahmud Abouhalima wasn't with him, was he?

17 A No.

18 Q And Nidal Ayyad wasn't with him, was he?

19 A No.

20 Q The next day is February 13, '93, to which you've
21 testified under questioning by Mr. Fitzgerald.

22 A Yes.

23 Q And on that day, Mohammed Salameh visited
24 Mr. Nosair alone, is that correct?

25 A Yes.

1 Q Mahmud Abouhalima wasn't with him, was he?

2 A No.

3 Q And Nidal Ayyad wasn't with him, was he?

4 A No.

5 MR. STAVIS: I have no further questions, your

6 Honor.

7 THE COURT: Anything else?

8 MR. FITZGERALD: No, Judge.

9 MR. RICCO: Your Honor, I have questions.

10 THE COURT: Mr. Ricco?

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q Good afternoon.

14 A Good afternoon.

15 Q You indicated that Mr. El-Gabrownny visited the
16 Attica Correctional Facility on nine occasions, isn't that
17 right?

18 A To visit Mr. Nosair, yes.

19 Q That first visit was February 1992, February 24,
20 isn't that right?

21 A Yes.

22 Q On that occasion Mr. El-Gabrownny visited
23 Mr. Nosair with Khadijah Nosair, Mr. Nosair's wife, and Nura
24 Nosair, Mr. Nosair's daughter, isn't that correct?

25 A Yes.

1 Q The second visit that Mr. El-Gabrowny took to the
2 Attica Correctional Facility was on April 11, 1992, correct?

3 A Yes.

4 Q At that time he visited the Attica Correctional
5 Facility with Khadijah Nosair, Mr. Nosair's wife, and Abdul
6 Aziz Nosair, Mr. Nosair's son, isn't that correct?

7 A Yes.

8 Q The third time that Mr. El-Gabrowny visited the
9 Attica Correctional Facility was on June 6, 1992?

10 A Yes.

11 Q He visited with a man by the name of Nasser K.
12 Ahmed, isn't that correct?

13 A Yes.

14 Q The next time Mr. El-Gabrowny visited was on June
15 27, 1992, and he visited Mr. Nosair alone, isn't that
16 correct?

17 A Yes.

18 Q The next time Mr. Nosair visited, was on July

19 18 --

20 THE COURT: I think you mean Mr. El-Gabrowny.

21 MR. RICCO: I am sorry. Excuse me.

22 Thank you, your Honor.

23 Q The next time Mr. El-Gabrowny visited Mr. Nosair
24 was on July 18, 1992, and he visited with a man by the name
25 of Shawkat M. Wehidy, isn't that correct?

1 A Yes.

2 Q The very next time that Mr. El-Gabrowny visited
3 Mr. Nosair was on September 6, 1992, and he visited
4 Mr. Nosair alone, isn't that correct?

5 A Yes.

6 Q The next time that Mr. El-Gabrowny visited the
7 Attica Correctional Facility, he visited on October 26,
8 1992, and he visited with Ms. Nosair and a man by the name
9 of Shawkat Wehidy, isn't that correct?

10 A Yes.

11 Q The very next time Mr. El-Gabrowny visited the
12 Attica Correctional Facility was on December 1992, and he
13 visited with a man by the name of Nasser K. Ahmed, isn't
14 that correct?

15 A Yes.

16 Q The last time that Mr. El-Gabrowny visited
17 Mr. Nosair at the Attica Correctional Facility was on
18 January 14, 1993, and on that visit he was accompanied by
19 Mr. Nosair's wife, Khadijah Nosair, correct?

20 A Yes.

21 Q His son Abdullah El-Gabrowny, correct?

22 A Not on the 14th. His daughter -- oh, his son
23 Ibrahim -- Abdullah El-Gabrowny, yes, his son. I'm sorry.

24 Q And the daughter of Mr. Nosair, Nura Nosair,
25 isn't that correct?

1 A Yes.

2 Q From looking at these records, you are able to
3 determine who visited Mr. Nosair and when, isn't that
4 correct?

5 A Yes.

6 Q At about two weeks before February 26, 1993, did
7 Mr. Nosair ever visit this facility with Mohammed Salameh?

8 THE COURT: I'm sorry. Mr. El-Gabrowny?

9 MR. RICCO: I'm sorry, your Honor.

10 Strike that and let me start all over.

11 Q On February 26, 1993, the World Trade Center was
12 bombed, isn't that correct?

13 A Around that time. I don't remember the exact
14 date.

15 Q OK. During February of 1993 or January of 1993,
16 did Mr. El-Gabrowny visit the Attica Correctional Facility
17 with Mohammed Salameh?

18 A No, he did not.

19 Q Did Mr. El-Gabrowny ever visit the Attica
20 Correctional Facility with Mr. Mohammed Salameh?

21 A No.

22 Q Mr. Mohammed Salameh on his visit on February 13,
23 1993, he used Mr. El-Gabrowny's address, isn't that correct?

24 A I'm not sure whose address that is.

25 Q 57 Prospect Park Southwest, Brooklyn, New York,

1 isn't that the same address that Mr. El-Gabrowny used on
2 every visit to the Attica Correctional Facility?

3 A Yes, it is.

4 Q Isn't that the same address that Mr. El-Gabrowny
5 used on every visit to the Rikers Island Correctional
6 Facility?

7 A Yes, it is.

8 Q Mr. Mohammed Salameh used that address for the
9 first time out of all of his visits on February 13, 1993,
10 isn't that correct?

11 A That's correct.

12 Q He had never used that address before out of all
13 the visits he had ever made to Mr. Nosair at either Attica
14 or Rikers Island, isn't that correct?

15 A That's correct.

16 Q In fact, when he went to visit Mr. Nosair on that
17 day, he also used Mr. El-Gabrowny's telephone number, isn't
18 that correct?

19 A That's correct.

20 Q Prior to that time, Mr. Nosair had used an
21 address of 30- --

22 THE COURT: Mr. El-Gabrowny?

23 MR. RICCO: Wow. I am sorry, your Honor. Late
24 in the day. Thank you.

25 Q Mr. Salameh on a prior occasion had used at the

1 Attica Correctional Facility the address of 36-05 30th
2 Street, Long Island City, New York, isn't that correct?

3 A Yes.

4 Q However, he gave the telephone number of
5 Mr. El-Gabrowny, isn't that right?

6 A I recall that he did at least once. I am not
7 sure if he did every time, but I do recall that on at least
8 one occasion he gave that phone number for that address.

9 Q When Mr. Salameh visited the Rikers Island
10 facility, he used the address of 26 Weldon Street?

11 A That's correct.

12 Q Never used Mr. El-Gabrowny's address at the
13 Rikers Island Correctional Facility, isn't that right?

14 A I believe that's correct.

15 Q Now, after February 26, 1993, Mr. Nosair received
16 less visits than he had before that time, isn't that
17 correct? Is it safe to say?

18 A I don't understand the question.

19 Q Let me ask the question differently, then.

20 After February 1993, Mr. Nosair received visits
21 from only family members and an attorney with the exception
22 of one occasion, isn't that correct?

23 A The first three visits in February were people
24 listed as friends, but after February 16 -- after the
25 February 16 visit, that's correct. They are lawyers or

1 relatives, with the exception of May 21, 1993.

2 Q That one exception is on May 21, 1993, right?

3 A Yes.

4 Q On that day one family member does visit, that's
5 Ali El-Gabrowny, isn't that correct?

6 A Yes.

7 Q He's accompanied by Mr. Emad Salem, isn't that
8 right?

9 A Yes. They visit on the same day.

10 Q And Mr. Siddig Ali?

11 A Yes.

12 MR. RICCO: I have no further questions, your
13 Honor.

14 Thank you.

15 THE COURT: Anything else?

16 MR. FITZGERALD: No redirect, Judge.

17 THE COURT: Thank you. You are excused.

18 Ladies and gentlemen, we are going to break for
19 the day. Please leave your notes and other materials
20 behind. Please don't discuss the case, and we will resume
21 tomorrow at 9:30. Good night.

22 (Witness excused)

23 (Jury excused)

24 (Proceedings adjourned to Tuesday, April 18, 1995
25 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 April 18, 1995
21 9:40 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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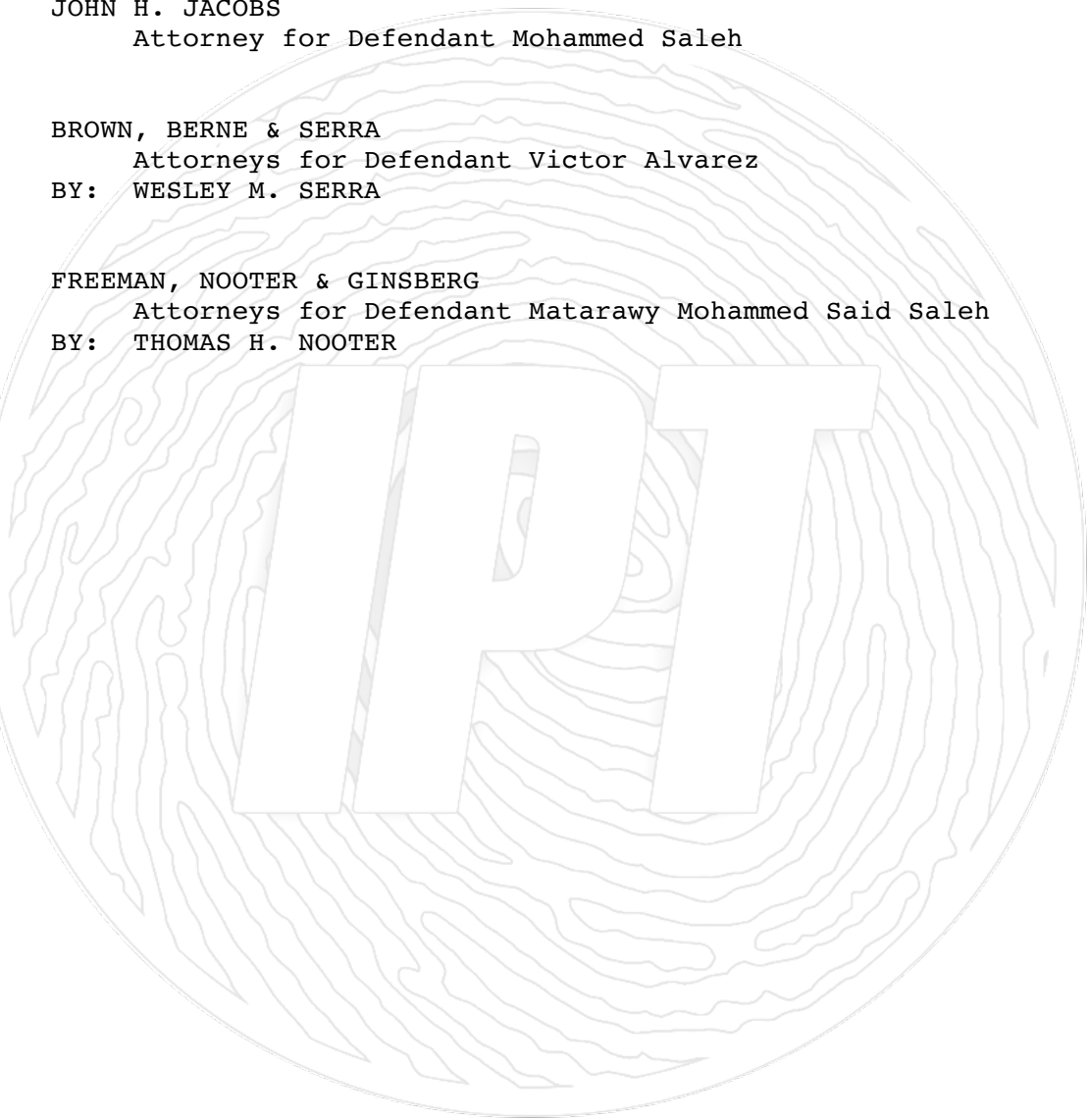
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1 (Pages 8191 and 8192 were sealed by order of the
2 court)

3 (In open court)

4 (Jury not present)

5 THE COURT: Good morning.

6 COUNSEL: Good morning.

7 MR. RICCO: Your Honor, as we discussed in the
8 conference room, may Mr. El-Gabrowny be excused now?

9 THE COURT: Mr. El-Gabrowny, you understand you
10 have a right to be present?

11 DEFENDANT EL-GABROWNY: Yes, I do, but I am not
12 feeling quite well. I would be willing to stay today if I
13 could. I would like to be able in other days to be able to
14 stay. Hopefully I would like to stay.

15 THE COURT: I told Mr. Ricco that I had discussed
16 this matter with some people at the MCC this morning, even
17 before it was brought to my attention, and I will discuss it
18 further with them to see whether we can get you treatment in
19 addition to what you are receiving.

20 DEFENDANT EL-GABROWNY: I would appreciate that.

21 THE COURT: Are you willing to have us go ahead
22 today without your being present?

23 DEFENDANT EL-GABROWNY: Yes.

24 THE COURT: And I will report to Mr. Ricco on
25 what the outcome of my conversation is. I hope you feel

1 better.

2 DEFENDANT EL-GABROWNY: Thank you.

3 THE COURT: You are excused.

4 MS. STEWART: Judge, the government is offering a
5 number of documents this morning with regard to Dr. Omar
6 Rahman. Because of difficulties at the MCC, it used to be
7 that we would just bring tapes in and leave them with him,
8 and there would be no problem. But they now have instituted
9 a procedure by which you have to bring them to the legal
10 department, they have to get some Arabic translator to
11 listen to them, then they bring them upstairs. So the tapes
12 that we tried to bring in on Thursday afternoon had still
13 not arrived as of last night. I called this morning, and I
14 was roundly abused because I didn't know exactly to whom
15 they had been given. At any event, he did not have the
16 tapes. I called Mr. Fitzgerald about the tapes. We are
17 ready to go forward on them and there are other documents
18 that they propose to put in that we have certain objections
19 to. I would like to make those objections at this time.

20 THE COURT: That is fine.

21 Before we go ahead with that, Mr. Bernstein, you
22 wanted to say something?

23 MR. BERNSTEIN: Yes, so we can take care of it.
24 Mr. Abdelgani also wishes to waive his appearance and not be
25 here. He has medical problems.

1 THE COURT: That was explained to me also. I
2 gather he is going to get some medication or treatment?

3 MR. BERNSTEIN: Yes. I saw him this morning in
4 jail. Presumably he will get treatment later in the day if
5 he can get back to the MCC as quickly as possible, with
6 Mr. El-Gabrownny.

7 THE COURT: Mr. Amir Abdelgani, do you understand
8 you have a right to be here?

9 DEFENDANT ABDELGANI: Yes, sir.

10 THE COURT: Are you willing to have us go ahead
11 in your absence?

12 DEFENDANT ABDELGANI: Yes, sir.

13 THE COURT: I hope you feel better too.

14 MR. BERNSTEIN: The record should be clear I have
15 spoken to the government. There seems to be no evidence
16 that will come in that will directly bear on Mr. Abdelgani.

17 THE COURT: Thank you very much. You are
18 excused.

19 (Defendants El-Gabrownny and Abdelgani left the
20 courtroom.)

21 Ms. Stewart, we won't deal with anything that
22 your client hasn't had a chance to review. So far as the
23 things that he has had a chance to review, I received this
24 morning a list of certain conversations that I understand
25 you had objection to.

1 MS. STEWART: That's right, Judge.

2 THE COURT: And I looked at --

3 MS. STEWART: Judge, first of all, we are
4 objecting to the introduction of these conversations on
5 relevance grounds, period. They appear to have nothing to
6 do with any of the charges in this indictment, and we would
7 ask for a proffer with regard to each tape as to what
8 relevance that has.

9 THE COURT: When you say "these conversations" --

10 MS. STEWART: Today I am --

11 THE COURT: The list that I have contains the
12 following: 410 -- I am sorry, do you have a list against
13 which you can check this?

14 MS. STEWART: Yes.

15 MR. FITZGERALD: Maybe I can help out.

16 MS. STEWART: I do.

17 THE COURT: 410, 703, 705, 713, 714, 718, 720,
18 726, 728, and 739. Those were the ones that I was told you
19 had relevance objections to.

20 MR. FITZGERALD: I think I can explain what
21 happened, Judge. That was the list of items we were seeking
22 to put in today which I provided to Francie, and it is not a
23 complete list of what we are going to get to. I think Ms.
24 Stewart, before court started this morning, told me she was
25 prepared to deal with the 700 series, with 700, 701, 703,

1 705. 700 and 701, I think, are for tomorrow. But she
2 isolated those, as well, as having objections. That's the
3 two lists.

4 MS. STEWART: Just so we are completely clear: I
5 had mentioned to Mr. Fitzgerald that I thought there were
6 relevance objections to be made to the entire series of the
7 tapes the government proposes to introduce against my
8 client, being that they all involve things that are
9 happening supposedly on foreign soil. Over and above that,
10 I have 403 objections to numerous of these items as well, as
11 well as some pure hearsay objections to some of them, where
12 someone is quoting a newspaper article, for example.

13 For those reasons, Judge, we were hoping to go
14 forward on all of them today, but because we didn't get the
15 tapes in, we are only prepared to go forward on 700, 701,
16 703, and 705, and Exhibit 410 as well, and we are still
17 discussing a sermon that was also proffered to us, which I
18 do not have.

19 THE COURT: Is this to be the first order of
20 business in your proof today?

21 MR. FITZGERALD: Government Exhibit 410 is the
22 first order of business.

23 THE COURT: How long do you think this discussion
24 is going to take? Do you have any idea?

25 MS. STEWART: I do not know what the government

1 is going to say. I will be as brief as possible.

2 THE COURT: I am thinking about the jury. What I
3 would like to do is to get them out here, explain to them we
4 have some legal matters to deal with and we will get started
5 as soon as we can, and then send them back, so they don't
6 sit back there and tap their feet. Let's do that and then
7 we will talk about it.

8 The alternative is, I can just let Ms. Schwartz
9 tell them that without having them here. Would you allow
10 that?

11 MS. STEWART: That is fine with us.

12 MR. FITZGERALD: Yes.

13 THE COURT: It is all right with everybody, I
14 trust.

15 With regard to 410, it was my assumption, after
16 looking at it, that the only thing that the government
17 really wanted introduced here was the address. Is that
18 right or not?

19 MR. FITZGERALD: No, incorrect, Judge. On 410,
20 not just the address, but the identification of that address
21 for Said Mansour is being linked to both the Islamic group
22 and the Islamic Jihad Front, and showing that on the
23 translation of 410T-1, the link between the services office
24 and Pakistan Martyr Azzam Information Center seeking to
25 raise funds to be sent to a postal account, the Islamic

1 Jihad Fund, located in Denmark.

2 THE COURT: But it wasn't the substance; that is,
3 it was addresses rather than the substance.

4 MR. FITZGERALD: Yes, Judge. As long as the
5 message was made clear that the Islamic group is officially
6 making a statement signed by Said Mansour, that he was
7 speaking for the Islamic group, and also that at the top of
8 the original exhibit, the telecopier marking shows that the
9 fax that was seized from defendant Abdel Rahman's house
10 evidently came in on October 14, '92 and from S.A. Mansour.

11 So, to cut to the chase, what we would argue to
12 the jury is that Mr. Mansour is faxing to defendant Abdel
13 Rahman these statements, keeping him posted on matters, but
14 also that the addresses reflected Said Mansour's sort of
15 focal point between the Islamic Jihad point --

16 MS. STEWART: I didn't hear that.

17 MR. FITZGERALD: The Islamic Jihad Fund is being
18 sent to his care for the benefit of the Jihad office in
19 Pakistan, and also the Islamic group is using that as an
20 address, and he in turn is in contact with Abdel Rahman --
21 he, Mansour.

22 MS. STEWART: We would still raise the relevance
23 ground. What is the relevance of all this, just as it is
24 when they introduced the addresses that were found in the
25 sheik's apartment? Moreover -- and I know this is an

1 argument very dear to Mr. Jacobs' heart -- we have not yet
2 seen anything but one document from Denmark. It makes it a
3 little difficult to understand what context these are in,
4 where we are going with it, what kind of questions we might
5 ask or not ask, since all we have are these three documents.
6 It just seems to me that without that conceptual framework
7 in which to place these, knowing other things, whom we are
8 corresponding with, what might be brought out later in the
9 case with regard to the persons named here or the person
10 named here, we have to proceed, as you said, very, very
11 carefully. But there is every reason to believe that the
12 government should have had or does have these documents from
13 Denmark.

14 THE COURT: I don't think the government has the
15 documents, in fact.

16 MS. STEWART: They did fingerprint searches on
17 books. They had to have the fingerprints at that point. If
18 they have the fingerprints on one document, it is hard to
19 understand how they don't have all the documents that were
20 supposedly seized.

21 MR. FITZGERALD: Your Honor, the fingerprints
22 were obtained from books obtained from Ahman Ajaj at Kennedy
23 Airport.

24 MS. STEWART: The comparison prints, I am talking
25 about.

1 MR. FITZGERALD: I don't know where the known
2 samples came from. We are still in the process of trying to
3 get the documents from Denmark. We will get them as soon as
4 we can. I have told counsel we can sit down and discuss it
5 informally, but the bottom line is that the agent who seized
6 it is not going to be able to answer questions about Denmark
7 regardless.

8 THE COURT: Agents who seized it?

9 MR. FITZGERALD: Seized this fax from Abdel
10 Rahman's apartment in Jersey City. If there is something
11 else in defendant Abdel Rahman's apartment that needs to be
12 put in context, that becomes clear later, we are more than
13 ready to make the agents available or stipulate.

14 THE COURT: Forget what is in Denmark which we
15 don't have.

16 MR. FITZGERALD: The indictment alleges that the
17 Jihad pursued various objectives, including the
18 establishment of the United States as a staging ground for
19 targets located in the United States and elsewhere, and also
20 alleged that defendant Abdel Rahman used his status as a
21 leader of an overseas Jihad organization; that that status a
22 allowed him to serve as a leader in the New York area. This
23 is part of a series of items of proof to show that defendant
24 Abdel Rahman was the emir of the group known as El Gama'a Al
25 Islamia group, and that is an overseas terrorist

1 organization. That has been the government's position from
2 the opening when Ms. Stewart claimed that defendant Abdel
3 Rahman was merely a preacher in a mosque.

4 MS. STEWART: I never said that. I said he was
5 an extremely political person opposed to the regime in
6 Egypt. Let's be straight about that.

7 THE COURT: Regardless of what you said, he is at
8 least right about what he said.

9 MR. FITZGERALD: And this shows him to be a
10 hands-on person involved in the affairs of the Islamic group
11 overseas, and shows him to become apprised of operational
12 matters, personnel matters, who is here, who is there, what
13 they are doing. That is an important part of the case to
14 show his status.

15 MS. STEWART: I just would add, Judge, these are
16 obviously flyers meant for wide dissemination. They are not
17 secret correspondences between him and Denmark. I hate to
18 say it, but something seems to be rotten in Denmark.

19 THE COURT: That is a reach, Ms. Stewart.

20 MS. STEWART: I waited a week to say it.

21 THE COURT: You might have gotten a better
22 opportunity if you waited.

23 MS. STEWART: Eventually, hopefully. And, of
24 course, one doesn't control what one receives on one's fax
25 machine. But those arguments aside, it just seems that it

1 does more harm to put it in at this juncture than it really
2 does any good. You might be able to show that it has no
3 relevance whatsoever if we see the other document. And if
4 he is on a mailing list of a thousand people that receives
5 it in Denmark, it makes it a different kind of document than
6 if he is the only one receiving it.

7 THE COURT: But this doesn't stand alone. Let's
8 get to the others. The others that you intended to
9 introduce today -- I am sorry, the ones you are prepared to
10 deal with are this one and 700?

11 MS. STEWART: This one, 700, 701, 703, 705. None
12 of the alleged Denmark conversations. And I don't know that
13 they are Denmark, because I have not had an opportunity to
14 consult on this.

15 MR. FITZGERALD: And, of those, Judge, 700 and
16 701 were for tomorrow.

17 THE COURT: Look, she is prepared to deal with
18 them.

19 MR. FITZGERALD: That is fine.

20 THE COURT: And we have a moment now, so we will
21 just deal with them. I haven't looked at 700. What is it?

22 MR. FITZGERALD: 700 is a call to Pakistan, and
23 during that call -- a call by defendant Abdel Rahman, who is
24 addressed by the person on the other line as Your
25 Eminence -- he is advised that the brothers carried out an

1 operation in Egypt. It indicates that the operation was
2 against four tourist buses and five police cars. And the
3 defendant Abdel Rahman asked, what are the results, and is
4 told that the brothers returned safely and that they
5 inflicted heavy losses on the other side in an hour of
6 shooting. And the defendant Abdel Rahman responds, OK,
7 thank God, may God guide your way for the best.

8 First, it directly responds to the contention
9 that the defendant Abdel Rahman is only in favor of action
10 in defense, not against aggression, and that what we are
11 looking at here is, he is not only operationally involved,
12 that he is operationally involved in attacks against tourist
13 buses, but I would also point out that this is a phone
14 number, I believe, that comes up again. It came up on the
15 cross of Emad Salem, when he said that he overheard a
16 conversation in defendant Abdel Rahman's apartment where he
17 thought that people were reporting about the movement of
18 troops and he told the agent to check out that phone call.
19 I believe that is the same number.

20 Let me double-check that.

21 During cross last week of Mr. Salem, Ms. Stewart
22 asked: Was he aware of this saying, "Do not commit
23 aggression. Allah does not love the aggressors," the bottom
24 line being, this is a Gama'a operation in Egypt. This is
25 not something he is unaware of. This is something people

1 are reporting to him on. That number in Peshawar, Pakistan,
2 is called repeatedly. And when he calls that number, he is
3 apprised of the status of operations and personnel.

4 (Continued on next page)

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1 MS. STEWART: Judge, the attack on the police
2 cars guarding the tourist buses in Egypt, I believe is one
3 of the "bad acts" that the prosecution advanced at an
4 earlier date, and which was not ruled upon at that time. We
5 would contend, first of all, this issue in this particular
6 call is raised by the person on to whom he is speaking, and
7 it is raised in this way. It is said, "Did you hear that?"
8 And Dr. Rahman says, "What?"

9 Then this person goes on to report this entire
10 incident. In other words, he is in Pakistan; this is taking
11 place in Egypt; the sheik is New Jersey. It seems to me
12 there is a hearsay objection, that he is repeating something
13 that is hearsay within this conversation, and thus totally
14 unreliable and it is unsolicited by Dr. Rahman. It is
15 something he is just reporting on the news, something that
16 he believed the sheik would be interested in, but does not
17 go beyond that. He does not say, "Shall we send
18 reinforcements? Shall we attack?" Nothing. It is there,
19 and it's prejudicial and I would ask that it be excluded on
20 403 grounds.

21 MR. FITZGERALD: I would point out two responses:
22 First, you have to take that conversation in context with
23 the others. When he calls, people listen. They ask for
24 directions and guidance. The second part is that one of the
25 elements of the solicitation count is that the government

1 must prove beyond a reasonable doubt that there are
2 circumstances strongly corroborative of intent, which means
3 that when defendant Rahman asked someone to do something
4 that he means that they carry it out. Precisely when the
5 evidence is offered to show that when he says to take an
6 action, that is when an objection is made. He does have
7 that status, and this is offered to prove it.

8 THE COURT: She is saying that this, standing
9 alone, doesn't show that he said to take any action, simply
10 that it was reported to him that an action was taken and he
11 said good.

12 MR. FITZGERALD: Taken in context with the other
13 calls, particularly those saying that he is conscious of
14 surveillance and people listening in, it shows the nature of
15 his relationship with the people he is speaking with at that
16 phone number. In fact, a number of times people asked, "Are
17 there any orders for us?" I don't know if this is one of
18 the calls, but they address him as "your eminence."

19 MS. STEWART: We are going to deal with that
20 through the translator, I think.

21 THE COURT: Which others are you prepared to do?

22 MS. STEWART: Judge, we have no objection to 701.
23 I mentioned to Mr. Fitzgerald that I am withdrawing that
24 objection at this time.

25 THE COURT: OK.

1 MS. STEWART: In 703, there is about four pages
2 of discussion of getting a power of attorney --

3 THE COURT: Right.

4 MS. STEWART: -- to be sent to Egypt for a
5 pending case. It is apparently with regard to the fellow in
6 Pakistan. But it is also a case that later on the sheik
7 talks about himself being charged in.

8 THE COURT: That one I did look at, about the
9 case involving Faraj Foda going to a military court.

10 MS. STEWART: Right.

11 MR. FITZGERALD: She told me she may have an
12 objection. We will redact that part. It doesn't matter to
13 us, the discussion of pending cases in Egypt.

14 THE COURT: What are you offering it for, then?

15 MR. FITZGERALD: The rest of the conversation,
16 703, is a conversation with an individual identified as Abu
17 Khaled, who asked defendant Abdel Rahman, "Do you command us
18 with anything?"

19 MS. AMSTERDAM: I'm sorry. I couldn't hear that.

20 MR. FITZGERALD: "Do you command us with
21 anything?"

22 THE COURT: What page?

23 MR. FITZGERALD: I think it is pages 12 to 13.
24 Following that defendant Abdel Rahman says that the boys
25 should come to him since Abu Khaled cannot assign them work,

1 and agrees that Abu Khaled should assign the work to the
2 kids that could be considered jihad internally or
3 externally. And then Abu Khaled responds.

4 THE COURT: So he does.

5 MS. STEWART: I should warn the government that
6 the sheik is talking about his sons that happen to be in
7 Pakistan at this time. He earlier asks, "Did you get the
8 visas for the boys?" They said, "Well, we didn't know what
9 you wanted to do and we were a little shy about asking them
10 to do things."

11 At the end, he asks again about that.

12 He says, "Since you have no work for them, let
13 them come to me."

14 Then they respond that they will give them work
15 if that is what he wants, but to make a larger --

16 MR. McCARTHY: I spoke to the interpreter about
17 that. That is right. What they are talking about putting
18 them to work on is Islamic work, which, taken in the context
19 of the whole case, takes on a different meaning. I
20 understand they happen to be Dr. Abdel Rahman's sons. But
21 all things considered, that is not all that surprising.

22 MS. STEWART: We had no objection with regard to
23 that part.

24 THE COURT: They are withdrawing the other part,
25 so we are fighting over an empty bag.

1 MS. STEWART: Right.

2 THE COURT: What else? 705 did you say?

3 MS. STEWART: One minute.

4 705, Judge. There is, at pages 2 and 3 and then
5 at pages 6 and 7, a long discussion regarding Al-Gama'a
6 Al-Islamia and the emir. That was also raised originally as
7 bad acts and whether or not it should be allowed in, not as
8 being implicit in the indictment. I would ask that that all
9 be excluded.

10 THE COURT: No. That, I believe, is directly
11 relevant.

12 MS. AMSTERDAM: I'm sorry, your Honor. What did
13 you say?

14 THE COURT: It is directly relevant. There is a
15 discussion about whether to deny association with the
16 organization, whether to say that the organization simply is
17 anybody who follows the truth. That discussion is in.

18 MR. McCARTHY: There is one other thing. May I
19 just take a second with Ms. Stewart.

20 MS. STEWART: The other thing has to do with a
21 sermon that was seized at Elmasry's. I have the search
22 number. I don't know what exhibit number it is.

23 MR. McCARTHY: Your Honor, it is Government
24 Exhibit 461/T.

25 THE COURT: I haven't seen that.

1 THE DEPUTY CLERK: Judge, you have it in the
2 binder.

3 MR. McCARTHY: The portions that we are going to
4 talk about are from 4 going over to page 5, your Honor. The
5 last paragraph on page 4 and the first paragraph on page 5,
6 which I will hand up to the court.

7 THE COURT: I have the transcript.

8 MR. McCARTHY: All right.

9 (Pause)

10 THE COURT: I have no understanding of this. I
11 don't understand this at all.

12 MS. STEWART: Judge, if I can give it some
13 context perhaps --

14 THE COURT: I understand what this says. I don't
15 understand how it relates to this case.

16 MR. McCARTHY: More than half of the approach of
17 the Abdel Rahman defense in this case has been his purported
18 affinity with America, its principles, its people, and what
19 it stands for.

20 What Ms. Stewart brought to the jury's attention
21 last week, which is consistent with a theme that's been
22 pounded away throughout, is that Dr. Abdel Rahman, far from
23 being a person who is at war with the United States, in fact
24 has a great love of the American people.

25 He's taken the position, in fact, that he views

1 his stay here as a covenant with the nation that has allowed
2 him entry through his visa. The pitch that he's been
3 permitted to make to the jury from the beginning of the
4 trial is that he has one particular feeling about them. It
5 is the government's view that this section that we are
6 talking about now, this disputed section of this transcript,
7 is something which places in context what his feelings are
8 precisely on that issue, which is something that he has put
9 into dispute in the trial.

10 You can't have it both ways. You can't put in
11 half the story, which is the story he tells very publicly,
12 and not put in what he says when the TV cameras aren't
13 going.

14 MS. STEWART: This is a public sermon. It is not
15 clandestinely whispered in anybody's ear. This is a comment
16 on morals, the sexual morals of Americans. It has not much
17 to do with whether he loves them or not. He's judging them
18 from a religious point of view.

19 THE COURT: It really has zero to do with what
20 you were talking about. He talks about the decline of
21 morality in this country. There are other people talking
22 about that, too.

23 MR. McCARTHY: The other people talking about it
24 aren't being asked about their view about blowing up places
25 that have lots of civilians in them.

1 THE COURT: The conversations about blowing up
2 places are to be admitted. The conversations about the
3 decline of morality in the United States -- and that's all
4 this is -- are out. At least this conversation is out if
5 that is all it is in for.

6 MR. McCARTHY: Moving on to the next thing: Ms.
7 Stewart has, as I understand it, some objections to parts of
8 this conversation that deal with --

9 THE COURT: What is the exhibit number?

10 MR. McCARTHY: I'm sorry, 461T. That deal with
11 Mustafa Shalabi. I share her view that most of that stuff
12 should come out. I think we are going to be able to agree
13 with each other about exactly what ought to come out. If we
14 can't, that is not something we intend to present this
15 morning and we can bring a dispute back to the court if we
16 have one.

17 THE COURT: All right.

18 MS. STEWART: That I think concludes it.

19 THE COURT: I am going to let in 410 for the
20 purposes that he described.

21 MR. FITZGERALD: Your Honor, shall we offer 703
22 from page 12 forward, is that acceptable? Does that cure
23 the problem?

24 THE COURT: As well as 700. 703 you say you're
25 offering only from 12 on?

1 MR. FITZGERALD: Yes. We will pick it up where
2 Abu Khaled joins the conversation, which I believe is -- I'm
3 sorry, page 11, toward the bottom.

4 THE COURT: Ms. Stewart?

5 MS. STEWART: Where Adu Khaled --

6 MR. FITZGERALD: Yes. I think I would pick up at
7 the line, Shwaish: Here is sheik Abu Khaled, he will talk
8 to you about Luxor. It doesn't matter, we can pick up at
9 Khaled: Peace be upon you.

10 MS. STEWART: That is fine, Judge.

11 THE COURT: OK. So that is all we can deal with
12 today, correct?

13 MR. FITZGERALD: 705 I think you ruled on, yes.

14 THE COURT: All right.

15 Before we start, can we go back over two things
16 we touched on yesterday: One may seem trivial. It was an
17 objection that Mr. Patel made during the testimony by the
18 sergeant about Mr. Nosair looking around. I overruled the
19 objection. On second thought, the part about him looking
20 around is in; however, there was a part at the end, I think,
21 where he said that he was looking to see where things led.
22 If there is a re-read, that is out. I assume that was your
23 objection.

24 Do you remember it?

25 MR. PATEL: I do remember the objection.

1 MR. STAVIS: Yes.

2 MR. PATEL: Yes.

3 THE COURT: So the part about his looking around
4 is in; the part about his looking to see where things led is
5 out.

6 The expert's testimony, what is your position on
7 Whitehurst and Ms. Knuckles. Mr. Patel?

8 MR. PATEL: Our position is that they have to --

9 THE COURT: They have to testify before the
10 evidence comes in.

11 MR. PATEL: Yes.

12 THE COURT: You are going to produce Whitehurst
13 and Ms. Knuckles?

14 MR. FITZGERALD: Your Honor, can we get back to
15 you after consulting with Mr. Khuzami?

16 THE COURT: Fine.

17 MR. FITZGERALD: I thought our position was as to
18 the chain of custody, who handled particular items, it need
19 not be perfect as long as there is a reasonable basis for
20 the jury, and we would make it available to the defense on
21 the defense case.

22 MR. PATEL: We can resolve this with Mr. Khuzami.

23 THE COURT: Fine. Are we set to go ahead?

24 MR. JACOBS: What is the ruling on 410?

25 THE COURT: 410 is in. It is in for the purposes

1 for which they offered it, namely, to prove up the names,
2 the addresses, and the organizational affiliations.

3 MR. JACOBS: I'm sorry. Does that mean the
4 entire document is coming in?

5 THE COURT: I am not sure how you plan to offer
6 it.

7 MR. FITZGERALD: Your Honor, I will offer it in
8 Arabic now so it won't be displayed to the jury. I will be
9 calling a translator, and, if there is something that anyone
10 wants redacted, we can redact it out, and I will just read
11 the portions to the jury at this point that are relevant,
12 namely, the headers and the footers.

13 MS. STEWART: Namely what?

14 MR. FITZGERALD: I will read who the fax
15 purported to come from and the date; I will read who signed
16 the documents in terms of organizations and what addresses
17 are there.

18 As for the substance of what is reported in the
19 main part of each document, I will not read that to the
20 jury. We can discuss with counsel what needs to be redacted
21 for anything that ends up in the jury's book. Right now
22 they haven't --

23 THE COURT: You mean that part of it?

24 MR. FITZGERALD: Yes.

25 THE COURT: If you can agree on a one-line

1 summary of what the nature of the message is, it seems to me
2 that would be the best thing to do. It would save everybody
3 a lot of time.

4 MR. JACOBS: Just to be clear, your Honor, I join
5 with Ms. Stewart said, but I want to reserve any objections
6 in light of further discovery we get from the government. I
7 understand what they have offered it for, but concerning
8 these conspiracies and jihad groups --

9 THE COURT: Just along the lines of the claim
10 that somehow they have had this stuff from Denmark and they
11 are hiding it?

12 MR. JACOBS: I am not saying that, your Honor. I
13 am saying I want to reserve, that the government has offered
14 a document that was purportedly sent from Denmark that we
15 haven't seen certain discovery on. I am not commenting on
16 what the government has done or didn't do, your Honor. I am
17 just reserving on it. They offered it on the theory of
18 jihad groups, and I want to reserve on it.

19 THE COURT: All right. Let's go.

20 (Jury present)

21 THE COURT: Good morning, ladies and gentlemen.

22 JURORS: Good morning.

23 THE COURT: Again I'm sorry for the delay in
24 getting started. But sometimes we really do need to hash
25 some things out. Rather than do it up at the side there

1 while you are sitting in the box, it's easier to do it while
2 you are reasonably comfortable in the jury room.

3 MR. FITZGERALD: The government re-calls Special
4 Agent Andrew Vale.

5 ANDREW VALE,

6 called as a witness by the Government,
7 having been duly sworn, testified as follows:

8 THE COURT: Go ahead.

9 MR. FITZGERALD: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. FITZGERALD:

12 Q. Mr. Vale, can you tell the jury what you do for a
13 living?

14 A. I am a special agent with the Federal Bureau of
15 Investigation.

16 Q. If you could just speak up a bit by either
17 turning both microphones toward you or sitting a little
18 closer so everyone catches your answers.

19 A. Yes.

20 Q. Where are you assigned?

21 A. I am assigned to the Newark division.

22 Q. You testified previously about a search conducted
23 in June of 1993 of an apartment at 115 Fairview Avenue, do
24 you recall that?

25 A. Yes, I do.

1 Q. Was that defendant Abdel Rahman's apartment?

2 A. Yes, it was.

3 Q. During that search, did you have occasion to
4 search the hallway closet in that apartment?

5 A. Yes, I did.

6 Q. Can you tell us generally the nature of the items
7 you saw in the hallway closet.

8 A. There were some pamphlets there; there were a lot
9 of papers, fax documents. That was the majority of the
10 items that were in there, a lot of papers.

11 MS. STEWART: I cannot hear him, Judge. I'm
12 sorry.

13 THE COURT: He said that was a majority of the
14 items there, a lot of paper, or a lot of papers. If you
15 could try to speak up, and slowly.

16 THE WITNESS: Yes.

17 MR. FITZGERALD: If I may approach the witness,
18 Judge.

19 THE COURT: Go ahead.

20 Q. I have placed before you a number of items of
21 paper and removed one that is in a plastic covering now with
22 a sticker on it. Do you recall what those items generally
23 are?

24 A. These are items that were found in the hallway
25 closet. There were just numerous documents in Arabic

1 writing.

2 Q. The number on the top piece of paper, the one in
3 the plastic covering now?

4 A. The bag one, Document No. 16.

5 Q. Is that Government Exhibit 410?

6 A. Yes.

7 Q. Is that an item you recovered in the apartment,
8 the hallway closet of defendant Abdel Rahman's apartment?

9 A. Yes, it is.

10 MR. FITZGERALD: Your Honor, I would offer
11 just -- I'm sorry.

12 THE COURT: You can't hear the witness?

13 JURORS: No.

14 Q. Lean forward, bring the mike closer. Turn both
15 towards you. It is a directional microphone. Great.

16 Is that item, Government Exhibit 410, one of the
17 items you recovered in the hallway closet of defendant Abdel
18 Rahman's apartment in June 1993?

19 A. Yes, it is.

20 MR. FITZGERALD: Your Honor, I would offer just
21 Government Exhibit 410.

22 THE COURT: That objection has been ruled on and
23 overruled. Go ahead.

24 (Government's Exhibit 410 for identification was
25 received in evidence)

1 MR. FITZGERALD: I have nothing further, Judge.

2 THE COURT: Ms. Stewart?

3 I'm sorry, Mr. Jacobs?

4 MR. JACOBS: May I just look at the exhibit, your
5 Honor.

6 (Pause)

7 MR. FITZGERALD: Your Honor, I have agreed with
8 counsel that on this document, which is one continuous sheet
9 of paper, there are three FBI stickers which it should be
10 made clear are not part of the exhibit. It says, Bag 1,
11 Document 16, Document 17, Document 18. They were not in
12 that condition when we recovered it, and we stipulate that
13 they are not part of the exhibit.

14 THE COURT: OK.

15 MR. JACOBS: Thank you.

16 THE COURT: All right. Ms. Stewart?

17 CROSS-EXAMINATION

18 BY MS. STEWART:

19 Q. Agent Vale, how many documents in total were
20 recovered by you in that apartment that day?

21 A. Total? I don't know the total.

22 Q. Would you say it was more than a hundred?

23 A. Just in those documents alone right there, there
24 were close -- I believe there were over a hundred, like a
25 hundred and something pages, close to 150.

1 Q. This was not standing all alone in the closet,
2 was it?

3 A. No, it was not.

4 Q. There were a lot of books, manuscripts, tapes,
5 etc. in that closet, isn't that right?

6 A. Yes.

7 Q. It is a fax, is it not?

8 A. Yes.

9 Q. It is on fax paper?

10 A. Yes.

11 Q. Were there other faxes that you observed that
12 day?

13 A. Yes.

14 Q. There was indeed a fax machine in the apartment,
15 is that right?

16 A. Yes.

17 MS. STEWART: I think I have nothing further,
18 Judge.

19 MR. FITZGERALD: No redirect.

20 THE COURT: You are excused. Thank you.

21 MR. FITZGERALD: Your Honor, the government calls
22 Gamal Abdel-Hafiz.

23 (Witness excused)

24 MS. STEWART: Judge, may we have a very brief
25 side bar with Mr. McCarthy?

1 THE COURT: Sure.

2 (At the side bar)

3 THE COURT: Yes.

4 MS. STEWART: After some discussion with
5 co-counsel and talking among ourselves, we don't have an
6 objection to the translations coming in now. As a matter of
7 fact, we don't want it to be a mysterious document in Arabic
8 with Danish addresses on it.

9 MR. McCARTHY: You are talking about the last
10 exhibit?

11 MS. STEWART: Yes.

12 MR. McCARTHY: That is not this witness. That is
13 the next one. But that is fine. I will tell Mr.
14 Fitzgerald.

15 MS. STEWART: All right. I didn't want him for
16 us to pop up --

17 THE COURT: All right. Let's demystify it.

18 MS. STEWART: Yes.

19 (Continued on next page)

20

21

22

23

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25

1 (In open court)

2 GAMAL ABDEL-HAFIZ,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 THE COURT: Go ahead, Mr. McCarthy.

6 MR. McCARTHY: Your Honor, may I proceed from the
7 witness stand with the exhibits?

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION

10 BY MR. McCARTHY:

11 Q. Good morning, Mr. Abdel-Hafiz.

12 A. Good morning.

13 Q. You are still a translator employed by the
14 Federal Bureau of Investigation?

15 A. Yes, sir.

16 THE COURT: It is impossible to hear the witness'
17 answers. So if you could -- good. Thank you.

18 Q. Remind us of what you do for a living, please,
19 into the microphone.

20 A. I am a translator with the Federal Bureau of
21 Investigation.

22 Q. Mr. Abdel-Hafiz, I am placing before you
23 Government's Exhibit 461 and 461T.

24 Do you recognize those items?

25 A. Yes, sir, I do.

1 Q. Please try to speak into the microphone.

2 A. Yes, sir, I do.

3 Q. Did you make the transcript that is 461T, that
4 is, the English transcript from the Arabic that is recorded
5 on the cassette tape that is 461?

6 A. Yes, sir, I have.

7 Q. Can you tell us, please, who the speaker was on
8 461 and 461T?

9 A. It is Sheik Omar Abdel Rahman.

10 Q. I am now showing you Government's Exhibits 700,
11 701, 703, and 705, which are cassette tapes, and transcripts
12 700T, 701T, 703T, and 705T. I would ask you to take a look
13 at those and tell us whether you reviewed them prior to
14 testifying?

15 A. Yes, sir, I have.

16 Q. Do the transcripts and the cassette tapes all
17 bear your initials indicating that you have reviewed them?

18 A. Yes, sir, they do.

19 Q. Is that also the case with 461 and 461T?

20 A. Yes, sir, it is.

21 Q. Do the English transcripts which bear the
22 corresponding T numbers fairly and accurately reflect an
23 English translation of the Arabic that is spoken on the
24 cassette tapes?

25 A. Yes, sir, it does.

1 MR. McCARTHY: Your Honor, subject to the rulings
2 made earlier this morning, the government offers 700 through
3 705 and the corresponding transcripts, which have T numbers,
4 and also 461 and 461T.

5 THE COURT: You said 700 and 705. Do you include
6 702 and 704?

7 MR. McCARTHY: I apologize, your Honor. It is
8 700, 701, 703 and 705.

9 THE COURT: Subject to the rulings this morning,
10 those are received.

11 (Government's Exhibits 700, 701, 703 and 705 and
12 the corresponding transcripts were received in evidence)

13 MR. McCARTHY: Also 461, your Honor, and 461T.

14 THE COURT: 461?

15 MR. McCARTHY: Let me just make sure Ms. Stewart
16 knows to what I am referring.

17 Your Honor, we are going to defer for the moment
18 on 461 and 461T.

19 THE COURT: Then you are just offering the 700
20 series. All right. I have ruled on those. Go ahead.

21 MR. McCARTHY: I have no further questions right
22 now, your Honor.

23 THE COURT: Ms. Stewart.

24 CROSS-EXAMINATION

25 BY MS. STEWART:

1 Q. Good morning, once again, Mr. Abdel-Hafiz.

2 A. Good morning.

3 Q. Directing your attention to the exhibits numbered
4 701, 700, 701 -- wait a minute. Now I am getting it
5 wrong -- 700, 701, 703 and 705.

6 A. Yes, ma'am.

7 Q. When you first translated these, were you
8 listening to a large tape on a reel or were you given a
9 cassette to work from?

10 A. A cassette with an individual call.

11 Q. A cassette with an individual?

12 A. Call. With just one phone call on it.

13 Q. So you did not listen to 11 reels of FISA
14 intercepts, is that right?

15 A. No, ma'am, I have not.

16 Q. Do you know whether or not what you listened to
17 was enhanced in any way or whether it was taken directly
18 from that tape?

19 A. There is no way for me to tell.

20 Q. Did you make any notes?

21 A. No, ma'am, I don't.

22 Q. You do make notes on some occasions, though, is
23 that right, when you are working on transcripts?

24 A. No, not what I am working on transcripts, no.

25 Q. Well, did we get some of your notes when you

1 worked on the CM's earlier, the tapes of Emad Salem?

2 Did you make some notes on those?

3 A. No, I don't make any notes while I am working. I
4 have WordPerfect and I work straight on the WordPerfect.

5 Q. You would on occasion, if there was something
6 happening on the tapes, such as laughter, you would put that
7 in brackets, is that correct?

8 A. Yes, ma'am.

9 Q. On some of these tapes, the participants are
10 identified?

11 A. Yes, ma'am.

12 Q. How did you go about doing that, other than
13 Dr. Abdel Rahman?

14 A. When they say their name to Dr. Abdel Rahman or
15 Dr. Abdel Rahman called them by name.

16 Q. That is the sole basis of that identification?

17 A. That's the sole basis.

18 Q. Is that right?

19 A. Yes, ma'am.

20 Q. Just the tape itself, is that right?

21 A. Most of the time, yes.

22 Q. No agent came to you and said he's talking to so
23 and so, is that right?

24 A. No, ma'am.

25 Q. Let me just ask you, on these four tapes and on

1 some of your other translations, the sheik is addressed as
2 "your eminence"?

3 A. Yes, ma'am.

4 Q. This is a proper form of address for a person who
5 is an imam and has a doctorate from Al-Azar, isn't that
6 correct?

7 A. An imam and keeper of the Koran, yes.

8 Q. At some times, during the end of the conversation
9 usually -- and I think I can point it out to you on one of
10 the tapes. If you just look at the transcript for 705 -- I
11 don't find it there, but, at any rate, there is a phrase, it
12 says, "What is your command?" do you remember translating
13 that on various of these tapes and maybe other tapes?

14 A. Yes.

15 Q. Is this not a polite form of taking leave of
16 someone used in Arabic when you say, "I'm at your command,"
17 or, "What is your command"?

18 A. That's a proper form of addressing someone when
19 that someone has -- I may say some kind of relationship
20 with, whether it is a work relationship or a father-son
21 relationship.

22 Q. Of respect?

23 A. Of respect.

24 Q. It could be, is that right?

25 A. Yes, yes.

1 Q. Let me shuffle these around a minute.

2 With regard to 700T, the other speaker in that
3 conversation is someone named Mohammed, is that right?

4 A. Yes, ma'am.

5 Q. And you have heard his voice on other of the
6 cassettes, is that correct, on other conversations?

7 A. I believe so.

8 Q. He is indeed on 703 as well, is he not?

9 A. Yes, ma'am.

10 Q. And on 705, is that right?

11 A. Yes, ma'am.

12 Q. Were you able to determine where those calls were
13 either coming from or going to, what country?

14 A. No, not me. On some of them, when he talked
15 about Pakistan, yes.

16 Q. Is it fair to say that those three conversations,
17 700, 703 and 705, the sheik is talking to someone in
18 Pakistan?

19 A. I believe so.

20 Q. With regard to 701 --

21 MS. STEWART: And the record should just reflect
22 that Mr. Abdel-Hafiz is referring to the transcript.

23 THE COURT: OK.

24 Q. -- he is speaking to someone in London, isn't
25 that correct?

1 A. Yes.

2 Q. There is no identity of names, is that right?

3 A. No, there is not.

4 Q. In transcript 700T, there is a description, is
5 there not, of a shootout in Manfalout. I know I'm murdering
6 the --

7 A. Which page, please?

8 Q. This is on page 4, I believe. Pages 3 and 4
9 starting on page 3.

10 (Pause)

11 A. OK.

12 Q. And Mohammed from Pakistan is asking Sheik Omar
13 in New Jersey if he heard about this news, is that right?

14 A. Yes.

15 Q. Where is Manfalout?

16 A. It is in south Egypt.

17 Q. Would you correct my pronunciation.

18 A. Manfalout.

19 Q. Falout. OK.

20 He basically gives the sheik the news of what is
21 happening in Egypt, is that right?

22 A. Yes.

23 Q. Also, on this particular tape, there is
24 conversation about cassettes and tapes that have not arrived
25 in Pakistan, is that right?

1 A. Yes.

2 Q. You yourself own cassettes and tapes of the
3 sheik's sermons, do you not, Mr. Abdel-Hafiz?

4 A. Yes, ma'am.

5 Q. Going on to 701 --

6 A. Excuse me. But the tapes here that is mentioned
7 here, are not clearly sermons of the sheik.

8 Q. They are just referred to as cassette tapes, is
9 that right?

10 A. Yes.

11 Q. Are the tapes you have on cassettes?

12 A. Yes. But here the sheik told them if they didn't
13 arrive, "I'll call and I'll give you a transcript or a read
14 on the phone with what happened in the news conference."

15 Q. Right.

16 A. So apparently these were taping of a news
17 conference, what happened in the news conference or an
18 interview with the sheik.

19 Q. Right. An interview or a news conference as
20 opposed to a sermon?

21 A. Yes, ma'am.

22 Q. Is that right?

23 A. Yes, ma'am.

24 Q. Go on to 701.

25 A. All right.

1 Q. On page 7 there is a reference in the middle of
2 the page to letters that have been sent on behalf of the
3 sheik to America, is that right?

4 A. Yes.

5 Q. These were letters that were -- it's described as
6 a polite and decent letter, right?

7 A. Yes.

8 Q. It is dealing with the -- well, strike that.
9 In the midst of this the sheik asks to whom was
10 it sent?

11 A. Yes.

12 Q. And then you have him as saying "to the proper
13 channels"?

14 A. Yes.

15 Q. Are you certain as you sit there that the sheik
16 did not say "to my address" or "sent to me in my name"?

17 A. No, I don't believe he said that.

18 Q. It would be very different Arabic to say "to the
19 proper channels"?

20 A. Yes.

21 Q. And this was a letter -- strike that.

22 You are absolutely certain that "to the proper
23 channels" is in that tape?

24 A. Yes, ma'am.

25 Q. Also, in this particular tape at page 9 there is

1 an exchange between the sheik and the man he is speaking to
2 about the girl who is like butter.

3 A. Yes.

4 Q. Would you say that they were joking around when
5 they made these references?

6 A. They were chuckling.

7 Q. It is not noted in your transcript, but they were
8 chuckling; it was like they were going back and forth
9 laughing, right?

10 A. That's true.

11 Q. On page 10 there is reference to something that
12 has been sent to the print shop to be printed, do you see
13 that?

14 A. Yes.

15 Q. You translated that as The Absent Ordinance?

16 A. Yes, ma'am.

17 Q. Could it also be the missing or the lost
18 ordinance?

19 A. I heard it as the missing ordinance, not the lost
20 ordinance.

21 Q. But in your mind it means the same? The missing
22 or the absent --

23 A. Yes, the missing or the absent. Not the lost.

24 Q. This is a famous book, is it not, in Egypt?

25 A. There are several books that are written under

1 that name.

2 Q. It was written by someone who was ultimately put
3 to death by the Egyptian government, is that right?

4 MR. McCARTHY: Objection to form.

5 Q. If you know?

6 MR. McCARTHY: "It."

7 THE COURT: I guess the question is, do you know
8 if a book by that name was written by someone who was
9 executed?

10 A. I have no idea.

11 Q. What were the years you were living in Egypt,
12 Mr. Abdel-Hafiz?

13 MR. McCARTHY: Objection, relevance.

14 THE COURT: Sustained.

15 Q. I need you to go ahead to page 11. There is an
16 interruption by an incoming phone call, is that right?

17 A. Yes, ma'am.

18 Q. Did that occur, would you say, frequently in the
19 course of your transcribing these conversations, that there
20 was another call that would come through, and it would be --

21 A. The conversations, yes.

22 Q. Just below that, about six lines after it says,
23 "We can take the money from Abdallah."

24 A. Yes.

25 Q. The sheik says, "Go ahead."

1 Isn't what he actually says on the tape "mashi,"
2 or "OK"?

3 A. It can be "mashi" or it can be "do so" or it can
4 be "OK."

5 Q. OK. Thank you.

6 A. You're welcome.

7 Q. If you would go back now to page 4 in this
8 document. I am sorry.

9 A. That is all right.

10 Q. I missed something.

11 The very first line, the sheik refers to
12 something that you have translated as Ceaucescu?

13 A. Ceaucescu, yes, ma'am.

14 Q. What is the meaning of that, if you can tell us?

15 A. Ceaucescu was the ruler of Romania. He was a
16 dictator in Romania, and he refers to Hosni Mubarak, the
17 Egyptian president, as Ceaucescu.

18 Q. Ceaucescu was a communist ruler, is that correct?

19 MR. McCARTHY: Objection.

20 Q. If you know.

21 THE COURT: I will allow it.

22 A. Yes.

23 Q. He was executed by his own people, is that
24 correct, after a change came about, is that right?

25 A. Yes.

1 Q. On page 10 the fellow in London asks about two
2 people of the sheik, is that right, at the very top of the
3 page?

4 A. Yes, ma'am.

5 Q. One is Abdel Sattar and the other is Nidal, is
6 that right?

7 A. That's true.

8 Q. "Nidal" is a first name, is it not?

9 A. Yes, ma'am.

10 Q. Is it?

11 A. I don't know if it is a first name or a last
12 name. He said Nidal and Abdel Sattar.

13 Q. Nidal can be either a first name or a last name?

14 A. Yes.

15 Q. It's a common name, though, am I correct?

16 A. Not in Egypt.

17 Q. Not in Egypt, but a common name in the Middle
18 East?

19 A. Around Jordan, Palestine, that's about it.

20 Q. Abdel Sattar is a common name as well, is that
21 right?

22 A. In Egypt.

23 Q. In Egypt?

24 A. Yes, ma'am.

25 Q. Going on to 703, this is a conversation with

1 Mohammed in Pakistan once again, is that right?

2 A. Yes.

3 Q. Eventually another brother named Sheik Abu
4 Khaled, is that right, starting on page 11?

5 A. Yes, ma'am.

6 Q. The first full paragraph on page 12 refers to,
7 you've translated it as "the brothers inside."

8 Do you see where I'm referring to?

9 A. Yes, ma'am.

10 Q. It is repeated again, the third attribution down,
11 "brothers inside"?

12 A. Yes, ma'am.

13 Q. Does that mean the brothers inside Egypt? Is
14 that the way that's referred to?

15 A. Most likely, yes.

16 Q. Then, at page 13 the sheik at the very first
17 attribution says, "Regarding the issue of the boys."

18 Do you see that?

19 A. Yes.

20 Q. He said "boys." He did not say sons? He said
21 "boys," is that right? There was no word for "sons"?

22 A. He said "el-owlad" in Arabic. And that word can
23 be -- a person can say "el-owlad" meaning his own sons, his
24 own children, or the children in general who he is talking
25 about.

1 Q. Later on, on this page, he talks about -- where
2 it says, "OK, no problem." Sheik Khaled talks about going
3 to Bosnia, is that right?

4 A. Yes.

5 Q. Then he says that they were shy about assigning
6 any work, do you see that? That is the next paragraph down.

7 A. OK. Yes.

8 Q. Going on to 705 -- one moment.
9 Going back to 703, this is dated February 23,
10 1993.

11 A. Yes, ma'am.

12 Q. Is that correct?

13 A. Yes, ma'am.

14 Q. 705 is dated March 20, is that right?

15 A. Yes, ma'am.

16 Q. While we are at it, 701 is February 17, 1993?

17 A. Yes, ma'am.

18 Q. And 700 is February 16, 1993, is that right?

19 A. That's true.

20 Q. Going on, then, to 705, this is once again in
21 Pakistan, am I correct?

22 A. I believe so.

23 Q. He is talking again with Mohammed?

24 A. Yes, ma'am.

25 Q. Is that right?

1 A. Yes.

2 Q. They talk once again about Egypt, is that
3 correct?

4 A. Which page?

5 Q. On page 2.

6 A. Yes.

7 Q. It deals specifically with the group Al-Gama'a
8 Al-Islamia?

9 A. Al-Gama'a Al-Islamia.

10 Q. Islamia?

11 A. Yes.

12 Q. Thank you.

13 Then, once again, as in the prior tape, Mohammed
14 tells the sheik about a campaign, an arrest campaign that
15 took place in Asyuit?

16 A. At Asyuit, yes.

17 Q. Asyuit?

18 A. Yes, ma'am.

19 Q. Maybe by the end of the case my pronunciation
20 will improve.

21 Then at page 5 and 6, they are discussing items
22 that have appeared in the press, is that right?

23 A. On which paragraph?

24 Q. Starting in the middle of page 5, where it says
25 "Amen, God may accept their martyrdom."

1 Do you see that, several Egyptian newspapers?

2 A. Yes.

3 Q. They are talking about, are they not, in your
4 translation, about what is being said about the sheik in the
5 newspapers of Egypt, what they have picked up from the
6 American press to some degree?

7 A. That's true.

8 MS. STEWART: Just give me one moment, Judge.

9 THE COURT: Sure.

10 Q. With regard to the sermon, which is 461T -- I
11 think they are general questions. I don't think you need to
12 have it in front of you. I don't think you need it. But
13 maybe you better have it just in case.

14 A. I don't know if we --

15 MR. McCARTHY: May I have one moment, your Honor.

16 (Pause)

17 (Counsel conferred)

18 MR. McCARTHY: Thank you, Judge.

19 Q. With regard to this, Mr. Abdel-Hafiz, you put the
20 things that are from the Koran in quotation marks?

21 A. Yes, ma'am.

22 Q. In this particular translation just as you did in
23 the others, is that right?

24 A. Yes, ma'am. That's true.

25 MS. STEWART: I have no further questions, Judge.

1 THE COURT: Anyone else? No.

2 Mr. McCarthy?

3 MR. McCARTHY: Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. McCARTHY:

6 Q. Ms. Stewart asked you about Al-Gama'a Al-Islamia.

7 A. Yes, sir.

8 Q. What is the English translation of that?

9 A. "The Islamic group."

10 Q. "The Islamic group"?

11 A. Yes, sir.

12 Q. Thank you.

13 A. You're welcome.

14 THE COURT: You are excused.

15 THE WITNESS: Thank you.

16 (Witness excused)

17 THE COURT: Go ahead, Mr. Fitzgerald.

18 MR. FITZGERALD: Your Honor, at this time the
19 government would read from Government Exhibits 703 and 705,
20 if I could just have a moment with Ms. Stewart.

21 THE COURT: OK.

22 (Pause)

23 MR. FITZGERALD: I believe, your Honor, they are
24 in the jury's books, but we are reading Government Exhibit
25 703 starting at page 11.

1 THE COURT: All right. 703 is being read
2 starting at page 11. So if you could turn to that, 703T in
3 the appropriate book and to page 11 of that transcript.

4 Do you want to tell us who is reading what?

5 MR. FITZGERALD: Yes, Judge.

6 For Government Exhibit 703 at page 11 I will read
7 the voice of Khaled, and Mr. McCarthy will read the voice of
8 defendant Abdel Rahman.

9 Starting at page 11, we will just start with the
10 next-to-the-last speaking part, "Khaled: Peace be upon
11 you."

12 (Government Exhibit 703T was read to the jury)

13 MR. FITZGERALD: The other transcript, Judge, is
14 Government Exhibit 705T, which we will read from page 1.

15 Your Honor, again, Mr. McCarthy will read the
16 voice of defendant Abdel Rahman, and I will read the voice
17 of Muhammad and Ms. Jane Chu will read the parts of the
18 unidentified males. That is on 705T starting at page 1.

19 (Government Exhibit 705T was read to the jury)

20 THE COURT: Ladies and gentlemen, we are going to
21 take a short break. Please leave your notes and other
22 materials behind. Please don't discuss the case, and we
23 will resume in a few minutes.

24 (The jury was excused)

25 MR. SERRA: Your Honor, I know the court is going

1 to speak to authorities at the MCC about medical issues.
2 Could the court mention that Mr. Alvarez has back problems
3 also, not so severe that he does not want to be here, but he
4 has explained to me about it, and I have complained to the
5 MCC about it on numerous occasions. Could the court mention
6 that so that they could have someone look at him?

7 THE COURT: OK.

8 MR. SERRA: That was my only application, your
9 Honor.

10 (Pages 8245 and 8246 were sealed by order of the
11 court)

12 (Recess)

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1 (Jury not present)

2 THE COURT: Mr. Nooter.

3 MR. NOOTER: My client apparently has an
4 application to speak with your Honor. I don't really have
5 any --

6 THE COURT: Your client has a lawyer. I will
7 hear from his lawyer.

8 MR. NOOTER: He wants me to inform your Honor
9 that he has a problem with his representation.

10 THE COURT: We visited that issue on a number of
11 occasions. This is not going to be another one. So you
12 will take a seat and we will proceed.

13 MR. NOOTER: He has asked me for copies of
14 transcripts of those various meetings that we have had.

15 THE COURT: I will arrange to get them for him.

16 MR. NOOTER: Thank you.

17 (Jury present)

18 THE COURT: Mr. Fitzgerald.

19 MR. FITZGERALD: Before calling the next witness,
20 your Honor, after discussion with Mr. Jacobs, we are going
21 to offer a certain set of phone records, Government Exhibits
22 W802 through W807, W809, W --

23 THE COURT: One second, please.

24 MR. FITZGERALD: I'm sorry.

25 I will start from scratch. Government Exhibits

1 W802 through W807, W809, W809A, W810 through W812, W815,
2 W817 through W820, and W824.

3 THE COURT: Mr. Jacobs?

4 MR. JACOBS: No objection, your Honor.

5 THE COURT: All right. Then the exhibits just
6 enumerated by Mr. Fitzgerald are received without objection.

7 (Government Exhibits W802 through W807, W809,
8 W809A, W810 through W812, W815, W817 through W820, and W824
9 for identification were received in evidence)

10 MR. FITZGERALD: The government now calls Mark
11 Cozine.

12 MARK COZINE,
13 called as a witness by the Government,
14 having been duly sworn, testified as follows:

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MR. FITZGERALD:

18 Q. Good morning, Mr. Cozine.

19 A. Good morning.

20 Q. Can you tell the jury what you do for a living.

21 A. I am an immigration inspector employed by the
22 U.S. Immigration & Naturalization Service at Kennedy Airport
23 here in New York.

24 Q. If you could just take the second microphone and
25 bring it a little to your left, bring it a little closer to

1 you, and point it in your direction. If you stay close to
2 the microphone, everyone will be able to hear you.

3 For how long have you worked as an immigration
4 inspector?

5 A. Almost four years.

6 Q. Have you been assigned to one particular airport?

7 A. Here at JFK in New York.

8 Q. Can you tell the jury your duties as an
9 immigration inspector.

10 A. We interview and examine arriving international
11 passengers to determine their admissibility into the United
12 States.

13 Q. Are you familiar with the term of a "primary
14 inspection area"?

15 A. Yes, I am.

16 Q. Can you explain to the jury what a primary
17 inspection area is.

18 A. When a passenger arrives off a flight, usually
19 they come down en masse and arrive in the primary inspection
20 area, where there is anywhere from 15 to 30 inspectors to
21 perform a brief cursory inspection of the passengers to
22 determine if any of the grounds of excludability would apply
23 to them. If for some reason there might be a problem with
24 either the documents or the person, they refer them for a
25 more in-depth, or a secondary inspection.

1 Q. Is the secondary inspection area removed from the
2 main gates where everyone passes through?

3 A. Yes, it is a separate room.

4 Q. Let me direct your attention to a particular day,
5 September 1, 1992. Were you working that day?

6 A. Yes, I was.

7 Q. Where were you stationed?

8 A. I was assigned to the International Arrival
9 Building on the west wing.

10 Q. Did you have occasion to greet the flight from
11 Pakistan International Airlines, Flight 703?

12 A. Yes, we performed a gate check on that flight,
13 which is where we meet the flight and await all the
14 passengers arriving off the plane for an initial check to
15 make sure that they have all the required documents or the
16 correct documents to enter the United States, because if
17 they lack documents or have no documents, a civil fine can
18 be levied against the airline .

19 Q. So a gate check would go before the primary
20 inspection?

21 A. Yes.

22 Q. Where exactly do you stand when you perform a
23 gate check?

24 A. At the edge of the jet way, which is the
25 mechanical bridge which connects the plane to the building.

1 Q. So as people get off the plane, they show you
2 their documents, and, if you approve them, then they go on
3 to the primary inspection area?

4 A. Yes.

5 Q. On September 1, 1992, when you performed a gate
6 check for the Pakistan International Airlines flight, did
7 you stop any people who did not have proper documents?

8 A. Yes.

9 Q. Approximately how many people?

10 A. Five or six.

11 Q. Did those people make any application, those five
12 or six people?

13 A. All the people later asked for political asylum
14 in the United States --

15 MR. JACOBS: Objection, 801.

16 THE COURT: It is not being offered for the
17 truth.

18 MR. JACOBS: I assume your Honor doesn't want
19 argument in front of the jury.

20 THE COURT: Pardon?

21 MR. JACOBS: Did you want me to reply?

22 THE COURT: The objection is overruled.

23 Go ahead.

24 Q. Did those people ask for anything?

25 A. Yes, they all applied for -- I believe all of

1 them applied for political asylum.

2 Q. What did you do with those five or six people?

3 A. Myself, I searched them all, fingerprinted them
4 all, photographed them all.

5 Q. Where did you bring them?

6 A. Into the secondary area. They were all escorted
7 from the aircraft down past the primary area into the
8 secondary inspection area.

9 Q. Did you follow through in any of the particular
10 five or six cases once you had fingerprinted or photographed
11 those people?

12 A. No.

13 Q. Let me approach you --

14 A. Actually, there was one that I did. Now that I
15 look back, there was one that I did, yes.

16 Q. Besides that person, did you handle a second case
17 that came to the secondary inspection area?

18 A. Yes.

19 Q. Let me approach you with what's been premarked as
20 Government Exhibit 612 and Government Exhibit 617, and also
21 610. If you could take a look at Government Exhibit 617 and
22 tell us if you recognize what it is.

23 A. It's picture of the man I know as Ramzi Yousef.

24 Q. When did you take that picture?

25 A. September 1, 1992.

1 Q. Was he one of the five or six people you stopped
2 getting off the plane?

3 A. Yes, he was.

4 Q. Do you know what documents he had with him when
5 you stopped him during the gate check?

6 A. He presented what appeared to be a valid Iraqi
7 passport that contained no visa to enter the United States.

8 Q. To effect a proper, lawful entry, did the Iraqi
9 passport require a visa?

10 A. Yes, it did.

11 Q. Is that why you stopped him?

12 A. Yes.

13 Q. Let me show you a copy of Government Exhibit 612
14 is that something that you recognize?

15 A. Yes, it is.

16 Q. What is that?

17 A. That is a form FD 249, I believe. It is a
18 fingerprint chart or a photocopy of it.

19 Q. And the original fingerprints, who took those
20 fingerprints?

21 A. It has my signature on it.

22 Q. When did you take them?

23 A. September 1, 1992.

24 Q. Are those fingerprints that you took of the
25 person you knew as Ramzi Yousef?

1 A. Yes.

2 Q. Let me show you Government Exhibit 610. I ask
3 you to take a look at that and compare it with Government
4 Exhibit 617.

5 A. It appears to be an enlargement of this one.

6 MR. JACOBS: I'm sorry.

7 A. It appears to be a photo enlargement of the photo
8 I took.

9 MS. AMSTERDAM: Objection.

10 Q. Is that a fair and accurate --

11 THE COURT: Overruled.

12 MR. FITZGERALD: Your Honor, I believe at this
13 time 612 is already in evidence. I would offer 610 and 617.

14 THE COURT: 610 and 617 are received without
15 objection.

16 (Government's Exhibits W610 and W617 for
17 identification were received in evidence)

18 MR. FITZGERALD: If I may just display Government
19 Exhibit 610 to the jury.

20 THE COURT: Go ahead.

21 (Government Exhibit W610 was displayed to the
22 jury)

23 Q. To make it clear for the record, that's
24 Government Exhibit W610 and W617.

25 Inspector Cozine, the person identified as Ramzi

1 Yusef is one of the people you left at the secondary
2 inspection area?

3 A. Yes.

4 Q. And someone else processed?

5 A. That's correct.

6 Q. While he was there, did you overhear him speaking
7 with any other people?

8 A. Yes, he was speaking with one of the Pakistani
9 Airlines representatives who was asking him how he got on.

10 MR. JACOBS: I'm sorry. I am having trouble
11 hearing him.

12 THE COURT: He overheard him speaking to one of
13 the airline representatives.

14 Could you please try to talk into the microphone.

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 A. He was speaking to one of the Pakistani Airlines
18 representatives, who asked him how he got on the plane, and
19 he stated that he had --

20 MR. JACOBS: Objection. 801.

21 THE COURT: Is it being offered for the truth?

22 MR. FITZGERALD: No, your Honor, we will move on.
23 It is not that important.

24 THE COURT: Fine.

25 Q. Did you come to process an individual by the

1 name, or going by the name Khurram Khan that afternoon?

2 A. Yes, I did.

3 Q. Did you come to learn him by a different name?

4 A. Yes.

5 Q. What was the second name you knew him to be?

6 A. Ahmad Ajaj.

7 Q. Let me approach you with what's been premarked as
8 Government Exhibit W609 and Government Exhibit W618.

9 Looking at Government Exhibit W609, do you
10 recognize what that is?

11 A. It is a photograph that I took of the man known
12 as Khurram Khan or Ahmad Ajaj.

13 Q. Is it a fair and accurate picture of how he
14 looked on that occasion?

15 A. Yes, it is.

16 MR. FITZGERALD: Your Honor, I would offer
17 Government Exhibit W6109.

18 MR. JACOBS: Brief voir dire?

19 THE COURT: Go ahead.

20 VOIR DIRE EXAMINATION

21 BY MR. JACOBS:

22 Q. Mr. Cozine, the individual in this photograph
23 identified himself under what name?

24 A. Originally Khurram Khan, and then later he
25 identified himself as Ahmad Ajaj.

1 Q. To you?

2 A. To myself, yes.

3 MR. JACOBS: No objection.

4 THE COURT: All right. 609 is received.

5 (Government's Exhibit 609 for identification was
6 received in evidence)

7 THE COURT: Did you offer 618?

8 MR. FITZGERALD: Not yet, Judge.

9 DIRECT EXAMINATION (Continued)

10 BY MR. FITZGERALD:

11 Q. Inspector Cozine, Government Exhibit W618, what
12 is that?

13 A. Again, it is a form FD 249 fingerprint chart.

14 Q. Are those fingerprints you took yourself?

15 A. Yes, they are.

16 Q. And whose fingerprints are they?

17 A. Those are of the man known as Khurram Khan, or
18 Ahmad Ajaj.

19 Q. And did you take those on September 1, 1992?

20 A. Yes, sir, I did.

21 MR. FITZGERALD: The government would offer
22 Government Exhibit W618.

23 THE COURT: Hearing no objection --

24 MR. JACOBS: I am sorry. Briefly, your Honor.

25 THE COURT: Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MR. JACOBS:

3 Q. Mr. Cozine, the information that's contained in
4 the fingerprint card, is that information that you obtained
5 from Ajaj?

6 A. Which information?

7 Q. Well --

8 THE COURT: Mr. Jacobs, could you talk into the
9 microphone or near it.

10 Q. There is information about, for example, place of
11 birth, and the country is listed as Sweden, that information
12 you obtained from him?

13 A. That was taken off the passport he presented.

14 Q. Date of birth, that was taken off the passport
15 information or obtained orally from him?

16 A. I believe so. But the top -- the sex, race,
17 height, I didn't fill that part in.

18 Q. OK. So there is some information on the document
19 that was filled in by somebody else?

20 A. Correct.

21 Q. But the information as to the place of birth, you
22 say you got that -- rather than him orally telling you
23 something, you wrote it from another document?

24 A. Again, I didn't write that.

25 MR. JACOBS: I have no objection, your Honor.

1 THE COURT: 618 is received without objection.

2 (Government's Exhibit 618 for identification was
3 received in evidence)

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. At the point in time that you were dealing with
7 this person who initially said he was Khurram Khan, did you
8 then know of any relationship between him and the person who
9 earlier identified himself to you as Ramzi Yousef?

10 MR. JACOBS: Objection.

11 THE COURT: Overruled.

12 A. No, I did not.

13 Q. What type of passport did this person who
14 initially identified himself at Khurram Khan present to you?

15 A. He was presenting a Swedish passport that had
16 been photo-substituted. The plastic laminate had been
17 replaced, and his photograph was inserted over the photo of
18 the original passport photo.

19 Q. Does photo-substitute essentially mean he swapped
20 pictures?

21 A. In fact, in this case, the old photo was still in
22 the passport underneath his photo.

23 Q. Now, are you familiar with what's called a
24 visa-waiver pilot program?

25 A. Yes.

1 Q. How did the visa-waiver pilot program work in
2 September of 1992?

3 A. At that time I believe it was 11 countries that
4 were allowed to apply for entry under the visa-waiver pilot
5 program. They were basically the European Economic
6 Community --

7 MR. RICCO: Can the witness please slow down a
8 little bit.

9 THE COURT: All right.

10 Can you try to talk into the mike. Thank you.

11 A. At that time I believe it was 11 countries,
12 basically the European Economic Community, who were low
13 immigration risks, and they were allowed on apply for entry
14 for a period of 90 days or less into the United States
15 without the visa that would normally be required.

16 However, since they are no longer required to
17 have a visa, they would lose any right to a judicial review,
18 except for a claim for asylum, if they were found to be
19 inadmissible to the United States by an immigration officer.

20 Q. So the benefit to a Swedish passport is you did
21 not need a visa to enter the country?

22 A. That is correct.

23 Q. But if the immigration authorities determined
24 that you were ineligible, you could never see a judge, they
25 would just send you back home?

1 A. Unless you made a claim for political asylum.

2 Q. What happened when you dealt with the fellow who
3 initially identified himself as Khurram Khan and he
4 presented to you a Swedish passport?

5 A. I took a sworn statement from him. Under the
6 visa-waiver program, we decided the passport had been
7 altered and was bogus, and we were going to refuse him
8 entry. I took a short question and answer from him, just a
9 form of taking under oath: What's your name? When were you
10 born? Where were you born? What country are you a citizen
11 of? Do you have a passport?

12 After that, I advised him that he wasn't going to
13 be allowed into the United States.

14 Q. Let me stop you there a second.

15 When you asked him what country he was from, what
16 did he tell you?

17 A. He said Sweden.

18 MR. JACOBS: Objection.

19 THE COURT: Overruled.

20 MR. JACOBS: Can we see your Honor at the side
21 then?

22 THE COURT: No.

23 MR. JACOBS: I have an 801 objection at this
24 time.

25 THE COURT: The 801 objection is overruled.

1 Q. Did he tell you about what he did for a living?

2 A. He said he was a journalist, I believe.

3 Q. Did you ask him about whether or not the Swedish
4 passport he presented to you was in fact his own passport?

5 MR. JACOBS: Objection, leading.

6 A. Yes.

7 THE COURT: That is sustained.

8 Q. Did you have a discussion about the Swedish
9 passport?

10 A. Yes. He insisted it was his own and he was
11 Khurram Khan.

12 Q. Let me approach you with what's been premarked as
13 Government Exhibit W2797. Do you recognize what is marked
14 as Government Exhibit W2797?

15 A. Yes. It is the Swedish passport in the name
16 Khurram Khan that Mr. Ajaj presented that evening.

17 MR. FITZGERALD: Your Honor, I would offer
18 Government Exhibit W2797.

19 MR. JACOBS: No objection.

20 THE COURT: W2797 is received without objection.

21 (Government's Exhibit W2797 for identification
22 was received in evidence)

23 Q. Did there come a time when you told Mr. Khurram
24 Khan or Mr. Ahmad Ajaj what you planned to do with him?

25 A. Yes, we advised him that he was going to be

1 refused entry to the United States and that he was going to
2 be departing on the return flight of Pakistani International
3 Airlines.

4 Q. What, if anything, did he say in response?

5 A. At that point he asked to speak to me in private.
6 The primary inspection area was then deserted since the wing
7 of the building we were on had been closed down. We went
8 outside and he stated to me that he had been here once
9 before and had claimed asylum but he had lost his documents.

10 Q. Did he tell you anything about his name at that
11 point?

12 A. He said his name was Ahmad Ajaj and he was a
13 Palestinian.

14 Q. Did he tell you where it was that he resided when
15 he was in the country before?

16 A. He said he lived in Houston, Texas.

17 Q. Did he tell you anything about what he was doing
18 in Pakistan?

19 A. Not that I can remember.

20 Q. What did you do at this point?

21 A. I asked the Pakistani Airlines representatives to
22 bring me his checked suitcases to see if there was any proof
23 of his residence here in the United States and began to look
24 through his hand luggage. He had a briefcase --

25 Q. When you referred to his checked suitcase, you

1 are talking about suitcases that were checked into baggage,
2 not --

3 A. Yes. Checked baggage.

4 Q. Did you look through the checked baggage?

5 A. Yes, I did.

6 Q. Can you tell us generally the types of items you
7 found in his baggage.

8 A. There was very little clothing and there was all
9 kinds of papers, books, magazines, videotapes, audiotapes.
10 There were books all about guns, bombs, explosives,
11 firearms, tactics. I don't know how you could describe it.

12 Q. Let me approach you with what's been premarked
13 for identification as Government Exhibits W2781 through
14 W2786.

15 I have placed before you six pale blue binders
16 which have been marked for identification purposes as
17 Government Exhibits W2781 through W2786. Do you recognize
18 those items?

19 A. Yes, I do.

20 Q. What do you recognize them to be?

21 A. They are the books that were contained in Khurram
22 Khan or Ahmad Ajaj's suitcase.

23 Q. Did you look through them on the night of
24 September 1, 1992?

25 A. Yes, I did.

1 Q. What did you notice about the contents of those
2 books?

3 MR. STAVIS: Objection, referring to a matter
4 that is not admitted into evidence, your Honor.

5 THE COURT: That is sustained.

6 Q. Did you see any other forms of identification in
7 the luggage of Khurram Khan that evening?

8 A. Yes. He had some ID cards for an Islamic center.
9 He had a Texas driver's license. There were several
10 passports with his picture, without his picture, and there
11 was a photocopy of his employment authorization card that
12 was issued by immigration.

13 Q. Let me approach you with what's been premarked as
14 Government Exhibits W2794 through W2796 and Government
15 Exhibit W2799-1.

16 Do you recognize what's been premarked as
17 Government Exhibits W2794 through W2796?

18 A. Yes, I do.

19 Q. What are they?

20 A. These are the passports and the ID cards that
21 were found in the belongings of Mr. Ajaj.

22 Q. Can you tell us, with regard to W2794, one of the
23 passports -- if you look on the yellow sticker it will tell
24 you the number -- what country that's from?

25 A. 2794 is a U.K. passport.

1 Q. United Kingdom?

2 A. Yes.

3 Q. 2795?

4 A. Is a Saudi Arabian passport.

5 Q. And 2796?

6 A. A Jordanian passport.

7 Q. If you could look inside each passport and tell
8 us whether or not there are photographs in each of them,
9 and, if so, whether or not they look like the person you
10 knew as Khurram Khan or Ahmad Ajaj.

11 MS. AMSTERDAM: Objection, your Honor.

12 THE COURT: Overruled.

13 A. The Jordanian passport bears his photo. The
14 Saudi Arabian passport doesn't bear his photo, but someone
15 has lifted the photo. Apparently someone was going to
16 insert the photo in there.

17 THE COURT: That is stricken. There is no photo
18 in the Saudi passport? There was a photo removed from the
19 Saudi passport?

20 THE WITNESS: It's been lifted up.

21 THE COURT: OK. Go ahead.

22 Q. And the last passport, the Jordanian, I believe,
23 or the British?

24 A. The British.

25 Q. OK.

1 A. It bears a photo, but not Mr. Ajaj's photo.

2 Q. What name is that passport in?

3 A. Azan Mohammad.

4 MR. FITZGERALD: Your Honor, I would offer W2794
5 through W2796 and W2799-1.

6 THE COURT: What is 2799-1?

7 Q. Could you identify for the record, Inspector
8 Cozine, what 2799-1 consists of.

9 A. Several blank identification cards, Texas state
10 identification card in the name Ahmad Ajaj and two Al-Bunyan
11 Islamic Information Center identification cards in the names
12 Khurram Khan and Azan Mohammad.

13 MR. FITZGERALD: Your Honor, I renew the offer of
14 W2794 through W2796 and W2799-1.

15 MR. JACOBS: No objection.

16 THE COURT: Hearing no objection, those are
17 received. That is W2794 through 96 and W2799-1.

18 (Government Exhibit W2794 through W2796 and
19 W2799-1 for identification were received in evidence)

20 Q. Did you find any other equipment related to
21 passports in the suitcase?

22 A. Yes. There was several stamps that were
23 counterfeit rubber stamps that were a likeness of the Saudi
24 Arabian wet seal that's placed on the photograph page and
25 over the photo to show that the photograph hasn't been

1 tampered with.

2 MR. FITZGERALD: Your Honor, if I could point
3 out, I think the jurors have in their books copies of
4 W2799-1.

5 THE COURT: OK. There is a thin binder that you
6 were given today, one of the thinner binders that you have.
7 That is the one that's got 2799-1 in it.

8 Q. Inspector Cozine, those are all separate little
9 cards you found?

10 A. Yes.

11 Q. One of them is in the name Azan Mohammad?

12 A. That is correct.

13 Q. And one is in the name Khurram Khan?

14 A. Yes.

15 Q. And several others are blank?

16 A. Correct.

17 Q. That is the Al-Bunyan Islamic Information Center
18 with an address in Tucson, Arizona?

19 A. Yes.

20 Q. Can you see the reverse of the cards from here?

21 A. Yes.

22 Q. Is there an indication on the back that any
23 assistance rendered to the bearer of this card in the
24 performance of his professional journalistic duties will be
25 highly appreciated?

1 A. That's correct.

2 Q. Now, did you find any other items besides the
3 books in front of you and the passports and identification?

4 Do you have any letters in the briefcase?

5 A. There was many, many letters. There was plane
6 tickets, plane ticket stubs, there was several checks,
7 videotapes, audiotapes, there was sacks of photocopies of
8 documents, like paper sacks filled with just reams and reams
9 of photocopies.

10 Q. Did you see any documents pertaining to an
11 immigration interview?

12 A. He had a photocopy of an INS-issued employment
13 authorization card.

14 Q. Are you familiar with what is known as a cheat
15 sheet for immigration?

16 A. Yes.

17 Q. Can you tell the jury what a cheat sheet is?

18 A. A cheat sheet is what we call the -- we call it a
19 cheat sheet. It is usually a piece of paper that a person
20 who is going to attempt entry into the United States with a
21 fraudulent passport will have with all the pertinent
22 passport information on and questions. Basically it is a
23 script for them to practice and to try to follow to coax
24 their way through immigration inspector's interview.

25 Q. Did you find anything like that --

1 A. Yes.

2 Q. -- in the luggage?

3 A. Yes, Mr. Khurram Khan, Ahmad Ajaj, had a cheat
4 sheet on his person.

5 Q. Let me approach you with what's been premarked as
6 Government Exhibits W2799-5 and W2799-6. If you could take
7 a look at those two items and tell us whether or not you
8 recognize them.

9 A. Yes. These were the papers that Mr. Ajaj had on
10 him that evening.

11 Q. Finally, let me approach you with what's been
12 premarked Government Exhibits W845 and 845T, W2803D-1,
13 W2803D-2, W2803-6 and W2803-6T and 2807 and W2800-B and
14 lastly, W2800-D-1.

15 MR. BERNSTEIN: Can we have a readback of the
16 exhibits that they have just put through, about eight or
17 nine exhibits?

18 MR. FITZGERALD: I didn't hear that.

19 THE COURT: He wants a re-read of the list.

20 Do you want me to read it off to you?

21 MR. BERNSTEIN: If that is possible.

22 THE COURT: 845, 845T, 2803D-1 and D-2, 2803-6,
23 2803-6T, 2807, 2800-D and 2800-D-1.

24 MR. BERNSTEIN: Thank you, Judge.

25 Q. Let me show you first what's been premarked as

1 Government Exhibit W2803-6. Can you tell me whether or not
2 you recognize that?

3 A. I don't recognize this specific document, but it
4 is consistent with the documents that were found.

5 MR. STAVIS: Objection, your Honor.

6 THE COURT: Sustained.

7 Do you want to do these after lunch?

8 MR. FITZGERALD: That would be fine, Judge.

9 THE COURT: All right. Ladies and gentlemen, we
10 are going to break for lunch. Please leave your notes and
11 other materials behind. Please don't discuss the case and
12 we will resume at 2 o'clock or near 2 o'clock.

13 (The jury was excused)

14 THE COURT: You may step down.

15 (Witness excused)

16 (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 p.m.

MR. JACOBS: Your Honor, can I raise some matters?

THE COURT: Go ahead.

MR. JACOBS: Your Honor, I would like some clarification, if possible, concerning Ajaj's statements to this agent. I am not certain under what theory the government is offering those statements. Just so the record is clear, my objection was that it is clearly a hearsay statement.

THE COURT: It is not clearly hearsay. It is clearly not hearsay. It is not being offered for the truth. It is being offered to show that it was made.

MR. JACOBS: Perhaps I am wrong, your Honor. If it is not offered for the truth that the man said it, then what relevancy is it being offered for?

THE COURT: Mr. Jacobs, do I have to teach? The truth when it is referred to in the context of hearsay does not mean that he said it. That is not the truth. The truth is the assertion contained in the statement. That is not what they are offering it for.

MR. JACOBS: What are they offering it for?

THE COURT: They are offering it to show that he said it. That they are permitted to offer it for, and it is

1 not hearsay.

2 MR. JACOBS: What relevance is the fact that he
3 said it?

4 THE COURT: Your objection was hearsay. You said
5 801.

6 MR. JACOBS: Right.

7 THE COURT: I overruled it. Now I have a
8 relevance objection?

9 MR. JACOBS: Yes.

10 THE COURT: What is the relevance?

11 MR. FITZGERALD: It is a co-conspirator statement
12 of someone using a false statement to enter the country and
13 bring bomb manuals.

14 MR. JACOBS: Then the government is not saying --
15 now they are offering it under 801(d)(2), which I think is
16 different than what your Honor's ruling was.

17 THE COURT: My ruling was and is that it is not
18 hearsay.

19 MR. JACOBS: Then, with your Honor's ruling in
20 mind, I will withdraw my previous objection to what Agent
21 Cozine overheard and was about to testify to previously. He
22 said he overheard Ajaj saying something to some officials
23 from the airline or something. I made an objection. I
24 think your Honor sustained it. I am going to withdraw that.

25 THE COURT: I did sustain it because that was the

1 one about who -- what did that one concern?

2 MR. FITZGERALD: He overheard a conversation
3 between Mr. Yousef and an airline official about how he got
4 on the plane.

5 THE COURT: That may very well have been true,
6 how he got on the plane. I thought that was being offered
7 to show how he, in fact, got on the plane, which is why I
8 sustained the objection. What you are now telling me is the
9 only valid objection that you had you are now withdrawing.

10 OK. Stranger things have happened.

11 MR. JACOBS: The next matter, your Honor,
12 concerns some of the exhibits, in particular 2781 through
13 2786, which are portions of the bomb manuals.

14 THE COURT: One second.

15 MR. JACOBS: Sure. Take your time.

16 THE COURT: According to what I have, those have
17 not yet been offered. I gather they are going to be.

18 MR. JACOBS: If I can discuss them with your
19 Honor, I am not concerned about the chain of custody of
20 those, that document. I spoke to Mr. Fitzgerald, who
21 indicated to me that the FBI has no chain of custody log or
22 chain of custody envelope with respect to that document. It
23 is unclear to me --

24 THE COURT: Do you have some indication that the
25 document was altered in some fashion?

1 MR. JACOBS: Your Honor, there are fingerprints
2 that were recovered by the bureau at a later point. We are
3 now getting information that people from Denmark may have
4 touched it. I would like to know who's had custody of that
5 document. I am not sure the document is in the same
6 condition that it was in when this agent saw it for the
7 first time. I have reason to believe that it's been out of
8 the custody of the Federal Bureau of Investigation. I don't
9 know who --

10 THE COURT: What reason do you have to believe
11 that, other than the fact that it was introduced in a trial
12 in this building? I suppose that takes it out of the
13 custody of the FBI.

14 MR. JACOBS: I have reason to believe that the
15 United States Attorney's Office for the Eastern District
16 took custody of it from the Federal Bureau of Investigation.

17 I would like to find out who in the FBI had it
18 when, and who took custody of it. Obviously the government
19 in attempting to prove who is responsible for the World
20 Trade Center bomb is going to attempt to use this document
21 or the series of documents, and I think it is incumbent upon
22 the government to establish a chain of custody. Especially
23 when there are fingerprints involved and there are unknown
24 fingerprints still on this document.

25 THE COURT: Unless the fingerprints of the

1 particular people involved could have been put on in the
2 interim, I don't see it, but, Mr. Fitzgerald?

3 MR. FITZGERALD: Your Honor, I disagree with just
4 about everything he said except this is all premature. We
5 don't intend to offer today 2781 through 2786. I was laying
6 the foundation of authentication. If that becomes relevant,
7 we can address it. I think he is wrong, but I don't think
8 we need to take up time.

9 THE COURT: You did not ask him, or at least I
10 don't recall having heard you ask him whether the documents
11 are in the same or substantially the same condition as when
12 he saw them at the airport. I guess you can ask that.

13 MR. FITZGERALD: I will clear that up. But I do
14 not intend to offer those six bomb manuals today.

15 THE COURT: OK.

16 MR. FITZGERALD: If there is an issue as to the
17 items identified at the end just before lunch, some of those
18 items I will be offering, so if we need to address
19 foundation questions now we can deal with it.

20 THE COURT: One of them you asked him about, and
21 he said, "Well I don't really remember it," and started to
22 say but it is consistent with the other documents that he
23 had, which does not do it.

24 MR. FITZGERALD: My understanding is his
25 testimony will be there was a whole bunch of papers that

1 were largely bad Xeroxes, and that these look like those
2 documents, but they are in a foreign language. So he can't
3 identify specific documents but these look consistent with
4 them.

5 THE COURT: "Consistent with" are funny words,
6 particularly since this is the first that I have heard that
7 it is a foreign-language document. It is one thing for him
8 to say it looks like the documents, but he can't be sure.
9 Consistency suggests consistency of content and he is in no
10 position to evaluate that. So I would appreciate it if that
11 word did not come out again.

12 MR. FITZGERALD: That was my poor choice of
13 words. He would say it looks like those documents.

14 THE COURT: Fine. But he can't be sure?

15 MR. FITZGERALD: Yes.

16 THE COURT: Presumably there will be somebody who
17 then took it from him and can be sure, correct?

18 MR. FITZGERALD: There is a chain of custody. If
19 we have to go through six witnesses to get there, we will.

20 THE COURT: Good.

21 MR. LAVINE: Your Honor, may I just bring one
22 matter to your attention?

23 THE COURT: Yes, Mr. Lavine.

24 MR. LAVINE: I have some personal matters which I
25 have to take care of through the end of the week, and

1 Mr. Abdelgani has consented to my associate, Rosemarie
2 Olsen, sitting in my place tomorrow, Thursday and Friday. I
3 have discussed this with Mr. McCarthy. There will be no
4 evidence directly relating to Fadil Abdelgani for the
5 balance of this week, and my client has consented to --

6 THE COURT: Mr. Abdelgani, do you understand what
7 your lawyer just told me.

8 DEFENDANT FADIL ABDELGANI: Yes.

9 THE COURT: You understand you have a right to
10 have him here while this trial goes on?

11 DEFENDANT FADIL ABDELGANI: Yes.

12 THE COURT: Do you consent to having his
13 associate sit instead of him for these days?

14 DEFENDANT FADIL ABDELGANI: Yes.

15 THE COURT: Thank you very much.

16 MR. LAVINE: Thank you, your Honor.

17 THE COURT: Thank you.

18 MARK COZINE, resumed.

19 (Jury present)

20 THE COURT: Good afternoon, ladies and gentlemen.

21 JURORS: Good afternoon.

22 THE COURT: Mr. Fitzgerald.

23 MR. FITZGERALD: Thank you, Judge.

24 DIRECT EXAMINATION (Continued)

25 BY MR. FITZGERALD:

1 Q. Inspector Cozine, this morning I asked you some
2 questions about whether or not you overheard any
3 conversation between the person identified to you as Ramzi
4 Yousef and anyone else in the inspection area after you were
5 done dealing with him.

6 A. That's correct.

7 Q. If you could keep your voice up and sit near the
8 microphone and tell us what you overheard.

9 A. Mr. Yousef said to one of the Pakistani Airlines
10 representatives, when he was asked how he got on the plane,
11 he stated that he had a brother in the Iraqi Consulate in
12 Pakistan who assisted him to get on the airplane.

13 Q. That was something he told to whom?

14 A. One of the Pakistani Airlines representatives.

15 Q. I place back before you the six pale blue binders
16 which have been premarked for identification W2781 through
17 W2786. I would just like you to look at them and tell us
18 how their current condition compares with the condition of
19 the items you saw on September 1, 1992.

20 A. They are intact except for the disturbance caused
21 by, I guess, whatever chemical they used to take
22 fingerprints. The covers are a little beaten up, but the
23 internal pages other than discoloration are intact.

24 Q. Aside from discoloration and a little more wear
25 and tear on the covers they look the same?

1 A. Yes.

2 Q. Let me approach you with what's been premarked,
3 the items identified before lunch, which is W845, W2803D-1,
4 W2803D-2, W2803-6, W2807, W2800B, and W2800D-1. Can you
5 tell the jury the volume of the documents that you saw in
6 the suitcases on September 1, 1992?

7 A. The six large books, several paper, brown paper
8 sacks filled with documents, hundreds and hundreds of pages.

9 Q. In what language were these documents?

10 A. It appears to be Arabic. I am not sure.

11 Q. Did you speak or read Arabic?

12 A. No, I don't.

13 Q. What type of paper did you see? What was the
14 paper like?

15 A. It was rather flimsy, poor quality, it was
16 mimeographed rather than photocopies.

17 Q. Do you think you would specifically recognize
18 individual items that were in the suitcase on September 1,
19 1992 if you saw them now?

20 A. Some items, not every one.

21 Q. Let me show you Government Exhibit 2800B for
22 identification and ask you to look at the documents and tell
23 me whether or not --

24 THE COURT: Is that B as in boy or D as in dog?

25 MR. FITZGERALD: B as in boy.

1 Q. Looking at W2800B, as in boy, if you could look
2 at those and tell us whether or not you recognize them.

3 A. None of them in particular, but they all --

4 MR. JACOBS: I can't hear the witness.

5 A. None of them in particular, but they all,
6 everything in the bag looked like this.

7 Q. With regard to W2800D-1, looking at that item, do
8 you recognize it?

9 A. Again, it is Arabic, it was hundreds and hundreds
10 of Arabic documents. I didn't read them. I don't
11 understand what they say or what they are. But it looks
12 like it was the stuff that was in the bag.

13 Q. Would your answer be the same as to W2803D-1?

14 A. Yes.

15 Q. With respect to W2803D-2?

16 A. Yes, it would be the same.

17 Q. With regard to W2803-6?

18 A. Again, the same.

19 Q. The same answer, OK.

20 Let me show you Government Exhibit W-2807. I ask
21 you to look at that.

22 A. Again, it could have very well been in there. I
23 don't remember everything that was in there.

24 Q. Does it look like the type of documents that were
25 in there?

1 A. Yes, it does.

2 MR. FITZGERALD: Your Honor, at this time the
3 government would only offer 2803D-1, 2803, W2803D-2,
4 W2803-6, and W2807.

5 MR. JACOBS: Objection. May I have a voir dire?

6 MR. STAVIS: I had an objection. I wanted to be
7 heard at the side bar. I did not want a voir dire.

8 MR. FITZGERALD: If I could have a moment, I
9 may --

10 THE COURT: Do you want to come up or do you want
11 to talk to them first?

12 MR. FITZGERALD: If I can talk to them a second.

13 THE COURT: Fine.

14 (Counsel conferred)

15 MR. FITZGERALD: Your Honor, for the time being,
16 I will withdraw that offer.

17 THE COURT: OK.

18 Q. After looking through the bags of Mr. Khurram
19 Khan or Ahmad Ajaj, what was Mr. Ajaj's demeanor like during
20 this time?

21 A. He became very loud and belligerent and upset.

22 Q. What was done with Mr. Khurram Khan or Ahmad Ajaj
23 that evening?

24 A. As he got very loud and belligerent, like I said,
25 he began to use profanity, so he was taken aside and we

1 searched his person again, then he was handcuffed and set
2 down to await further processing while we continued the
3 search of his baggage.

4 Q. Was he one of the people who applied for asylum
5 that day?

6 A. He did claim asylum after the books were found
7 and he was handcuffed. I believe he stopped speaking to all
8 the officers present.

9 Q. When people claim asylum, are they ordinarily
10 detained or -- let me direct your attention to the fall of
11 1992. What was the practice at the facility you worked at,
12 at JFK airport with regard to people who came from in from
13 other countries and claimed asylum?

14 A. At that time we were receiving anywhere from 1500
15 to 1800 adverse actions a month, which included asylum
16 seekers, probably a thousand of them or more seeking asylum,
17 many of them with no documents whatsoever. Those who were
18 deemed would pose no threat were released in their own
19 recognizance --

20 MR. BERNSTEIN: Objection relevance.

21 THE COURT: Sustained.

22 Q. Were all of the people who applied for asylum
23 detained or was it just some of them?

24 MR. BERNSTEIN: Objection.

25 THE COURT: Overruled.

1 A. Very few were detained.

2 Q. What happened in Mr. Ajaj's case?

3 A. He was detained.

4 MR. FITZGERALD: I have nothing further, Judge.

5 THE COURT: Cross? Mr. Jacobs?

6 MR. JACOBS: Roger, do you have anything?

7 THE COURT: Mr. Stavis? Anybody?

8 Mr. Stavis.

9 MR. STAVIS: Thank you, your Honor.

10 May I have the Jordanian passport?

11 Thank you.

12 CROSS-EXAMINATION

13 BY MR. STAVIS:

14 Q. Mr. Cozine, is that how you pronounce your name?

15 A. That is correct.

16 Q. This is the second time that you are testifying
17 about these things, is it not?

18 A. That is correct.

19 Q. The first time you testified was on November 9
20 and 10 of 1993, is that correct?

21 A. I am not sure of the exact date. That sounds
22 about right.

23 Q. The first time that you testified concerning
24 these events was in 1993, is that correct?

25 A. That is correct. When Mr. Ajaj first came in,

1 though, I gave a statement to the FBI concerning his initial
2 entry.

3 Q. I am asking you about your testimony.

4 A. OK.

5 Q. You previously testified about these same events,
6 correct?

7 A. Correct.

8 Q. You previously testified about these same events
9 at a prior trial, correct?

10 A. That is correct.

11 Q. That prior trial was the World Trade Center
12 trial, is that correct?

13 A. That is correct.

14 Q. At the World Trade Center trial Mr. Ajaj was a
15 defendant, is that correct?

16 A. That is correct.

17 Q. Mr. Ajaj, when you stopped him, he had come on a
18 Pakistan Airlines Flight 703, is that correct?

19 A. Pakistani International Airlines.

20 Q. Yes.

21 A. PIA, yes.

22 Q. Flight 703, is that correct?

23 A. I am not sure of the exact flight.

24 Q. But it was from Pakistan?

25 A. Yes.

1 Q. You testified this morning about something called
2 a cheat sheet?

3 A. That is correct.

4 Q. That was Government Exhibit 2799?

5 A. That is correct.

6 Q. In that cheat sheet, Mr. Ajaj said that he was
7 from Peshawar, Pakistan, is that correct?

8 A. I believe it said on it that he was born in
9 Sweden.

10 Q. Did he say he was living in Peshawar, Pakistan in
11 the cheat sheet?

12 A. I don't recall.

13 MR. STAVIS: May I have Exhibit 2799, please.

14 May I approach the witness, your Honor.

15 THE COURT: Yes.

16 Q. I have what has been marked for identification as
17 Government Exhibit 2799-5 and 6.

18 I ask you to take a look right over there.

19 A. OK. It says: What is your address in Pakistan,
20 in red. Then in black it says: In Peshawar Hayatabad, I
21 believe.

22 Q. Thank you.

23 During the course of your duties for the
24 Immigration & Naturalization Service, do you have occasion
25 to interview people from Peshawar, Pakistan?

1 A. Yes.

2 Q. That is fairly common, is that correct?

3 A. Yes.

4 Q. Peshawar, Pakistan is on the border of Pakistan
5 and Afghanistan, is that correct?

6 A. That is correct.

7 Q. One of the things that you recovered from
8 Mr. Ajaj was a Jordanian passport, is that correct?

9 A. That's correct.

10 MR. STAVIS: May I approach the witness, your
11 Honor.

12 THE COURT: Yes.

13 Q. I am showing you what has been marked as
14 Government Exhibit W2796 in evidence. I ask you to turn to
15 page 17.

16 A. Yes.

17 Q. That is a Pakistani entry stamp, is that correct?

18 A. Yes. But it appears -- it's probably
19 counterfeit.

20 Q. There is also -- hold on. I will get you the
21 page. There is also an entry concerning Mr. Ajaj being a
22 resident of the United Arab Emirates, do you see that?

23 A. There is a residence visa from UAE, yes.

24 Q. And it is very loosely affixed?

25 A. Yes.

1 Q. That, too, appears counterfeit, is that correct?

2 A. No, that appears to be genuine.

3 Q. Would it be fair to say that the United Arab
4 Emirates stamps on there would make you wonder?

5 A. Make we wonder what?

6 MR. FITZGERALD: Objection to form.

7 THE COURT: Sustained as to form. If we can find
8 out what we are wondering about.

9 MR. STAVIS: OK.

10 Q. Would it give you pause in your duties as an
11 Immigration & Naturalization Service official seeing that
12 United Arab Emirates seal that is affixed to that passport?

13 MR. FITZGERALD: Objection just to "pause."

14 THE COURT: Sustained.

15 Q. You previously testified in November of '93, is
16 that correct?

17 A. That's correct.

18 Q. When you previously testified, at page 2470 of
19 the record, were you asked the following question and did
20 you give the following answer, on line 5:

21 "Q. Other than --

22 MR. FITZGERALD: If I can have a moment. Thank
23 you.

24 MR. STAVIS: Do you have it?

25 Q. (Reading)

1 "Q. Other than the fingerprint stuff -- and we
2 all agree that that has nothing to do with this -- does
3 anything else there look like you it would make you wonder?
4 Not the little FBI tags. Those either; we are not
5 interested in those."

6 And did you answer: "Resident of Emirates."

7 A. I may have, I don't recall.

8 Q. Did you?

9 A. That's what the record states. I am not sure.

10 Q. Thank you. When you were searching Mr. Ajaj's
11 luggage, you came across a series of postcards, is that
12 correct?

13 A. That is correct.

14 Q. One of those postcards was a postcard depicting a
15 downed Soviet helicopter with a red Soviet star in it, is
16 that correct?

17 A. I believe so.

18 Q. Another one was a Soviet tank that had been
19 disabled and the turret had been taken off the tank, is that
20 correct?

21 A. I don't recall if there was any markings on the
22 tank, but there was a postcard with a damaged tank on it,
23 yes.

24 MR. STAVIS: Thank you. I have no further
25 questions of this witness.

1 THE COURT: Mr. Ricco.

2 CROSS-EXAMINATION

3 BY MR. RICCO:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. You are an experienced inspection agent, aren't
7 you?

8 A. Yes, sir, I believe so.

9 Q. On this day in September of 1992, this fellow who
10 identified himself initially as Khurram Khan tried to con
11 you with a Swedish passport, isn't that correct?

12 A. That is one way to look at it, yes.

13 Q. He showed you the passport and you took a look at
14 it, right?

15 A. That's correct.

16 Q. The passport had a photograph on it, right?

17 A. Correct.

18 Q. The photograph was just taped onto the passport,
19 isn't that right?

20 A. There was a sheet of plastic laminate over it,
21 yes.

22 Q. But it was fairly obvious to a person of your
23 experience that there was something being concealed there,
24 isn't that right?

25 A. Yes.

1 Q. In fact, the photograph is just sort of taped
2 onto the document, isn't that right?

3 A. It is just placed on over the original
4 photograph, yes.

5 Q. With tape, right?

6 A. Tape, glue.

7 MR. RICCO: If I may approach the witness.

8 A. It's just tape.

9 Q. It's just taped right onto the top of the
10 passport?

11 A. Yes, but I am not sure that is how it was that
12 night. The photograph may have fallen off when they were
13 fingerprinting.

14 Q. It became very obvious to you that this was not a
15 legitimate passport, isn't that correct?

16 A. That's correct.

17 Q. You started asking this man further questions,
18 isn't that correct?

19 A. Yes.

20 Q. The more you asked him, the more suspicious you
21 became, isn't that correct?

22 A. Well, from the minute we examined the passport we
23 knew -- from the minute we examined the passport we knew he
24 wasn't who he said he was.

25 Q. You ultimately discovered that the man who was

1 traveling with the Swedish passport in his possession had
2 three other passports?

3 A. That is correct.

4 Q. A Jordanian passport? A Saudi Arabian passport?

5 A. Yes.

6 Q. And a United Kingdom passport?

7 A. Yes.

8 Q. In addition to that, he had other identification
9 documents?

10 A. Yes.

11 Q. He had documents that indicated that he had a
12 Texas public service, some type of Texas public service
13 document, isn't that correct?

14 A. State ID card.

15 Q. He had some type of Islamic Center in Houston
16 Texas ID card?

17 A. I believe it's Tucson, Arizona.

18 Q. OK. He also had blank identification cards that
19 needed a picture attached and information placed in them,
20 isn't that correct?

21 A. Correct.

22 Q. He had several of these?

23 A. Yes.

24 Q. So this man who was traveling on this day had in
25 his possession various documentations appearing to represent

1 him, isn't that correct?

2 A. Correct.

3 Q. Did you ever ask him where he was going?

4 A. I don't recall.

5 Q. Your job at the airport is to verify the
6 documentation of people entering the country?

7 A. To verify it and make sure they don't fall under
8 one of the other exclusionary grounds. Documentary grounds
9 is only one of nine.

10 Q. You also pulled to the side Ramzi Yousef, isn't
11 that correct?

12 A. Yes.

13 Q. Did you interview Ramzi Yousef or did someone
14 else interview him?

15 A. Someone else did.

16 Q. Do you have any independent knowledge of what
17 happened during the interviewing process -- withdrawn.

18 Do you have any personal knowledge of what
19 happened in the interviewing process of Ramzi Yousef?

20 A. Just that he made a claim for political asylum.

21 Q. And he was released, isn't that correct?

22 A. That's correct.

23 Q. At the time that Mr. Ajaj was being questioned by
24 you, did it create a distraction in your office?

25 A. Not particularly, nothing out of the normal.

1 Q. Is it fairly normal to search the luggage of a
2 person and find how-to manuals for bombing, training, arms,
3 and various passports and documents of this sort?

4 A. No. But it is fairly common to search people and
5 have people get loud and belligerent.

6 Q. I will get to that. My first question is: Is it
7 fairly common to stop a person and to find the type of
8 documents that were discovered from Mr. Ajaj's bags?

9 A. No, this is the only time I ever found a suitcase
10 full of bomb manuals.

11 Q. When you did this, you had the people in your
12 office come over and take a look at this, didn't you?

13 A. I showed the supervisor.

14 Q. Mr. McCarthy -- I am sorry. Mr. Fitzgerald asked
15 you a question as to whether or not you were aware of any
16 relationship, if any, at that time between Mr. Ajaj and
17 Mr. Yousef. I think you said no.

18 A. That's correct.

19 Q. Now that you have had an opportunity to think
20 back on the events that took place on that day in the
21 airport, have you come to the conclusion that Mr. Ajaj was
22 creating a distraction for Mr. Yousef?

23 A. I have no idea. I mean, the only time that I
24 found out that they were connected was months, months later.

25 MR. RICCO: I have no further questions, your

1 Honor. Thank you very much.

2 THE COURT: Mr. Jacobs?

3 Actually, Mr. Jacobs, can you wait for just a
4 minute. We are going to take a short break, ladies and
5 gentlemen, please leave your notes and other materials
6 behind. Please don't discuss the case, and we will resume
7 in a few minutes.

8 (The jury was excused)

9 THE COURT: You may step down briefly.

10 (Witness excused)

11 THE COURT: This won't take long.

12 MR. JACOBS: Are we excused for a few minutes?

13 THE COURT: A very short time. Somebody just
14 needed to use the rest room. They will be back.

15 MR. JACOBS: All right.

16 (Recess)

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1 MS. AMSTERDAM: Your Honor, when my associate Mr.
2 O'Brien, shows up, I am going to leave for the day. I think
3 the Court is aware I haven't been well. Mr. Khallafalla has
4 agreed, for the balance of the two days, to proceed.

5 THE COURT: Mr. Khallafalla, you understand what
6 your lawyer has told you?

7 DEFENDANT KHALLAFALLA: Yes.

8 THE COURT: Is that satisfactory to you?

9 The record will reflect he has nodded his head
10 yes.

11 THE COURT: Mr. Jacobs?

12 CROSS-EXAMINATION

13 BY MR. JACOBS:

14 Q. Inspector, on September 1, the time that you
15 began interviewing Ajaj until the time he left your custody,
16 about how long was that, would you say? About how long was
17 that, roughly, your business?

18 A. The time I dealt with him, maybe an hour or more.

19 Q. How long?

20 A. An hour or more, but he was there hours after I
21 had left.

22 Q. So can you give us -- and I understand you didn't
23 keep a minute record -- but about what time did you first
24 have contact with him, about?

25 A. The first time I saw him was when he stepped off

1 the plane, whatever time the plane arrived.

2 Q. What time would you say that was?

3 A. Before 9. Some time before 9 that evening.

4 Q. Were you working a night shift that night?

5 A. 1 to 9. 1 in the afternoon to 9 p.m.

6 Q. So you were about to go off when you had him pass
7 through your booth?

8 A. He didn't pass through my booth. I was in the
9 secondary area.

10 Q. Secondary area. And you spent about an hour or
11 so before you left conducting this investigation? Is that
12 fair to say?

13 A. Dealing with him alone? About an hour.

14 Q. About an hour.

15 A. Yes. Maybe more.

16 Q. Maybe more. Maybe an hour and a half?

17 A. It could be.

18 Q. During that time you attempted to take a sworn
19 statement from him, correct?

20 A. Yes.

21 Q. And you questioned him about what he was doing
22 and where he was going, things like that; correct?

23 A. Yes.

24 Q. After you finished your shift and went home, did
25 there come a time that you made notes of what took place at

1 any time?

2 A. No.

3 Q. As you sit there now, is it your testimony that
4 you never made any notes and memoranda of the events of that
5 evening, September 1?

6 A. Correct.

7 Q. Were you interviewed the next day, September 2,
8 by anybody in law enforcement?

9 A. I don't know if it was the next day, but a few
10 days after that, yes. We were interviewed by the FBI.

11 Q. When you say a few days, could you try to be more
12 precise? Was it the 1st? Was it the 4th or 5th? Can you
13 give me your best?

14 A. I don't recall.

15 Q. Pardon me?

16 A. I don't recall.

17 Q. Could it have been September 17? Is that
18 possible?

19 A. It's possible.

20 Q. When you left that evening, you left the
21 investigation with your supervisors, or what was the status
22 when you left that night?

23 A. After I completed the search of his belongings,
24 everything was assembled, placed in envelopes, and passed on
25 to the acting supervisor. And I continued and completed the

1 case of another alien who had arrived on the same flight.

2 Q. I assume that alien had nothing to do with this
3 matter we are in court here about?

4 A. As far as I know, no.

5 Q. When you left, did you tell your supervisors that
6 the FBI was to be called with respect to Ajaj? Did you have
7 any such conversation?

8 A. No. I believe the supervisor called.

9 Q. Called the Bureau.

10 A. I believe so.

11 Q. Because would I be correct in stating, and I
12 think you just testified on cross of Mr. Stavis, this is the
13 first time you had encountered documents and paraphernalia
14 that you have just described; correct?

15 A. That's correct.

16 Q. You were somewhat concerned and you reported this
17 to the supervisor, correct, this information?

18 A. Yes.

19 Q. When the Bureau spoke to you, who spoke to you in
20 the FBI?

21 A. I believe it was Special Agent James Owen and
22 Pamela McDaid, I believe.

23 Q. And they took notes of the interview with you?

24 A. Yes.

25 Q. Something called a 302?

1 A. No idea.

2 Q. Did you ever see it, the report?

3 A. No.

4 Q. Do you know what unit they were assigned to?

5 A. I believe domestic terrorism task force.

6 Q. Domestic terrorism task force. And that
7 interview took place sometime in September of 1992; correct?

8 A. It's possible.

9 Q. And would you say that you tried, to the best of
10 your ability, to give the FBI as much information as you
11 could concerning Ajaj and the events that took place in that
12 hour or so, correct?

13 A. Yes.

14 Q. They were part of this terrorist task force;
15 correct?

16 A. As far as I know, yes.

17 Q. When you spoke with them, did they have custody
18 of any of the documents that the government has showed you
19 here today? Did they have custody of any of the documents?

20 A. I have no idea. They didn't show any to me.

21 Q. So, in September of 1992, Agents McDaid and Owens
22 didn't ask you to look at any of the documents, did they?

23 A. No.

24 Q. And am I correct that you did not initial and
25 date anything you saw that night, is that correct?

1 A. That's correct.

2 Q. Would I be correct in stating that there were
3 hundreds of pieces of paper, correct?

4 A. Correct.

5 Q. There are six books, correct?

6 A. Correct.

7 Q. And would I be correct in stating that you
8 thumbed through the books, got a little idea of what they
9 are about; correct?

10 A. That's correct.

11 Q. You didn't initial the books, correct?

12 A. No, sir.

13 Q. You didn't initial any documents, correct?

14 A. No, sir.

15 Q. You didn't take pictures of anything, correct?

16 A. Some of the documents were photocopied. I didn't
17 copy them myself, no.

18 Q. But somebody may have, you don't know?

19 A. I believe so, yes.

20 Q. And who might that have been?

21 A. Some of the other inspectors present. Whoever
22 was helping on the case with the supervisor.

23 Q. You made no inventory? You know what an
24 inventory is?

25 A. Yes.

1 Q. A list of items, correct?

2 A. No, I did not.

3 Q. You didn't make an inventory of what you found on
4 his person or in his suitcases, correct?

5 A. No, I did not.

6 Q. Did anybody from Immigration make an inventory
7 like that, sir?

8 A. I believe an inventory was made when he ended up
9 in the processing center.

10 Q. Have you ever seen that inventory?

11 A. No.

12 Q. He told you, Ajaj, that at some point he had been
13 to the U.S. before, is that correct?

14 A. That's correct.

15 Q. And he told you he lived in Houston, correct?

16 A. Yes.

17 Q. Worked in a Domino's Pizza?

18 A. Yes.

19 Q. In Houston, correct?

20 A. Yes.

21 Q. And you had no idea whether he was telling you
22 the truth or not, correct?

23 A. He had a Domino's Pizza shirt in his bag.

24 Q. He had a Domino's Pizza shirt in his bag.

25 A. That's correct.

1 Q. But in actuality you don't know if any of the
2 things he was telling you that night were true or just a
3 lie, correct?

4 A. Well, based on the ID, the Texas state ID and the
5 photocopy of his employment authorization card, it would
6 fairly --

7 Q. It looked real?

8 A. Excuse me?

9 Q. It looked real to you?

10 A. Yes.

11 Q. When you found some of these items which you have
12 described as manuals and things like that, you asked him,
13 "Why do you have these things?" Am I correct?

14 A. Correct.

15 Q. Do you remember what he said to you?

16 A. I believe he said, "They are just books. Books
17 aren't against the law. I can read whatever I want."

18 Q. Was it right after that he got a little excited,
19 belligerent with you?

20 A. In that time frame, yes.

21 Q. Did he start making accusations that people
22 destroy our homes, kill our people, did he start talking
23 like that?

24 A. Yes, he did.

25 Q. At the same time you also had a conversation with

1 him about bullet wounds that he had on him?

2 A. Correct.

3 Q. And you actually asked him, am I correct, "Are
4 you a terrorist?" Am I correct, sir?

5 A. No, I did not.

6 Q. Did you ever say to him words to the effect,
7 "What are you involved in? Are you some kind of terrorist?"
8 Did you ever ask him that question, sir?

9 A. No.

10 Q. Words to that effect.

11 A. I asked him if he was a member of any groups or
12 anything. I never said terrorist.

13 Q. You never said terrorist.

14 A. No.

15 MR. JACOBS: May I approach the witness, your
16 Honor?

17 THE COURT: Yes, you may.

18 MR. JACOBS: Let me show you 35016A for
19 identification, and if I can, to move it along, let me refer
20 you, Inspector, to the last paragraph here, up until the
21 first paragraph up here. You look at the whole document.

22 MR. FITZGERALD: For the record that is 35106A.

23 MR. JACOBS: Correct, a document provided to me
24 by the government.

25 THE COURT: As it is obligated to do.

1 MR. JACOBS: Yes, sir.

2 (Pause)

3 Q. Have you finished reading it Agent -- Inspector?

4 A. Yes.

5 Q. Having looked at that document, Inspector, does
6 that refresh your recollection as to whether you asked
7 Mr. Ajaj whether he was involved in some kind of terrorist
8 activity?

9 MR. FITZGERALD: Objection to form.

10 THE COURT: Sustained as to form. There has been
11 no showing of failure of recollection. Do you want to ask
12 him if it is still his testimony?

13 Q. Is it still your testimony, sir, that you didn't
14 ask anything about being a terrorist or being involved in
15 terrorist activities?

16 A. As far as I can recollect, I never used that
17 word.

18 Q. Did he tell you that he was involved in something
19 called Intifatah, I-n-t-i-f-a-t-a-h?

20 A. The Intifatah.

21 Q. Did you know what that was when he told you that?

22 A. Yes.

23 Q. Would you tell the jury?

24 A. I have some idea.

25 Q. You had some idea. Would you tell the jury what

1 your understanding is of that word?

2 A. The Intifatah is the Palestinian uprising on the
3 West Bank.

4 Q. On the West Bank.

5 A. Yes.

6 Q. And he told you he was involved in Intifatah as a
7 response to something you asked him?

8 A. Yes.

9 Q. What did you ask him?

10 A. Like I said, I believe I asked him if he was any
11 member of any groups or anything.

12 Q. And he said he was a member of the Intifatah?

13 A. The Intifatah.

14 Q. After the FBI interviewed you in September of
15 1992, did you have another interview with the FBI after
16 that, if you can recall?

17 A. Not recently after that. Several months later,
18 after the World Trade Center bombing, I was interviewed
19 again.

20 Q. Where was that?

21 A. At JFK again.

22 Q. By who?

23 A. The next time I believe it was Wayne Parola.

24 Q. The detective with the task force?

25 A. Yes.

1 Q. Between the time of your, as you testified, first
2 interview with Agents McDaid and Owens, and an interview
3 with Detective Parola -- I think that is his name -- after
4 the World Trade Center, did you speak to anybody in law
5 enforcement other than Immigration people about this matter?

6 A. I have no idea. I don't remember.

7 Q. Specifically, did you ever have any conversations
8 with any prosecutors in the Eastern District of New York,
9 which is over the Brooklyn Bridge. Did you ever talk to any
10 U.S. Attorney over there about Ajaj?

11 A. Yes, there was a telephone interview.

12 Q. Do you remember who that was with? Do you
13 remember the Assistant's name?

14 A. No.

15 Q. Did you speak to any agents in the Eastern
16 District?

17 A. I just remember Owens and McDaid.

18 Q. Pardon?

19 A. I just remember James Owens and Pamela McDaid.

20 Q. The next time you saw some of these exhibits was
21 six, seven months later, is it fair to say, eight months
22 later?

23 A. Around the time I testified at the World Trade
24 Center trial.

25 Q. Between that time and September 1, you hadn't

1 seen anything -- you hadn't seen the documents again, had
2 you?

3 A. No.

4 Q. In connection with the Yousef matter, did you
5 call the Bureau or or did the Bureau call you with respect
6 to statements that you heard about Ramzi Yousef?

7 A. I gave information to my supervisor, who
8 contacted the task force.

9 Q. In other words, some time after the World Trade
10 Center bombing you realized there might be a connection and
11 you spoke to your supervisor, your supervisor called the
12 Bureau, and the detective from the task force contacted you?

13 A. That's correct.

14 MR. JACOBS: I have nothing further.

15 THE COURT: Mr. Wasserman?

16 CROSS-EXAMINATION

17 BY MR. WASSERMAN:

18 Q. Good afternoon, Inspector.

19 A. Good afternoon.

20 Q. Inspector, the conversation that you overheard
21 where Ramzi Yousef was talking to a Pakistani Airline
22 official, was that conversation in English?

23 A. I believe so.

24 Q. Do you understand any other languages besides
25 English?

1 A. Spanish.

2 Q. It was not in Spanish?

3 A. No.

4 Q. Did you report that conversation to the inspector
5 who would ultimately interview Ramzi Yousef?

6 A. No.

7 Q. Do you know why the Pakistani airline official
8 was questioning Mr. Yousef?

9 A. Because, since he was boarded without a visa,
10 they faced a civil fine of \$3,000, so they were concerned as
11 to how he got on the aircraft.

12 Q. OK, and he was explaining to them how he did it?

13 A. Yes.

14 Q. Did you have occasion to look at the airplane
15 ticket of Mr. Ajaj?

16 A. Probably. I don't recall specifically.

17 Q. Or his boarding pass?

18 A. I don't specifically recall looking at it.

19 MR. WASSERMAN: May I approach?

20 THE COURT: Yes.

21 Q. Let me show you what has been marked as
22 Government Exhibit 2849 for identification. Do you
23 recognize that document?

24 A. It's a photocopy of a Pakistani international
25 boarding pass.

1 MR. FITZGERALD: Excuse me. One moment, your
2 Honor, with Mr. Wasserman?

3 (Pause)

4 Q. Do you recall what class Mr. Ajaj flew on
5 Pakistani Airlines?

6 A. No, I don't.

7 Q. Did you have occasion to inquire into that?

8 A. No.

9 MR. WASSERMAN: Your Honor, my understanding with
10 the government is that by stipulation tomorrow we will
11 introduce into evidence the boarding pass of Mr. Ajaj. Is
12 that correct?

13 MR. FITZGERALD: That's correct.

14 MR. WASSERMAN: Thank you. No further questions.

15 THE COURT: Anyone else? Anything else?

16 MR. FITZGERALD: Just one question, Judge.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION

19 BY MR. FITZGERALD:

20 Q. You testified on direct and on cross-examination
21 that Mr. Yousef explained to the Pakistani Airline official
22 that he got on board with the help of a brother who worked
23 in the Iraqi Consulate in Pakistan.

24 A. That's correct.

25 Q. Were you present for the account, the reason he

1 gave to the other Immigration inspector as to how he got on
2 board?

3 A. No, I was not.

4 Q. Do you know if it is the same account or a
5 different account?

6 MR. STAVIS: Objection, your Honor.

7 THE COURT: He presently doesn't know.

8 MR. FITZGERALD: Nothing further.

9 THE COURT: Anything else? No. You are excused.
10 Thank you.

11 (Witness excused)

12 MR. FITZGERALD: The government calls Mike
13 Feghali.

14
15 M I K E F E G H A L I,
16 called as a witness by the government,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FITZGERALD:

20 Q. Mr. Feghali, you have testified before but will
21 you tell the jury again what you do for a living?

22 A. I am a professional translator for the U.S.
23 Government.

24 Q. Let me approach you with what has been received
25 in evidence this morning as Government Exhibit 410 and what

1 has been marked for identification as Government Exhibit
2 410T1, T2, and T3. I ask you to take a look at Government
3 Exhibit 410 in evidence and tell us if you recognize it.

4 A. Yes, I do.

5 Q. I ask you to take a look at Government Exhibit
6 410T1, Government Exhibit 410T2, and Government Exhibit
7 410T3. Look at those three items and tell us whether or not
8 you recognize those items. And just speak into the
9 microphone.

10 A. These are translations of the Arabic text.

11 Q. So 410T1, T2 and T3 are translations of the
12 Arabic text on Government Exhibit 410.

13 A. Right.

14 Q. For the record, is Government Exhibit 410 one
15 continuous sheet of faxed type paper?

16 A. Now it is, yes.

17 Q. And these translations are broken out into
18 different pages, the translation of each page?

19 A. Right.

20 Q. Are Government Exhibits 410T1, T2 and T3 fair and
21 accurate translations from the Arabic language into English
22 of the Texas appearing on Government Exhibit 410?

23 A. Yes, they are.

24 MR. FITZGERALD: Your Honor, I would offer 410T1,
25 2 and 3.

1 THE COURT: There has been an offer. 410T1, T2
2 and T3 are received without objection.
3 (Government Exhibits 410T1, 410T2, and 410T3 were
4 received in evidence.)

5 MR. FITZGERALD: I have nothing further, Judge.

6 THE COURT: Any cross? Mr. Jabara, representing
7 Dr. Abdel Rahman, go ahead.

8 CROSS-EXAMINATION

9 BY MR. JABARA:

10 Q. Mr. Feghali, good afternoon.

11 A. Good afternoon, sir.

12 Q. You remember me?

13 A. I do.

14 Q. I spoke with you the last time you were here in
15 court?

16 A. Yes, sir.

17 Q. You did the translations on these, did you not?

18 A. Yes, sir.

19 Q. And did you make the decision as to what emphasis
20 you would give in terms of the type style or size of the
21 type in the translation?

22 A. I am not sure I understand exactly what you are
23 saying, but, if I may, when I take the document, sir, I read
24 it from beginning to end, and I try to give it the emphasis
25 that the writer has given, not mine, the meaning that he

1 tried to convey.

2 Q. At the top of this document, which I would like
3 to show you --

4 MR. JABARA: May I approach?

5 THE COURT: Yes.

6 A. Yes, sir.

7 Q. Can you show me the English translation of that
8 particular document?

9 A. Yes, sir. Of course. It is this.

10 Q. Can you read to me what the first line of that
11 document states, Mr. Feghali?

12 A. The title, you mean?

13 Q. Yes.

14 A. Yes. No Khalifah without Jihad. No Jihad
15 without blood and corpses.

16 Q. Will you show me on this document the same in the
17 Arabic, which document that refers to?

18 A. This one here. This is the same line.

19 Q. Can you tell me whether that line there is any
20 larger than any of the line in the text of this?

21 A. I don't know if it is larger, but it is a
22 different line.

23 Q. It is a different line.

24 A. Different letter.

25 Q. Is it the same size or smaller than the text?

1 A. No, I would say it is a little larger, if
2 anything.

3 Q. What is at the top of that page, Mr. Feghali?

4 A. The top up here?

5 Q. Yes.

6 A. It's "In the name of God, the compassionate, and
7 the graceful."

8 Q. Do you know that that is how every prayer begins
9 in the Moslem religion?

10 A. Well, not only every prayer. Every letter.
11 Every time a letter is written, this is written up there.

12 Q. Mr. Feghali, I would like to show you again, if
13 you don't mind, the page that I showed you, which I asked
14 you to read the title.

15 A. Yes, sir.

16 Q. Where do you see it written up there on the top
17 "In the name of God, most gracious and most merciful"?

18 A. I don't see it.

19 Q. So you didn't translate that part, is that
20 correct?

21 A. You see, when I work, sir, I don't --

22 Q. Yes or no. Did you translate that part or didn't
23 you?

24 A. No -- yes, I did translate it, but if it was
25 there I would have, but what I work on is not the original.

1 It is a copy, a working copy. And this could have been
2 missed out of it, because I mentioned it on the other
3 translations of the same page.

4 Q. Are you saying to me, sir, that what you used to
5 translate from is different from this document here?

6 A. I use a copy, a working copy.

7 Q. Is it different from the document that I showed
8 you?

9 A. No, it is not originally, it is not basically,
10 no.

11 Q. It is not basically?

12 A. No.

13 Q. Then why does it not begin at the top, "In the
14 name of God, most gracious, most merciful"?

15 A. Well, probably I made a mistake. But the rest of
16 them are mentioned there, sir.

17 MR. JABARA: I have nothing further, your Honor.

18 THE COURT: Anything else? Anybody have anything
19 else?

20 MR. FITZGERALD: No redirect.

21 THE COURT: Thank you, Mr. Feghali. You are
22 excused.

23 (Witness excused)

24 MR. FITZGERALD: The government calls Martha
25 Morales.

1 MARTHA MORALES,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 MR. FITZGERALD: Thank you, Judge.

6 DIRECT EXAMINATION

7 BY MR. FITZGERALD:

8 Q. Ms. Morales, will you tell the jury what you do
9 for a living?

10 A. I am an Immigration inspector.

11 Q. For how long have you been an Immigration
12 inspector?

13 A. Approximately seven years.

14 Q. What is your current title?

15 A. Special Operations Immigration Inspector.

16 Q. And how long in total have you worked for INS?

17 A. Approximately 13 years, sir.

18 Q. Where are you currently stationed?

19 A. Kennedy International Airport, New York City.

20 Q. I direct your attention to September 1 of 1992.

21 Were you working that day?

22 A. Yes, sir, I was.

23 Q. What area in the airport were you assigned to?

24 A. I was assigned to the International Arrivals

25 Building, the west wing section.

1 Q. Were you assigned for the primary or the
2 secondary inspection area?

3 A. The secondary inspection area.

4 Q. Let me approach you with what has been received
5 in evidence as Government Exhibit 610. I ask you to take a
6 look at that photograph and tell me whether or not you
7 recognize that person.

8 A. Yes, sir, I do.

9 Q. How did you meet that person?

10 A. This gentleman was referred to the secondary area
11 because of a documentary deficiency.

12 Q. Something was wrong with his documents?

13 A. Yes, sir.

14 Q. And you met him on that day, September 1, 1992?

15 A. Yes, sir.

16 Q. What name did you know him by?

17 A. Ramzi Ahman Yousef.

18 Q. You can put the photograph down.

19 Can you tell the jury what you recall about how
20 Mr. Ramzi Ahman Yousef was dressed on the day you met him?

21 A. Mr. Yousef was dressed in a silk, what appeared
22 to be a silk suit, earth colors, very puffy sleeves, I
23 believe it had -- it consisted of a shirt, pants, and a
24 vest.

25 Q. Do you recall anything about his shoes?

1 A. He had a slip-on type shoes. They were possibly
2 cloth.

3 Q. Do you interview a lot of people coming through
4 the airport?

5 A. Yes, sir, I do.

6 Q. Is there a reason why you remember how this
7 person was dressed on that particular occasion?

8 A. The reason I remember how he was dressed is
9 because it appeared to be very unusual dress.

10 Q. Can you tell us what documents he had with him?

11 A. He presented an Iraqi passport, the older
12 version. There are two versions of the Iraqi passport,
13 which is very large and an olive green. And the passport
14 did not contain a nonimmigrant visa to enter the U.S., which
15 is why he was referred to the secondary area.

16 Q. Was it common at that time, in the fall of 1992,
17 to encounter people presenting Iraqi passports at JFK?

18 A. No, sir, it was not.

19 Q. Let me approach you with what has been premarked
20 as Government Exhibit W614. If you can take a look at it
21 and tell us whether or not you recognize it.

22 A. Yes, sir, I do.

23 Q. What is it?

24 A. This is the passport that Mr. Yousef presented.

25 Q. Is that the dark green Iraqi passport you spoke

1 of?

2 A. Yes, sir.

3 MR. FITZGERALD: Your Honor, I would offer
4 Government Exhibit W614.

5 MR. JACOBS: No objection.

6 THE COURT: Government Exhibit 614 is received
7 without objection.

8 (Government Exhibit 614 was received in
9 evidence.)

10 Q. Did you take any other documents from Mr. Ramzi
11 Yousef on that occasion?

12 A. Yes, sir. He had an identification card for an
13 organization that I believe was based in Arizona under
14 another name, and he had an address book that was a memo pad
15 type book that opened from the bottom up.

16 Q. Let me approach you with what has been premarked
17 as Government Exhibits W613, W2849, and W2849-1.

18 Looking first at Government Exhibit W2849, I ask
19 you to take a look at this and see if you recognize it.

20 A. Yes, I do. It says boarding pass presented by
21 Mr. Yousef or found on his person.

22 MR. FITZGERALD: Your Honor, I would offer
23 Government Exhibit W2849.

24 MR. JACOBS: No objection.

25 MR. STAVIS: I just want to see the exhibit.

1 THE COURT: W2849 received in evidence without
2 objection.

3 (Government Exhibit W2849 was received in
4 evidence.)

5 Q. Ms. Morales, if you would just read to the jury
6 the name on the boarding pass presented by the person who
7 identified himself to you as Ramzi Ahman Yousef.

8 A. The name on this boarding pass says Mr. Azan
9 Muhammad.

10 Q. Azan Muhammad?

11 A. Yes.

12 Q. A-z-a-n M-u-h-a-m-m-a-d?

13 A. Yes.

14 Q. Let me show you what has been premarked as
15 Government Exhibit W2849-1. I ask you to take a look at
16 that and see if you recognize it.

17 A. This is the identification card for the
18 organization that I stated prior, that Mr. Yousef had on his
19 person.

20 MR. FITZGERALD: Your Honor, I have Government
21 Exhibit W2849-1.

22 THE COURT: Show it to Mr. Jacobs.

23 MR. JACOBS: No objection.

24 THE COURT: W2849-1 is received without
25 objection.

1 (Government Exhibit W2849-1 was received in
2 evidence.)

3 Q. Ms. Morales, will you just read into the record
4 the name of the organization in the upper right-hand corner?

5 A. The name of the organization is Al Bunyan Islamic
6 Information Center.

7 THE COURT: Spell that second word.

8 A. B-u-n-y-a-n, Al Bunyan Islamic Information
9 Center, in Tucson, Arizona.

10 Q. And if you could tell us the name -- first of
11 all, whose picture is on that identification card?

12 A. This is Mr. Yousef's photograph.

13 Q. And whose signature appears on that card, as best
14 you can tell?

15 A. The signature reads Ramzi Yousef.

16 Q. What name is printed on the card?

17 A. The card is issued in the name of Khurram Khan.

18 Q. Would that be K-u-r-r --

19 A. K-h-u-r-r-a-m K-h-a-n.

20 Q. Thank you. And, finally, I will show you what
21 has been premarked as Government Exhibit W613 and ask you to
22 take a look at that document.

23 A. Yes.

24 Q. Tell us whether or not you recognize it.

25 A. Yes. This is a photocopy of the address book

1 that Mr. Yousef had on his person. When I requested an
2 address for his paperwork or the processing of his case
3 work, he presented this address book.

4 Q. Did you take the original address book from him
5 or did you just copy his and return the original back to
6 him?

7 A. It was his property so I made copies and returned
8 it to him.

9 Q. Did you speak to Mr. Yousef with regard to an
10 asylum application?

11 A. Yes, sir.

12 Q. What language did you speak to Mr. Yousef in?

13 A. In English.

14 Q. Did he tell you why he wanted asylum in the
15 United States?

16 A. He stated political and religious reasons.

17 Q. During the course of that interview, did you take
18 a signed statement from Mr. Ramzi Ahman Yousef?

19 A. Yes, I did. A signed statement.

20 Q. I approach you with what has been premarked
21 Government Exhibit 611 and ask you to take a look at that.

22 MR. JACOBS: Is there an offer on 613 or not?

23 MR. FITZGERALD: Yes. I would offer Government
24 Exhibit W613.

25 MR. JACOBS: May I have voir dire on that, your

1 Honor?

2 THE COURT: Yes.

3 VOIR DIRE EXAMINATION

4 BY MR. JACOBS:

5 Q. Ma'am, W613, do you have it in front of you?

6 A. This is the copy of the address book.

7 Q. The original of that book you gave back to
8 Yousef, correct?

9 A. Yes, sir.

10 Q. And I think you were describing what type of book
11 it was. It is one of these little notebooks that you turn
12 from the bottom up with a spiral on top?

13 A. I stated address book that appeared to be sort of
14 memo pad, yes, that opens up, opens from the bottom up.

15 Q. Ma'am, this exhibit that you have in front of
16 you, that is 613T, W613T?

17 A. It just states 613.

18 Q. 613? OK. The original -- did you copy each and
19 every page, ma'am, or just some, if you can tell us.

20 A. Yes. OK. As I recall, there were pages that
21 were blank, many pages that were blank, and I only copied
22 the pages that had information on them.

23 Q. So it looks like about six pages on these
24 documents, if you can tell me, ma'am; is that about right?

25 A. That's right.

1 Q. So, in other words, what was ever in that little
2 notebook you made an attempt to copy where there was
3 writing.

4 A. Yes.

5 Q. You copied those pages?

6 A. Yes, sir.

7 Q. And I am not saying that is the original copy
8 that you made, but does this appear to be the actual pages
9 that you copied, do they look the same to you, ma'am?

10 A. It appears to be, because it has the staple marks
11 and the perforation holes that we made over the places into
12 a file jacket. Appears to be; I couldn't tell you.

13 Q. Did you initial the pages, ma'am, on September 1?

14 A. No, sir, I didn't.

15 Q. But to the best of your ability it looks like
16 these are the same six pages, correct?

17 A. Yes, sir.

18 MR. JACOBS: I have no objection.

19 MR. STAVIS: Your Honor, I have an objection to
20 Government Exhibit 613 but no voir dire. I have a relevance
21 objection.

22 THE COURT: I will take it subject to connection.
23 613 is received.

24 (Government Exhibit 613 was received in
25 evidence.)

1 DIRECT EXAMINATION (Continued)

2 BY MR. FITZGERALD:

3 Q. Now, Ms. Morales, let me approach you with what
4 has been premarked as Government Exhibit W611 (handing).

5 A. Thank you.

6 Q. Do you recognize that item?

7 A. Yes, sir. This is a sworn statement that I took.

8 Q. Is that the original or a copy?

9 A. This is the original.

10 Q. Is that the statement you took from Ramzi Yousef
11 on September 1, 1992?

12 A. Yes, sir, it is.

13 Q. During this interview, did you ask Mr. Yousef how
14 it was that he got on board the plane without the documents?

15 MR. FITZGERALD: Let me strike that.

16 Your Honor, I offer Government Exhibit W611.

17 MR. JACOBS: May I have a moment?

18 THE COURT: Yes.

19 MR. JACOBS: I have no objection.

20 THE COURT: W611 is received without objection.

21 (Government Exhibit W611 was received in
22 evidence.)

23 Q. Ms. Morales, looking at the first page of
24 Government Exhibit W611, did Mr. Ramzi Ahman Yousef say to
25 you where he said he was born?

1 A. Yes, sir. He stated he was born in the United
2 Arab Emirate on May 20, 1967.

3 Q. Did he tell you what country that he said he was
4 a citizen of?

5 A. He stated he was a citizen of Iraq because it was
6 his father's citizenship, in other words, derived from him.

7 Q. Did he tell you what country he said he lived in?

8 A. He claimed to have resided in Pakistan.

9 Q. And turning to the second side of the page, did
10 he tell you how he got on the plane without the proper
11 documentation?

12 A. Yes. He stated he paid a Pakistani government
13 official 2,700 U.S. dollars for a boarding pass.

14 Q. Did he tell you whether or not he knew this
15 Pakistani official?

16 A. He stated, "I don't know this man's name."

17 Q. Did you ask him what the purpose of his trip to
18 America was?

19 A. Yes, I did, and he only stated political and
20 religious, not ending the sentence.

21 Q. Did he indicate to you what his occupation was?

22 A. I believe he claimed he was an electronics
23 engineer.

24 Q. After you completed your interview with
25 Mr. Yousef, what action did you take upon his application

1 for asylum?

2 A. Considering the fact that he had a passport of
3 Iraq, dual nationality possibly, multiple identification,
4 more than one under one identity, more than one identity,
5 and was claiming political and religious asylum, all the
6 factors, he was the only Iraqi on that flight that day to my
7 belief, I approached the supervisor, acting supervisor,
8 presented the case, and then suggested that it be -- or
9 recommended that it be a detained exclusion, only because I
10 don't make those decisions.

11 Q. So you recommended that he be held in a type of
12 jail pending a decision of the Immigration proceedings?

13 A. Yes, sir.

14 Q. Cutting to the bottom line, what happened when
15 your supervisor made the decision?

16 A. The supervisor called someone of a higher rank,
17 which was an assistant area port director. The case was
18 discussed various times, three times if I recall correctly.
19 There seemed to be a link to something other that was
20 happening in the room that day. But due to lack of
21 detention space and other priorities and other reasons which
22 I am not quite sure of, it was determined that he was going
23 to be processed for a walk-in exclusion, which means that he
24 will be given a court date to appear at a later date before
25 an Immigration judge for determination of admissibility.

1 Q. So he would be allowed to enter the country but
2 would be required to appear at a court proceeding regarding
3 his immigration?

4 A. Yes, sir.

5 Q. When people are allowed to enter the country to
6 appear for an asylum-type proceeding, do they give a contact
7 address, a place where they can be contacted?

8 A. Yes, sir.

9 Q. And do you recall the addressee provided when he
10 was asked to provide it?

11 A. I don't have the papers before me, but, if I
12 recall correctly, he gave an address in Houston, Texas.

13 Q. Let me approach you with: At the time that he
14 gave you the contact address, what did you do with it?

15 A. I immediately wrote it down on the 122, which is
16 a notice of service. It is a legal notice that you gave to
17 the aliens.

18 MS. STEWART: I can't hear her judge, I am sorry.

19 A. I immediately wrote it down on the 122 form,
20 which is a notice of service. It is a form that notifies
21 the alien as to what the charges are of his illegal entry
22 into the United States and when and where to appear for a
23 hearing before an immigration judge.

24 Q. Did you write that address down at a time when it
25 was fresh in your mind?

1 A. Yes. I had him write it down on a piece of scrap
2 paper and I wrote it down on the forms.

3 Q. To the best of your ability, did you write it
4 accurately?

5 A. Yes.

6 Q. Let me show you Government Exhibit W3538-B, as in
7 boy. Take a look at the form and tell me if you recognize
8 what it is.

9 A. It's the 122 form, the notice of service of
10 hearing.

11 Q. Is that the 122 form pertaining to Ramzi Ahman
12 Yousef?

13 A. Yes.

14 Q. And does that contain the address and phone
15 number for Ramzi Yousef?

16 A. Yes, it does.

17 MR. FITZGERALD: I offer that portion of the
18 document which contains the address and phone number.

19 THE COURT: You can read it, but the document
20 itself can't come in.

21 MR. FITZGERALD: All right. I can read into the
22 record, Judge: It is 2101 Lyons Street, Houston, Texas,
23 77020. And the phone number would be area code 214, 329,
24 6515.

25 I have nothing further, Judge.

1 THE COURT: We are going to take a short break,
2 ladies and gentlemen. Please leave your notes and other
3 materials behind. Please don't discuss the case. We will
4 resume in a few minutes.

5 (Recess)

6 (Jury present)

7 THE COURT: Cross? Cross-examination?

8 MR. RICCO: Yes, your Honor.

9 THE COURT: Mr. Ricco, for Mr. El-Gabrownny. Go
10 ahead.

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q. Good afternoon, Ms. Morales.

14 A. Good afternoon, sir.

15 Q. As an INS inspector, one of the functions of your
16 job is to determine whether or not the person who is filling
17 out a statement is being honest with you, isn't that right?

18 A. I don't believe that that is a part of my job. I
19 take statements under oath, and it is not for me to
20 determine whether they are telling the truth or not.

21 MR. RICCO: Mr. McCarthy, will you look at
22 testimony, page 266, line 10 to 14.

23 MR. FITZGERALD: Thank you.

24 Q. Do you recall being asked this question and
25 giving these answers at the first trial, the World Trade

1 Center trial?

2 A. Yes, sir, I recall being asked many questions.

3 Q. I am going to ask you some specific questions.

4 A. OK.

5 Q. The question was asked you by one of the lawyers.

6 "Q. So you had a good opportunity to observe
7 him and get a good sense of his English-speaking skills and
8 to in effect size him up from your perspective as a customs
9 officer, am I correct?"

10 The answer was: "I am an immigration officer.

11 "Q. Excuse me.

12 "A. And I don't size up people. I observe
13 them to determine whether they are being honest and whether
14 they are giving a sworn statement in full honesty."

15 Do you recall being asked that question and
16 giving that answer?

17 A. Yes, sir, I do recall that response and I think
18 you --

19 THE COURT: No, he just asked you whether you
20 recall the response. If he wants to pursue it he can pursue
21 it or the government can.

22 MR. FITZGERALD: I just have a 106 objection.

23 Read the next question and answer.

24 MR. RICCO: Sure, whatever.

25 Q. "Q. fair enough. Do you believe, based on

1 Mr. Yousef's answers to you, that he was being honest?" I
2 will just go forward.

3 "A. That is something I can't judge. I only
4 document the facts, sir."

5 Do you recall being asked that question and
6 giving those answers?

7 A. Yes, sir.

8 Q. For example, you don't know whether or not
9 Mr. Yousef was being honest with you, isn't that right?

10 A. Sir, when I take a statement under oath, I have
11 to set my personal feelings aside. I can assume that the
12 person is being honest, but it is a statement under oath,
13 just that. Therefore, I have to pretty much accept that
14 they quite possibly might be telling the truth.

15 Q. OK. But that is in response to the part of the
16 question that I read that Mr. Fitzgerald wanted me to read.
17 I want to get back to the first part of the question that I
18 asked you, which was whether or not you attempt to determine
19 whether or not the person is being honest and whether they
20 are giving a sworn statement honestly. Is that something
21 that you do in your work?

22 A. Your question sounds like do I give a personal
23 opinion on that. No, I don't, sir. I don't understand your
24 question.

25 Q. I will try to ask it another way.

1 As a customs officer, Inspector --

2 A. Immigration.

3 Q. I am sorry. As an Immigration inspector, a
4 person sits in front of you and you will ask them basic
5 questions, isn't that correct? Where they came from, right?

6 A. Well, whatever questions make sense, depending on
7 the type of case that it is. They are pretty much
8 formatted.

9 Q. OK. And the people give you answers, isn't that
10 correct?

11 A. Yes, sir.

12 Q. And based on those answers that they give you,
13 you make some determination as to what your actions will be,
14 isn't that correct?

15 A. Based on a completed sworn statement, you can't
16 make a determination; you recommend a proceeding, and then
17 your superiors then make a determination, sir. I am sorry,
18 but that is the truth.

19 Q. Well, that is what I am asking you. You do
20 something based on your answers, don't you?

21 A. Based on their full statement, yes, sir. We make
22 a recommendation.

23 Q. All right. Based on their full statement, you
24 make some recommendation. And in this case, based on his
25 answers and what you observed, you decided that this person

1 should be detained, isn't that right? You made a
2 recommendation?

3 A. I made a recommendation --

4 Q. That this person should be detained?

5 A. -- that this person should be detained.

6 Q. And he gave you or he presented an identification
7 card from an Islamic organization in Arizona somewhere,
8 isn't that right?

9 A. Yes, sir.

10 Q. And the card had a front and a back, right?

11 A. Yes, sir, it did.

12 Q. The front of the card said that the card was
13 presented to Khurram Khan, isn't that correct?

14 A. I can't remember what side, but the card was
15 issued to a Khurram Khan, yes, sir.

16 Q. But the signature was Ramzi Yousef?

17 A. Yes, sir, it was.

18 Q. And on the side of that that was opposite from
19 the name Khurram Khan, it indicated where the card was
20 issued and what type of passport was issued in support of
21 that card, isn't that right?

22 A. Yes, sir.

23 Q. And the passport that was issued in support of
24 that card said a Swedish passport, isn't that correct?

25 A. Yes, it did.

1 Q. And it had a passport number, isn't that right?

2 A. Yes, it did, sir.

3 Q. And this was a part of the information that you
4 passed on to your supervisor, isn't that correct?

5 A. A part, yes.

6 Q. Now, he had three different identifications,
7 right? Three different ID -- he had three different
8 identities, right?

9 A. It appeared, yes, that he had three different
10 identities.

11 Q. And you made your recommendation to the
12 supervisor, right?

13 A. Yes, sir.

14 Q. And I think you said, based on something that was
15 going on in the room that you really weren't a part of, a
16 decision was made to release this gentleman, isn't that
17 correct?

18 A. No, I think you misunderstood that.

19 Q. OK. Clarify it.

20 A. Yes. OK. That based on the fact that there was
21 lack of detention space and for other reasons unknown to me,
22 a decision was made to release the subject.

23 Q. Did you say to the jury a few minutes ago that
24 there was something going on in the room that might have
25 been linked?

- 1 A. That had nothing to do with this response, sir.
- 2 That was earlier.
- 3 Q. That was earlier.
- 4 A. Yes.
- 5 Q. And do you know what it was that was going on in
- 6 the room that might have been linked to the gentleman that
- 7 was in front of you who identified himself as Ramzi Yousef?
- 8 A. I believe so.
- 9 Q. Were you aware that there was another individual
- 10 who was traveling on that same plane using the identity of
- 11 Khurram Khan?
- 12 A. While I was processing the case, no. But when I
- 13 went to present the case to my supervisor, I realized that
- 14 there was another gentleman in the room using an identity,
- 15 sir.
- 16 Q. And also using the Swedish passport, isn't that
- 17 right?
- 18 A. Using several passports.
- 19 Q. Well, let's get to those. But first, using the
- 20 Swedish passport, isn't that correct?
- 21 A. Well, I didn't process that case, but I do
- 22 believe that there was a Swedish passport, yes, sir.
- 23 Q. And there were several other passports, isn't
- 24 that correct, that that gentleman was possessing?
- 25 A. Other than that, I recall a United Kingdom

1 British passport.

2 Q. At the time that you were aware that there was
3 another individual with the name Khurram Khan and that there
4 was another individual possessing a Swedish passport with
5 that name, was Mr. Yousef still in the room, was he still
6 there, or had he left?

7 A. Mr. Yousef's case was just about completed and
8 the other gentleman's case had just been initiated.

9 Q. Does that mean that Mr. Yousef was still at
10 Immigration or had he left?

11 A. He was still in the immigration area.

12 MR. RICCO: I have no further questions. Thank
13 you, your Honor.

14 Oh, I am sorry, I have one question, excuse me.

15 Q. Mr. Fitzgerald asked you whether or not it was
16 common to see an Iraqi passport. I think he asked you a
17 question sort of like that. Do you recall that?

18 A. Earlier today, yes.

19 Q. And I think you indicated that there were two
20 types of Iraqi passports: There was an older one and a
21 newer passport?

22 A. At that point in time, yes, there were only two
23 types that we knew of.

24 Q. Can you tell us if in the fall of 1992 was your
25 office notified that there was a problem with people using

1 unauthorized Nicaraguan passports?

2 A. I don't recall that, sir, because we receive
3 intelligence reports on a monthly basis, and for me to tell
4 you exactly what was received when, I am sorry, I can't
5 recall.

6 Q. That's OK. Now, one other question. About a
7 thousand to 1,800 people a month apply for political asylum
8 through your offices, isn't that correct?

9 A. Through the offices or at the airport.

10 Q. At the airport.

11 A. Well, that's not correct because the amount
12 fluctuates. It was much higher within 1991 to 1993. It's
13 much lower now. I can't really tell you how many. But,
14 yes, many.

15 Q. The man Ramzi Yousef, you have a distinct
16 impression of him, don't you?

17 A. I don't know what you are referring to, sir.

18 Q. A distinct impression, you remember him, you
19 remember what he was wearing, don't you?

20 A. I remember what he was wearing.

21 Q. You even have an idea of the type of shoes he had
22 on, isn't that right?

23 A. I have an idea of the type of shoes he had on
24 because I recall his dress, it was very unusual.

25 Q. And there is nothing unique or unusual about the

1 fact that you just happened to remember this man, isn't that
2 right? In other words, you just remember who he is, right?
3 You remember what you saw that day, isn't that right?

4 A. No, I just don't remember who he is.

5 MR. RICCO: I have no further questions.

6 THE COURT: Mr. Wasserman, representing
7 Mr. Hampton-El.

8 CROSS-EXAMINATION

9 BY MR. WASSERMAN:

10 Q. Good afternoon, Inspector.

11 A. Good afternoon, sir.

12 Q. When Mr. Yousef showed you his Iraqi passport --

13 MR. WASSERMAN: Your Honor, may I approach for a
14 moment?

15 THE COURT: Yes.

16 Q. Showing you, Inspector, what has been marked, I
17 believe in evidence as Government's Exhibit 614.

18 You noticed, of course, I am sure, that he had
19 not signed his passport?

20 A. I don't recall whether I noticed he had not
21 signed his passport.

22 Q. I don't know, is there anything to signing or not
23 signing a passport which would be of any significance,
24 regardless of which country's passport you are using? Is it
25 something that you would naturally look for or not look for

1 as a matter of your inspection?

2 A. Something you might look for. About 75 percent
3 of the people that come through do not sign their passports.

4 Q. Mr. Yousef, was he able to conduct the interview
5 with you in English without any difficulty?

6 A. Yes, sir. I specifically request from anyone
7 that I am conducting an inspection with if they need an
8 interpreter, and he did not need an interpreter at the time.

9 Q. Would you say he was fluent in English?

10 A. He appeared to be fluent, moderate accent and
11 fluent, yes.

12 Q. How was his demeanor? Was he calm, was he
13 excited? How would you describe him?

14 A. If I recall correctly, he was calm, well spoken.

15 Q. And when you asked him how he had obtained entry
16 on the Pakistani Airline plane without having the proper
17 visa, what exactly did he tell you?

18 A. I don't remember his exact words, but I believe I
19 documented on the sworn statement, which I looked at
20 earlier, that he paid a Pakistani government official 2,700
21 U.S. dollars.

22 Q. Did he seem shy about telling you this? Was his
23 answer readily forthcoming, in other words?

24 A. I don't know what you mean by shy. I can't prove
25 intent. He stated that --

1 Q. Let me rephrase the question.

2 When you asked him the question, did he respond
3 relatively quickly to your question?

4 A. I don't recall if he responded quickly or slowly.

5 Q. Did there seem anything about that transaction
6 that he wanted to conceal?

7 A. What transaction, sir?

8 Q. The purchase for \$2,700 of a boarding pass.

9 A. He stated it; therefore, he didn't want to
10 conceal it. Right?

11 Q. OK. He responded that he was an electrical
12 engineer when you asked him his occupation?

13 A. Electronics engineering.

14 Q. Electronics. Did that arouse any reaction on
15 your part as to his being an electronics engineer and his
16 seeking asylum in the United States?

17 A. I am not aroused by case work. I don't
18 understand your question.

19 Q. Was there anything about his occupation? He
20 stated that he was an electronics engineer and he stated
21 that he was seeking political asylum. Was there anything
22 about that combination which -- I see you nodding your head.
23 Go ahead.

24 A. No, I am listening.

25 Q. Was there anything about that combination which

1 aroused your interest?

2 A. Interest possibly, no, only the fact that he was
3 claiming religious and political asylum.

4 Q. And nothing about his occupation that made it
5 unusual that he was seeking asylum?

6 A. Might have appeared to be unusual.

7 Q. The boarding pass which I believe is now in
8 evidence as Government 2849 --

9 MR. WASSERMAN: May I approach, Judge?

10 MR. FITZGERALD: That is W2849.

11 MR. WASSERMAN: Yes.

12 Q. I show you this.

13 A. Thank you.

14 Q. Did you have occasion to ask Mr. Yousef about
15 that boarding pass?

16 A. When I asked him how he was able to board the
17 Pakistani Air flight, that is when my question was answered.
18 Therefore, I don't believe I asked him anything other.

19 Q. And that boarding pass is in the name of Muhammad
20 Azan?

21 A. Yes, sir.

22 Q. And did you later learn that Muhammad Azan was
23 one of the identities of one of the passports that was
24 carried by Mr. Ajaj?

25 A. At the time I did the not know that.

1 Q. You subsequently came to that?

2 A. Quite possibly.

3 Q. And that boarding pass that you hold now, which
4 is in evidence, that is a first-class boarding pass, is that
5 not correct?

6 A. Yes, sir.

7 MR. WASSERMAN: No further questions. Thank you.

8 THE COURT: Mr. Jacobs, representing Mr. Mohammad
9 Saleh.

10 MR. JACOBS: Can I see 2849-1 for identification.

11 THE COURT: It is in evidence.

12 MR. JACOBS: It is in evidence?

13 CROSS-EXAMINATION

14 BY MR. JACOBS:

15 Q. Ma'am, what was your shift that evening?

16 A. I believe it was 1 to 9 shift.

17 Q. About what time did you interview Yousef,
18 approximately?

19 A. I can't recall exactly, but I believe it was
20 early evening.

21 Q. You said you did some paperwork in connection
22 with this. The government showed you some of it. Is that
23 correct?

24 A. I am sorry?

25 Q. You did some paperwork in connection with this,

1 correct, ma'am?

2 A. Yes.

3 Q. And there came a point that you discussed this
4 matter with supervisors, is that correct?

5 A. This case, yes.

6 Q. Would you give me the name of the supervisor that
7 you discussed it with, please?

8 A. I discussed it with the acting supervisor,
9 Mr. Malafronte, who then called the supervisor on the east
10 wing, which was Mr. Blair, who then I believe contacted the
11 assistant area port director.

12 Q. So Malafronte you discussed it with, one person,
13 correct? That's the first person you discussed it with?

14 A. No, I discussed it with Mr. Mastrosimone, who was
15 the supervisor prior to his leaving.

16 Q. So you discussed the Ramzi Yousef situation with
17 somebody by the name of Peter Mastrioni?

18 A. Mastrosimone.

19 Q. Mastrosimone?

20 A. Not discussed. We call it presenting the case.

21 Q. You presented the case.

22 A. Yes.

23 Q. You spoke, he spoke; correct?

24 A. Yes.

25 Q. You had conversation, correct?

1 A. Yes, sir.

2 Q. And he then left, correct?

3 A. Yes, sir.

4 Q. And you next spoke to -- who is the next person?

5 A. Mr. Malafronte.

6 Q. And you again discussed the matter, presented
7 documents to him; correct?

8 A. Yes, sir.

9 Q. Who was the next person you spoke to?

10 A. Mr. Malafronte then contacted Mr. Blair who was
11 the supervisor on the east wing.

12 THE COURT: You didn't talk to anybody else,
13 correct?

14 THE WITNESS: No, sir.

15 Q. In connection with your discussions with the
16 supervisors, you had made a recommendation for detention,
17 correct?

18 A. Yes, sir.

19 Q. And you made that recommendation because you felt
20 that Yousef might pose a danger to the United States, is
21 that correct, ma'am?

22 A. No, sir. Not because I felt he might pose a
23 danger. You are putting words in my mouth. I made that
24 recommendation.

25 THE COURT: He is asking you --

1 Q. Are you saying that I put that in your mouth?

2 Fine, OK.

3 THE COURT: He is allowed to put words in your
4 mouth on cross-examination.

5 A. I made that recommendation based on the facts of
6 the case.

7 Q. Did you make a conclusion, ma'am, that he might
8 pose a danger to the United States? Yes or no.

9 A. That's difficult to say.

10 MR. JACOBS: May I refer the government to page
11 2663 of the witness's previous testimony beginning at line
12 17, and I will read through line 1 on the next page. Mr.
13 Fitzgerald, if you would like to me to read anything else,
14 let me know.

15 MR. FITZGERALD: That is fine. OK.

16 Q. Ma'am, let me read your previous testimony.

17 A. Yes, sir.

18 Q. Beginning at page 2663:

19 "Q. After you finished the paperwork, what
20 happened to Mr. Yousef?

21 "A. After the paperwork was completed, I spoke
22 to the supervisor on duty. I cannot make the decision as to
23 whether to detain or release an alien applying for political
24 asylum in the United States."

25 A. Exactly.

1 Q. "And discussed the fact that I believe he should
2 remain detained because he had documents under several or
3 two identities, possibly three, including the boarding pass,
4 and that I felt he might pose a danger to the United
5 States."

6 Do you recall being asked those questions and
7 giving that answer under oath, ma'am, before Judge Duffy
8 here in this building? Yes or no.

9 A. Yes, sir, I do recall that.

10 Q. In connection with your discussion of Mr. Yousef,
11 with the supervisors Malafronte -- my pronunciation is
12 terrible, Mastrosimone or Blair --

13 THE COURT: Mastrosimone, and she didn't talk to
14 Blair. Please keep it straight and ask a question.

15 Thank you.

16 MR. JACOBS: Sorry.

17 Q. Those two supervisors, did you discuss the case
18 of Khurram Khan with them? Yes or no.

19 A. I discussed the case of Ramzi Ahmad Yousef
20 presenting another document in the name of Khurram Khan.

21 Q. Did you discuss the --

22 THE COURT: You have an answer. Ask another
23 question.

24 Q. The other question is: Did you discuss another
25 person that was before Immigration at that time by the name

1 of Khurram Khan? Yes or no. Did that come up in the
2 discussion with the two supervisors?

3 A. I can't recall.

4 Q. Did you at any time that evening see Exhibit
5 3849-1, which is in evidence, an Al-Bunyan Islamic
6 Information Center card made out to a Khurram Khan with a
7 photograph of Ajaj? Did you see that document that evening,
8 ma'am? Yes or no?

9 A. You just stated with a photograph of Ajaj. This
10 is a photograph of Mr. Yousef.

11 Q. Could I see the other exhibit.

12 Let me show you 2799 --

13 MR. JACOBS: Is this in evidence?

14 MR. FITZGERALD: W2799-1 in evidence.

15 Q. This is in evidence. Did you see that card with
16 the name Khurram Khan with the Ajaj photo that evening?

17 A. I believe I did, but after Mr. Yousef's case was
18 processed, as I stated earlier, I was informed of the other
19 person and in the other case which this related to.

20 Q. Am I correct, ma'am, looking at the two exhibits
21 that are in evidence, they are identical cards with just
22 different pictures of two different people, correct, ma'am,
23 same name?

24 A. It appears so.

25 Q. Did you discuss this before Yousef was released,

1 to your knowledge, with the two supervisors?

2 A. To my knowledge, myself and Mr. Cozine presented
3 both cases to the supervisors, and the supervisors discussed
4 these cases. We did not.

5 Q. Did you, ma'am, review any of the evidence
6 that -- I will call it evidence -- any of the documents that
7 Cozine had taken from Ajaj that evening, ma'am? Did you see
8 any of it?

9 A. Yes. I saw some of the documents that evening
10 after I had completed my case work with Mr. Yousef.

11 Q. Did you discuss any of the documents with
12 Mr. Yousef that evening?

13 THE COURT: Any of the documents that had been
14 taken from Mr. Ajaj?

15 MR. JACOBS: Correct.

16 THE COURT: Thank you.

17 MR. JACOBS: Thank you, your Honor. I am sorry.

18 Q. Did you discuss any of those documents with
19 Yousef?

20 A. I believe not.

21 MR. JACOBS: May I have one moment.

22 Q. Did you speak to the Federal Bureau of
23 Investigation in September of 1992 in connection with the
24 events of that evening?

25 A. No, I did not.

1 MR. JACOBS: I have nothing further.

2 THE COURT: Anyone else? No.

3 Any redirect?

4 MR. FITZGERALD: No, Judge.

5 THE COURT: Thank you very much. You are
6 excused.

7 THE WITNESS: Thank you, your Honor.

8 (Witness excused)

9 MR. FITZGERALD: The government next calls Peter
10 Wolpert, W-O-L-P-E-R-T.

11 PETER WOLPERT,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FITZGERALD:

16 Q. Mr. Wolpert, can you tell the jury what you do
17 for a living.

18 A. Yes. I am the president of City Chemical
19 Corporation.

20 Q. Can you briefly describe to the jury what City
21 Chemical Corporation is.

22 A. We are a chemical repackager. Basically, I am in
23 buying bulk chemicals and repackaging into smaller usable
24 quantities.

25 Q. If you could just keep your voice up so everyone

1 in the room can hear you and look at either microphone.
2 They are directional, so if you look at them, they pick up
3 your voice better.

4 How did you get involved in the City Chemical
5 Corporation?

6 A. It has been in my family for about 85 years, and
7 I have been president for eight years.

8 Q. Can you give us a brief description of what you
9 do, what you mean by repackaging chemicals.

10 A. We buy bulk chemicals and repackage them into
11 small usable quantities.

12 Q. Do you manufacture chemicals at City Chemical?

13 A. No, we simply purchase them on the outside.

14 Q. Where is your office located?

15 A. Right now it is in Jersey City, New Jersey.

16 Q. Do you work at that office?

17 A. Yes.

18 Q. In the fall of 1992, did you have that office in
19 Jersey City?

20 A. Yes.

21 Q. Did you also have another office at that time?

22 A. Yes.

23 Q. Where was the second office?

24 A. On 22nd Street in Manhattan.

25 Q. Is that office still operating?

1 A. No.

2 Q. Have you testified at a prior proceeding?

3 A. Yes.

4 Q. When you testified at the prior proceeding, were
5 you testifying under what's called immunity?

6 A. Yes.

7 Q. Is it your understanding that that immunity
8 carries over to your testimony here today?

9 A. Yes.

10 Q. Can you briefly tell us what you understand that
11 immunity to mean.

12 A. That, providing I tell the truth, no matter what
13 I say here can be used against me in any other pending case.

14 Q. You talked a little fast. Could you just repeat
15 that a little slower and a little louder.

16 A. That, as long as I tell the truth, whatever I say
17 today cannot be used against me in any other pending case.

18 Q. Let me approach you with what's been premarked as
19 Government Exhibits W77, W634A and B, W636, and W2937.

20 Showing you first what is marked as Government
21 Exhibit W77, do you recognize that item?

22 A. Yes.

23 Q. What is it?

24 A. It is a handwritten invoice for several
25 chemicals.

1 Q. Is that an invoice of your business, City
2 Chemical?

3 A. Yes.

4 Q. Do you recognize any of the handwriting on W77?

5 A. Yes.

6 Q. Whose handwriting do you recognize?

7 A. Well, the large scribbly kind of handwriting is
8 my own.

9 Q. Let me show you what's been marked for
10 identification as Government Exhibit W634A and W634B and ask
11 you if you recognize that document.

12 A. Yes.

13 Q. What is that document, or what are those two
14 documents stapled together?

15 A. These are internal, what we call worksheets that
16 just show the repackaging of several chemicals, two
17 chemicals.

18 Q. Are those records kept by the City Chemical
19 Company?

20 A. Yes.

21 Q. Showing you what's been premarked as Government
22 Exhibit W2937, I ask you if you recognize that document.

23 A. Yes.

24 Q. What is that?

25 A. It is also a handwritten invoice for chemicals.

1 Q. Is that a City Chemical invoice?

2 A. Yes.

3 Q. Do you recognize the handwriting on that
4 document?

5 A. Yes.

6 Q. Whose handwriting is it?

7 A. It is my own.

8 Q. Showing you, finally, Government Exhibit W636 for
9 identification.

10 Do you recognize these two items?

11 A. Yes.

12 Q. What are they?

13 A. They are phone messages taken by my receptionist.

14 Q. Are those four sets of documents, which I will
15 borrow back for a second just to read the numbers in the
16 record, W77, W634A and B, W636 and W2937, records that were
17 kept by City Chemical Corporation?

18 A. Yes.

19 MR. FITZGERALD: Your Honor, I would offer those
20 documents.

21 THE COURT: Those are received without objection.
22 Go ahead.

23 (Government Exhibits W77, W634A and B, W636 and
24 W2937 for identification were received in evidence)

25 Q. Showing you first Government Exhibit W77, do you

1 recognize the date on those items?

2 A. Yes.

3 Q. Can you tell the jury what date those forms were
4 filled out.

5 A. November 30, 1992.

6 Q. Do you recall the customer you --

7 MS. LONDON: Excuse me. What was the date again?

8 MR. FITZGERALD: November 30, 1992.

9 Q. Do you recall who the customer was that caused
10 you to fill out those forms dated November 30, 1992?

11 A. Yes.

12 Q. What was the customer's name?

13 A. Well, he identified himself to me as Kamal.

14 Q. Kamal, K-A-M-A-L?

15 A. I think so, yes.

16 Q. How did you first come to make contact with
17 Mr. Kamal, by phone or in person?

18 A. He called me several times by phone, and then he
19 came down and placed this order in person.

20 Q. Do you recall how many times he spoke to you by
21 phone before he came down to meet with you in person?

22 A. Maybe about three or four.

23 Q. Do you recall what chemicals he asked you about
24 when you spoke on the telephone?

25 A. Yes.

1 Q. Can you tell the jury what chemicals he asked
2 about.

3 A. Urea, methyl alcohol, sulfuric acid, nitric acid
4 and a few others.

5 Q. Did there come a time when he actually placed an
6 order for those chemicals?

7 A. Yes.

8 Q. Is that reflected on the document before you?

9 A. Yes, it is.

10 Q. Can you just tell the jury what quantities of
11 which chemicals were ordered by Kamal.

12 A. He bought 30 gallons of methyl alcohol, a
13 thousand pounds of urea, 60 gallons of sulfuric acid, a
14 gallon of phenol, it looks like 105 gallons of nitric acid,
15 a gallon of ethyl alcohol, 25 pounds of sodium carbonate,
16 and five gallons of ammonium hydroxide.

17 Q. What was the total price for this chemical order?

18 A. \$3,615.45.

19 Q. Was that order filled out on the date listed,
20 November 30?

21 A. Yes.

22 Q. When was delivery made of those chemicals?

23 A. About two days later.

24 Q. Between the time when you took the order and the
25 time when delivery was made, were the chemicals paid for?

1 A. Yes, they were paid on the 30th.

2 Q. Who paid for them?

3 A. This person, Kamal.

4 Q. How did he pay?

5 A. He paid me in \$100 bills.

6 Q. Let me approach you with what's been premarked,
7 or received in evidence as Government Exhibit 610.

8 I ask you to take a look as what's been premarked
9 as Government Exhibit W610. Do you recognize what's in
10 front of you?

11 A. Yes.

12 Q. Who is that?

13 A. That looks like Kamal.

14 Q. During the time of this first transaction,
15 besides the chemicals that were listed on the order form,
16 did this fellow who identified himself as Kamal ask you
17 about any other chemicals?

18 A. Yes.

19 Q. What chemical did he ask you about?

20 A. He asked me for a small quantity of methenamine.

21 Q. M-E-T-H-E-N-A-M-I-N-E?

22 A. Yes.

23 Q. What did you tell him when he asked you for a
24 small quantity of methenamine?

25 A. I told him we didn't carry it.

1 Q. In fact, at that time did you have any
2 methenamine in stock?

3 A. Yes.

4 Q. Why did you tell him that you didn't have any?

5 A. It was just a small quantity, and I didn't really
6 want to repackage it.

7 Q. The quantity of methenamine you had in stock, how
8 much did you have?

9 A. I had 100 pounds.

10 Q. Was it intact and sealed?

11 A. Yes.

12 Q. How much did he ask for?

13 A. I think either one or five pounds.

14 Q. So you would have had to break the seal on the
15 larger quantity?

16 A. Yes.

17 Q. Do you know where those chemicals ordered on
18 November 30, 1992 were delivered to?

19 A. Yes.

20 Q. Where?

21 A. To 69 Mallory Avenue.

22 Q. Do you know what's located at 69 Mallory Avenue?

23 A. Yes. There is a Space Station.

24 Q. Is "The Space Station" the name of a business?

25

1 A. I think so.

2 Q. What kind of place is the Space Station?

3 A. It is like a public storage area where you can
4 rent these cubicles.

5 Q. So it is a place that rents storage locations?

6 A. Yes.

7 Q. This would be in Jersey City as well?

8 A. Yes.

9 Q. Do you know the name of the person who delivered
10 the chemicals to the Space Station at 69 Mallory Avenue in
11 Jersey City?

12 A. Yes.

13 Q. Who was it?

14 A. Al Diaz.

15 Q. Did you have any conversation with Al Diaz after
16 he made the delivery of the chemicals to the Space Station?

17 A. Yes.

18 Q. Can you tell the jury what you recall Al Diaz
19 saying?

20 MR. BERNSTEIN: Objection.

21 THE COURT: Sustained.

22 Q. After the first delivery, did you hear from Kamal
23 again?

24 A. Yes.

25 Q. Can you tell us what you spoke about the next

1 time?

2 A. He called to make the arrangement for a second
3 delivery, and also to exchange some chemicals that were
4 purchased originally.

5 Q. When you say "exchange some chemicals that were
6 purchased originally," are you talking about some of the
7 chemicals that were delivered pursuant to that first order?

8 A. I am talking about chemicals that were purchased
9 the first time he returned in exchange for chemicals that he
10 bought the second time.

11 Q. What chemicals did he return?

12 A. I would have to look.

13 Q. OK.

14 A. He returned 30 gallons of methyl alcohol, 60
15 gallons of sulfuric acid, five gallons of ammonium
16 hydroxide, one gallon of phenol, and two empty drums.

17 Q. Those chemicals that were returned, were they
18 intact, in the same sealed condition?

19 A. Yes.

20 Q. As best you can tell, they had not been used?

21 A. Correct.

22 Q. Did he return any of the urea or nitric acid that
23 had been delivered?

24 A. No.

25 Q. What did he get as part of the second

1 transaction?

2 A. From the best that I can remember, he got about
3 500 pounds more of urea, and maybe about another 100 gallons
4 of nitric acid.

5 Q. Do you know, when he returned some of the
6 chemicals that he bought the first time and received the
7 second set of chemicals, if any money changed hands?

8 A. I don't think so.

9 Q. Do you recall the time at which the second
10 transaction took place?

11 A. A few days before Christmas of '92.

12 Q. Now, did there come a time after that second
13 transaction when you engaged in a third transaction with
14 Kamal?

15 A. Yes.

16 Q. Do you recall what that transaction concerned?

17 A. I would have to look.

18 Q. Can you just look at whatever you need to look at
19 and just identify for the record what the exhibit number is.

20 A. 2937.

21 Q. Is there a date on Government Exhibit W2937?

22 A. Yes. January 27, 1993.

23 Q. Does it indicate whether a purchase was made at
24 that time?

25 A. Yes.

1 Q. What was purchased by Kamal on that occasion?

2 A. 100 pounds of aluminum metal, 25 pounds of
3 magnesium metal, 18 five-pint units of nitric acid, two
4 gallons of methyl alcohol, 65 pounds of ferric oxide and 5
5 pounds of potassium nitrate.

6 Q. When you referred to 100 pounds of aluminum
7 metal, was that metal or was that aluminum metal powder?

8 A. It was powder.

9 Q. Similarly, when you referred to magnesium metal,
10 was that metal form, or magnesium metal powder?

11 A. It was powder.

12 Q. What was the price for that sale on January 27,
13 1993?

14 A. The total was \$643.93.

15 Q. Do you know how that sum was paid?

16 A. I'm pretty sure it was paid in cash.

17 Q. If you could look at Government Exhibit W636, the
18 two pink slips for phone messages.

19 A. OK.

20 Q. Looking at that item, if you look at the item I
21 believe on your right, you should see a phone number listed
22 and then a phone number written down the side of the paper?

23 A. Yes.

24 Q. Do you see the phone number written down the side
25 of the paper?

1 A. Yes.

2 Q. Do you know what country that phone number is
3 from?

4 A. Yes.

5 Q. OK. What country is that?

6 A. Switzerland.

7 Q. Do you know whose phone number that is?

8 A. Yes, it is a customer of mine in Switzerland.

9 Q. So that phone number has nothing to do with the
10 Kamal transaction?

11 A. Correct.

12 Q. The other phone number on that document, does
13 that pertain to Kamal?

14 A. Yes.

15 Q. Can you just read that phone number into the
16 record.

17 A. 908-499-6368.

18 Q. Then, if you look at the other pink slip, if you
19 could tell us what phone number is listed on that document.

20 A. 433-4831.

21 Q. Was that a phone number for Kamal?

22 A. Yes.

23 Q. Finally, did there come a time during this time
24 period, from November of '92 to late January 1993, when you
25 engaged in any transactions with anyone affiliated with the

1 Allied Signal Company?

2 A. Yes.

3 Q. Can you tell the jury what you recall about that
4 transaction.

5 A. From what I remember, we got an inquiry from
6 Allied Signal for a small quantity of lead nitrate, and I
7 told them they need a written purchase order, which I
8 received by fax, and then one of their chemists came down to
9 pick up that small quantity.

10 Q. Do you remember the name of that chemist?

11 A. Yes.

12 Q. What was his name?

13 A. It was Nidal Ayyad.

14 Q. Do you recall the quantity of lead nitrate that
15 was ordered by the purchase order?

16 A. It was a small quantity. I don't remember
17 exactly.

18 Q. Do you recall when --

19 THE COURT: Mr. Fitzgerald, could you come to a
20 convenient break point in the next five minutes.

21 MR. FITZGERALD: Certainly, Judge.

22 Q. When this person came down to pick up the order,
23 do you recall whether or not there was discussion of
24 providing an additional quantity of lead nitrate at that
25 time?

1 A. Yes.

2 Q. What do you recall about that occasion?

3 A. He wanted to purchase a quantity over and above
4 what was stipulated on the purchase order.

5 Q. What did you do at the time?

6 A. I told him no.

7 Q. Did you sell him the amount on the purchase
8 order?

9 A. Yes.

10 Q. Following the explosion at the World Trade Center
11 in February of 1993, did you make contact with government
12 authorities through an attorney?

13 A. Yes.

14 Q. Did you meet with them?

15 A. Yes.

16 Q. As you sit here today, have you had, has an
17 attorney taken steps on your behalf to apply for a reward
18 for the company?

19 A. Yes.

20 Q. Have you received any money?

21 A. No.

22 MR. FITZGERALD: Excuse me. One second, your
23 Honor.

24 One last question.

25 Q. When you said the third transaction was January

1 27, can you just tell us what year that was?

2 A. 1993.

3 MR. FITZGERALD: Thank you.

4 I have nothing further, Judge.

5 THE COURT: Is anybody going to cross?

6 Ms. London? I'm sorry. Who is going to go first I guess is

7 my question. I guess Ms. London is.

8 MS. LONDON: Yes, your Honor.

9 THE COURT: Do you want to come up for just a
10 second.

11 (Continued on next page)

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1 (At the side bar)

2 THE COURT: The question is simply do you have
3 anything you can cover in five minutes, or would you prefer
4 to start tomorrow morning?

5 MS. LONDON: I would prefer to start tomorrow
6 morning, your Honor.

7 THE COURT: OK.

8 (In open court)

9 THE COURT: Ladies and gentlemen, we are going to
10 break for the day. Please leave your notes and other
11 materials behind. Please don't discuss the case. Please
12 don't read, see or hear anything about this case, and we
13 will resume tomorrow morning at 9:30. Although you may
14 already be aware of it, I want to remind you that we are
15 going to be sitting this week on Friday morning.

16 All right. We will see you tomorrow morning.

17 (The jury was excused)

18 THE COURT: You may step down.

19 (Witness excused)

20 MR. JACOBS: Your Honor?

21 THE COURT: Yes.

22 MR. JACOBS: Your Honor, in connection with the
23 testimony of Cozine and the another agent, we have reviewed
24 the 3500 material, and apparently for the first time it's
25 come out that apparently there were discussions between the

1 Immigration people concerning the connection between Ayyad
2 and Yousef.

3 I am not interested in pursuing it except for one
4 fact: I would like a representation from the Department of
5 Justice that no other agency intervened that evening in
6 Yousef's release. If Immigration released Yousef, I am not
7 interested in pursuing it. But if some other agency
8 intervened, that is something I think we are entitled to
9 know and to find out. Other than that, if they tell me they
10 have reviewed the files and Immigration just did what they
11 did, I have nothing further to pursue. But with that in
12 mind, I would like the government to make a statement.

13 MR. McCARTHY: Do you have a particular agency in
14 mind?

15 MR. JACOBS: The CIA, the FBI. If somebody
16 intervened that night I would just like to know.

17 MR. McCARTHY: No.

18 THE COURT: No, you are not going to make the
19 inquiry? Or, no, nobody else intervened?

20 MR. McCARTHY: No, nobody else intervened.

21 THE COURT: All right.

22 MR. JACOBS: The matter is closed.

23 THE COURT: Good night.

24 (Proceedings adjourned Wednesday, April 19, 1995
25 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

April 19, 1995
9:40 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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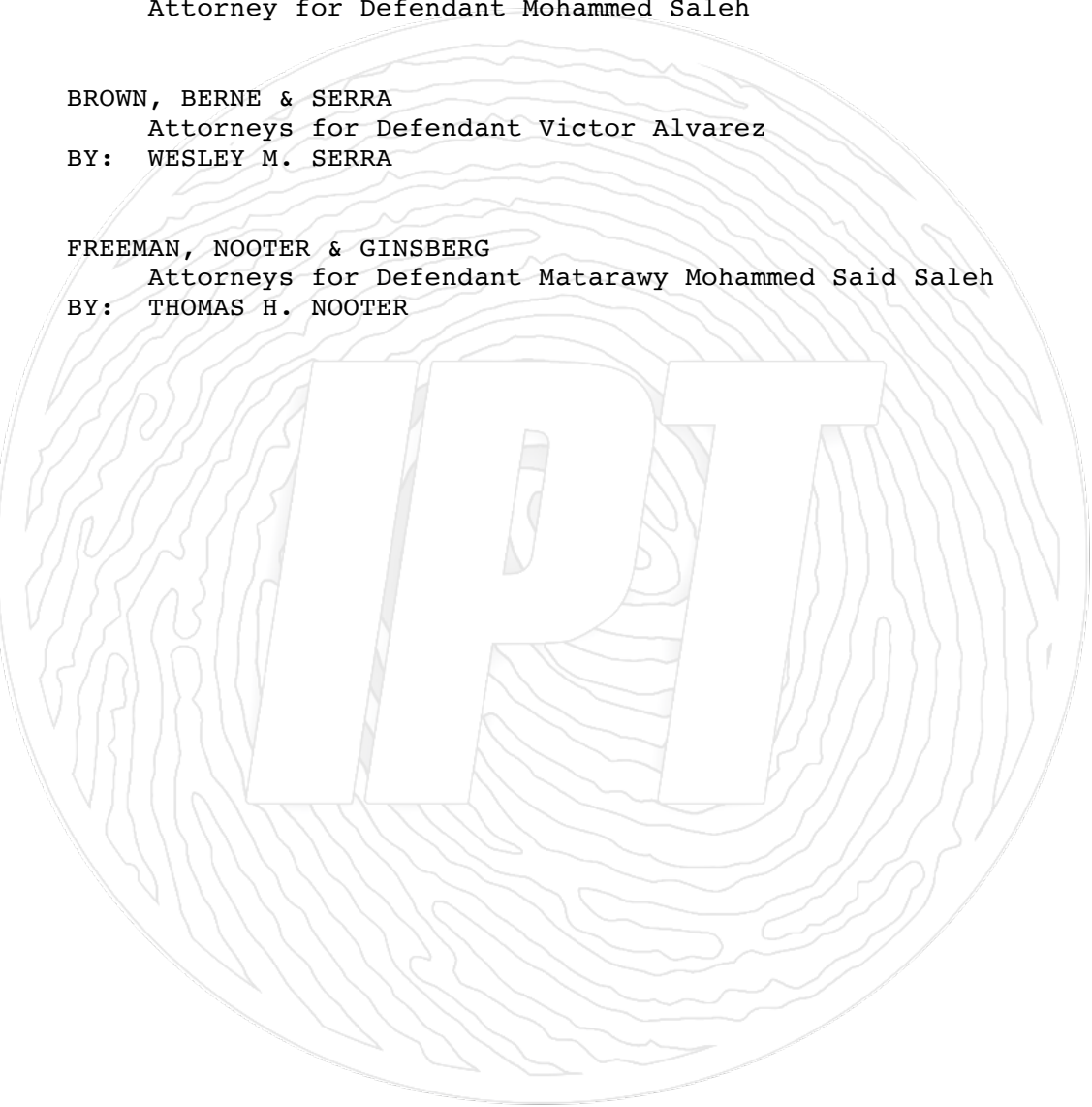
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BY: THOMAS H. NOOTER



1 (In open court; jury not present)

2 MR. SERRA: Your Honor?

3 THE COURT: Sir.

4 MR. SERRA: Something quick. By agreement with
5 my colleagues, I will at least lead off on the
6 cross-examination of Mr. Wolpert.

7 THE COURT: Fine.

8 Mr. Nooter, your client isn't with us?

9 MR. NOOTER: Judge, I just met with him now for
10 about 15, 20 minutes. The discussion was not completed by
11 the time it was time to come into court. Apparently, he got
12 a little upset. What happened thereafter I wasn't present
13 for, I just heard noise. It sounded as if he was upset. I
14 am now told that he doesn't want to come into the courtroom,
15 but this is hearsay, this is --

16 THE COURT: It is admissible.

17 MR. NOOTER: All I am saying is he didn't tell me
18 that personally.

19 THE COURT: I think I am allowed to take hearsay
20 in this situation, and I will take it.

21 MR. NOOTER: He did seem very upset. I don't
22 know whether it is because --

23 THE COURT: Your client has a low upset
24 threshold.

25 MR. NOOTER: Yes.

1 THE COURT: It seems to me if he wants to be
2 upset, I will be happy to see him. I will give him
3 something to be upset about. Why don't you go back and tell
4 him that I will be delighted to meet with him and I will
5 focus his irritation for him.

6 MR. NOOTER: He does actually want to meet with
7 you to discuss some representation issues.

8 THE COURT: Good. Then we will get together
9 right now. We will have a brief discussion. Mr. Jacobs?

10 MR. JACOBS: Your Honor, I am going up to the
11 Second Circuit for an argument. My client waives my
12 appearance, and Mr. Bernstein will cover for me.

13 THE COURT: Mr. Saleh, is that all right with
14 you?

15 DEFENDANT MOHAMMED SALEH: Yes, your Honor.

16 THE COURT: Good luck to you, Mr. Jacobs.

17 MR. McCARTHY: Can we have some rebuttal on that,
18 your Honor?

19 MR. NOOTER: I would go speak to him, but should
20 I go back there and then come around the back or --

21 THE COURT: You can go through there.

22 MR. WASSERMAN: As long as we have a minute, if I
23 may, the deputy asked me to put on the record something
24 which I had told her, that if I am ever late --

25 THE COURT: I am sorry.

1 MR. WASSERMAN: If I am ever late, counsel for
2 Dr. Rahman has agreed to stand up for me, and my client has
3 accepted that so the proceedings can continue in my absence.

4 THE COURT: Is that satisfactory to you
5 Mr. Hampton-El.

6 DEFENDANT HAMPTON-EL: That is fine, your Honor.

7 MR. STAVIS: I have an application. I don't know
8 if your Honor wishes me to make it Mr. Nooter's absence. I
9 don't know the logistics of it.

10 THE COURT: I don't particularly want you to make
11 it in Mr. Nooter's absence as opposed to in his presence,
12 but is it something that concerns him?

13 MR. STAVIS: No, it concerns a witness.

14 THE COURT: Then why don't you make it.

15 MR. STAVIS: Your Honor, the government has
16 informed me, and they long ago provided 3500 material with
17 regard to a witness by the name of Joseph S. Caliguari,
18 C-A-L-I-G-U-A-R-I. Mr. Caliguari testified at the World
19 Trade Center trial to the effect that on December 19, 1992,
20 Mahmud Abouhalima, who is an unindicted co-conspirator in
21 this case, went to his gun shop -- he is the owner of the
22 Bull's Eye Gun Shop in Carteret, New Jersey -- and
23 Mr. Abouhalima purchased a quantity of ammunition, and
24 Mr. Abouhalima asked Mr. Caliguari if Mr. Caliguari could
25 sell him any powder to reload this type of ammunition. At

1 which point Mr. Caliguari sold to Mr. Abouhalima a quantity
2 of Hodgdon, H-O-D-G-D-O-N, smokeless powder.

3 Your Honor, my application is under Rule 403.

4 Earlier in the week, there was some testimony --

5 THE COURT: I recall the testimony earlier.

6 MR. STAVIS: -- about smokeless powder.

7 THE COURT: Right.

8 MR. STAVIS: The prior testimony of Mr. Caliguari
9 relates to smokeless powder to reloading of ammunition.
10 Whether or not Mr. Abouhalima, who is an unindicted
11 co-conspirator, purchased ammunition or smokeless powder I
12 would say under these circumstances will be confusing and
13 prejudicial. Your Honor, I know that this person did
14 testify at the first World Trade Center trial, but your
15 Honor, the World Trade Center bombing is Overt Act L of
16 Count One, of the seditious conspiracy count. There are 105
17 other overt acts.

18 I don't think that just because he testified at
19 the World Trade Center trial he should be permitted to
20 testify here. If Mr. Abouhalima had bought the smokeless
21 powder along with an unindicted co-conspirator or a
22 co-conspirator, I could see the relevance of it, and it
23 wouldn't be prejudicial. But in light of the testimony
24 earlier in the week, I think any probative value that this
25 testimony might have would be outweighed by its prejudice.

1 THE COURT: December of 1990 is --

2 MR. STAVIS: '92.

3 THE COURT: '92, of course, is after the date
4 when your client's locker was sealed.

5 MR. STAVIS: Approximately two years after.

6 THE COURT: I don't understand the prejudice.

7 MR. STAVIS: Prejudice is one aspect of it. The
8 prejudice is Mr. Nosair had smokeless powder, Mr. Abouhalima
9 had smokeless powder.

10 THE COURT: That is the prejudice?

11 MR. STAVIS: Yes, your Honor. Smokeless powder.
12 The jury does not know what smokeless powder is for, if it
13 builds bombs or what have you. I think also, Rule 403 talks
14 about confusion and delay and waste of time. I ask this
15 court to consider those factors with regard to this witness,
16 and I may make subsequent applications with regard to
17 various witnesses from the World Trade Center portion of the
18 case.

19 THE COURT: All right. Do you want to be heard?

20 MR. FITZGERALD: Yes, your Honor. I would point
21 out briefly that Overt Act DD under the World Trade Center
22 bombing section of the overt acts specifically set out that
23 transaction in December of 1992, so counsel had been on
24 notice since the return of the indictment. It is not
25 unfairly prejudicial. I think his testimony will probably

1 take was much time as these arguments, so I don't think
2 there will be undue delay.

3 THE COURT: I don't think he is seriously
4 pressing the waste of time issue. The notion that somehow
5 the jury is going to be inflamed because they have heard
6 smokeless powder in one setting and smokeless powder in
7 another is I think not giving them credit for a reasonable
8 amount of common sense. What uses smokeless powder can be
9 put to will be the subject of testimony. The application is
10 denied.

11 Yes, sir?

12 MR. JABARA: Your Honor, I know that my cocounsel
13 Ms. Stewart has taken up the matter of the festival or the
14 holiday, the Muslim holiday.

15 THE COURT: That is right. She has.

16 MR. JABARA: My understanding was that your Honor
17 was willing to schedule a hearing on this.

18 THE COURT: That is right. I am.

19 MR. JABARA: We would like to have a hearing.

20 THE COURT: Do you have any documentary proof
21 that you can submit to me?

22 MR. JABARA: Documentary proof?

23 THE COURT: Yes.

24 MR. JABARA: We will probably present testimony.

25 THE COURT: I would prefer, frankly, a document

1 if you have one. Do you have one?

2 MR. JABARA: We don't have a document now, but we
3 will see if we can obtain some.

4 THE COURT: If you would.

5 MR. JABARA: We know that the Parking Violations
6 Bureau of the City observes it.

7 THE COURT: The Parking Violations Bureau is
8 closed for four days you are telling me?

9 MR. JABARA: Yes. For purposes of the tickets,
10 yes.

11 THE COURT: You are telling me that the Parking
12 Violations Bureau closes for four days, Ms. Stewart, for
13 this holiday?

14 MS. STEWART: No, Judge, but they suspend
15 alternate side of the street parking for four days, which is
16 the equivalent of closing.

17 THE COURT: No, it isn't. That is ridiculous.
18 That is absolutely ridiculous.

19 MS. STEWART: Maybe the mayor should be informed
20 that he is losing a lot of valuable revenue.

21 THE COURT: Call him up and tell him.
22 That is absurd.

23 MS. STEWART: I am telling you that is the truth.

24 THE COURT: They suspend alternate side of the
25 street parking in this city at the drop of a hat. That

1 doesn't go to the question of whether people can or can't
2 appear in court.

3 I told you inside what I thought of this. I
4 hadn't planned to take it up in open court. If you want to
5 take it up in open court, we will. But I want something
6 serious, not that alternate side of the street --

7 MS. STEWART: We have spoken to certain imams,
8 who also contend --

9 THE COURT: I have spoken to certain of them
10 myself, and I am getting a reaction that is very different
11 from the one you are getting. I am not knocking off for
12 four days. I am just not going to do it.

13 MS. STEWART: We will try to get you something in
14 writing, Judge.

15 THE COURT: Thank you. I have an appointment
16 inside. I will be back shortly.

17 (Pages 8382 through 8389 were sealed by order of
18 the court)

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1 (In open court)

2 PETER WOLPERT, resumed.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: Again, I am sorry for the delay in
7 getting started, but we had some preliminary matters we had
8 to deal with. We have now dealt with them.

9 Cross-examination.

10 Mr. Serra, representing Mr. Alvarez. Go ahead.

11 MR. SERRA: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. SERRA:

14 Q Good morning, Mr. Wolpert.

15 A Good morning.

16 THE COURT: You are still under oath.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Go ahead.

19 MR. SERRA: Thank you, your Honor.

20 Q Mr. Wolpert, in late November of 1992, you were
21 first approached by this man Kamal, is that correct?

22 A Yes.

23 Q Did Kamal tell you his last name?

24 A No.

25 Q Did you ask him his last name?

1 A No.

2 Q Did you ask him what business he worked for?

3 A Yes. He gave me the name of Salut Products.

4 Q S-A-L-U-T, is that right?

5 A Yes.

6 Q Did you ask him for a business card?

7 A No.

8 Q Did you ask him for a letterhead?

9 A No.

10 Q Did he drive up in a car with "Salut Products" on
11 the side of it?

12 A I didn't see that.

13 Q Did you ask for any proof that Salut Products in
14 fact existed?

15 A No.

16 Q You didn't have any proof that Salut Products in
17 fact existed, is that correct?

18 A Correct.

19 Q There were three shipments of chemicals that you
20 made pursuant to Kamal's orders, is that correct?

21 A Yes.

22 Q Those were all delivered to 69 Mallory Avenue, is
23 that right?

24 A Pretty sure, yes.

25 Q 69 Mallory Avenue I think you told Mr. Fitzgerald

1 is a storage place, is that correct?

2 A Correct.

3 Q "Storage place" meaning one of those places where
4 there are rooms for rent where you can put things, is that
5 right?

6 A Correct.

7 Q It wasn't a laboratory, was it?

8 A No.

9 Q It wasn't a manufacturing facility, was it?

10 A No.

11 Q In fact, your delivery person after making the
12 first delivery came back and told you that, isn't that
13 right?

14 A Correct.

15 Q Your delivery person said to you, "Why are we
16 delivering to this place?" Didn't he?

17 A I don't remember him saying that, no.

18 Q What did he say?

19 A I think he said the storage center looked a
20 little funny.

21 Q Did he say that 69 Mallory Avenue did not seem to
22 be the type of location that you should be delivering these
23 chemicals to? Did he say that?

24 A I don't remember those exact words.

25 Q The first time you spoke to people from the FBI

1 and from the U.S. Attorney's office was March 6, 1993, is
2 that correct?

3 A Yes.

4 Q That was a couple of agents and a couple of
5 Assistant U.S. Attorneys, is that correct?

6 A Yes.

7 Q Did you tell them that Al Diaz, your delivery
8 man, came back to after making the first delivery to 69
9 Mallory, came back and told you that 69 Mallory Avenue did
10 not seem to be the type of location that you should be
11 delivering these chemicals to?

12 Did you tell that to the agents and the assistant
13 U.S. attorneys on March 6, 1993?

14 A I don't remember exactly.

15 Q In addition to the chemicals which you sold to
16 Kamal, Mr. Wolpert, he asked you for something on that first
17 time that he saw you end of November 1992 that you wouldn't
18 sell to him, isn't that right?

19 A Correct.

20 Q What was that?

21 A It was methenamine.

22 Q That is what you wouldn't sell to him because you
23 only had a bigger quantity, isn't that right?

24 A Correct, I had a 100-pound drum.

25 Q He also asked you for something that, when you

1 called your supplier, your supplier told you that that
2 chemical was highly flammable and dangerous, is that
3 correct?

4 A I don't remember that.

5 Q At the same meeting, Mr. Wolpert, that we already
6 spoke about, March 6, 1993, the first time you met with
7 assistant U.S. attorneys and FBI agents, did you tell them
8 that Kamal also wanted to order another chemical which you
9 did not have in stock, that you contacted your supplier and
10 you were told that due to the extreme flammability and
11 combustibility of this chemical that you would need special
12 permits and then you declined to supply that chemical to
13 Kamal? Did you tell the assistant U.S. attorneys and the
14 agents that the first time you met with them?

15 A That sounds familiar, yes.

16 Q What was the chemical, sir?

17 A I don't remember.

18 Q But whatever it was, sir, you refused to sell it
19 to him because it was too dangerous to be sold without a
20 permit, is that correct?

21 A There was complications involved, yes.

22 Q Mr. Wolpert, did you refuse to sell it to him
23 because your supplier told you it was too dangerous to sell
24 without a permit?

25 A I don't remember exactly.

1 Q Do you remember that that is what you told the
2 agents and the assistant U.S. attorneys?

3 A No.

4 Q Do you know, Mr. Wolpert, that nitric acid is the
5 most common chemical used in the making of explosives?

6 A No.

7 Q You don't know that?

8 A No.

9 Q When Kamal came to you the first time, you sold
10 him 105 gallons of nitric acid, is that correct?

11 A Correct.

12 Q That is over 800 pounds of nitric acid, isn't
13 that right?

14 A Correct.

15 Q Later on you testified in answer to Mr.
16 Fitzgerald's questions that you sold him another 100 gallons
17 of nitric acid, is that correct?

18 A About that, yes.

19 Q Another 800 pounds of nitric acid, is that right?

20 A About that quantity, yes.

21 Q So, in other words, in total, Mr. Wolpert, you
22 sold Kamal, last name unknown, more than three-quarters of a
23 ton of nitric acid, didn't you?

24 A Correct.

25 Q Do you know, Mr. Wolpert, what nitroglycerin is?

1 A I have heard of it.

2 Q Kamal didn't get any glycerin from you, is that
3 right?

4 A Not that I remember, no.

5 Q But glycerin is very easy to get on the open
6 market, is that right?

7 A Very.

8 Q Glycerin is a chemical that's widely used in
9 making soaps, in photographic development and so on, is that
10 right?

11 A Correct.

12 Q It's easy to get?

13 A Yes.

14 Q Nitroglycerin is composed of glycerin, nitric
15 acid and sulfuric acid, is that correct?

16 A I don't know.

17 Q You sold Kamal, last name unknown, nitric acid
18 and sulfuric acid, didn't you?

19 A Correct.

20 Q In large quantities, isn't that right?

21 Withdrawn.

22 You also sold Kamal, last name unknown, something
23 called methanol, is that right?

24 A Yes.

25 Q That's methyl alcohol, is that right?

1 A Yes.

2 Q Methanol is used to stabilize nitroglycerine so
3 it won't blow up while you are moving it around, isn't that
4 right?

5 A I have no idea.

6 Q Do you know what methyl nitrate is?

7 A No.

8 Q Mr. Wolpert?

9 A No.

10 Q You don't know that methyl nitrate is a high
11 explosive, similar to nitroglycerine?

12 A No.

13 Q We established you sold Kamal methanol and
14 sulfuric acid, correct?

15 A Yes.

16 Q And nitric acid, right?

17 A Yes.

18 Q You also sold him something called urea, is that
19 correct?

20 A Correct.

21 Q As a matter of fact, the sale of a thousand
22 pounds of urea that you made to Kamal was the only one in
23 that time period that you made to anybody that was that
24 large, is that right?

25 A Yes.

1 Q Isn't it true that methyl nitrate is made from
2 methanol, nitric acid, urea and sulfuric acid?

3 A I never heard of methyl nitrate.

4 Q Had you ever heard of picric acid?

5 A Yes.

6 Q Picric acid is another high explosive, isn't it?

7 A It can be.

8 Q Picric acid, Mr. Wolpert, is made from sulfuric
9 acid, nitric acid and phenol, isn't that correct?

10 A I don't know how to make it.

11 Q So it is already established you sold Kamal, last
12 name unknown, nitric acid and sulfuric acid, correct?

13 A I sold him those two acids, yes.

14 THE COURT: I want to remind the jurors that the
15 evidence is the answers, not the questions. Go ahead.

16 Q You sold him phenol, too, didn't you,
17 Mr. Wolpert?

18 A Yes.

19 Q Have you heard of cyclonite, Mr. Wolpert?

20 A No.

21 Q RDX perhaps?

22 A No.

23 Q Were you in the military, sir?

24 A No.

25 Q So you don't know that cyclonite or RDX is a very

1 powerful high explosive? You don't know that, sir?

2 A No, I don't.

3 Q You said that Kamal, last name unknown, wanted a
4 chemical called methenamine, is that correct?

5 A Methenamine, yes.

6 Q Methenamine, right. He wanted a chemical called
7 methenamine, is that right?

8 A Correct.

9 Q You wouldn't sell it to him you said because you
10 had it in too-big quantities and you didn't want to break it
11 down for what he wanted?

12 A Yes.

13 Q Methenamine is a major component of cyclonite,
14 isn't that right?

15 A I don't know that.

16 Q You sold Kamal two powdered metals?

17 A Excuse me?

18 Q You sold Kamal two metals in powdered form, is
19 that right?

20 A Yes.

21 Q Aluminum and magnesium, correct?

22 A Yes.

23 Q Now, both of -- withdrawn.

24 Light metal powders are good fuels for fires,
25 aren't they?

1 A I suppose so.

2 Q They will make something burn hotter and faster,
3 is that right?

4 A I don't know that for sure.

5 Q Did you take high school chemistry, Mr. Wolpert?

6 A Yes.

7 Q Did you ever in high school chemistry see the
8 teacher put aluminum powder or magnesium powder in something
9 that was burning and it all of a sudden burns hotter,
10 brighter and faster?

11 A I don't remember that, no.

12 Q You also sold Kamal something called ferric
13 oxide, that right?

14 A Yes.

15 Q You can combine aluminum powder, magnesium powder
16 and ferric oxide to make something called Thermit, can't
17 you?

18 A I don't know that.

19 Q Do you know what Thermit is, sir?

20 A No.

21 Q You don't know that it is a very rapid,
22 hot-burning incendiary material?

23 A No.

24 Q You testified, Mr. Wolpert, that you are
25 testifying here under a grant of immunity, is that right?

1 A Correct.

2 Q In fact, Mr. Wolpert, you refused to testify
3 without a grant of immunity, didn't you?

4 A Yes.

5 Q You refused to answer questions until you got
6 immunity, isn't that right?

7 A That was my lawyer's advice, yes.

8 Q It may have been your lawyer's advice, but it was
9 your decision, wasn't it?

10 A Yes, I followed his advice.

11 Q Mr. Wolpert, your business basically is taking
12 bulk chemicals and breaking them down into smaller
13 quantities to sell, is that right?

14 A Yes.

15 Q Your business is very competitive, isn't it?

16 A Somewhat.

17 Q Well, if you look in the Yellow Pages, you're not
18 the only company, is that right?

19 A There are very few that do what we do.

20 Q The chemicals which you sold to Kamal are
21 available for more than just your company, isn't that right?

22 A Yes.

23 Q You could go to one of many chemical companies
24 and buy the same chemicals, isn't that correct?

25 A Yes.

1 Q You said that your business has been in your
2 family for 85 years, is that right?

3 A Yes.

4 Q And you have been head of it for eight years, is
5 that right?

6 A Yes.

7 Q So you are fairly familiar with the industry, is
8 that correct?

9 A Yes.

10 Q Kamal could have bought the same chemicals that
11 he bought from you without any more identification from one
12 of a number of other companies, isn't that correct?

13 A Yes.

14 Q All he would have needed was the money?

15 A I suppose.

16 Q Every chemical that we mentioned, except for
17 methenamine and glycerin, you in fact sold to Kamal, is that
18 right?

19 A Every chemical you mentioned, no.

20 Q Well, other than the explosives that you would
21 make -- withdrawn.

22 Nitric acid, sulfuric acid, ferric oxide, etc.,
23 those chemicals you sold to Kamal, is that right?

24 A Yes.

25 Q You sold it to him with no identification,

1 correct?

2 A Correct.

3 Q Without verifying that he worked for any sort of
4 company at all, is that right?

5 A Yes.

6 Q Knowing that it was being delivered to a storage
7 place, is that correct?

8 A Yes.

9 Q Then your lawyer put in for a reward for you, is
10 that right?

11 A Yes.

12 Q Kamal paid cash, didn't he, sir?

13 A Yes.

14 Q Hundred-dollar bills, is that right?

15 A Yes.

16 Q In total he paid you over \$4,000 in
17 hundred-dollar bills, didn't he?

18 A I know at least \$3500 was in hundred-dollar
19 bills.

20 Q OK. Over \$4,000 total in cash, is that right?

21 A Yes.

22 Q He didn't give you \$300 and tell you he would get
23 you the rest when he could, did he?

24 A No.

25 Q None of that over \$4,000 in cash consisted of a

1 plastic bag with change in it, did it?

2 A No.

3 MR. SERRA: Thank you, Mr. Wolpert.

4 I have nothing further, your Honor.

5 THE COURT: Ms. London, do you have anything?

6 MS. LONDON: No.

7 THE COURT: No. Anybody else?

8 Any redirect?

9 MR. FITZGERALD: Just one question.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION

12 BY MR. FITZGERALD:

13 Q Mr. Serra asked you if he brought you any cash in
14 a plastic bag. Did he ask you to go a warehouse and stir
15 the chemicals together?

16 A No.

17 MR. FITZGERALD: Thank you.

18 THE COURT: Anything else?

19 Thank you. You are excused, Mr. Wolpert.

20 (Witness excused)

21 MR. FITZGERALD: Your Honor, at this time, after
22 discussion with Mr. Jacobs, there is an offer of Government
23 Exhibits W650A, B, C, E, and F, leaving out W650D.

24 THE COURT: When you say "after discussion," I
25 gather the discussion is that it is admissible?

1 MR. JACOBS: That is correct.

2 THE COURT: Good. All right. Government
3 Exhibits W650A, B, C, E and F are received without objection
4 on stipulation.

5 Go ahead.

6 (Government's Exhibits W650A, B, C, and E for
7 identification were received in evidence)

8 MR. FITZGERALD: If I could just read small
9 portions of the documents, which are bank records from
10 Statewide Savings Bank for an account in the name of
11 Mohammed Salameh, listing an address of 34 Kensington
12 Avenue.

13 The account documents indicate that the account
14 was opened on January 1, 1992 by Mohammed Salameh, listing
15 his address as 34 Kensington Avenue, Apartment 8.

16 Also, Government Exhibit W650E is a check dated
17 November 30, 1992, drawn on the Mohammed Salameh account,
18 payable to Mohammed Salameh. The reverse indicates Mohammed
19 Salameh as the signature in the amount of \$3400. The
20 notation on the front side of the check says \$3400-hundred.

21 Now the government would call Joseph Caliguari.

22 JOSEPH S. CALIGUARI,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. FITZGERALD:

2 Q Good morning, Mr. Caliguari.

3 A Good morning.

4 Q Would you please tell the jury what you do for a
5 living.

6 A I own a gun shop in New Jersey.

7 Q Can you tell the jury where in New Jersey this
8 gun shop is located.

9 A Yes, in Carteret, New Jersey.

10 Q Can you tell the jury where Carteret, New Jersey
11 is in relation to Avenel, New Jersey, A-V-E-N-E-L.

12 A It borders Avenel. It is the next town.

13 Q What is the name of your gun shop?

14 A Bull's Eye Gun Shop.

15 Q For how long have you been involved with Bull's
16 Eye Gun Shop?

17 A Since 1984.

18 Q Can you generally just describe the nature of
19 your business to the jury.

20 A We sell guns and related items, fishing equipment
21 and reloading equipment, everything like that.

22 Q Do you sell ammunition as well?

23 A Absolutely.

24 Q Did you ever have occasion to deal with a person
25 by the name of Mahmud Abouhalima?

1 A Yes, sir.

2 Q Can you describe for the jury what happened.

3 Was it on one occasion or more than one occasion?

4 A No, just one occasion.

5 Q Can you tell the jury what happened when you met
6 Mahmud Abouhalima.

7 A He came in, and he was looking for some
8 ammunition to reload a -- not to reload, ammunition for a
9 7.62 x 39 SKS Rifle.

10 Q When you mentioned 7.62 x 39, does that describe
11 basically the caliber of the cartridge?

12 A That's the caliber, yes.

13 Q Can you tell the jury what an SKS rifle is.

14 A It's basically a semi-automatic, either Chinese
15 or Russian semi-automatic rifle.

16 Q Is it similar to a rifle that people may be more
17 familiar with?

18 A There's quite a few rifles on the market, like an
19 AK, or some others.

20 Q When you say "AK," are you referring to --

21 A AK-47.

22 Q Did you have any discussion with Mr. Mahmud
23 Abouhalima as to whether or not he had an SKS rifle?

24 A He mentioned that he had a few.

25 Q Did he say what he did with them?

1 A Target practice.

2 Q Did he say where --

3 A Shooting. Just shooting, target practice.

4 Q Did he indicate where he went shooting?

5 A I thought he said New York. I'm not quite sure,
6 but I think it was New York that he said he shot at some
7 farm.

8 Q During the course of time that you met with him,
9 did he buy any ammunition for this rifle?

10 A No. He checked the prices of the ammo and he
11 said it was maybe a little too high, so he asked for other
12 ways to go.

13 Q Can you tell us what happened then.

14 A He asked if I had any powder that would be able
15 to reload this particular type of ammunition, and I said,
16 yes, I did.

17 Q What happened next?

18 A We cross-referenced it with the books, to make
19 sure, and I found a can of powder, one pound of powder, and
20 gave him the price. He said, yes, that would be all right.
21 He would buy that.

22 Q So did he buy the pound of powder?

23 A One pound of powder, yes.

24 Q Can you describe to the jury what kind of powder
25 it was.

1 A It's a smokeless powder made by Hodgdon.

2 Q Is that H-O-D-G-D-O-N?

3 A Right.

4 Q Is smokeless powder different from black powder?

5 A Absolutely, yes.

6 Q Let me approach you with what's been premarked as
7 Government Exhibit GX W612.

8 By the way, when you sell smokeless powder, are
9 you required by law to make any notations?

10 A Yes. It has to be kept in a bound book, the name
11 of it, the person and the identification and so on and so
12 forth.

13 Q It is kept in a book?

14 A Absolutely.

15 Q Let me approach you with what has been premarked
16 as Government Exhibit W642. I may have misspoken earlier.
17 That is 642.

18 Look at what's been marked as Government Exhibit
19 W642. Do you recognize what that document is.

20 A Yes.

21 Q What is it?

22 A It comes out of my bound book in my shop.

23 Q Is that a copy of a page from your bound book?

24 A That's correct.

25 Q Is that a book that you keep in the ordinary

1 course of business of Bull's Eye Gun Shop?

2 A Yes.

3 Q Is that the book you were talking about where you
4 are required to make entries for gun powder sales?

5 A Yes.

6 MR. FITZGERALD: Your Honor, I would offer
7 Government Exhibit W642.

8 MR. STAVIS: No objection.

9 THE COURT: All right. 642 is received without
10 objection.

11 (Government's Exhibit 642 for identification was
12 received in evidence)

13 Q Mr. Caliguari, do you see an entry in there for a
14 sale to Mahmud Abouhalima?

15 A Yes.

16 Q Can you just read the date of the entry and the
17 notations you made.

18 A 12/19/92. It is the Hodgdon powder, one-pound
19 can, to Abouhalima, "Muhad."

20 Do you want the address and that?

21 Q Yes.

22 A It is 7319 Fifth Avenue, Brooklyn, New York, age
23 32. Then his entire license, driver's license number.

24 Q So he would have to show you a driver's license
25 for identification?

1 A Yes. Some identification that I would be pretty
2 positive of who the gentleman is.

3 Q The date of the sale would have been December 19,
4 1992?

5 A Right.

6 MR. FITZGERALD: Thank you. I have nothing
7 further.

8 THE COURT: Cross? Mr. Patel.

9 CROSS-EXAMINATION

10 BY MR. PATEL:

11 Q Good morning, Mr. Caliguari.

12 A Good morning.

13 Q Smokeless powder is used to make bullets?

14 A Yes.

15 Q You mentioned that you cross-referenced something
16 in a book?

17 A Right.

18 Q That's a book that tells you how many grains of
19 this powder go into the bullet?

20 A Exactly.

21 Q Let me stop here for a minute.

22 The bullet consists of a brass casing usually,
23 right? For shotgun shells it is a plastic casing?

24 A Right.

25 Q That is the most expensive part of the bullet,

1 right?

2 A Right.

3 Q There are people who go shooting and they reload
4 their bullets because they have the metal casing already,
5 and it's cheaper to reload them than to buy them from you?

6 A Yes.

7 Q You sell them the stuff to reload it, right, and
8 they go shooting?

9 THE COURT: You have to say "yes." Otherwise,
10 the reporter can't get it.

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 MR. PATEL: Thank you, your Honor.

14 Q You sell the reloading equipment as well?

15 A Yes.

16 Q When they reload it, they take this brass part of
17 the bullet, and they put a primer in it, right, and this --

18 A Yes.

19 Q -- machine puts the primer in the correct
20 position, right?

21 A Yes.

22 Q Then it puts in a measured amount of powder?

23 A That's right.

24 Q That's what you looked in the book to tell

25 Mr. Abouhalima how much powder went into that size bullet?

1 A That's correct.

2 Q How many grains of powder went into that size
3 bullet?

4 A At this point I really can't remember exactly the
5 amount, but I did give him an amount from the book.

6 Q When you describe grains, you are talking about
7 the number of individual particles of powder, is that
8 correct?

9 A Yes.

10 Q It is in the thousands, right?

11 A Could be, sure.

12 Q Then this machine puts the top of the bullet into
13 the cartridge, and you now have, for much less money, the
14 same thing that someone could buy, right?

15 A That's correct. That's right.

16 Q That is an absolutely legal procedure?

17 A It is.

18 Q It is done by hobbyists all over the country?

19 A Correct.

20 Q In fact, not only all over New Jersey, but all
21 over the United States, there are stores just like yours
22 where someone can walk in and buy this equipment?

23 A True.

24 Q And buy powder?

25 A Yes.

1 Q You sold Mr. Abouhalima a one-pound box?

2 A Correct. One-pound canister, can.

3 Q It also comes in ten-pound cans, right?

4 A Yes.

5 Q And he could have bought all he wanted?

6 A Well, I don't have it in my shop in that

7 quantity, but I usually carry just one-pound cans.

8 Q In other words --

9 A It's possible --

10 Q -- if he wanted ten one-pound cans --

11 A Yes.

12 Q -- he could have bought ten one-pound cans?

13 A Yes.

14 Q And if you had ten ten-pound cans, and he wanted

15 ten of them, he could have walked out of there with ten

16 pounds of powder just by writing it in the book?

17 A Correct.

18 MR. PATEL: Just one minute.

19 Q This is not the first time you've testified about
20 this sale?

21 A No.

22 Q You testified about this exact matter in this
23 exact courtroom --

24 A Yes.

25 Q -- at the World Trade Center trial, and at that

1 time Mr. Abouhalima was a defendant?

2 A Yes.

3 Q He's not a defendant in this case?

4 A Correct.

5 Q You mentioned an AK-47.

6 A Yes.

7 Q That is a semi-automatic weapon?

8 A Yes.

9 Q A number of your customers have those?

10 A Not in New Jersey.

11 Q Not in New Jersey?

12 A No.

13 Q No. Not in New Jersey anymore?

14 A Not anymore.

15 Q Prior to -- was it last year?

16 A About three years ago almost.

17 Q OK. But at the time that you sold this powder to
18 Mr. Abouhalima, it was legal to own an AK-47 in New Jersey?

19 A Yes.

20 Q And a number of your clients had those weapons at
21 that time?

22 A I never sold an AK-47 from my shop.

23 Q But people bought ammunition for it?

24 A It was a legal weapon at one time, prior to the
25 bill. It is not a legal weapon in the state of New Jersey.

1 Q In the state of New Jersey?

2 A No.

3 Q But in the state of New York as far as you know
4 it is a legal weapon?

5 A Yes, I believe so.

6 Q In semi-automatic form?

7 A I believe so.

8 MR. PATEL: Thank you. Nothing further.

9 THE COURT: Mr. Ricco?

10 CROSS-EXAMINATION

11 BY MR. RICCO:

12 Q In December of 1992, a very tall, red-headed man
13 came into your shop and asked the questions that you just
14 testified to, isn't that right?

15 A Yes.

16 Q When he wanted to make a purchase of the gun
17 powder, you requested that he present some type of
18 identification, isn't that right?

19 A Correct.

20 Q You are required to ask for that, isn't that
21 right?

22 A Yes.

23 Q In fact, as a licensed gun merchant you asked for
24 that?

25 A Absolutely.

1 Q He presented to you what appeared to be valid New
2 York State driver's license?

3 A Yes.

4 Q Which had his name on that driver's license?

5 A Yes.

6 Q And the face of the individual who was standing
7 before you?

8 A Yes.

9 Q And you sold him the smokeless powder?

10 A Yes.

11 Q How much did he pay for it?

12 A Around \$13, I believe, something like that.

13 Q OK.

14 MR. RICCO: No further questions. Thank you very
15 much.

16 THE COURT: Anyone else?

17 Ms. London, representing Tarig Elhassan.

18 Go ahead.

19 CROSS-EXAMINATION

20 BY MS. LONDON:

21 Q Mr. Caliguari, the ammunition that you sold to
22 Mr. Abouhalima was specifically sports rounds, not military
23 rounds, wasn't it?

24 A The can of powder, ma'am.

25 Q The can of powder was for sports rounds, not

1 military rounds, is that right?

2 A Well, I don't know what he used it for, but it is
3 basically, that round is a military round. It has been
4 upgraded to a sport round recently.

5 Q Prior to testifying at the other trial, you were
6 interviewed with the FBI, is that correct?

7 A Yes.

8 Q At that time did you not tell the FBI that you
9 sold one box of 20 pounds of 7.62 x 39 ammunition made by
10 Norencio?

11 A Yes.

12 Q Brand name China Sports?

13 A Yes.

14 Q Lead tipped, jacketed sports rounds?

15 A Yes.

16 Q Not military rounds?

17 A Yes.

18 Q Many of your customers use reloading equipment
19 for target shooting, isn't that right?

20 A Yes, they do.

21 Q They go out to public ranges, isn't that right?

22 A Correct.

23 Q In fact, it's common?

24 A Oh, yeah. Sure.

25 Q The sale and purchase of this ammunition is

1 legal?

2 A Yes, it is.

3 Q There is nothing illegal about buying powder for
4 reloading equipment, is there?

5 A No.

6 MS. LONDON: No further questions.

7 THE COURT: Anyone else? Any redirect?

8 MR. FITZGERALD: No, Judge.

9 THE COURT: Thank you. You are excused.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 MR. FITZGERALD: The government calls Debra
13 Zeiger, Z-E-I-G-E-R.

14 DEBRA ZEIGER,

15 called as a witness by the Government,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FITZGERALD:

19 Q Good morning, Ms. Zeiger.

20 A Good morning.

21 Q If you can just keep your voice up, or speak into
22 either microphone, and if you could tell the jury what you
23 do for a living.

24 A I work at City Chemical.

25 Q If you could keep your voice up just a little

1 more so everyone can hear you. If you can tell us where the
2 City Chemical facility you work at is located.

3 A 100 Hoboken Avenue in Jersey City.

4 Q For how long have you worked for City Chemical?

5 A About two and a half years.

6 Q What did you do for City Chemical?

7 A General office work.

8 Q Have you testified at a prior proceeding?

9 A Yes, I have.

10 Q When you testified at a prior proceeding, did you
11 testify pursuant to what is called immunity?

12 A Yes.

13 Q Is it your understanding that that immunity
14 carries over to this proceeding as well?

15 A Yes.

16 Q Let me approach you with what's been premarked as
17 Government Exhibits W2938-1, W2938-2, and W2938-3.

18 If you could look first at W2938-3, the yellow
19 sheet. Tell us if you recognize what that is.

20 A Yes.

21 Q What is that?

22 A When I got a -- when I get phone calls from
23 customers, I take down the notes on these, of what they
24 wanted, their names, their phone number.

25 Q So it is like your scratch notes?

1 A Right.

2 Q If you look at W2938-2, can you tell us what that
3 is. I'm sorry. W2938-1. Forgive me.

4 A I had gotten a phone call from Nidal Ayyad from
5 Allied Signal, and he had wanted to purchase something, so I
6 wrote it up on this purchase order. He was going to come in
7 and pick it up.

8 Q So W2938-1 would be a purchase order?

9 A Right.

10 Q Is that based upon the information that was
11 contained on your scratch notes, W2938-3?

12 A Yes.

13 Q Is it part of the regular practice of your work
14 at City Chemical to write up these purchase orders such as
15 W2938-1?

16 A Sometimes, yes.

17 Q Do you recognize the handwriting on W2938-1?

18 A It's my handwriting.

19 MR. FITZGERALD: Your Honor, I would offer
20 Government Exhibit W2938-1 and W2938-3.

21 THE COURT: 2938-1 and 2938-3 are received
22 without objection. Go ahead.

23 (Government's Exhibits 2938-1 and 2938-3 for
24 identification were received in evidence)

25 MR. FITZGERALD: Thank you.

1 Q Looking at Government Exhibit W2938-1,
2 Ms. Zeiger, can you tell us the name of the customer that
3 you took that purchase order from?

4 A Nidal A. Ayyad.

5 Q Does it indicate where Nidal A. Ayyad, A-Y-Y-A-D
6 worked?

7 A At Allied Signal.

8 Q Can you tell us the date of that purchase order.

9 A 2/2/93.

10 Q Can you tell us the items that he ordered on
11 February 2, 1993?

12 A Phenol crystals, hexamine and lead nitrate.

13 Q When you say phenol, crystal phenol?

14 A Correct.

15 Q When you say hexamine, to the right is there a
16 second name?

17 A Methenamine, hexamethylene tetramine.

18 Q Those are all different names of the same
19 product?

20 A I would assume so. I am not too sure.

21 Q OK. Methenamine is M-E-T-H-E-N-A-M-I-N-E, is
22 that correct?

23 A Correct.

24 Q The last item ordered besides the phenol crystals
25 and the methenamine is lead nitrate?

1 A Correct.

2 Q What dealings did you have with Nidal Ayyad when
3 he ordered these chemicals?

4 A He called me over the phone and he had told me
5 what he wanted. I had to go into Peter and show him what
6 chemicals they were. And then Peter told me to get a
7 purchase order from him, to have it faxed over.

8 Q When you say "Peter," are you referring to Peter
9 Wolpert?

10 A Right, correct.

11 Q So you asked for a purchase order and -- OK.
12 Look at W2938-2. I ask you to look at that.

13 Can you tell us if you recognize Government
14 Exhibit W2938-2.

15 A Yes.

16 Q What is that?

17 A The fax that he sent me for the purchase order.

18 Q Is that something that you received in response
19 to your request?

20 A Correct.

21 MR. FITZGERALD: Your Honor, I would offer
22 Government Exhibit W2938-2.

23 THE COURT: 2938-2 is received without objection.

24 Go ahead.

25 (Government's Exhibit 2938-2 for identification)

1 was received in evidence)

2 Q Quickly turning to the second page, Ms. Zeiger,
3 of that purchase other, is that written on Allied Signal
4 stationery?

5 A Yes.

6 Q Does that list three chemicals?

7 A Yes.

8 Q Phenol crystal, hexamine and, in parentheses,
9 methenamine, and third, lead nitrate?

10 A Yes.

11 Q Looking at the second page, what is the date that
12 is typed on that purchase order from Allied Signal, signed
13 by Nidal Ayyad?

14 A January 2, 1993.

15 Q Your purchase order is dated February 2, 1993?

16 A Yes.

17 Q Can you explain the difference in the dates.

18 A On the fax on the bottom, it is dated February 2,
19 1993.

20 Q That would be the bottom of page 1 to 2938-2?

21 If you are looking at the document in front of
22 you, the first page of that same exhibit has a fax stamp?

23 A Right.

24 Q Indicating that you received it on February 2?

25 A Correct.

1 Q So you asked for a purchase order on February 2,
2 you received this fax, but the actual purchase order he sent
3 you was dated January 2?

4 A Correct.

5 Q Did you have a discussion with Mr. Ayyad as to
6 when he would pick up these materials?

7 A He said he would pick it up in a day or two, and
8 I wasn't going to be there. So I took the purchase order
9 and I left it by the front desk so when he wasn't -- you
10 know, when I wasn't there, it would be there and they would
11 know where it is.

12 Q Were you taking a few days off?

13 A Yes.

14 Q When you came back after a few days off, did you
15 know if the purchase order had been filled or not?

16 A It wasn't.

17 Q Did there come a time when the purchase order was
18 filled?

19 A Yes.

20 Q Were you there when it happened?

21 A Yes, I believe so.

22 Q Do you have a clear memory of what happened?

23 A I don't have too clear a memory of it.

24 Q But you know that when you came back a few days
25 after February 2, the purchase order had been --

1 MS. AMSTERDAM: Objection as to the leading, your
2 Honor.

3 THE COURT: That just recapitulates the
4 testimony. I will allow it. Go ahead.

5 Q Is it fair to say a few days after February 2,
6 1993 when you returned to work, the purchase order had not
7 been filled yet?

8 A Right.

9 Q You know that it was filled after that --

10 A Right.

11 Q -- but you don't have a clear memory of how it
12 happened?

13 A Correct.

14 MR. FITZGERALD: Thank you. I have nothing
15 further.

16 THE COURT: Cross?

17 Ms. London, representing Tarig Elhassan.

18 Go ahead.

19 CROSS-EXAMINATION

20 BY MS. LONDON:

21 Q Good morning, Ms. Zeiger.

22 A Good morning.

23 Q You have told us that you are testifying here
24 under a grant of immunity, isn't that correct?

25 A Correct.

1 Q What do you understand that to mean?

2 A That, that whatever I say will be -- I don't
3 know. I am confused. Will not be held against me.

4 Q Do you understand that to mean that nothing that
5 you say here can be used in a prosecution against you?

6 A I believe so.

7 Q Unless of course you do not tell the truth, is
8 that right?

9 A I guess so.

10 Q Going back to when you first received the
11 telephone call from Nidal Ayyad, when you received that
12 call, did you take his name?

13 A Yes.

14 Q And his telephone number?

15 A I believe so. I have to look. I don't --

16 Q You told us that when he gave you the order, you
17 went in to speak to Mr. Wolpert about it, is that right?

18 A Correct.

19 Q When you wrote out this order, directing your
20 attention to Government Exhibit 2938-1, which I believe is
21 the order that you wrote out when he called you.

22 A No. I would write out the yellow sheet first.

23 Q Oh, OK. You wrote out --

24 A 2938.

25 Q 2938-3 first?

1 A Right.

2 Q When did you write out 2938-1?

3 A After I finished getting the purchase order from
4 him, after it was faxed over.

5 Q In the left-hand column of 2938-1 there are code
6 numbers, do you see those?

7 A Right. Those are the code numbers of the
8 chemicals.

9 Q Those you get out of a catalog or a reference
10 book?

11 A Right.

12 Q When Mr. Ayyad gave you his order --

13 A Yes.

14 Q -- you then asked him to fax you a written order,
15 isn't that right?

16 A Purchase order, yes.

17 Q Purchase order.

18 Did you supply Mr. Ayyad with the code numbers?

19 A I don't remember.

20 Q I would direct your attention to Government
21 Exhibit 2938-2 on page 2.

22 A OK.

23 Q This is the fax that Mr. Ayyad sent you, isn't
24 that right?

25 A Correct.

1 Q In this fax Mr. Ayyad has the same code numbers
2 that you have on your --

3 A Correct.

4 Q -- purchase order sheet, isn't that right?

5 A Correct.

6 Q Do you recall as you sit here today whether you
7 gave him those code numbers on the telephone?

8 A I don't remember.

9 Q Would it be your normal practice for you to give
10 out code numbers on the telephone?

11 A If the customer requests it.

12 Q I'm sorry?

13 A If the customer requests it.

14 Q So it's also possible that Mr. Ayyad had these
15 code numbers and a reference book of his own, is that
16 possible?

17 A I guess it's possible.

18 Q Were you present when Mr. Ayyad -- you don't
19 recall him picking up these chemicals?

20 A Vaguely.

21 Q Do you remember whether he paid for them at the
22 time that he picked them up?

23 A I would assume so, yes. But I don't really
24 remember. I mean I would say yes, he paid for them at the
25 time because on this particular purchase order you have to

1 get paid at the time that they pick it up.

2 Q Do you recall whether he paid by check or by
3 cash?

4 A I don't remember.

5 Q If he paid by check, you would have a copy of
6 that in your accounts received, is that correct?

7 A Well, I would give it to the bookkeeper and they
8 would take care of it.

9 Q Are you aware that Mr. Wolpert applied for a
10 reward with respect to information he gave in this case?

11 A I was just informed of that today.

12 Q You had no knowledge of that prior to today?

13 A No.

14 Q Your brother is married to Mr. Wolpert's sister?

15 A Correct.

16 Q Isn't that correct?

17 He's also the office manager for City Chemical?

18 A Correct.

19 Q Isn't that right?

20 A Yes.

21 Q He was employed there at that time, too?

22 A Correct.

23 MS. LONDON: I have no further questions.

24 THE COURT: Anyone else? Any redirect.

25 MR. FITZGERALD: Just one question.

1 THE COURT: Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. FITZGERALD:

4 Q Ms. Zeiger, if you could just tell us the phone
5 number Nidal Ayyad gave you when he first contacted you.

6 A 201-455-3827.

7 MR. FITZGERALD: Thank you. Nothing further,
8 Judge.

9 THE COURT: Any recross? No?
10 Thank you. You are excused.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, at this time the
2 government was going to read from two exhibits, 700 and 701,
3 which I believe are in the jurors' books.

4 THE COURT: All right. If you will take out your
5 books and turn to tab 700.

6 Can you tell us who is reading which part.

7 MR. FITZGERALD: Yes, your Honor. With regard to
8 Government Exhibit 700T, Mr. McCarthy will read the voice of
9 defendant Abdel Rahman, and I will read the voices of
10 Mohammed, last name unknown, and then later the voice of
11 Talib, last name unknown. They appear at separate times.

12 THE COURT: This is dated February 16?

13 MR. FITZGERALD: Yes, Judge.

14 THE COURT: Go ahead.

15 MR. FITZGERALD: Thank you.

16 (Government Exhibit 700 was read to the jury)

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1 MR. FITZGERALD: The second conversation is the
2 very next one, Government Exhibit 701T. The date is
3 February 17, 1993. Mr. McCarthy will read the voice of
4 defendant Abdel Rahman, and I will read the voice of the
5 unidentified male number 1, and the unidentified male number
6 2.

7 (Government Exhibit 701T was read to the jury.)

8 MR. McCARTHY: Your Honor, the government calls
9 Barbara Stango.

10 MR. SERRA: May we approach the sidebar for a
11 second, your Honor?

12 THE COURT: Yes.

13 (At the sidebar)

14 MR. SERRA: Your Honor, my client has been
15 sitting there for a while. He needs to go to the rest room.
16 I am sorry.

17 THE COURT: That is all right.

18 MR. SERRA: He told me fifteen minutes ago. I
19 was hoping the Court would break.

20 THE COURT: That is what the sidebar is for.

21 (In open court)

22 THE COURT: Ladies and gentlemen we are going to
23 take a short break. Please leave your materials behind.
24 Please don't discuss the case.

25 (The jury left the courtroom.)

1 THE COURT: Mr. Stavis?

2 MR. STAVIS: Yes, your Honor. This morning when
3 Mr. Fitzgerald was introducing Government's Exhibit 650
4 series, which concerns some checks and banking materials
5 from Mr. Salameh, Mr. Fitzgerald indicated, I believe it was
6 in front of the jury, that Mr. Jacobs had stipulated to the
7 introduction of this evidence. I did not stipulate to the
8 introduction of this evidence, and it is a point that I wish
9 to make, your Honor, because Mr. Jacobs is a very fine
10 lawyer but he doesn't represent Mr. Nosair, and I did not
11 make a point of it in front of the jury, but in the future I
12 will object where on such stipulations I am not consulted.

13 THE COURT: There have been exhibits that have
14 walked in, in this case, where one lawyer is delegated
15 responsibility. If that was not the case here, you could
16 have asked for a sidebar or you could have gotten up and
17 objected. Not liking to object in front of the jury has
18 gotten to the point of a fetish. Getting up and, in a
19 dignified fashion, saying "objection" is the way you do it.

20 MR. STAVIS: I was not objecting to the
21 introduction of the exhibits. I was objecting to the
22 stipulation, because it is my understanding that Mr. Jacobs
23 is not representing everyone here at the table. That is why
24 I am raising it now.

25 THE COURT: You are getting up to make a speech

1 about an exhibit that you have no objection to? Thanks very
2 much for sharing the thought with me. Have a nice break.

3 (Recess)

4 (Jury not present)

5 MR. JACOBS: Your Honor, can I just clarify
6 something, so we understand what our understanding is with
7 respect to these documents where there was some question?

8 THE COURT: You mean what we dealt with just
9 before the break?

10 MR. JACOBS: Yes. Your Honor has read the
11 letter. I think it is explanatory as to what our agreement
12 is.

13 THE COURT: All right. It is just that you
14 coordinate as to some things. I will assume that everybody
15 is coordinated unless somebody tells me otherwise. I don't
16 see making a big deal about it.

17 MR. JACOBS: I did make an agreement with the
18 government.

19 THE COURT: You are allowed to.

20 MR. JACOBS: It is not that. Mr. Fitzgerald then
21 confirmed it in writing with counsel. What it does is, with
22 respect to bank records and phone records of individual
23 defendants, those are not agreed to, and the government has
24 to speak as to each individual counsel and we also have a
25 right to make 403 objections. But I think Mr. Fitzgerald's

1 letter to all counsel will explain it to your Honor.

2 THE COURT: Thank you.

3 (Jury present)

4

5 BARBARA STANGO,

6 called as a witness by the government,

7 having been duly sworn, testified as follows:

8 MR. McCARTHY: May I proceed, your Honor?

9 THE COURT: Go ahead.

10 DIRECT EXAMINATION

11 BY MR. McCARTHY:

12 Q Still good morning.

13 A Good morning. Still morning.

14 Q Can you tell the ladies and gentlemen of the jury
15 what you do for a living?

16 A I am the car control security manager for
17 National Car Rental.

18 Q Is that what you were doing for a living in
19 February of 1993?

20 A Yes, it is.

21 Q Can you explain to us what your responsibilities
22 are in your job at National?

23 A I am responsible for accounting for vehicles,
24 researching rentals, dealing with law enforcement, getting
25 our vehicles out of impounds, giving law enforcement names

1 of our customers in case something is involved in a crime or
2 something of that nature.

3 Q Ms. Stango, did National Car Rentals have a
4 relationship with a business called Allied Signal --

5 A Yes, it did.

6 Q -- during -- I am sorry?

7 A Yes, they do.

8 Q They do now?

9 A Yes.

10 Q Did they during February of 1993?

11 A Yes, they did.

12 Q Can you explain to us what the business
13 relationship was?

14 A Well, Allied Signal is a large account of
15 National Car Rental, and because of the volume of business
16 Allied Signal generates for National, they have a rental
17 location on the property of Allied Signal in Morristown, New
18 Jersey.

19 Q Who in 1993 ran the office at the Allied
20 Signal -- withdrawn.

21 Who, as between National and Allied Signal, ran
22 the office location at the Allied Signal business in
23 February of 1993?

24 A Sara O'Brien.

25 Q Was Sara O'Brien with National or with Allied

1 Signal?

2 A She was an Allied Signal employee.

3 Q Can you explain, please, how the Allied Signal
4 arrangement worked, that is, what employees of Allied Signal
5 would have to do in order to rent rentals at that time?

6 A Well, if the employees of Allied didn't need a
7 car immediately and just walked into the office, they would
8 contact Sara by phone, tell Sara that they needed a car at
9 an approximate time, 3 o'clock, 4 o'clock in the afternoon.
10 Ms. O'Brien would then generate a rental for the individual
11 based on the information that she had in her files for these
12 people.

13 Q Can you tell us, please, where National is
14 located?

15 A National is located on the property at Allied
16 Signal in Morristown.

17 Q I am sorry, I am confusing two different things.
18 Your office at National, that is, the National office
19 proper, not the one that is at Allied Signal -- we will get
20 to that in a second.

21 A All right. My office is located at 3575 South
22 Street in Newark, New Jersey, right outside of Newark
23 Airport.

24 Q And where was the National office that was
25 located at Allied Signal?

1 A It was at Allied Signal on their property.

2 Q Can you tell us where Allied Signal is?

3 A In Morristown, New Jersey, 101 Columbia Turnpike.

4 Q I think I have placed before you some exhibits,
5 which I will read into the record. W2823B and 2824B, and
6 W2823A and 2824A. Let's deal with the B exhibits first. Do
7 you recognize 2843B and 2824B, that is, generally what those
8 records are?

9 A Yes, I recognize them.

10 Q Can you briefly explain to us in general what
11 those records are?

12 A They are the complete identification of vehicles,
13 the car activity of two vehicles, and two rental agreement
14 displays, computerized printouts, rental agreement displays
15 of two vehicles.

16 Q These are computer records?

17 A That's correct.

18 Q And they are records kept by National?

19 A That's correct.

20 MR. McCARTHY: The government offers 2823B and
21 2824B.

22 MR. JACOBS: Just briefly?

23 THE COURT: On voir dire?

24 MR. JACOBS: Yes.

25 THE COURT: Go ahead. Voir dire.

1 VOIR DIRE EXAMINATION

2 BY MR. JACOBS:

3 Q Ma'am, you have no personal knowledge concerning
4 these documents, is that correct? These are just records
5 kept in the ordinary course of business by National, is that
6 correct?

7 A That's correct.

8 MR. JACOBS: No objection.

9 THE COURT: Anyone else?

10 2823B and 2824B are received without objection.

11 (Government Exhibits 2823B and 2824B were
12 received in evidence.)

13 DIRECT EXAMINATION (continued)

14 BY MR. McCARTHY:

15 Q Before we get to that, let's turn to the A
16 exhibits, that is 2823A and 2824A. Can you explain to us
17 briefly what those are?

18 A These are the abbreviated rental documents that
19 the customer signs at the time of rental, and the customer
20 is presented with a copy of these documents.

21 Q So the customer actually signs the A exhibits?

22 A That's correct.

23 Q How does the amount of information on the A
24 exhibits compare to the records that are in the B exhibits?

25 A Well, the information on the A exhibit, as I

1 stated, is abbreviated, and does not include any information
2 on the customer, the personal information on the customer,
3 except for the individual's name.

4 MR. McCARTHY: Your Honor, on the same basis, I
5 offer 2823A and 2824A.

6 MR. JACOBS: No objection.

7 THE COURT: 2823A and 2824A are received without
8 objection.

9 (Government Exhibits 2823A and 2824A were
10 received in evidence.)

11 Q Ms. Stango, let me ask you to turn your attention
12 to 2823B for a moment.

13 A Yes, sir.

14 Q Can you tell us, please, what car that refers to?

15 A This car is a 1993 red Olds Sierra, with New York
16 license plate Z Zebra, R Robert, V Victor, 479.

17 Q Does the rental agreement indicate whether there
18 was a rental of that vehicle beginning on February 15?

19 A Yes, it does.

20 Q Can you tell us, please, when the rental term
21 began and when it ended, the date and time?

22 A The rental began on February 15, 1993, at 3:30 in
23 the afternoon, and terminated on February 23, 1993, at 8
24 a.m. in the morning.

25 Q Is that a rental to an Allied Signal employee?

1 A Yes, it is.

2 Q Can you tell us who the employee was?

3 A Nidal Ayyad.

4 Q Did Mr. Ayyad leave a telephone contact number?

5 A Yes, he did.

6 Q What was that?

7 A Area code 201 455-3827, his business phone number
8 at Allied Signal.

9 Q Do the records indicate whether there was an
10 additional driver for that vehicle besides Mr. Ayyad?

11 A Yes, they do.

12 Q Who would the additional driver be?

13 A Salameh.

14 Q The record says Salameh?

15 A Salameh.

16 Q Directing your attention to 2823A, what you
17 described as the contract which is actually signed by the
18 customer?

19 A Yes, sir.

20 Q Are there signatures at the bottom of that
21 document, ma'am?

22 A Yes, there are.

23 Q Can you tell us who the signatures are by?

24 A N. Ayyad and Salameh M.

25 Q Let me direct your attention now to 2824B.

1 A Yes, sir.

2 Q Is that also a record pertaining to a vehicle
3 rented by an Allied Signal employee?

4 A Yes, it is.

5 Q Can you tell us, please, first, the vehicle, that
6 is, describe it.

7 A It is a 1993 red Chevrolet Corsica, New York
8 plate Z Zebra, N Nancy, P Peter, 960.

9 Q Can you tell us whether there is a rental term
10 beginning on February 23?

11 A Yes, there is.

12 Q Can you tell us again the beginning date and time
13 and the ending date and time?

14 A The rental began on February 23, 1993 at 5 p.m.,
15 and terminated on February 27, at 5:45 p.m.

16 Q Can you tell us again who the Allied Signal
17 employee was?

18 A The Allied Signal employee is Nidal A. Ayyad.

19 Q Was there an additional driver listed?

20 A Yes, there was.

21 Q Who was that?

22 A Salameh.

23 Q Directing your attention again to the A exhibit
24 that corresponds to the B exhibit, that is 2824A. Are there
25 signatures at the bottom of that contract?

1 A Yes, there are.

2 Q Who are the signatures?

3 A N. Ayyad and N. Salameh.

4 Q Let me just ask you about the times, that is, the
5 times that the car was initially rented. You told us, I
6 believe, that the rental for the first vehicle -- which
7 began on February 23?

8 A Yes.

9 Q -- was at 8 a.m.?

10 THE COURT: No, ended. The first vehicle began
11 February 15, and ended February 23.

12 Q I am sorry. I meant 3:30 in the afternoon. Is
13 that right?

14 A Yes, the first rental, the time on this rental
15 was 3:30 in the afternoon exactly.

16 Q And the rental on the second vehicle began at 5
17 o'clock in the afternoon exactly?

18 A Yes, sir.

19 Q Is it unusual to see exact rounded times like
20 that?

21 A Not at Allied Signal. At Newark Airport it would
22 be, but not at Allied Signal.

23 Q Can you explain to the ladies and gentlemen of
24 the jury why it would be not unusual at Allied but would be
25 unusual if someone were to come to the counter without

1 prearrangement?

2 A At Allied Signal, the employees contact Ms.
3 O'Brien, or whoever happens to be handling the National
4 function, and they will say that they need a car around 3:30
5 or 4 o'clock in the afternoon. Because it is such a busy
6 business, the National representative will pre-do the
7 contract, so that when the customer gets there all they have
8 to do is sign the contract and then they can be off. And if
9 they say 3:30 or 4 o'clock, he will generate the contract
10 exactly 3:30 or 4 o'clock. But that does not mean that that
11 is exactly when the rental began.

12 Q How does that differ from, say, a walk-up
13 customer at Newark Airport?

14 A If the customer walks up to the counter at Newark
15 Airport, that is an immediate transaction. The computer,
16 when the rental is generated, it is generated at an exact
17 time instead of at an approximate time, as is what happens
18 at Allied Signal at Morristown.

19 MR. McCARTHY: Thank you Ms. Stango. Thank you,
20 your Honor.

21 THE COURT: Cross? Mr. Ricco, for
22 Mr. El-Gabrownny.

23 CROSS-EXAMINATION

24 BY MR. RICCO:

25 Q Good morning, Ms. Stango.

1 A Good morning.

2 Q The person that dealt directly with Mr. Nidal
3 Ayyad would be Ms. Sara O'Brien?

4 A That's correct.

5 Q And Ms. O'Brien has been at the Allied Chemical
6 location for several years, isn't that correct?

7 A Many years, yes, sir.

8 Q And she is very familiar, isn't she, with the
9 different employees that rent at Allied Chemical?

10 A Yes, she is.

11 Q What happened here, based on your review of the
12 documents, is that Mr. Ayyad called Ms. O'Brien for car
13 rental, isn't that correct?

14 A That's the way it appears, sir, yes.

15 Q What he did in this situation, he asked to have
16 an additional driver added to the contract?

17 A Right. That's correct.

18 Q And that additional driver was a person by the
19 name of M. Salameh?

20 A That's correct.

21 Q The first car was returned, was it not, on
22 February 23?

23 A Yes, it was.

24 Q That car was in an accident, isn't that right?

25 A That's right.

1 Q And the person who was driving the car at the
2 time it was in the accident was M. Salameh, isn't that
3 right?

4 A Yes, it was.

5 Q It was not Mr. Nidal Ayyad?

6 A No, it was Mr. Salameh.

7 Q And the car was returned, it was damaged;
8 correct?

9 A Yes.

10 Q And what Mr. Nidal Ayyad did was rent another
11 car?

12 A Yes. He rented another vehicle the same day that
13 he returned the damaged vehicle.

14 Q And he rented that car on February 23, 1993?

15 A Right.

16 Q And he did not bring that car back until February
17 28, 1993, isn't that correct?

18 A February 27, 1993.

19 Q I am sorry, February 27, 1993. And the second
20 car rental, he again requested that an additional driver be
21 placed on that car with the policy, isn't that correct?

22 A That's correct.

23 Q And that person was again M. Salameh?

24 A That's correct.

25 Q Now, you indicated that what happens is that an

1 employee from Allied Chemical would call Ms. O'Brien and
2 sort of make a pre-reservation for automobiles?

3 A That's right.

4 Q So that if, for example, the contract says 4
5 o'clock, he could have actually picked the car up at 2
6 o'clock or 6 o'clock or at any time in the afternoon of that
7 day?

8 A That's right.

9 Q And so the time of 4 o'clock is really not
10 controlling, is it?

11 A Right. That's correct.

12 Q Ms. O'Brien would have had in her files
13 information about Mr. Nidal Ayyad?

14 A That's right.

15 Q That would have been his address?

16 A Yes.

17 Q His credit cards, isn't that correct?

18 A Right.

19 Q And it would be more than one; it would be his
20 personal card if he had one, and his corporate card. Isn't
21 that correct?

22 A Not necessarily. She may just have one credit
23 card in her file. If Mr. Ayyad had several credit cards, it
24 doesn't mean that he would use those credit cards for the
25 rental.

1 Q Of course. But what does happen sometimes at the
2 Allied Chemical location is that the employees sometimes
3 rent the cars for their own purposes, isn't that correct?

4 A That's right.

5 Q Unrelated to Allied Chemical?

6 A That's correct.

7 Q But the point that I am trying to bring out with
8 you is that Mrs. O'Brien would have had the information
9 about Mr. Ayyad, his address, and his telephone number,
10 isn't that correct?

11 A Yes, it is.

12 Q With Mr. Salameh, would he have been required to
13 produce a driver's license at the time the car was picked
14 up?

15 A Mr. Salameh was not there at the time Mr. Ayyad
16 picked up the vehicle.

17 Q On either occasion, isn't that right?

18 A That's right.

19 Q I want to ask you a couple of questions about the
20 rental policies in general.

21 A OK.

22 Q Does National Car Rental rent cars to prospective
23 renters on a cash basis?

24 A We do rent on a cash basis, yes, but they have to
25 meet certain requirements.

1 Q What are those requirements?

2 A They must be employed for at least a year or
3 more; they must have a home telephone number listed in their
4 name; and we also do a TRW credit check. And valid driver's
5 license, of course. We can't forget the driver's license.
6 That's very important.

7 Q And all of that is done before the person is
8 allowed to drive away with that vehicle, isn't that right?

9 A That's right. That's correct.

10 Q And this would be done in the normal course of
11 the rental business, isn't that right?

12 A Yes, it's right.

13 Q But in this situation that was not done; Mr.
14 Ayyad rented this car through his business, isn't that
15 correct?

16 A That's correct.

17 MR. RICCO: I have no further questions. Thank
18 you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Anyone else? Mr. Jacobs representing
21 Mr. Mohammad Saleh.

22 CROSS-EXAMINATION

23 BY MR. JACOBS:

24 Q Ma'am, did the records reflect, on the 27th of
25 February, who returned the car?

1 A They don't reflect the individual who returned
2 it. The vehicle that was rented to Nidal Ayyad was
3 returned, and since the employee was of Allied Signal, we
4 are assuming that he is the one who returned the vehicle.

5 Q But the records that you have before you don't
6 indicate who the individual was that returned it, do they?

7 A No, none of the rental records would indicate
8 that.

9 Q Do you have any reports or anything at National
10 that might indicate who returned the actual vehicle, ma'am?

11 A No. Rental car companies don't keep those type
12 of records.

13 MR. JACOBS: Thank you.

14 THE WITNESS: You're welcome.

15 MR. RICCO: Your Honor, I have two questions.

16 THE COURT: Go ahead.

17 MR. RICCO: Thank you very much.

18 BY MR. RICCO:

19 Q I am sorry, Ms. Stango.

20 A That's OK.

21 Q In fact, Nidal Ayyad was an Emerald Card holder
22 with your rental car company, isn't that correct?

23 A That's correct.

24 Q And he was a man who rented cars quite often,
25 isn't that correct?

1 A Well, it doesn't necessarily mean that you rent
2 vehicles a lot if you are an Emerald Club member, because
3 the Emerald Club membership provides certain gratuities, so
4 to speak, you know, free weekend rates, free coupon mileage,
5 free mileage. But you don't have to rent cars constantly to
6 be an Emerald Club member.

7 Q But your records indicate that Nidal Ayyad did in
8 fact rent cars from National?

9 A Yes.

10 Q Through the office record, didn't he?

11 A On a semi-regular basis, yes, he did.

12 Q And he was quite familiar with the procedure for
13 renting cars, isn't that right?

14 A I would assume that he was, yes.

15 MR. RICCO: No further questions. Thank you.

16 THE WITNESS: You're welcome.

17 THE COURT: Anybody else?

18 MR. JACOBS: One moment, your Honor.

19 (Pause)

20 MR. JACOBS: Nothing further.

21 THE COURT: Any redirect?

22 MR. McCARTHY: Yes.

23 REDIRECT EXAMINATION

24 BY MR. McCARTHY:

25 Q Ms. Stango, Mr. Ricco, the gentleman who just

1 asked you a couple of more questions, pointed out that
2 Mr. Ayyad was an Emerald Card holder?

3 A Yes.

4 Q Can you explain to the jury what that means?

5 A To be an Emerald Club member, you have to pay a
6 yearly fee, and all of your personal information is recorded
7 in our computer, in our Emerald Club department. If you
8 rent really frequently -- a lot of our customers rent every
9 week -- it entitles you to gifts, you know, different types
10 of awards. If you really run a lot, you can get a free car
11 for six months. There is a lot of benefits to being an
12 Emerald Club member. You can also join the Emerald Dial,
13 which means you don't have to go to the counter. It is a
14 counter bypass.

15 Q Is one of the benefits a discount under the usual
16 rate that a customer would have to pay?

17 A If the Emerald Club membership rate would be less
18 expensive than their normal corporate rate, then they would
19 get the Emerald Club member rate. But if the corporate rate
20 is less than the Emerald Club, then it would be on their
21 corporate rate.

22 Q How about the corporate rate as compared to what
23 any person who walked up to the counter to rent would have
24 to pay?

25 A Well, it depends. Corporate rates are different

1 for each company, and a lot of times the Emerald Club
2 membership is less expensive than a corporate rate for a
3 company that doesn't do that much volume with National. So
4 they would get the Emerald rate.

5 Q At the moment I am not asking you to compare the
6 corporate rate to the Emerald Club rate. I am asking, more
7 specifically, what was the financial benefit, if any, to
8 Allied Signal for being involved in this relationship with
9 National?

10 A Allied Signal generates a tremendous volume of
11 rent-a-car business with National, and they get an extremely
12 good rental rate. Therefore, Mr. Ayyad did not use his
13 Emerald Club rate. He used the Allied Signal rate.

14 Q You were also asked a couple of questions on
15 cross-examination about the exact -- withdrawn.

16 You were asked some questions about the time that
17 is reflected in the computer printout, correct?

18 A That's correct.

19 Q And I think you told us the time is just an
20 estimation in terms of the Allied Signal agreement?

21 A Yes, it is.

22 Q Because that is done by prearrangement?

23 A That's correct.

24 Q Let me direct your attention to the A exhibits.
25 Those, I think you told us, were the contracts that the

1 writer actually signs at the time that the vehicle is picked
2 up?

3 A That's correct. At the time the contract is
4 picked up.

5 Q Do those agreements, that is, the A agreements
6 that are actually signed by the customers, reflect a
7 particular time that that record was generated?

8 A Yes, they do.

9 Q Can you tell us, please, with respect to 2823A,
10 what time that particular item was picked up and what date?

11 A The time that's generated on this contract is
12 3:30 in the afternoon on February 15, 1993.

13 Q How about on 2824A?

14 A On 2824A the rental date was February 23, '93 and
15 the rental time was 5 p.m.

16 Q Is there any indication on either of those
17 documents as to the time that they were generated?

18 A Not on these documents but on computer printout
19 there is.

20 Q And what would be the time on the computer
21 printout?

22 A On the rental of February 15, this rental was
23 actually generated at 2:06 in the afternoon.

24 Q How about on 2824B?

25 A This is the rental of February 23, with 5 p.m.

1 pickup. This rental was actually generated at 4:03 in the
2 afternoon.

3 Q Thank you.

4 A You're welcome.

5 THE COURT: Mr. Jacobs?

6 RE-CROSS-EXAMINATION

7 BY MR. JACOBS:

8 Q Ms. Stango back in February of 1993, did National
9 have vans to rent?

10 A National had minivans to rent.

11 MR. JACOBS: Nothing further.

12 THE COURT: Any other questions? You are
13 excused, Ms. Stango.

14 (Witness excused)

15 MR. McCARTHY: Your Honor, the government calls
16 Kenneth Brouzalis.

17 MR. STAVIS: Your Honor, I have an objection, if
18 I may be heard at the sidebar.

19 THE COURT: Come on up.

20 (At the sidebar)

21 THE COURT: Yes?

22 MR. STAVIS: Your Honor, Mr. Brouzalis was the
23 parking lot supervisor at the World Trade Center. He
24 testified at the original trial about ticketing practices
25 and that sort of thing.

1 THE COURT: Ticketing?

2 MR. STAVIS: Practices, how you give a ticket.

3 The ticket, validation of tickets that come into the --

4 THE COURT: You mean as permission to park rather
5 than that you stayed over?

6 MR. STAVIS: That's correct.

7 THE COURT: All right.

8 MR. STAVIS: My application is in the nature of a
9 Rule 403. I think this is a needless waste of time. I
10 think that the government tried the World Trade Center case;
11 it was a six-month circumstantial case. This is a different
12 case. And this testimony, while not prejudicial in and of
13 itself, is just a needless waste of time.

14 THE COURT: What is he here to show?

15 MR. McCARTHY: The testimony will show that on
16 two occasions prior to the bombing, scouting trips
17 essentially were made by Salameh and others to the B2 level
18 of the World Trade Center, once on February 16 and once on
19 February 24.

20 MR. STAVIS: The only other thing I would say is
21 that I had conceded that these people bombed the World Trade
22 Center in my opening statement; I believe several of my
23 co-counsel had done so. Presenting a circumstantial, albeit
24 an abbreviated, circumstantial case from the one that was
25 presented at the original trial is, in my view, an

1 unnecessary and needless waste of time. That is why I make
2 the application.

3 MR. McCARTHY: My response to that is simply that
4 it is evidence which shows a course of concerted activity
5 among people who are linked up to Mr. Stavis' client at
6 about the time that they are linked up to his client.
7 Indeed, I believe one of the scouting trips is very close in
8 time to the time that Salameh was actually up in Attica.

9 THE COURT: I am going to let you put this
10 witness on. On the other hand, the subtext of his point is,
11 I think, that if there are steps that can be omitted here or
12 witnesses that can be omitted, and if stipulations can be
13 obtained as to certain information, I would much prefer to
14 do it that way. I want to you explore that.

15 MR. McCARTHY: Right. I just point out that we
16 have basically boiled the five-month trial down to less than
17 a couple of weeks' presentation by doing precisely that, and
18 stipulations in this case are a lost cause and have been for
19 some time.

20 THE COURT: I don't want to get started with that
21 here. But let's pursue it.

22 (In open court)

23

24

25

1 KENNETH GROUZALIS,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 MR. McCARTHY: May I?

5 THE COURT: Please.

6 DIRECT EXAMINATION

7 BY MR. McCARTHY:

8 Q Good afternoon, sir.

9 A Good afternoon.

10 Q Mr. Grouzalis, can you explain to us what you do
11 for a living?

12 A I am an operations group supervisor at the World
13 Trade Center for the Port Authority.

14 Q Can you tell us what your job was in February of
15 1993?

16 A I was the public parking lot supervisor at the
17 World Trade Center for the Port Authority.

18 Q I am sorry, your voice trails off a little at the
19 end of your answer, and I have to ask you to repeat it.

20 A I was the public parking lot supervisor for the
21 Port Authority.

22 Q I think you can also, if you want, speak into the
23 microphone that is right in front of you. You are not to
24 lean over, I am sorry.

25 A All right.

1 Q Can you tell us what your job was in February of
2 1993, that is, exactly what your responsibilities were?

3 A I supervised the public parking operation at the
4 World Trade Center. I supervised about 18 cashiers. We
5 accounted for the money and the tickets that came in. We
6 reconciled them at the end of the day. And we stored them
7 until an order was prepared on them.

8 Q Are you familiar with the red parking lot and the
9 yellow parking lot?

10 A Yes, sir.

11 Q Can you explain to the ladies and gentlemen what
12 those are?

13 A The yellow public parking lot is on the B2 level.
14 It is basically under building number 1. The red public
15 parking lot is also on the B2 level and it is basically
16 closer to building number 2.

17 MR. McCARTHY: Your Honor, may I approach
18 Mr. Grouzalis with some exhibits?

19 THE COURT: Go ahead.

20 Q Mr. Grouzalis, I place before you Exhibits W698A
21 and B and W701A and B. Do you recognize those items, sir?

22 A They are public parking lot tickets, one for the
23 yellow lot, one for the red lot.

24 Q Can you explain, please, what the procedure was
25 in February 1993 for a member of the public with a vehicle

1 who wanted to park in the red or yellow parking lots?

2 A When a vehicle approached the cashier's booth, he
3 would time and date stamp the ticket and give a stub to the
4 parker and keep the other stub in the booth. And then when
5 the person left the lot, the person would hand his part back
6 and he would date time stamp it again so he knew how much
7 money to charge.

8 Q You tell us that you would date and time stamp
9 it?

10 A Yes, sir.

11 Q What kind of date stamp and what kind of time
12 stamp?

13 A We would use Julian date and military time.

14
15 (continued on next page)
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1 Q So the clock would be from zero to 2400 hours?

2 A Yes, sir.

3 Q The date --

4 A The day would be 001 to 365.

5 Q Now, can you tell us what the ticketing system
6 was; that is, when you got a ticket, how many parts were
7 there and what was done with each?

8 A On the yellow parking lot we just updated the
9 ticket. It was a two-part claim check, and in the red lot
10 it was still a three-part claim check. The person that
11 parked the vehicle always got a copy of the claim check and
12 we kept a copy of the claim check. At the end of the day,
13 when the tickets were reconciled to see that there were no
14 outstanding tickets, they were stapled together and put on
15 file.

16 Q Was there a practice with respect to the copy of
17 the claim check that you would keep at the World Trade
18 Center, at the Port Authority? Was there a practice with
19 respect to reporting the license plate of the vehicle?

20 A Yes, when a vehicle pulled in, the cashiers were
21 instructed to place the license plate and the state
22 designation on the back of the claim check.

23 Q Looking at the exhibits that I have placed before
24 you, the 698 series, A and B, and the 701 series, A and B,
25 can you please tell us what the dates are of those tickets.

1 A The yellow parking lot, the 698A and B, is the
2 55th day of the year. That would be February 24.

3 Q Looking at those exhibits, is it indicated how
4 long the person who parked stayed at the World Trade Center
5 or -- I withdraw that question. How long the vehicle was
6 parked on that day?

7 A This vehicle in the yellow parking lot on
8 February 24 was there for 39 minutes.

9 Q How are you able to tell that?

10 A By the punch-in time and the punch-out time and
11 the dollar amount that was put on the ticket as to what to
12 charge.

13 MR. McCARTHY: The government offers 698A and B.
14 I just need to show it to Mr. Stavis for a
15 moment.

16 MR. STAVIS: Your Honor, my objection would be as
17 previously stated at the side bar.

18 THE COURT: That is overruled.

19 MR. McCARTHY: Your Honor, if I may, I am also
20 going to offer the other ones, which I might as well do now.

21 THE COURT: Why don't you do that. Why don't you
22 establish the foundation now. Go ahead.

23 Q Can you tell us, please, on 701 --

24 A The same information?

25 Q Yes.

1 A This is a ticket for the red parking lot. It is
2 on the 47th day of the year, which would be February 16, and
3 the vehicle was in the parking lot for 27 minutes.

4 MR. McCARTHY: Your Honor, the government offers
5 W698, A and B, and W701, A and B.

6 MR. STAVIS: Objection.

7 THE COURT: That is overruled. 698, A and B and
8 701, A and B are received.

9 (Government's Exhibits 698, A and B, and 701, A
10 and B, for identification were received in evidence)

11 Q You better keep your glasses on.

12 A OK.

13 Q On the 698 series, did you record the license
14 plate?

15 A Yes, the license mate was recorded.

16 Q OK. What was the license plate of the vehicle
17 that day?

18 A Z -- it looks like ZNP 960.

19 Q Which date was that? Can you remind us?

20 A That was February 24.

21 Q Can you tell us what time in and what time out on
22 February 24.

23 A Two minutes to two in and 2:37 out. That's p.m.

24 Q Turning your attention to the other exhibit,
25 which would be the 698 series, I believe.

1 A 701.

2 THE COURT: 701.

3 Q I'm sorry. On 701, can you give us, please, the
4 will be plate?

5 A ZRV 479.

6 Q Can you tell us the date and the time in and the
7 time out?

8 A The date was the 47th day of the year, which
9 should be February 16, the time in was 10:05 a.m., and the
10 time out was 10:32 a.m.

11 MR. McCARTHY: May I have a moment, your Honor.

12 THE COURT: Yes.

13 MR. McCARTHY: Your Honor, I have no further
14 questions, but I would ask to be able to read from items
15 that came into evidence with this witness and the last one.

16 THE COURT: Before cross you mean?

17 MR. McCARTHY: Yes, sir.

18 THE COURT: All right. Go ahead.

19 MR. McCARTHY: Exhibit 698, license plate ZNP
20 960.

21 Exhibit 2824B, on page 1, the license plate, ZNP
22 960.

23 On Government's Exhibit 701, the license plate
24 ZRV 479.

25 And on Government's Exhibit 2823 B, the license

1 plate ZRV 479. Thank you, your Honor.

2 THE COURT: Cross?

3 MR. JACOBS: One moment.

4 THE COURT: Mr. Jacobs?

5 MR. JACOBS: May I just talk to the government
6 one moment, your Honor.

7 (Counsel conferred)

8 CROSS-EXAMINATION

9 BY MR. JACOBS:

10 Q Sir, the ticket where the person that writes the
11 license number down, is that the customer's ticket or is
12 that the ticket that the parking lot holds?

13 A He writes it on both halves normally.

14 Q On both halves normally?

15 A Yes.

16 Q I assume that these were records that were turned
17 over to law enforcement agents sometime after the World
18 Trade Center explosion, is that correct?

19 A Yes.

20 Q The records for the day of the World Trade Center
21 explosion, were they also turned over to the law enforcement
22 agents as well?

23 A I believe they were, yes.

24 MR. JACOBS: I have nothing further.

25 THE COURT: Anything else?

1 MR. McCARTHY: No, your Honor. Thank you.

2 THE COURT: You are excused. Thank you.

3 THE WITNESS: Thank you.

4 (Witness excused)

5 THE COURT: Ladies and gentlemen, we are going to
6 break for lunch. Please leave your notes and other
7 materials behind. Please don't discuss the case, and we
8 will resume this afternoon at 2 o'clock.

9 Have a pleasant lunch.

10 (Jury excused)

11 MR. JACOBS: Your Honor, just briefly. I want to
12 put on the record that the government's informed me that
13 they were not able to locate either stub of the van that
14 allegedly held the bomb. I just want to put that on the
15 record, that they have been not been able to locate either
16 of those tickets. That was my discussion with Mr. McCarthy.
17 I just want to make sure that is on the record. The
18 Department of Justice does not have those stubs.

19 THE COURT: OK. Fine.

20 MR. JACOBS: That is all.

21 THE COURT: Anything else. Mr. Ricco?

22 MR. RICCO: Yes, your Honor. Mr. El-Gabrownny
23 would like to be excused for this afternoon. His back is
24 continuing to bother him.

25 THE COURT: OK. I am sorry about that. Does he

1 have --

2 MR. RICCO: He has the pad on, and he has the
3 pillow.

4 THE COURT: OK. You understand that you have a
5 right to be here, and you are satisfied to have us go ahead
6 anyway?

7 DEFENDANT EL-GABROWNY: Yes, your Honor.

8 THE COURT: Thank you very much. I hope you feel
9 better.

10 Anything else? Thank you.

11 (Luncheon recess)

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A F T E R N O O N S E S S I O N

Time noted, 2:15

MR. BERNSTEIN: Judge, I have an application.

THE COURT: Mr. Bernstein.

MR. BERNSTEIN: The court may anticipate what the application is. Obviously, several defense counsel, if not everyone in this building, is now aware that there has been a bombing in Oklahoma City. From the reports we have received, I can't think of a greater outside influence that this jury might have to grapple with if they become aware of the news reports as they are emerging at this time.

Under the circumstances, I am going to ask for the extraordinary remedy of having this jury sequestered. I would temper that application by indicating to the court that the sequestration order I would ask for would initiate now, but not necessitate continuation throughout the trial.

There could come a time, based upon what the news media and all the reports tell us over time, that maybe the storm will pass. Maybe in fact the bombing will not be alleged to be Islamically related, and maybe we will be able to have this jury not sequestered after a period of time.

But, unfortunately, if we don't take action now, they are going to be bombarded 24 hours a day with news coverage, and I can't think of anything that would be more externally prejudicial to my client's case.

1 THE COURT: Mr. Jacobs?

2 MR. JACOBS: That is not a unanimous agreement
3 among defense counsel.

4 THE COURT: Ms. Amsterdam?

5 MS. AMSTERDAM: I am joining in that application,
6 your Honor, on behalf of Mr. Khallafalla.

7 MR. JACOBS: I would oppose that, your Honor. I
8 think your Honor gave a cautionary instruction at the
9 beginning of this case, when there were some incidents in
10 the Middle East at that time, and I think a cautionary
11 instruction can be given to this jury now that some of us
12 could work on with the government and your Honor.

13 I do feel some cautionary instruction must be
14 given. I don't have the language off the top of my head,
15 but your Honor did give something right at the beginning of
16 the trial.

17 THE COURT: Ms. Stewart?

18 MS. STEWART: I am also joining, and I think for
19 my client in particular whenever anything of a violent
20 nature linked to an Islamic cause happens, invariably on
21 television there is one picture that is shown, and I am
22 joining the application. I hope, too, that it will be
23 short-lived. I don't think anyone likes working to a
24 sequestered jury. It puts extraordinary pressures on
25 everyone.

1 MS. LONDON: I join in Mr. Bernstein's
2 application. Your Honor, I do as well have some concern
3 about what if anything the jurors may have been exposed to
4 already. Hopefully there's been nothing. I don't know how
5 quickly the marshals became aware of this and what steps may
6 have been taken wherever the jurors are kept to make sure no
7 radios were going and things like that, but I would like to
8 be assured on that as well.

9 MR. PATEL: Your Honor, on behalf of Mr. Nosair
10 we are not asking your Honor to sequester the jury. We
11 would ask for a cautionary instruction.

12 THE COURT: I would be interested to know among
13 those who asked for sequestration how many would be prepared
14 to work seven days a week until the sequestration is lifted.

15 MR. BERNSTEIN: Judge --

16 THE COURT: You would, Mr. Bernstein? Who else?

17 MR. BERNSTEIN: The simple matter is that I
18 wouldn't have a choice. If it has to be done, we would have
19 to do it. The only thing I can say to the court is to ask
20 us to work, and the court and the jurors, seven days a week
21 makes us potentially unable to do the work we have to do to
22 prepare through the time --

23 THE COURT: I will pare it back to six.

24 MR. BERNSTEIN: You know, it just seems to me we
25 have gone from a four-day schedule, or to a

1 four-and-a-half-day schedule, as we have been doing, I would
2 ask the court to allow us to work five or maybe five and a
3 half. We do have families. I know it would take the jurors
4 away from their families --

5 THE COURT: What do you propose to tell them is
6 the reason for the sequestration?

7 MR. BERNSTEIN: Judge, I don't know. Simply that
8 there are events that have caused the court to believe that
9 sequestration is necessary to prevent them from being privy
10 to news events that may or may not have an impact on this
11 case.

12 THE COURT: Did you want to be heard?

13 MS. STEWART: I was just going to suggest that
14 you go with the truth in a limited way: That there have
15 been events, that it is of great concern to the court and to
16 everyone here, and that --

17 THE COURT: You would simply refer to unspecified
18 events?

19 MS. STEWART: Yes.

20 As far as the seven days, Judge, whatever it
21 takes, it has to take. We didn't reach this decision
22 lightly. It is not a tactical consideration. I can assure
23 you of that. No answer is the right answer here, and that
24 is clear.

25 THE COURT: That is probably true. It is true in

1 the sense that no answer is the absolutely dispositive
2 answer, and there is no answer without a downside.

3 However, I thought about it somewhat over lunch.
4 If we were very, very near the end of the evidence in this
5 case, I would be tempted to do it. But we are not.

6 The prejudice of the sort that you are talking
7 about from their finding out about this event it seems to me
8 is about as bad from a sudden sequestration in the middle of
9 a trial like this as it is from what they might hear about
10 the reason for this, that is, the underlying event.

11 My own proposal is to give them a cautionary
12 instruction at the end of the day. I drafted something over
13 lunch. I would be happy to share it with you.

14 In fact, I wasn't going to share it until the
15 afternoon break against the possibility that we might find
16 out something more than we know now. If you want to hear it
17 now, I will read it to you now. Do you want to hear it now?

18 Heads are nodding so I will read it now.

19 This assumes that, regardless of any attempt to
20 tell them not to listen and so forth, they are going to hear
21 the bare outlines of what happened. It is on every single
22 station, both news stations and other station. It is going
23 to be in every newspaper and it is going to be on for days.
24 So I drafted the following:

25 Ladies and gentlemen, when you go home tonight,

1 you will likely hear television and radio reports about an
2 event that I shall discuss briefly with you. This morning a
3 bomb exploded at a federal building in Oklahoma City,
4 causing substantial damage and more than 15 deaths. In the
5 coming days there is bound to be a great deal of speculation
6 in the media about who is responsible for that bombing, as
7 well as comparisons drawn with this case and speculation
8 about whether that bombing has any connection with this
9 case.

10 I want to remind you that you took an oath when
11 we began to decide this case based on the evidence presented
12 in this courtroom. That explosion is not part of the
13 evidence presented in this courtroom and therefore may not
14 play any part in your decision about the facts of this case.
15 I am going to assume that all of you and each of you can
16 continue to live up to your oath, unless any of you gives me
17 reason to think otherwise.

18 In order to make sure that you can continue to
19 live up to your oath to decide this case based only on the
20 evidence presented here, I want to ask you particularly
21 tonight and in the coming days not to listen, to the extent
22 that you can avoid doing so, to any news report about the
23 events in Oklahoma City, and not to read about it.

24 I say to the extent you can advisedly. You may
25 not be able to avoid seeing or hearing something, but I do

1 not want you to listen to or see things in any extensive
2 fashion. I may have occasion to talk to you further about
3 this on a later date, but let me leave you with this
4 thought: We live in a society that is governed by laws.
5 The only appropriate response to lawlessness is law. Our
6 obligation under the law -- your obligation, mine, and the
7 obligation of the lawyers -- is to try to case according to
8 the rules. All parties here, the government and each of
9 these defendants, have a right to have this case decided
10 only on the evidence presented here.

11 Your duty under the law is to decide the case
12 based only on the evidence presented in this courtroom. It
13 would be lawless for any of us to let this event deter us
14 from doing what we are legally obligated to do.

15 I would leave it at that. We may in the coming
16 days have to talk to them, but I don't want to talk to them
17 now or at any near time because, regardless of the turmoil
18 that is going on now, just as occurs with other events,
19 there is going to come a time when this will work its way
20 back to page 3 and then to page 5 and then to page 35. If
21 we have to make inquiry, we can make inquiry at that time.
22 I don't want to start making inquiry when events are piling
23 in on people and there is absolutely no point in doing it.
24 But I will hear you further.

25 MR. BERNSTEIN: I just want to make sure that

1 means you are denying my motion for sequestration.

2 THE COURT: As it stands now, based on what I
3 know now, I am.

4 MR. BERNSTEIN: Let me go further on that to make
5 sure. I believe this was Mr. Nooter's concern. None of us
6 know what the normal procedures are during the daytime when
7 the jurors are here.

8 THE COURT: They don't listen to news reports.

9 MR. BERNSTEIN: It is a question of whether or
10 not they have outside contact or telephone call privileges
11 during the morning. This is the kind of event that when you
12 pick up the phone gets related. So I think there needs to
13 be some voir dire to make sure that we don't --

14 THE COURT: That is why I mentioned it in here.
15 You want me to voir dire them now? No, I will not do that.
16 They can listen to whatever they listen to this afternoon.

17 MR. BERNSTEIN: Judge, let me mention one further
18 concern: I don't want this jury on the court's instruction
19 to believe that if there is evidence in the Oklahoma City
20 matter that does relate to these defendants that they won't
21 hear it because there is some implication in the instruction
22 that the government is precluded from offering it. It is my
23 belief, unless I misconstrue the law, that if Mr. McCarthy
24 received evidence in the next week or so or month that could
25 be admissible on the charges here, they will attempt to

1 offer that, and I don't want the instruction to imply that
2 the reason the jurors can't hear about it is because there
3 is some evidentiary division.

4 THE COURT: Mr. Stavis, is this on
5 Mr. Bernstein's point?

6 MR. STAVIS: Yes, your Honor. At the beginning
7 portion of the proposed instruction, I think what
8 Mr. Bernstein is referring to, you said that's not evidence
9 in the case. I would appreciate if your Honor could say
10 that that incident has nothing to do with the case on trial.
11 That is a strong instruction, and I would ask your Honor,
12 under these circumstances, to give that kind of instruction.

13 MR. JACOBS: I think you said that previously,
14 your Honor.

15 MR. MCCARTHY: We don't know that that is true.

16 MS. AMSTERDAM: Your Honor did give that
17 instruction. There was some incident that happened at the
18 beginning of the trial.

19 THE COURT: Notice, by the way, how quickly
20 events recede. But go ahead.

21 MS. AMSTERDAM: I agree. The subway event, when
22 there was a bombing on the subway, and then it turned out to
23 be a single person as opposed to a terrorist act.

24 THE COURT: I don't think I had occasion to
25 instruct on that because that happened, as I recall --

1 MR. STAVIS: Ramzi Yousef, your Honor.

2 THE COURT: No.

3 MS. AMSTERDAM: In either event, when your Honor
4 gave a cautionary instruction, I remember your Honor
5 specifically indicated that it had nothing to do with this.
6 I specifically remember Mr. McCarthy standing up and saying
7 we can't be sure of that. Nonetheless, it is my very vivid
8 memory that your Honor did give that instruction, and I
9 believe under the circumstances that that is warranted here.

10 MR. STAVIS: One other specific suggestion that I
11 have with regard to the charges: I think you had a casualty
12 figure or something, and from the reports that we were
13 hearing that was very vague, and I would ask --

14 THE COURT: It is not very vague. There are 18
15 people dead.

16 MR. STAVIS: OK.

17 THE COURT: They are going to see that. You
18 don't want me to specify numbers?

19 MR. STAVIS: Yes.

20 MS. AMSTERDAM: Yes.

21 THE COURT: I think I ought to tell them that
22 there has been loss of life, and I intend to tell them that
23 because they are going to hear it anyway. I understand they
24 are going to hear it anyway. The point is not to obliterate
25 it, it's to prepare them for the fact that they are going to

1 hear it.

2 MS. AMSTERDAM: I am sure that your Honor gave
3 great thought to the issue of sequestration over lunch. I
4 would ask the court --

5 THE COURT: I gave as much thought as you can
6 give over lunch to sequestration. Don't overstate it.

7 MS. AMSTERDAM: It is on everyone's mind. When
8 we discussed it, very few defense counsel wanted this action
9 taken for the duration of the trial. My concern is that --
10 I think that your Honor is right. In a week or so this will
11 be on page 3 or 4 or 5. The maximum amount of publicity,
12 the maximum amount of wild speculation happens in the first
13 couple of days.

14 I would echo Mr. Bernstein's request with the
15 modification that the court consider sequestering the jury
16 for the next week until events are sorted out. Because I
17 think the most danger is this week's coverage. And if
18 tomorrow there is an event that occurs where group steps
19 forward -- and I am not saying that there would be -- and
20 somehow or other identifies themselves with one of the
21 defendants in this case, I think that we may rue the fact
22 that we didn't take this extraordinary measure, because then
23 we are going to be faced with the issue of whether or not
24 the appropriate remedy might be a mistrial.

25 I am asking the court to be safe as opposed to

1 sorry. We don't know where we are going to be in a week and
2 I am asking the court to reconsider, at least through the
3 weekend, sequestering the jury.

4 THE COURT: I will consider it. Does anybody
5 else want to be heard on that subject?

6 MR. JACOBS: Other than I would oppose that?

7 THE COURT: You would oppose it.

8 MR. JACOBS: Yes.

9 THE COURT: You would propose to limit it to a
10 week from the start or not?

11 MS. AMSTERDAM: Yes. A week from today. You
12 know, of course, a week is an arbitrary number. If
13 tomorrow, for example, somebody connected to the Waco
14 incident, and this is the two-year anniversary, steps
15 forward, of course, I am going to say let them go home.

16 But my concern is that this weekend, and, you
17 know, the jurors being home Saturday and Sunday and half of
18 Friday and are not working, is the time that they are going
19 to be most exposed to not only news reports, but family
20 members and friends discussing it.

21 If you walk out on the street now, you can't buy
22 a frankfurter without the man at the frankfurter stand
23 saying to you, "Have you heard what happened in Oklahoma?"

24 Your Honor has a very valid point, that in a week
25 these things have a way the not only sorting themselves out,

1 but putting themselves in a sense of perspective.

2 I frankly would hate to be standing here tomorrow
3 going, "I told you so," or, "I predicted it. Now I am
4 forced to make a mistrial application." I don't want to
5 make that application. I want to go through to the end.

6 THE COURT: But you would also propose to tell
7 them absolutely nothing about the reason for it?

8 MS. AMSTERDAM: I think we would have to say to
9 them that there was an event that happened today of national
10 proportions, and we have not yet been able to sort it out,
11 and we feel that the more prudent thing to do now is to
12 prevent you from having any news coverage or any
13 communications with friends and families, and, while we
14 apologize for the disruption that it is going to cause to
15 your life, we are at this point considering keeping you at
16 least through the weekend until we are able to sort out this
17 information.

18 MR. McCARTHY: Your Honor, I am more concerned
19 about what happens in the more likely event that it doesn't
20 get sorted out in a week. Then what you have done is you
21 have had the jury aware of the fact that there is an event,
22 which naturally in their minds they will think is somehow
23 connected to what they are here doing, and then you are
24 going to spring them a week from now when they are going to
25 find out that there was a big bombing.

1 It seems to me that the nefarious effect of that
2 is likely to be greater than any salutary affect of it.

3 MS. AMSTERDAM: Except that if we instruct them
4 in a week, the story is already on page 7 and they have
5 some --

6 THE COURT: In their minds --

7 MS. AMSTERDAM: In their minds, it is on the
8 front burner. However, the amount of bombardment of
9 information that they will get just has to be less by virtue
10 of the passage of time.

11 THE COURT: It seems to me that -- I'm sorry, Mr.
12 Jacobs?

13 MR. JACOBS: Your Honor, what do you tell their
14 families, that they can't communicate with the people?
15 These people have husbands and wives and children. I mean,
16 what are you going to tell them? They are being isolated?
17 They are not allowed to talk to you?

18 Listen, it is a problem. There is no easy
19 solution, but if the court gives a fair instruction to this
20 jury, we are not going to isolate these people from an event
21 of this proportion, and we come up head on, hopefully our
22 jurors can follow your Honor's instruction. But to scare
23 these people today and send them to a hotel, you know, we
24 might as well just tell them that the defendants did it.

25 THE COURT: You are all very persuasive, but -- I

1 am serious. I didn't mean that as a joke.

2 MR. WASSERMAN: Your Honor?

3 THE COURT: Yes.

4 MR. WASSERMAN: The one detail that I have heard
5 brewing about as I go back to the office are six children
6 lost their lives. That is the detail that tends to stick in
7 people's minds.

8 THE COURT: That is not going away either.

9 MR. WASSERMAN: I'm sorry?

10 THE COURT: That is not going away either.

11 MR. WASSERMAN: I understand. What I am
12 suggesting is we would like voir dire where you want to
13 bring out in the sense the worst that is going to come out,
14 and I would ask your Honor if in the instruction to the jury
15 if you could bring out any loss of life, including children.
16 It is just a detail --

17 THE COURT: That detail I will not mention.

18 MR. WASSERMAN: They are going to get that -- if
19 I may, Judge, what you do with what I think is a good
20 instruction is cushion the impact of what they are going to
21 hear from all sides. What you don't include has shock
22 value. That is all.

23 MR. BERNSTEIN: Judge?

24 THE COURT: Yes.

25 MR. BERNSTEIN: What Ms. Amsterdam talked about

1 was my very concern. I didn't discuss the children issue,
2 but that is to me the greatest visceral response to what
3 happened. These jurors the next four or five days are going
4 to see -- and we know how the media operates -- the funerals
5 of American children. That to me is going to be --

6 THE COURT: They will not see that because they
7 will be directed not to watch it.

8 MR. BERNSTEIN: Frankly, I don't see how we can
9 avoid discussions with their families and the impact, and it
10 doesn't mean to say that children dying are any different,
11 Americans, people are all egocentric. Those deaths are
12 going to not go away to page 5. Other events may, the
13 children aspect of this, I think, is going to overwhelm any
14 juror's ability to be fair to my client.

15 MS. AMSTERDAM: Your Honor, I was on the street.
16 People were extremely shaken. My concern is that these
17 jurors, even if they don't listen to the news reports, will
18 walk into the house and have their wife, their mother, their
19 friend in tears. Frankly, I think that that is such an
20 emotionally charged thing which would dissipate with five
21 days, six days, seven days.

22 THE COURT: Not if their wives and husbands were
23 rounded up and sequestered in a federal case. That is my
24 judgment. I understand your point of view, I understand the
25 sincerity of it, and I appreciate the fact that I have all

1 this help.

2 MS. AMSTERDAM: I know.

3 THE COURT: But I come back to where I started,
4 which is that I think that a firm cautionary instruction is
5 in order. I also think that I ought to state what I can
6 state now unequivocally because it is in the present tense,
7 which is that not only that the explosion is not part of the
8 evidence presented in this courtroom, but that it is not
9 part of this case. Because, as of right now, it is not part
10 of this case. If it becomes part of this case later on,
11 well, sufficient unto the day is the evil thereof. We will
12 deal with it then. But as of right now it is not part of
13 this case, and it seems to me that I can be perfectly
14 straightforward by telling them precisely that.

15 MR. STAVIS: I don't mean to split hairs. You
16 are not going to tell them as of this day?

17 THE COURT: No. I mean, even I wouldn't.

18 Mr. Jacobs?

19 MR. JACOBS: Your Honor, concerning the
20 afternoon's events --

21 MS. STEWART: Wait a minute. Hang on one minute,
22 please. Could you hold on a minute?

23 MR. JACOBS: Yes.

24 MS. STEWART: I also found Ms. Amsterdam to be
25 extraordinarily persuasive, and, indeed, she persuaded me to

1 join her position. I would ask, Judge, in your instruction
2 if you could particularly caution them about speaking about
3 the matter with family members. I think that is the
4 greatest danger.

5 THE COURT: I had planned actually to explain why
6 I go through this mantra about not talking about the case in
7 any event. I am going to go through that with them now as
8 part of this, and I will add that to this instruction.

9 The reason is a good psychological reason, which
10 is, as you listen to a case, or anything else for that
11 matter, and watch it unfold, your views can change. If you
12 talk about something, you take a position, and it becomes
13 that much harder and you become that much more resistant to
14 changing your view if you express it. If you don't express
15 it, it's very easy, or comparatively easy to change your
16 view when you see additional facts or other facts. That is
17 the reason for the mantra about not discussing the case, and
18 I will tell them that it is particularly important today
19 because of these events that they not discuss it, and that
20 is the reason for it. I am not going to refer to it as a
21 mantra, but you understand.

22 MS. STEWART: And also not discuss by analogy the
23 events of Oklahoma.

24 THE COURT: Correct.

25 MS. STEWART: The other thing is if someone you

1 love says to you, "Better do the right thing down there,"
2 that also is very hard to resist, as you know.

3 THE COURT: Yes, sir?

4 MR. STAVIS: Yes, a related application, your
5 Honor. This morning at the side bar I had objected to the
6 introduction of the certain testimony concerning the World
7 Trade Center, and I indicated to your Honor that I would try
8 to work out stipulations with the government. The
9 government was going to put on two fingerprint experts this
10 afternoon. We have stipulated them out of the case.

11 THE COURT: I am grateful for that.

12 MR. STAVIS: The other witnesses that were
13 scheduled for this afternoon one of whom is named Frederick
14 Ferby, another is Charles Maikish, and another is Paul
15 Maniscalco are World Trade Center victims.

16 Mr. Ferby was blown clear across the garage at
17 the B3 level of the World Trade Center, your Honor. We had
18 a meeting, defense counsel, over the lunch break to discuss
19 Rule 403 and its relation to some of the World Trade Center
20 evidence.

21 When I made my application this morning, it
22 related to it being just cumulative type of evidence. This
23 evidence, and particularly at this time, your Honor, and I
24 believe if your Honor looks over here you can see some of
25 the devastation blowup photographs that were scheduled for

1 introduction this afternoon. Particularly this afternoon I
2 don't think that the government should present evidence with
3 regard to the World Trade Center damages, of deaths, of
4 things of that nature.

5 The defense has taken a position in this case
6 that we will stipulate with regard to the victims in this
7 case assuming that the government is willing to do so. If
8 the government is not willing to do, so we have a Rule 403
9 objection, your Honor, and I would just state, as I did
10 earlier this morning, that this is one overt act out of 106.
11 It was one that was acceded by the defense in this case.

12 To come on with victims and ambulances and people
13 searching through the rubble finding dead bodies -- I don't
14 know if there will be medical examiners, we haven't gotten
15 3500 material from medical examiners. But I think that the
16 probative value of that evidence when you consider that this
17 is one overt act, this is not a retrial of the World Trade
18 Center, the probative value of that evidence, where I
19 believe just about every defense attorney in the case has
20 conceded that the World Trade Center was bombed and it was
21 bombed by Mohammed Salameh, Nidal Ayyad, etc., I think is
22 outweighed by the grave prejudice inherent in such evidence.

23 MR. McCARTHY: Number one, I think the time to
24 take that kind of a position was probably before digging in
25 one's heels, as a number of counsel did, on a defense

1 approach to this case, which is basically that what we have
2 called the second phase of the investigation is a government
3 overreaction to what happened at the bombing of the World
4 Trade Center, taking the position that it was an un-Godly,
5 out-of-worldly amount of money to pay the government's
6 informant in light of what he was being asked to do in the
7 second phase of the investigation. That is not the world
8 that we live in, that is not the position that they took.
9 We have cut this case down. The World Trade Center part of
10 the case, from what was presented to Judge Duffy as a
11 six-month trial, is down to probably a two-week or so
12 presentation.

13 It is our intention to call one exactly one
14 victim witness, Mr. Ferby. The fact of the matter is that
15 this is a terrorism trial. This is evidence of terrorism,
16 and we can't schedule it around the unknown, which is
17 today's event, and the one that occurs possibly tomorrow or
18 the next day or next week. This is the nature of the case
19 we are in. I don't think it can be sensibly scheduled
20 around the unknown.

21 MS. AMSTERDAM: Your Honor, I would just like to
22 add that it is a balancing test, and your Honor has the
23 discretion to decide what to do. While Mr. McCarthy says
24 you can't really control world events, this is a factor that
25 should be considered in terms of balancing out whether or

1 not the probative value outweighs the prejudice in this
2 matter. There is no contest as to what happened at the
3 Trade Center, that it was bombed, that there was death and
4 there was destruction. The level of prejudice, given the
5 context of today's event, I think clearly outweighs any
6 probative value of having a victim testify as to what his or
7 her personal feelings were about the events of that day.

8 THE COURT: The balance that generally is struck
9 under 403 in a situation like this, and I realize that
10 drawing analogies is difficult and risky in this kind of
11 business, is between the government being allowed, in
12 essence, to put a face on an event, a human face on an
13 event, and controlling something becoming inflammatory. I
14 don't think that presenting one victim witness is waiving
15 the bloody shirt.

16 The fact that the victim witness happens to be
17 presented today is a fortuity. But, again, I think it is a
18 fortuity that we can live with.

19 Yes?

20 MR. JACOBS: Your Honor -- I'm sorry, Roger, are
21 you finished?

22 MR. STAVIS: I didn't mean to interrupt your
23 Honor. I was going to speak when your Honor finished.

24 THE COURT: I am going to permit the victim
25 witness to testify.

1 MR. STAVIS: Going from the general to the
2 specific, that was one witness --

3 THE COURT: One second, please.

4 You have a jury sitting in there. I would really
5 like to get started if we can. Is this essential in order
6 to get started or not.

7 MR. STAVIS: It depends on who the first witness
8 is.

9 MR. McCARTHY: It will be Mr. Walsh, who was the
10 AGL Welding truck driver.

11 MR. STAVIS: Then we can deal with it at the
12 break.

13 MR. McCARTHY: I would advise the jury of the
14 stipulations first, if your Honor, please.

15 THE COURT: Fine.

16 MR. JACOBS: Just briefly, your Honor.

17 THE COURT: One second, she's gone to get the
18 jury.

19 MR. McCARTHY: This will take five seconds.

20 THE COURT: OK.

21 MR. JACOBS: I don't see why today we have to
22 have this kind of stuff entered in evidence. Over the next
23 day or so, the jurors are going to be exposed to some of the
24 photos coming out of Oklahoma. As far as my client is
25 concerned, I would ask for a continuance of this type of

1 evidence until Monday until we can sort things out. The
2 government can read transcripts, we will try to work out
3 some additional stipulations. Why this photograph has to be
4 shown in the next day or so to this jury while Oklahoma City
5 is on TV I think is really prejudicial to the defendants in
6 this case in light of that. I would ask for a continuance,
7 for a few days anyway. We will try to accommodate the
8 government with some other proof, but this type of evidence
9 and the victim testimony over the next day or so I think is
10 really unfair.

11 THE COURT: Yes?

12 MR. FITZGERALD: Your Honor, I would just point
13 out that that photograph is a shot of the area of the blast.
14 It has no bodies in it. There is nothing inflammatory. I
15 would note two other things for the record: There were more
16 than two dozen victims that testified at the earlier trial.
17 We cut it down to two at this trial, of people who were
18 actually at the blast site. One person came down after the
19 blast. When one person seemed emotional this morning, we
20 told her we wouldn't call her, and that was independent of
21 today's event that the government made that decision.

22 MR. STAVIS: That was the World Trade Center
23 trial, and this is a different trial.

24 THE COURT: With whom do you plan to introduce
25 the photos?

1 MR. FITZGERALD: Through Mr. Maikish, who I think
2 will be the second witness.

3 THE COURT: Again, it is a photo of the sort that
4 people have seen in the newspapers already of the World
5 Trade Center.

6 MR. BERNSTEIN: The problem -- that is why I
7 wanted them sequestered, is that tonight they are going to
8 go home and they are going to see the duplication of that in
9 tonight's live, real news. I don't see how any jurors can
10 separate that photograph in evidence from the event of two
11 years ago from what they are going to see happening on their
12 television sets tonight. The prejudice to me is just
13 overwhelming. I think that they lose the ability for them
14 to parse events, no matter what the curative instructions
15 are.

16 MR. McCARTHY: I wonder if Mr. Bernstein can
17 quantify how much less the prejudice will be a week from now
18 or two weeks from now.

19 THE COURT: Obviously I can't and none of us can.
20 He is doing the best he can for his client. I understand
21 his argument. I have rather more faith in their ability to
22 separate events than he does.

23 THE DEPUTY CLERK: Are we ready now?

24 THE COURT: Let's go.

25

1 MR. FITZGERALD: Judge, do you want the witness
2 out now?

3 THE COURT: Please.

4 MR. FITZGERALD: All right.

5 (Jury present)

6 THE COURT: Good afternoon, ladies and gentlemen.

7 JURORS: Good afternoon.

8 THE COURT: I seem to start most sessions with an
9 apology for the delay, and obviously this one is no
10 exception. But please understand that there are times that
11 we have things to deal with. We dealt with something now.
12 Again, I am sorry it happened. I wish I could promise you
13 that it is not going to happen again. I can't. All I can
14 promise you is an apology, which I am now giving.

15 JUROR NO. 8: Accepted.

16 THE COURT: Mr. McCarthy?

17 MR. McCARTHY: Thank you, your Honor.

18 The government's next witness is Dennis Walsh.

19 THE DEPUTY CLERK: Please rise and raise your
20 right hand.

21 DENNIS WALSH,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 THE COURT: Mr. Walsh, if you could try to move
25 forward as much as you can, and if you look directly at that

1 microphone and talk into it, it is directional so it will
2 pick up your voice.

3 MR. McCARTHY: I am sorry, your Honor.

4 (Pause)

5 MR. McCARTHY: Before I proceed to inquire of
6 Mr. Walsh, may I advise the jury of two stipulations.

7 THE COURT: Yes.

8 Ladies and gentlemen, there have been
9 stipulations at various times during this case. These are
10 either facts or testimony that the parties agreed to. You
11 should accept either the facts or the testimony as if they
12 had been proved, and give them whatever weight you think
13 they deserve. Go ahead, Mr. McCarthy.

14 MR. McCARTHY: Thank you, your Honor.

15 Ladies and gentlemen, the parties have stipulated
16 that, if called to testify, a witness who was qualified to
17 identify fingerprints would testify that on Government's
18 Exhibit W701A that was received in evidence this morning,
19 one identifiable fingerprint was developed and that is the
20 right index finger of Mohammed Salameh.

21 The same witness would also testify that
22 Government's Exhibit 70, which was previously received in
23 evidence sometime back, is a copy of Government's Exhibit
24 69C, that is, the portion of Government's Exhibit 70 as you
25 look at it on the extreme right is a copy of the photograph

1 that was previously received in evidence as Government's
2 Exhibit 69C.

3 Finally, the fingerprint expert would also
4 testify that it is not possible to tell from looking at a
5 fingerprint when the fingerprint was left.

6 DIRECT EXAMINATION

7 BY MR. McCARTHY:

8 Q Good afternoon, Mr. Walsh. Could you tell us,
9 please, how you are employed.

10 A I am a truck driver for AGL Welding Supply in
11 Clifton, New Jersey.

12 Q What part of New Jersey? I am sorry. I didn't
13 hear you.

14 A Clifton, New Jersey.

15 Q Can you tell us what kind of business AGL Welding
16 is.

17 A We distribute high-pressure gas cylinders of
18 various types to different kinds of -- for medical use and
19 factories and laboratories.

20 Q How long have you been employed by AGL Welding?

21 A About nine and a half years.

22 Q Have you been driving a truck for them that whole
23 time?

24 A Yes, I have.

25 Q Let me direct your attention to February 25,

1 1993, and ask you whether you made a delivery on that day to
2 a location known as the Space Station.

3 A Yes, that's correct.

4 Q Do you recall, sir, where the Space Station is?

5 A It is on Mallory Avenue in Jersey City.

6 Q Directing your attention to approximately 1
7 o'clock in the afternoon, did there come a time that you
8 arrived at the Space Station?

9 A That's correct.

10 Q Can you explain to the ladies and gentlemen of
11 the jury what you were delivering that day exactly.

12 A I was delivering three high-pressure cylinders of
13 hydrogen gas to that address.

14 Q Can you describe for us, please, what the
15 cylinders looked like.

16 A They were approximately four feet tall, about ten
17 inches in diameter, and they were painted red in color.

18 Q You said that was hydrogen gas?

19 A Right.

20 Q Are hydrogen cylinders always red?

21 A Yes, to my knowledge, they always are.

22 Q There came a time that you got to Mallory Avenue,
23 the Space Station?

24 A Yes.

25 Q Tell us what happened when you got there that

1 afternoon.

2 A Well, I didn't enter the premises. I parked the
3 truck on the side of the street and I was going to go in to
4 find out where I was supposed to deliver, and a gentleman
5 came out and approached me and said he was supposed to get
6 them.

7 Q Let me stop you for a moment and ask you, do you
8 recall who the customer was that day?

9 A Yes, I do.

10 Q And who was that that who were you supposed to
11 deliver the materials to?

12 A The Kamal Company.

13 Q The Kamal Company?

14 A Yes.

15 Q There came a time that you met somebody in the
16 vicinity of the Space Station?

17 A That's correct.

18 Q Did that person identify himself to you?

19 A Well, he didn't give me a name. He said he was
20 from the Kamal Company and he would direct me where to
21 deliver them.

22 Q Did there come a time that he signed some
23 invoices?

24 A Yes, there was.

25 Q Do you recall what name he used to sign the

1 invoices?

2 A Kamal Abraham.

3 Q Mr. Walsh, sir, I am placing before you first
4 Government's Exhibit 5E for identification, and I ask you
5 whether you recognize the person depicted in that
6 photograph?

7 A Yes, I do.

8 Q Who do you recognize that person to be?

9 A Mohammed Salameh.

10 Q Did you later learn him to be named Mohammed
11 Salameh, that is, on February 25, 1993 did you know him by
12 the name Mohammed Salameh?

13 A Yes.

14 Q You did?

15 Well let me ask you this: The person who signed
16 the invoice you told us used a name to sign the invoice?

17 A Right.

18 Q What name did he use to sign the invoice?

19 A Kamal Abraham.

20 Q Directing your attention to Exhibit 5E, the
21 person depicted in that exhibit, is that the person who
22 signed the invoice?

23 A Yes.

24 Q He identified himself on that day as Kamal
25 Abraham?

1 A He said he was from the Kamal Abraham Company and
2 he signed it Kamal Abraham.

3 Q Had you ever met that person before that day?

4 A No.

5 Q Did you later learn him to be known by the name
6 of Mohammed Salameh?

7 A Yes.

8 MR. McCARTHY: Your Honor, may I show
9 Government's Exhibit 5E to the jury, which has previously
10 been received in evidence.

11 THE COURT: Go ahead.

12 (Government Exhibit 5E was displayed to the jury)

13 Q Mr. Walsh, let me show you a few other items.

14 Do you recognize Government's Exhibit 721?

15 A Yes, I do.

16 Q What do you recognize that to be, sir.

17 A This is the time sheet we have to fill out
18 arrival, and departure time that we go to every stop during
19 a given day.

20 Q Is that the time sheet for February 25, 1993?

21 A Yes, it is.

22 Q Does it indicate what time you made your delivery
23 to the Space Station?

24 A Yes, it does.

25 Q What time was that, sir?

1 A Arrived at 12:51 and left at 1:06.

2 Q Thank you.

3 I am now showing you Government's Exhibits 2463A
4 and 2464A, both of which are prefaced as W exhibits, the W
5 series.

6 Do you recognize W2463A and W2464A?

7 A Yes, I do.

8 Q Can you tell us what those are, briefly.

9 A These are the two invoices, the delivery receipts
10 to when the transaction took place showing the cylinders and
11 the prices.

12 Q Can you tell us from -- withdrawn.

13 MR. McCARTHY: Your Honor, the government offers
14 W2463A and W2464A.

15 THE COURT: W2464?

16 MR. McCARTHY: A.

17 THE COURT: A is received without objection.

18 (Government's Exhibit 2464A for identification
19 was received in evidence)

20 Q Can you tell us looking at these documents how
21 much was paid for the hydrogen tanks?

22 A A total of \$841.17.

23 Q Thank you.

24 I am now showing you Exhibits W2940 and W2939.

25 Do you recognize those items, sir?

1 A Yes, those were the two money orders paid for the
2 cylinders.

3 Q Those are copies of the money orders? Those are
4 the money orders?

5 A Yes. They look like them to the best of my
6 knowledge.

7 MR. McCARTHY: Your Honor, the government offers
8 W2939 and W2940.

9 THE COURT: W2940 and 2939. All right.
10 Without objection, 2940 and 2939, both in the W
11 series are received. Go ahead.

12 (Government's Exhibits 2939 and 2940 for
13 identification were received in evidence)

14 Q Mr. Walsh, just directing your attention to
15 W2463A and W2464A in evidence, do you see at the bottom of
16 the invoice a signature, Dennis, 2/25/93?

17 A Yes. I signed them both and dated it upon the
18 receipt of the delivery.

19 Q That is your signature, sir?

20 A Yes.

21 Q Showing you W2939 in evidence, the money order,
22 am I correct on the money order for 141.17 it is written
23 "Paid to AGL" on the left side of the document, and then on
24 the right side "from Kamal," K-A-M-A-L, and then P-R-O-D-U
25 is crossed out, is that correct?

1 A Yes.

2 Q The name after that, or the word after that is
3 "Abraham," so it reads, "Kamal," the word "P-R-O-D-U" is
4 crossed out and then "Abraham."

5 A Right.

6 Q Reading from W2940 in evidence, which is the
7 money order for \$700, it lists on the "From" section,
8 "Kamal, Abraham; 69 Mallory Avenue; Jersey City, New
9 Jersey"?

10 A Right.

11 MR. McCARTHY: Your Honor, did the court pass on
12 2463A, that is, W2463A?

13 THE COURT: I don't have a record of having done
14 so. Are you offering it?

15 MR. McCARTHY: We press the offer of it.

16 THE COURT: Hearing no objection, 2463A is
17 received without objection.

18 MR. McCARTHY: Thank you.

19 (Government's Exhibit 2463A for identification
20 was received in evidence)

21 Q Mr. Walsh, can you please describe what happened
22 when the person who you met as Kamal but later learned was
23 Mohammed Salameh met you at that day outside the Space
24 Station?

25 A Yes. He came out to my truck and instructed me

1 where to deliver the cylinders.

2 Q Thank you.

3 What instructions did he give you?

4 A To pull inside the complex and he walked down and
5 showed me where -- which bay to deliver them.

6 Q I'm sorry. Which?

7 A He instructed me to pull down the alleyway and
8 instructed me which garage to deliver them.

9 Q Do you recall which garage they were delivered
10 to?

11 A I believe it was No. 24.

12 Q Was Mr. Salameh alone?

13 A No, he was with another man.

14 Q All right. Was the other man introduced to you?

15 A No, he wasn't.

16 Q Can you describe him for us.

17 A He was just basically average looking and average
18 height. He might have had a mustache, I am not sure. I
19 didn't speak one word to him. He was just basically
20 standing there the whole time. He was maybe in his 20s,
21 short hair. That's about all I remember.

22 Q Other than having a mustache, do you recall
23 whether he was otherwise clean shaven?

24 A I believe he was, to the best of my knowledge.

25 Q Did the other man who was with Mr. Salameh engage

1 Mr. Salameh in any conversation in your presence?

2 A When I was taking the cylinders off the truck,
3 they were kind of whispering to each other in a foreign
4 language. I didn't understand what they were saying. That
5 is about it.

6 Q Do you recall whether there was some discussion
7 about whether the tanks could be kept at the Space Station?

8 A Yes, there was. He was asking me, you know, how
9 dangerous and how flammable the gas was. I explained to
10 him, you know, as long as it doesn't come into contact with
11 any open flame and you kept the protective cap on, it would
12 be OK.

13 Q Did there come a time when there was some
14 discussion with the manager of the Space Station?

15 A Yes, there was. When I pulled in, the guy came
16 out of the office and he says, "Well, what are you bringing
17 in here?"

18 I told him, "Hydrogen tanks."

19 He said, "Well, you can't keep any flammables in
20 here."

21 The gentleman later identified as Salameh asked
22 him, "Well, can we keep them here for only two hours? And
23 they are going to be removed and we are going to take them
24 away with a van in maybe an hour and a half to two hours?"

25 He said, "Well, OK. Well, you can bring them in,

1 if that's the short amount of time that they are going to be
2 here."

3 So then I proceeded to go in.

4 Q Can you describe for us, please, Mr. Salameh's
5 demeanor during the time that you dealt with him?

6 A He seemed like he was kind of running around,
7 kind of a little nervous, a little shaky.

8 MR. STAVIS: Objection, your Honor.

9 THE COURT: Overruled. He can testify to it.
10 Go ahead.

11 A He seemed a little shaky, a little nervous.

12 Q Did you end up leaving the hydrogen tanks there?

13 A Yes, I did.

14 MR. McCARTHY: May I have just a moment, your
15 Honor.

16 THE COURT: Yes.

17 MR. McCARTHY: Thank you.

18 I have no further questions of Mr. Walsh.

19 THE COURT: Any cross?

20 Thank you very much, you are excused.

21 (Witness excused)

22 MR. FITZGERALD: Your Honor, before calling the
23 next witness, I wish to read just some items from some
24 documents received in evidence, including ones just received
25 for just a minute.

1 THE COURT: All right. Go ahead.

2 MR. FITZGERALD: Your Honor --

3 THE COURT: Go ahead.

4 MR. FITZGERALD: From the document received in
5 evidence this morning, Government Exhibit W2938-3, the phone
6 number listed for Nidal 201-455-3827.

7 From Government Exhibit W2823 --

8 THE COURT: Could you read that again. 455?

9 MR. FITZGERALD: 3827.

10 THE COURT: From which exhibit?

11 MR. FITZGERALD: From Government Exhibit W2938-3.

12 From both Government Exhibits W2823B and 2824B,
13 the phone number for Nidal Ayyad is 455-3827. Those were
14 the documents received with Ms. Stango this morning, the car
15 rental documents.

16 Referring to Government Exhibit 802, the phone
17 records received yesterday, looking at what's called page
18 71-81 on that document, the title on the page says "Allied
19 Signal. Site extension, 201-455-3827. Ayyad, Nidal."

20 Looking down the page to the entry for 2-24,
21 February 24, two entries at 8:52 and 10:52, to numbers in
22 Passaic, New Jersey, the same number both times, area code
23 201-478-5000.

24 That same number, 201-478-5000, appears as the
25 phone number for AGL Welding Supply on the invoices marked

1 GX W2463A and GX W2464A. 201-478-5000.

2 Turning to page 71-85 of that same exhibit, the
3 phone records for Nidal Ayyad at 455-3827. An entry for the
4 same day, February 24, 1993 the time listed 14:13. 14:13, a
5 phone call to Brooklyn New York, area code 718-768-4881.

6 That same number appears, 718-768-4881, with
7 regard to Mr. El-Gabrownny on the Attica visiting records on
8 the chart marked Government Exhibit 506A, for example, on
9 the day visited January 14, 1993.

10 The number again: 718-768-4881.

11 Your Honor, I believe I need to approach with Mr.
12 Stavis before calling the next witness.

13 (Continued on next page)

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1 (At the sidebar)

2 MR. STAVIS: Your Honor, I will be very brief. I
3 had mentioned to the Court a witness by the name of Ferby,
4 and Mr. Fitzgerald said that that would be the only victim
5 witness that they were calling. Mr. Maikish, I don't know
6 if we could classify him as victim or not, the next witness,
7 the proposed testimony -- he was the director of the World
8 Trade Center -- was in his office.

9 THE COURT: What is he supposed to prove?

10 MR. FITZGERALD: He covers everything from
11 explaining the World Trade Center, he was an engineer who
12 built it, and as a lawyer from the World Trade Center,
13 explains --

14 THE COURT: Go ahead.

15 MR. STAVIS: He also goes in -- based on his
16 prior testimony at the first trial -- he goes into what he
17 saw when he was there, helping people who were bleeding,
18 organizing rescue efforts, and things of that nature. I
19 would just renew my Rule 403 application with regard to
20 Mr. Maikish; in particular, with regard to his testimony
21 concerning the damage to individual victims at the site of
22 the World Trade Center at the time that he was there when
23 the explosion took place.

24 MR. FITZGERALD: Your Honor, besides testifying
25 how it was built and how it operates, he would say he was on

1 the 35th floor, he came down. I think he testified one
2 woman he aided who was cut with glass, and then he was part
3 of the response effort to setting up the fire department and
4 then inspected the scene, talks about the blast damage and
5 estimates the damage to repairs. He built the Trade Center
6 and then rebuilt it. He knows it from soup to nuts. He is
7 not a witness to -- he is not going to talk about -- he
8 mentions the one woman he saw; that's it. But, in large
9 part, in relying upon him going from soup to nuts, we cut
10 out a dozen witnesses.

11 THE COURT: Hold it to a minimum.

12 (In open court)

13 THE COURT: Could we have everybody pay attention
14 when the witness is being sworn. Thanks.

15
16 CHARLES J. MAIKISH,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FITZGERALD:

21 Q Mr. Maikish, can you tell the Court what you do
22 for a living?

23 A Yes. I'm the Director of the World Trade
24 Department for the Port Authority of New York and New
25 Jersey.

1 Q Can you tell us, first of all, how long you have
2 been working with the Port Authority of New York and New
3 Jersey?

4 A Approximately 25 years.

5 Q Can you explain to the jury briefly what the Port
6 Authority of New York and New Jersey actually is?

7 A Yes. The Port Authority is a bistate agency
8 which was created under a bistate compact in 1921. It is a
9 creature of federal legislation, and its specific mandate
10 was to facilitate international trade and commerce in the
11 port district. That is a statutorily defined area, about 25
12 miles in circumference around the Statue of Liberty. It
13 involves areas in New Jersey and New York.

14 Q Can you tell us what different departments there
15 are in the Port Authority?

16 A Sure. There are basically four businesses, as we
17 refer to them in the Port Authority, in which we pursue the
18 mandate of facilitating trade and commerce. The first is
19 the port department which operates the marine terminals, the
20 port facilities that handle marine cargo that come out of
21 the Port of New York and New Jersey.

22 The second business is an aviation business in
23 which we operate the three major airports. We also own a
24 fourth airport, Teterboro, and again that is facilitating
25 air traffic, both cargo and passengers, in and out of the

1 port region.

2 The third business is our interstate
3 transportation business, which is the bridges and tunnels
4 crossing the Hudson River into New Jersey and the bridges
5 from Staten Island into New Jersey, the Holland Tunnel, the
6 Lincoln Tunnel. We also operate bus terminals associated
7 with state transportation, Midtown Bus Terminal, the Uptown
8 Bus Terminal. And a rail rapid transit system from New
9 Jersey called Path which comes in from Newark and Hoboken,
10 principally into Manhattan.

11 Q And what is the fourth department?

12 A The fourth department is the World Trade
13 Department, which is the department that I am responsible
14 for, and that department is charged with providing
15 facilities, physical facilities, to both encourage and
16 enhance international trade. One of those facilities is the
17 World Trade Center, which was designed to be a physical
18 facility to house international trade and commerce
19 activities.

20 Q Can you tell us, were you involved actually in
21 the construction of the World Trade Center?

22 A Yes, I was. It was my first job when I came to
23 the Port Authority out of engineering school. I started
24 with the Port Authority in 1968 on the construction of the
25 World Trade Center. At that time it was in its very early

1 stages of construction, demolition had occurred and we had
2 started the excavation within the slurry wall area for the
3 ultimate construction of the foundations of the Trade
4 Center.

5 Q If I can stop you quickly. When did the break
6 ground in building the World Trade Center?

7 A 1966.

8 Q When did you start working on the Trade Center?

9 A 1968.

10 Q You mentioned a slurry wall. Can you give us a
11 brief explanation of what a slurry wall is?

12 A Sure. It was at that time a new technology that
13 was used for construction in areas that had high water
14 tables. It was originally used in Italy. And it's
15 basically where you build a box, a concrete box, you build
16 the four walls of a concrete box with the material, the
17 earth still within the four corners of that box. By digging
18 down and filling the trench with bentonite and then
19 replacing that bentonite with concrete and eventually what
20 you have is buried wall, four walls of a box. And you can
21 dig the dirt out within that box, colloquially we call it
22 the bathtub at the time the Trade Center was being
23 constructed and it was a very large area. And you can do
24 that without interference of what they call rakers and
25 things that are needed to hold up the walls. It's a much

1 easier way of constructing, especially in an area where you
2 have a high water table.

3 Q Is the water table higher around the World Trade
4 Center?

5 A Yes, it is. The Trade Center was constructed on
6 fill actually that was originally part of the Hudson River,
7 and the water table is quite high in that area.

8 Q Can you tell us what type of tenants are in the
9 World Trade Center complex?

10 A Yes. The complex contains what we call
11 qualifying tenants. Not just any company can locate in the
12 World Trade Center. There are requirements that the company
13 substantially be involved in international trade and
14 commerce. And in fact a tenant is submitted to our law
15 department for approval to see that they meet the statutory
16 requirements before they are permitted occupancy of the
17 Trade Center. And it is varied. We run the whole gamut of
18 agencies, both federal, state and city agencies, that are
19 involved in trade and commerce, to foreign offices which
20 have offices there, trading companies, chambers of commerce,
21 companies which are involved in international finance and
22 the movement of capital.

23 It essentially comes down to five areas that
24 people that are involved in: the movement of goods, the
25 movement of people, the movement of capital in international

1 trade, the movement of services, and the movement of
2 information.

3 We have major broadcasters there. The
4 telecommunications facility for the regions are located in
5 the Trade Center as well.

6 Q You mentioned that ground was broken in 1966.
7 When was the World Trade Center substantially completed?

8 A Well, the first tenant took occupancy in 1970,
9 and construction continued on through 1974, and various
10 buildings were dedicated between 1970 and 1974. The Trade
11 Center is best known as the Twin Towers, the two large
12 towers that are there, but it is actually comprised of seven
13 buildings. So it opened in stages between 1970 and 1974.
14 It was substantially complete in 1974.

15 Q If you can briefly take us through the jobs which
16 you held with the Port Authority since 1968 when you joined
17 as an engineer.

18 A Sure. In 1968 I started in engineering as a
19 field engineer at the Trade Center on its construction. In
20 1970 I moved over to New Jersey on the Journal Square
21 Transportation Center which are was then under construction
22 and stayed there until 1974. During that time I attended
23 law school and became an attorney, and I worked as attorney
24 for the Port Authority from 1974 through 1985 as a trial
25 attorney.

1 In 1985 I took on the project called the Hoboken
2 Ferry Project. I was the project director, charged with
3 responsibility for both conceiving and implementing the
4 trans-Hudson ferry service from Hoboken. That was completed
5 in 1989.

6 Then the executive director asked me whether I
7 would go into a line department, the world trade department,
8 as the deputy, the assistant director of world trade in
9 1989. And I did that.

10 In 1991 I was promoted to the director of world
11 trade, which is its chief executive officer, in 1991,
12 responsible for all aspects of the World Trade Center
13 complex.

14 Q Let me show you an exhibit premarked as
15 Government Exhibit W500. You have seen this item before?

16 A Yes, I have.

17 Q And does this item help you to explain the World
18 Trade Center complex in its various parts?

19 THE COURT: Talk into the microphone, please.

20 Q I am sorry. Does this exhibit help you to
21 explain the World Trade Center and its various components?

22 A Yes, it is a graphic depiction of the components
23 of the World Trade Center.

24 Q Is it a fair and accurate graphic depiction of
25 the components of the World Trade Center?

1 A Yes, it is.

2 MR. FITZGERALD: I would offer Government's
3 Exhibit W500.

4 THE COURT: For demonstrative purposes?

5 MR. FITZGERALD: Yes.

6 MR. BERNSTEIN: No objection.

7 THE COURT: W500 may be used for demonstrative
8 purposes. Go ahead.

9 Q Perhaps if you can step down, close to the
10 microphone, it might be easier.

11 Q Using that Government Exhibit W500, can you
12 explain the different buildings in the World Trade Center
13 and the nature of the business conducted?

14 A Certainly. The Trade Center is contained in a
15 16-acre site in lower Manhattan. It is comprised of seven
16 buildings. The first building that I refer to is the Tower,
17 Tower One of One World Trade Center, and it rises about
18 1,350 feet in the air, contains a little over 4 million
19 square feet of commercial office space, and houses a large
20 number of tenants within that complex, that tower itself.

21 Atop of Tower One are the broadcast facilities,
22 the TV broadcast facilities, FM broadcast facilities, and
23 other broadcast facilities for the region, so it is also a
24 telecommunications center.

25 Tower Two is almost a mirror image of Tower One.

1 It too rises about 1,350 feet, or 110 stories, in the air
2 from the plaza level, and it contains on top of it a major
3 tourist attraction for the region, the observation deck in
4 which we have about 2 million visitors come a year to that
5 observation deck.

6 Building Three is actually the hotel, which is
7 difficult to see on this, but Building 3, the hotel, is in
8 this area here. It is a 500000-square-foot building that
9 contains 826 rooms. It is known as the Vista Hotel. And
10 that hotel, by the way, was completed in 1982. It was a
11 later addition to the Trade Center.

12 Building Four is one of the outlying buildings,
13 perimeter buildings, in the World Trade Center. It contains
14 approximately 800,000 square feet of space, and it houses
15 essentially the International Commodities Exchange. That is
16 the exchange that trades on an international level, global
17 level, in oil, gold, gas, cotton and various commodities,
18 precious metals, etc. And that building contains the
19 Commodities Exchange and the trading floor, plus all of the
20 offices and ancillary services for the commodities exchange.

21 Building Five, which is about 700,000 square feet
22 and rises 9 stories, like Building Four, is a building that
23 houses companies of international finance, basically at this
24 point. It has various tenancies.

25 Building Six is the U.S. Customs House. The U.S.

1 Customs House is a building that is under lease to the
2 federal government and it houses U.S. Customs and other
3 associated federal agencies involved in international trade
4 of movable goods.

5 Building Seven, which was also added later,
6 essentially completed after 1985, actually outside the
7 slurry wall construction, is a 47-story building
8 constructed, what we call the Keystone Building, and that
9 houses companies involved in international finance.

10 These buildings basically back up onto an
11 open-air plaza, which is five acres in size. The area below
12 this is the subgrade area. This, as I indicated, is the
13 bathtub and is actually, if you look at the street lines
14 here, Church, Liberty, Vesey, and West Streets, they
15 actually form the perimeter of what I had referred to as the
16 bathtub before or the slurry wall.

17 There are essentially five levels going down from
18 that, which house about three and a half million square
19 feet, which essentially is both tenant storage, or was prior
20 to February 26, two years ago, tenant storage, parking,
21 public parking, and the infrastructure that is used to
22 operate the complex, transformers, etc.

23 Q Are there any Path train or subway stations in
24 the area?

25 A Yes. In the concourse area, right on the plaza,

1 is one of the largest indoor shopping malls, and it is the
2 largest indoor shopping mall in Manhattan. It contains
3 about 60 retail stores, a very large shopping area, and the
4 transportation center. There are three railroad lines that
5 come in, five subway stops, and the Path system itself comes
6 in from New Jersey. There is a major Path terminus at that
7 location, at which we have large numbers of commuters that
8 come through that and it is a transportation facility.

9 Q If I could just have you resume your seat for a
10 moment.

11 Now, if I could direct you to February 26 of
12 1993.

13 A Yes.

14 Q Were you working that day?

15 A Yes, I was.

16 Q Where were you?

17 A At approximately lunchtime I was in my office.

18 Q Where is your office located?

19 A On the 35th floor of Tower One.

20 Q Do you recall something happening at that point?

21 A Yes. I had a luncheon appointment at 12:30, and
22 at about 12:15 I was sitting at my desk. I had a few
23 minutes before I was going to go downstairs, and I was
24 executing some documents. I was in fact executing a lease,
25 had signed my first name and middle initial. I never

1 finished executing the lease, when a very loud noise
2 occurred and the building heaved. It was unusual because of
3 the way the towers are constructed with the massive amount
4 of steel and being on the 35th floor, for that building to
5 heave is an unusual event.

6 I had a two-way radio in a recharger next to my
7 desk which I usually keep low, because you can monitor my
8 police frequency and my operations frequency. And it
9 started to chatter rather actively. I knew that something
10 had occurred at that point in time.

11 Q What did you do?

12 A I yelled to my secretary, "What was that?" and
13 got up from my desk, grabbed the radio. There were reports
14 coming in of some damage in the Path station. I went out to
15 the desk and told my secretary to call Stan Brezhnoff, my
16 boss, and tell him that we had some kind of an event going
17 on, I didn't know whether it was external to the Trade
18 Center or internal.

19 There were reports coming through of damage in
20 the Path station almost immediately. There was a
21 construction inspector on my staff who was standing at the
22 desk talking to my secretary, and one of my managers, who I
23 asked to come with me, went with me towards the elevators.
24 I subsequently sent my manager back, told him to marshal the
25 response people, tenant services people and our operations

1 people into what we call the situation room, which is at the
2 B1 level. That room is equipped to respond to emergencies.
3 It has telephone communications, etc., and it has all the
4 drawings, it has all the equipment we need to deal with an
5 emergency.

6 I went out to the elevator. The elevator was
7 there, the door was open, but it was not functioning. It
8 was thin in what we call fire recall. There is a system in
9 the building that if there is a fire or a smoke condition,
10 that the elevators will come to a floor, open and hold.
11 They will not allow for passage. My construction inspector
12 had a key, a fire elevator key -- they all have them -- and
13 he keyed it into fire mode, which allows you to use the
14 elevator in the event of fire emergency, and we went down to
15 the lobby.

16 Q What happened when the elevator you were in
17 reached the lobby?

18 A The doors opened and I was startled at what I
19 saw. The lobby is nine stories in height. You don't
20 appreciate how high the lobby is because of the volume of
21 the tower, but it is actually nine stories high, the
22 interior lobby of the towers. And there was thick, heavy,
23 black smoke literally several feet above my head that had
24 already filled the lobby. And what was of surprise to me
25 was the indication of damage in the Path station and the

1 lobby being filled with smoke so rapidly right after the
2 event. I knew at that point that we had a major event. We
3 had a major event to deal with.

4 I went out towards West Street because I knew
5 that the Fire Department, the battalion chief, would be
6 responding to the West Street side of the Trade Center and
7 that they would set up a command station there to deal with
8 whatever we had. As I rounded the corner by the elevator
9 console right before the entrance to West Street, a young
10 lady came through the smoke, it was hazy and I saw her
11 coming through, and her face was bleeding. The elevator
12 started, Danny was there at the time, and I yelled to him.
13 He came over and told him to grab a rag, and we put the rag
14 on the young lady's face, and I asked him to take care of
15 her and I went out onto West Street.

16 Q Can you describe generally what you did when you
17 went out to West Street?

18 A Yes. Tried to ascertain quickly what the
19 condition was, and found out from the battalion chief that
20 almost all of the complex was involved in terms of either
21 smoke or fire and that we had a below-grade incident of some
22 kind. Quickly decided that we needed to set up a command
23 center. Asked whether the situation room was available.
24 Found out that it was involved as well, and decided that we
25 would use the Vista Hotel ballroom as sort of a gathering

1 area for people to marshal, and start responding to what we
2 needed to respond to.

3 As my staff was coming out of the tower, various
4 operational people came up from the subgrade and reported to
5 me what in fact had occurred in the subgrade area of the
6 Trade Center. My chief of plans and structures came and
7 told me at that time --

8 MR. BERNSTEIN: Objection, your Honor.

9 THE COURT: Don't tell us what he told you.

10 Q Where were the plans and drawings?

11 A Well, the plans and drawings are located in two
12 locations. There is the full set of plans and drawings for
13 the complex in the situation room downstairs.

14 Q Were they available to you?

15 A No, they were not.

16 Q What did you do?

17 A My chief of planning had come down at that point,
18 and I directed him to go back upstairs and get plans and
19 drawings, which was a virtual impossibility. I then told
20 him I realized that we had sets of plans and drawings at our
21 consulting engineers' offices uptown, and I directed my
22 police captain to dispatch two cars with police officers to
23 those locations to bring down engineers, consulting
24 engineers as well as sets of drawings, and the drawings were
25 delivered within an hour with the engineers, and we started

1 working with the Fire Department on locating systems and
2 emergency response and rescue.

3 Q Shortly after you went down to that location,
4 what was the status of the heat, power, light, and water in
5 the complex?

6 A I ascertained from my chief of plans and
7 structures as to what the conditions were of the vital
8 building systems and services. He said that, of the eight
9 feeders that feed the World Trade Center, and they are at
10 high-tension voltage, 13.8 kilovolts of electricity coming
11 in, which is the same voltage level that you see on these
12 transmission lines, it was ascertained that in fact --

13 MR. BERNSTEIN: Objection; hearsay.

14 THE COURT: Sustained.

15 A Four of the feeders had been severed.

16 MR. BERNSTEIN: Objection; hearsay.

17 THE COURT: Sustained. Don't tell us what they
18 told you.

19 Q Did there come a time when you actually made
20 entry into the World Trade Center itself, the subground
21 area?

22 A Yes.

23 Q Was that on the same day?

24 A Yes.

25 Q And who did you go with?

1 A I had gone down with one of the fire chiefs,
2 originally went down the Vista ramp, auto ramp, where I
3 could, you could see the area involved, the crater, and then
4 came back up because I wanted to get a sense of scope of
5 what we were dealing with. I later went down with the
6 executive director at 4 o'clock and did a larger survey of
7 the area as to what we had.

8 Q When you went down into the area, was there any
9 light, was there any light generated by the World Trade
10 Center lighting systems itself?

11 A At the time that I went down initially, there
12 was. The second time there was not, because I had directed
13 that all of the power be cut to the Trade Center at the
14 request of the Fire Department.

15 Q What about the pipe systems? What did you
16 observe about the piping systems when you were down there?

17 A We had various systems serving the Trade Center,
18 including high-pressure steam. The branch lines from the
19 high-pressure steam had been compromised and severed. I had
20 also at that point, in terms of the utility, directed Con
21 Edison to cease steam to the Trade Center. It is at high
22 temperature, superheated high-pressure steam. There is no
23 gas to speak of that services the Trade Center. We were not
24 concerned about natural gas.

25 The domestic water lines were severed and openly

1 pouring water into the crater area or the sub-basement area.
2 There is a 60-inch river waterline, literally a five-foot
3 diameter line, that services the chillers that are used for
4 air-conditioning and heat exchange for the Trade Center.
5 The branch line from one of the chillers had been physically
6 pushed down, and that is a 24-inch line had been physically
7 driven down through the 60-inch line. The 60-inch line had
8 been compromised. Power to the substation, power to the
9 pump station, out by the river had been terminated at the
10 time of the explosion by virtue of the feeder being severed,
11 so we were fortunate that we weren't pumping water through,
12 but the river was feeding gravity water into the subgrade.

13 The sprinkler system in the building is serviced
14 by 10,000-gallon tanks located at the MER's in the three
15 zones of each of the towers, and there are approximately six
16 of those tanks. Those lines, interconnecting lines in the
17 basement of the Trade Center subgrade, had been compromised
18 and breached and those tanks emptied. About 60,000 gallons
19 of water that emptied. The domestic service lines that
20 service the Trade Center, and those lines are under high
21 pressure to be able to feed a tower of that size, had also
22 been severed, and large amounts of water again were being
23 fed into that area.

24 The sanitary lines, some of them had been
25 breached and compromised and in fact were feeding into the

1 subgrade.

2 And the Fire Department had poured a good deal of
3 water into the area to get on the fire and contain it and
4 extinguish the fire and the spread of smoke.

5 Q Let me approach you with what has been premarked
6 as Government Exhibit W514.

7 Government Exhibit W514 is an exhibit that you
8 have seen before?

9 A Yes, it is.

10 Q And is this a computer-generated draft of the
11 Trade Center, the World Trade Center complex?

12 A Yes, it is.

13 Q And is it a cutout which shows what you can see
14 if you looked through some walls and see the internal part
15 of the building?

16 A Yes, it is a cross-section, computer-generated
17 cross-section of the various levels of the Trade Center cut
18 through at the area of south of the north tower.

19 Q Is it a fair and accurate depiction of what you
20 could see if you could do a cutout and just look into the
21 side of the building before the explosion on February 26?

22 A Yes, it is. At that location it fairly and
23 accurately depicts the configuration of the Trade Center at
24 its various levels.

25 MR. FITZGERALD: Your Honor, the government would

1 offer this exhibit, Government Exhibit W514, for
2 demonstrative purposes.

3 MR. STAVIS: Just one voir dire question.

4 VOIR DIRE EXAMINATION

5 BY MR. STAVIS:

6 Q You had indicated that you had seen that exhibit
7 before?

8 A Yes.

9 Q Was that exhibit seen by you at the first World
10 Trade -- excuse me -- at the World Trade Center trial?

11 A That's correct.

12 MR. STAVIS: I have no objection, your Honor.

13 THE COURT: Anybody else? W514 is received and
14 can be used for demonstrative purposes.

15 (Government Exhibit W514 was received in
16 evidence.)

17 Q If I can ask you to step down one more time.

18 If you can try to use the microphone, although
19 you don't seem to need it, and just describe to us what the
20 different levels are below ground of the World Trade Center.

21 A Yes, I will. Actually, in looking at this
22 exhibit, the cut-through is east of the hotel, and the hotel
23 would actually be west of this, so the hotel is not depicted
24 on the exhibit.

25 At the plaza level --

1 Q Would you just stand back a little bit from the
2 microphone. You have a very good voice. It gets too good
3 with the microphone.

4 A At the plaza level, which we call the plus 32
5 elevation, it is 32 feet above street level.

6 THE COURT: Now, unfortunately, the translators
7 can't hear you.

8 A At the plaza level we have an open air plaza at
9 this location, and what is contained here is entrances to
10 the mezzanine levels of One and Two World Trade Center,
11 which is one level above what is the lobby level of the
12 Trade Center.

13 At the Church Street entrance, which is the
14 street which borders on the east of the Trade Center, the
15 plaza level is at street grade. And because Manhattan
16 Island falls off as you come across, it actually drops down.

17 The next level below that is what we call the
18 concourse level, which is actually the street level at the
19 west side entrance to the World Trade Center. And that
20 concourse level contains various facilities. That concourse
21 level is the level where the shopping mall is located. And
22 what you are looking at here, actually, is an area where at
23 the concourse level we have what is called the prefunction
24 room, the prefunction room for the hotel. And outside of
25 the prefunction room just south of it is the main ballroom

1 of the hotel, and then the entrances to the hotel
2 themselves.

3 In addition to the concourse level, below that,
4 at the B1 level, what we call the 294 level, is the basic
5 building services and offices of the World Trade Department.

6 Within this area just north of the area that you
7 are looking at, the cutout below grade in the tower itself,
8 within the four walls of the tower, are the administrative
9 offices for my operations people.

10 In addition to that, you have the ramp which
11 comes off of West Street to the hotel, feeding that area for
12 parking at the B1 area for the hotel. There is public
13 parking under the hotel at the time at the B1 level. The B1
14 level also contains areas of storage for tenants, and the
15 area north of Tower One at the B1 level, the Customs House,
16 is the area used by U.S. Customs for various operations
17 storage, etc.

18 At the B2 level we have principally public
19 parking in the areas outside of the two towers. The areas
20 outside of the two towers within that bathtub area, the B1
21 level was the area for public parking, public transient
22 parking, and that contained approximately, at that point in
23 time, we had capacity for about 2,000 cars for parking in
24 the World Trade Center, of which about a thousand to 1,200 a
25 day were daily transient public parkers and about 800

1 monthly parkers. The B1 level was used essentially for
2 public daily transient parking, and most of the area at the
3 B1 area was used for that.

4 The B1 level was also the level that the ramps
5 from West Street connected to, so that cars could get in and
6 out of the World Trade Center parking area.

7 The B1 level also contained, in an area just east
8 of the parking facilities, it contained the truck dock, the
9 major truck dock, which was fed from a ramp over Barclay
10 Street, and which deliveries to the Trade Center were made.
11 We had close to a thousand trucks a day coming into the
12 Trade Center.

13 It also contained the operations control center,
14 which was the heart of the operations at the World Trade
15 Center, the police desk, and the emergency situation room
16 were contained just east of this area at the B1 level.

17 The B2 level also contained parking. The B2
18 level was essentially for parking of monthly tenants, spaces
19 that were rented on a monthly basis by the tenants
20 themselves. In the B2 level, as you go east, you will also
21 find the mezzanine of the Path railroad system, which is the
22 fare collection zone as you go down the escalators of the
23 World Trade Center into the zone that is where the
24 escalators would let you alight, and where you pay your
25 fares at the turnstile level.

1 The B2 level also constitutes the roof for the
2 vaulted area where the refrigeration equipment is contained.
3 There are seven 7,000-ton units of refrigeration capacity in
4 the World Trade Center at that location. Generally they
5 give you perspective usually of 1 thousand or a one-ton unit
6 will air-condition a house. These were seven 7,000-ton
7 units. And that was contained within this vaulted area.
8 The vaulted area actually went from B2 to B5, to these large
9 refrigeration machines.

10 Within that vaulted box area just east of it was
11 the platform level at the B4 level and the track level at
12 the B5 level -- the B6 level, excuse me.

13 The B6 level contained what we called the pipe
14 gallery, and that is where all of your piping, where your
15 river waterline came in, where the emergency generators
16 were, where your main steam lines came in, where really the
17 heart of the services, the utility services, came in and fed
18 the complex. And scattered throughout the subgrade area
19 here were mechanical equipment rooms, transformer rooms,
20 switch gear rooms, fan rooms, and the like, that we used to
21 operate the complex.

22 Q You mentioned that there were 2,000 cars parked
23 there per day.

24 A A capacity of 2,000 cars.

25 Q What was the volume of people going through the

1 Twin Towers on a daily basis?

2 A The complex housed about 50,000, or houses about
3 50,000 employees, and in addition to that 50,000 employees,
4 we have about 80,000 visitors for various and sundry
5 reasons, both business visitors that are coming to the
6 facility to make use of the business offices, whether it be
7 international banking or trade or cargo forwarding or marine
8 insurance or whatever it may be.

9 We have tourists, of course, that come to the
10 Trade Center and go to the observation deck, and we have
11 commuters that come through. Generally the population at
12 the World Trade Center at its peak, at that peak point of
13 time, could be as high as 130,000, and we have about 80,000
14 commuters that come through the transportation facility
15 every morning and every night, about 25,000 from Path and
16 about 55,000 to 60,000 that use the subway system and come
17 through the complex as a transit facility.

18 THE COURT: Mr. Fitzgerald, would you come to an
19 appropriate break point.

20 MR. FITZGERALD: This is it.

21 THE COURT: Ladies and gentlemen we are going to
22 take a break. Please leave your notes and other materials
23 behind. Please do not discuss the case. We will resume in
24 a few minutes.

25 (The jury left the courtroom.)

1 MS. AMSTERDAM: Your Honor, I have a doctor's
2 appointment this afternoon, and I will be leaving about ten
3 after 4. My client has consented to have Mr. Ricco
4 represent him for the balance of today's proceeding. That
5 is acceptable to Mr. Ricco.

6 THE COURT: Is that satisfactory to you,
7 Mr. Khallafalla?

8 THE DEFENDANT: Yes.

9 THE COURT: Thank you. A short break.

10 (Recess)

11 (Pages 8536 through 8539 were sealed by order of
12 the court)

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1 (In open court)

2 THE COURT: I mentioned this to some of you in
3 the robing room just now, and I will mention it to the rest
4 of you out here: I thought some more over the break about
5 Ms. Amsterdam's suggestion about sequestration, and I
6 continue to believe that that is ill-advised for a variety
7 of reasons.

8 First of all, to put them in a closed ended
9 sequestration, that is, we are going to sequester you for a
10 week or ten days or something of that sort is something that
11 we don't know if we could comply with. If the reason for
12 the sequestration continues to hold, we don't know what
13 events are going to develop.

14 Secondly, an unwarned sequestration, particularly
15 in a case like this, even if it were accompanied by all
16 sorts of disclaimers, would create an impression about the
17 personal safety of these jurors, that is, as far as I can
18 tell totally unwarranted, and would be very, very
19 disruptive.

20 It would generate in my estimation exactly the
21 kind of prejudice that we all want to avoid. I think the
22 best response to an event of this kind is to try to continue
23 as much as possible to do what we have been doing up until
24 now, and to try to remain as much the same as we have
25 before, with a pointed instruction about not looking at

1 reports of the event, and not discussing the event for
2 reasons that we talked about before.

3 I have revised the instruction to enhance it in
4 the ways that we talked about before, and that is the
5 instruction that I am going to give at the close of business
6 today, including a description of the reasons for not
7 discussing things that Ms. Stewart suggested.

8 Again, we are dealing with reactions and events
9 that none of us can predict, and it is a question of
10 exercising your best judgment. This is my best judgment.
11 And my best judgment about minimizing the prejudice is to
12 try to go ahead and remain as much the same after this event
13 as we were before with an appropriate instruction aimed at
14 making sure that they don't sit and wallow in it.

15 With that, let's get them back and continue.

16 Mr. Bernstein?

17 MR. BERNSTEIN: Your Honor, I am maintaining my
18 position for the sequestration.

19 THE COURT: I assume that everybody that took the
20 position before is unmoved by what I just said. If there is
21 anybody who is moved, they may feel free to speak, but I
22 assume we are not going to here from anybody.

23 MR. BERNSTEIN: I also have an 403 objection to
24 the testimony that is going to come in under the
25 circumstances previously described. I think it reaches the

1 point where the jury may have heard enough and the
2 photographs only add to what the jurors are going to see at
3 home tonight, and I renew my 403 objection on those grounds.

4 THE COURT: The 403 objection is overruled.

5 CHARLES J. MAIKISH, resumed.

6 (Jury present)

7 THE COURT: OK. Are you ready to continue, Mr.
8 Fitzgerald.

9 DIRECT EXAMINATION (Continued)

10 BY MR. FITZGERALD:

11 Q Mr. Maikish, when we broke, we had just reviewed
12 the cutout chart. Could you describe to the jury on
13 February 26, 1993 when you went down below ground what you
14 saw.

15 A On the first entry to the below-grade area
16 through the ramp from the Vista early on, because of the
17 lack of lighting and smoke, there wasn't that much I could
18 see other than the fact that much of the below-grade slab
19 had disappeared.

20 When I went down with the executive director, we
21 went down the B-1 stairwell, which is in the center of Tower
22 One down to the B-2 level. At the B-2 level within the core
23 of the tower are the shops, the mechanical shops, as well as
24 the lunch room on the south side of that tower and the fan
25 control room.

1 When I exited the B-1 stair, which is in the
2 center of the tower, to my left I saw that the walls of the
3 various rooms to the left of me were gone and the rubble was
4 piled 6 to 8 feet high at that point in that area. We had
5 temporary lighting in, temporary emergency lighting in and
6 lamping in. We were already engaged in some recovery
7 efforts.

8 I walk around the inside of the tower to an area
9 where my car had been formerly parked and noted that the
10 walls had been collapsed down on my car itself.

11 As I turned left to where the ramp is that exits
12 out of the Trade Center from the B-2 level, you could see
13 what we referred to as the crater. We had that area lit at
14 that point in time, fairly well lit with some flood lighting
15 and some temporary lighting and generators.

16 What I saw at the time amazed me, the extent of
17 the amount of destruction and damage. All of the, or most
18 of the international telephone lines for lower Manhattan
19 traverse that area of the Trade Center and they are in what
20 we call large duct banks of lines. They were down. They
21 had collapsed off of the B-1 ceiling and had come down and
22 they were twisted. We walked through that to the edge of
23 the crater, which was at the westerly end.

24 The slabs had collapsed all the way down into the
25 refrigeration rooms. The chillers themselves were covered

1 to their tops, and these stand 15 to 20 feet tall. They
2 were literally buried in concrete debris and rubble.

3 There were cars that were tossed against the back
4 wall and literally tossed one on top of the other, and
5 various pieces of the building infrastructure -- duct banks,
6 water lines -- had come down on cars. There were cars in
7 the hole itself, and there was material hanging from the
8 ceiling, pieces of pipe, conduit runs, duct bank runs,
9 wiring runs that had been there before which were now
10 hanging down rather precipitously.

11 The block wall which formed the south face of the
12 tower which separated the tower steel from the rest of the
13 below-grade area, those block walls all the way down for the
14 five levels were blown through and gone so that the bare
15 steel was exposed at that point in time.

16 During the construction of the Trade Center, all
17 of that steel had been given block walls as fireproofing,
18 concrete block walls. That concrete block wall for the
19 entire depth and length was gone.

20 The auto ramps were gone. They had collapsed
21 down. Various personnel at that point were doing what was
22 called secondary search for survivors and secondary search
23 of the area, Emergency Medical Services was there and
24 various law enforcement.

25 Q What could you hear?

1 A I could hear the sound of generators, emergency
2 generators. I could hear the sound of water. We went down
3 further. I went down into the chiller plant, and we had
4 restored some power at that point. The water was mid-calf
5 at the chiller plant at the B-5 level. The B-6 level, which
6 is the gallery, the pipe gallery, was totally flooded. We
7 pumped close to 3 million gallons of water out of there that
8 weekend to try to restore some systems.

9 I recollect walking through and being cautious
10 because the electrical switch gear had been energized and I
11 literally did not want to make waves because of the presence
12 of the water, but we needed to get power back for search and
13 rescue. We did that.

14 Q Did you see the bottom of the elevator shafts?

15 A Yes. When I indicated that whole wall, the
16 southerly wall of the tower had been blown out, the core
17 section of the tower, the very center of the tower at the
18 B-2 level is the bottom of the elevator shafts. Those
19 elevator shafts again are fireproofed, and they have block
20 walls around them and they are sealed.

21 In fact, they usually have airtight doors in them
22 because of the stack effect in the tower, the ability to
23 keep air from moving up those elevator shafts. Those walls
24 were gone, and the elevator shafts were open. The elevator
25 shafts were wide open.

1 Q What was happening in the elevator shafts?

2 A Well, controlling the smoke in the complex became
3 very difficult because of the fact that the crater itself
4 was like a large fire box with various cars and other
5 material of fire, and that smoke would go up the elevator
6 shafts like a natural flue into the tower itself, and the
7 smoke rose very rapidly in the tower. In fact, the first
8 reports of smoke were at the very top of the tower. So the
9 smoke went up the through the elevator shafts and then came
10 back down.

11 Q How big was the crater?

12 A It was half the size of a football field.

13 Q Let me approach you with what's been premarked as
14 Government Exhibit W553.

15 Have you seen this exhibit before?

16 A Yes, I have.

17 Q Does this fairly and accurately depict the crater
18 area in the days following the explosion on February 26?

19 A Actually, it fairly and accurately depicts the
20 crater very soon after the event. None of the temporary
21 steel bracing is in. That started going in on Saturday
22 morning.

23 MR. FITZGERALD: Your Honor, I would offer
24 Government Exhibit W553.

25 MR. STAVIS: Objection, your Honor, for the

1 grounds previously stated.

2 THE COURT: All right. That objection is
3 overruled. 553 will be received.

4 MR. FITZGERALD: If you could just step down one
5 more time, please.

6 THE WITNESS: Sure.

7 (The witness left the stand)

8 Q If you could just use this exhibit to explain
9 where this view is from and the extent of the damage that
10 you saw.

11 A The view is from the south side of Tower One,
12 these bays are approximately 30 foot in length so that you
13 are back almost a hundred feet back from the south of the
14 tower wall of Tower One. You are looking at the tower wall
15 at the B-2 elevation. This is the B-2 elevation. B-1 is
16 directly above it.

17 What you see here is the slabs having collapsed
18 from their column supports. What I mean by that is that the
19 way the Trade Center was constructed, the area outside the
20 two towers, is that steel columns were erected and then
21 concrete was poured between the steel columns and tied into
22 the steel columns through what we call a sheer connection at
23 these places. The force of the blast collapsed these
24 concrete floors, severing the connections at the columns.
25 That left the columns unsupported in a horizontal fashion.

1 Our principal concern was the structural
2 integrity of the hotel which stood above this. You can see
3 at the top here where the slab actually was lifted off of
4 what we call the sheer heads. It never came back down to
5 rest. The blast went all the way up through to the plaza
6 level, two levels, and went down five levels.

7 The intensity of the blast was greatest at this
8 area, the south perimeter of the tower itself. The reason
9 that we know that is that there is wind bracing in here. It
10 is an X brace. You can see this X brace in here. This
11 segment of the X brace was literally ripped off its weld
12 connections, it weighed about 14,000 pounds, and was hurled
13 through the lunch room and the lunch area where my staff
14 was.

15 The chillers that I explained before, you can
16 just barely see the top of the chiller vessel here. That
17 chiller vessel stands about 20 feet in height off the floor.

18 So, literally, the chiller refrigeration room was
19 filled with concrete and rubble debris.

20 This on the left here is the remains of what was
21 an automobile. These are automobiles as shown in the
22 picture here.

23 You can see the pieces of infrastructure, the
24 conduits and other things that serviced the Trade Center.
25 You can see them hanging. You can see how they were

1 impacted by this.

2 This is pretty much how it looked that evening.
3 It was floodlit. We had run some temporary lines and got
4 some electrical power down there. There are two automobile
5 tires shown in the left-hand corner. They were literally
6 ripped off the vehicles. Of course, in the front you see
7 the remains of some of the conduit that I had talked about
8 before.

9 Q Where was this situation room you discussed

10 A The situation room was actually up at this level
11 here, and it was east of this photograph. This photograph
12 only shows about a quarter of the crater. With the angle of
13 the lens, I couldn't get the full crater. The crater
14 actually extended far out, and the situation room was to the
15 left of this. The situation room had been taken out in the
16 blast, too, as well. The back of the police desk was taken
17 out, including the captain's room office and the lieutenant,
18 the lieutenant was actually buried in his office.

19 The staff operations room was at the B-2 level
20 right in here, and there was a lunch room in that area,
21 there was a fan control room, and there were shops,
22 mechanical shops, welding shops, painting shops, located at
23 the B-2 level.

24 Q Let me direct your attention back to the chart,
25 Government Exhibit W514.

1 Using that diagram, if you could show what slabs
2 and what walls were removed by the blast.

3 A The photograph that you looked at, you would have
4 been standing here and looking at the north tower, the face
5 of the north tower wall. The chiller I pointed out would
6 have been one of these chillers here.

7 You were standing here looking at this slab gone,
8 collapsed into the B-5 level. You were looking at the B-1
9 slab. Actually there was a section of the B-1 slab that was
10 blown out. There was a section of the concourse slab that
11 was blown out, and the plaza slab itself was breached. It
12 was actually -- it wound up bowing and it wound up with a
13 hole in it as well.

14 So that you are standing here looking at that
15 crater, that damage with the intensity of the damage being
16 focused in this area south of the tower.

17 This area here along the south wall of the tower
18 was the ramp which came back up to West Street, where cars
19 would exit the World Trade Center from the public parking,
20 excuse me, at the B-2 level.

21 Q Directing your attention to the walls going up
22 and down, which walls were taken out by the blast?

23 A The whole -- all of the walls along the south
24 face of the tower and the elevator pit walls and the office
25 walls, the demising walls were gone inside the tower.

1 In this direction, all of the walls were taken
2 out in the various rooms right to the southwest corner of
3 the hotel. The laundry room was destroyed. The locker room
4 for the employees, those walls were taken down. The
5 mechanical equipment room, the refrigeration plant for the
6 hotel itself, all of that was contained at the B-2 level in
7 this area under the hotel itself, which would have been in
8 here so that numerous block walls throughout the entire
9 length and in this direction, the wall which serves as the
10 partition wall between the subgrade area and the PATH
11 station, that wall collapsed into the PATH station. The
12 area of public occupancy that first reported the damage was
13 the PATH station where the ceiling collapsed and the walls
14 collapsed.

15 Q OK. If you could resume your seat, please.

16 (The witness resumed the stand)

17 Q Were you involved in the rebuilding effort after
18 the blast?

19 A Yes. I was principally responsible for the
20 recovery and reconstruction of the World Trade Center along
21 with the executive director and the chief engineer.

22 Q When were the repairs to the World Trade Center
23 substantially complete?

24 MR. JACOBS: Objection. 403.

25 THE COURT: Sustained.

1 Q Can you just give us an estimate in financial
2 terms, dollars, of the --

3 MR. JACOBS: Objection 403.

4 MR. STAVIS: Objection.

5 THE COURT: Overruled.

6 Q Can you give us a dollar estimate of the cost of
7 the repairs and the lost revenue as a result of the
8 explosion on February 26?

9 A Yes.

10 MR. JACOBS: Objection.

11 THE COURT: Overruled.

12 A The expenditure to date for physical
13 reconstruction is approaching \$350 million. The future
14 planned expenditures for future --

15 MR. STAVIS: Objection to this portion of the
16 answer, your Honor.

17 THE COURT: Overruled.

18 A The future planned reconstruction effort that is
19 required to restore the Trade Center is estimated at another
20 \$150 million, to bring the total for physical reconstruction
21 and system restoration to approximately \$500 million.

22 The lost revenues associated with the Trade
23 Center involved approximately \$50 million in lost revenues
24 directly to the Trade Center operation, another \$25 million
25 of expenditure in temporary tenant relocation --

1 MR. BERNSTEIN: Objection, hearsay.

2 THE COURT: Overruled.

3 A -- that the Port Authority paid for in relocating
4 tenants out of the Trade Center and then back in.

5 The Port Authority itself did an economic impact
6 study of the ancillary damages that other businesses
7 suffered as a result --

8 MR. STAVIS: Objection as to the ancillary study,
9 your Honor.

10 THE COURT: That is sustained.

11 MR. FITZGERALD: I have nothing further, Judge.

12 THE COURT: Cross?

13 MR. STAVIS: No cross-examination, your Honor.

14 MR. JACOBS: I reserve an application with
15 respect to this witness, your Honor.

16 No cross, Judge.

17 THE COURT: Ms. London?

18 MS. LONDON: No, your Honor.

19 THE COURT: You are excused. Thank you.

20 (Witness excused)

21 MR. FITZGERALD: The government calls Paul
22 Maniscalco.

23 MR. STAVIS: I would just make the same objection
24 that I had previously made with regard to Mr. Maikish.

25 THE COURT: Right.

1 MR. STAVIS: Under Rule 403.

2 THE COURT: That objection is overruled.

3 MR. STAVIS: Your Honor, may we have a brief side
4 bar?

5 THE COURT: Sure.

6 (At the side bar)

7 THE COURT: Yes.

8 MR. STAVIS: Your Honor, I just wanted to alert
9 the court, when I made a 403 objection, which was very
10 brief, as to Mr. Maniscalco, what he does is, he has
11 written, the 3500 material contains a report which sums up
12 the amount of dead, the amount of injured, the amount of
13 ambulances, who was transported.

14 MR. PATEL: Can I cut to the chase?

15 THE COURT: What is the chase?

16 MR. PATEL: He is the EMS --

17 THE COURT: Ubergruppen fuhrer?

18 MR. PATEL: Exactly, Judge. That is exactly what
19 he is. It is the body count.

20 THE COURT: It is the macro. OK.

21 What is the objection?

22 MR. STAVIS: The objection is under Rule 403.

23 The jury knows there was devastation. The jury knows all of
24 this. This is, as I stated previously today on the record,
25 one overt act out of 106. They know there was damage and

1 devastation, your Honor. This is just a body count, and I
2 think and I submit to the court under Rule 403 that under
3 the balance, probative versus prejudice, this is extremely
4 prejudicial. It should be kept out for that reason.

5 MR. PATEL: How many ambulance runs there were
6 doesn't -- it seems that the statistics of it, it gets
7 distorted in this case, which is really about something
8 else.

9 THE COURT: Do you have to do ambulance runs?
10 Can you just do the number of people who were injured?

11 MR. FITZGERALD: The number of ambulances, the
12 number of injured, he will be less than ten minutes. He has
13 to catch a plane to Oklahoma.

14 THE COURT: OK.

15 MR. PATEL: You are not going to bring that out,
16 are you?

17 THE COURT: No. You are not going to bring that
18 out.

19 (Continued on next page)

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1 (In open court)

2 PAUL MANISCALCO,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 THE COURT: Excuse me, Mr. Maniscalco, could you
6 move the microphone up or move your chair up or both and try
7 to talk into it. It is a directional mike. If you talk
8 right into it, they will be able to hear you.

9 THE WITNESS: This one?

10 THE COURT: You can talk into either one as long
11 as you talk into one of them.

12 DIRECT EXAMINATION

13 BY MR. FITZGERALD:

14 Q Deputy Chief Maniscalco, I will be brief.

15 Just tell us your job title.

16 A I am the commanding officer of the Special
17 Operations Division for New York City Emergency Medical
18 Service.

19 Q Did you participate in the response to the blast
20 at the World Trade Center on February 26, 1993?

21 A That's correct.

22 Q What was your role?

23 A I was the incident commander for the Emergency
24 Medical Service.

25 Q Did you set up different divisions at the

1 location?

2 A That's correct.

3 Q Ultimately, how many different divisions did you
4 set up?

5 A A total of six divisions were required to manage
6 this event.

7 Q Each division was basically run by itself?

8 A A division is representative of a geographic
9 area. Each of those divisions has what are called sectors,
10 which are the functional areas.

11 So at the six different divisions, which were One
12 World Trade Center, Two World Trade Center, Vista Hotel,
13 Five World Trade Center and Vesey Street, as well as the
14 Winter Garden operations, each of these geographic divisions
15 had triage treatment and transport sectors to tend to the
16 injured.

17 Q What did the triage sector do?

18 A Triage is a medical term for the sorting and
19 prioritization of patients so that we can get the most
20 effective care to the most injured patients.

21 The treatment section speaks for itself.

22 Treatment is where emergency medical care is rendered.

23 Q In addition to the divisions that you set up at
24 those locations that you described, were there forward
25 triage areas set up at the World Trade Center itself?

1 A That is correct. On the 43rd and 33rd floors of
2 the One and Two Towers, we had set up forward triage points
3 because of the sick patients.

4 Q Can you give the jury an estimate of how many
5 ambulance and emergency-type vehicles responded to the
6 incident.

7 A We had over 200 pieces of apparatus from around
8 the New York/New Jersey area that responded.

9 Q Where did those ambulances come from?

10 A New York City EMS, we held over tours so we could
11 mobilize every piece of equipment that we had. We brought
12 units in from volunteers in New York City. We had units
13 that were commercial or proprietary ambulances, as well as
14 New Jersey brought a significant number of resources in.

15 Q Is there a mutual aid agreement between New York
16 and New Jersey?

17 A That's correct. We have a mutual aid agreement.

18 Q That means you respond to each other's
19 emergencies, if necessary?

20 A In times of catastrophic events when the system
21 becomes overwhelmed, we have an agreement to share resources
22 to manage those events.

23 Q How many times before this had you used New
24 Jersey ambulances?

25 A Never. This is an historic event for us.

1 Q How many patients were treated under the command
2 of EMS at the scene on that day?

3 A Well, that is somewhat of a problem. We have
4 1,043 patients that we treated that we have documents for,
5 but the transient nature of the population --

6 MR. PATEL: Objection, your Honor.

7 THE COURT: Sustained.

8 Q The 1,043 number, does that include anyone who
9 went home and got treated separately from EMS?

10 A No.

11 MR. PATEL: Objection.

12 THE COURT: Overruled.

13 Q Let me show you what's been premarked as
14 Government Exhibit W525. Is this a photograph you have seen
15 before?

16 A That's correct.

17 Q What is this a photograph of?

18 A This is probably one or two o'clock in the
19 afternoon on February 26 at the World Trade Center bombing.
20 You have fire department apparatus, police department, EMS
21 operations are set up here. The patients are being funneled
22 from both of these points into a transport area. It depicts
23 a very chaotic scene that we were confronted with.

24 Q Is this a fair and accurate depiction of the
25 scene around the World Trade Center on February 26, 1993 in

1 the early afternoon?

2 A Yes, this is it. This is the picture.

3 MR. FITZGERALD: I would offer W525, your Honor.

4 MR. JACOBS: The previous objections have been
5 noted, I believe, your Honor.

6 THE COURT: Same ruling. W525 is received. Go
7 ahead.

8 (Government's Exhibit W525 for identification was
9 received in evidence)

10 MR. FITZGERALD: May I briefly display it to the
11 jury, your Honor?

12 THE COURT: You may, briefly.

13 (Government's Exhibit W525 for identification was
14 displayed to the jury)

15 Q Just two more questions, Chief Maniscalco.

16 In addition to the 1,043 patients that were
17 treated for injuries, how many fatalities occurred during
18 the blast?

19 A There were a total of six deaths that were
20 attributed to this event.

21 Q How many years are you with the EMS?

22 A Seventeen years.

23 MR. FITZGERALD: Nothing further, Judge.

24 THE COURT: Cross?

25 MR. STAVIS: No, your Honor.

1 THE COURT: You are excused. Thank you.

2 (Witness excused)

3 THE COURT: May I see counsel briefly at the
4 side.

5 (At the side bar)

6 THE COURT: This is simply to inquire about
7 whether you have something you can do for five or ten
8 minutes.

9 MR. McCARTHY: I apologize. I let the last
10 witness go because he had a home situation. I thought we
11 would be well past five o'clock. My error.

12 THE COURT: All right. Then we will break for
13 the day. I am going to give the instruction that I
14 described before. I am not going to mention children
15 specifically.

16 MR. WASSERMAN: Will you mention the number of
17 dead?

18 THE COURT: No. Because that is not verified. I
19 am simply going to say that there were many deaths.
20 Putting a number on it at this point I think is a mistake.
21 I understand about pulling the teeth. This is my devil's
22 compromise between that and becoming a living tabloid
23 headline, which I don't want to do.

24 (In open court)

25 THE COURT: Ladies and gentlemen, we are going to

1 break for the day. Before we break, I want to tell you that
2 when you go home tonight you will likely hear television and
3 radio reports about an event that I should discuss briefly
4 with you.

5 This morning a bomb exploded at a federal
6 building in Oklahoma City, causing substantial damage and
7 many deaths. In the coming days there's bound to be a great
8 deal of speculation in the media about who is responsible
9 for that bombing, speculation about similarities between
10 that event and events described in this courtroom, and
11 speculation about whether that event has any connection with
12 this case.

13 I want to remind you that you took an oath at the
14 start of this trial to decide this case based on the
15 evidence presented in this courtroom. That explosion is not
16 part of the evidence presented in this courtroom, and it is
17 not part of this case. Therefore, it has nothing to do with
18 this case and may not play any part in your decision about
19 the facts of this case.

20 I am going to assume that all of you and each of
21 you can continue to live up to your oath unless any of you
22 gives me a reason to think otherwise.

23 In order to make sure that you can continue to
24 live up to your oath to decide this case based only on the
25 evidence presented here, I want to ask you particularly

1 tonight and in the coming days not to listen, to the extent
2 you can avoid doing so, to any news report about the events
3 in Oklahoma City and not to read about it.

4 I say "to the extent that you can do so"
5 advisedly. You may not be able to avoid seeing or hearing
6 something. But I do not want you to listen to or to see
7 things in any extended fashion. I also request that you not
8 discuss the events in Oklahoma City with anyone on the
9 outside, including anybody at home or among yourselves, just
10 as I have told you that you should not discuss this case
11 with anyone on the outside or among yourselves. That is an
12 instruction that I have given you over and over again, and
13 it may be that you have heard it so often that you have
14 stopped listening when I give it. That happens. But please
15 understand that there is a good, sound reason for that
16 instruction.

17 As you hear facts proved in a courtroom, it is
18 natural for you to develop opinions, and it is also natural
19 for those opinions sometimes to change as you hear new or
20 additional facts. If you discuss things with others and in
21 the course of those discussions you express an opinion, then
22 it becomes harder to change your opinion than it would be if
23 you had not expressed it. As a matter of human nature, it
24 is easier to change an unexpressed opinion than it is to
25 change an expressed opinion. So, again, please do not

1 discuss either this case or the events in Oklahoma City with
2 anyone.

3 I may have occasion to talk to you further about
4 this at a later date, but let me leave you with this
5 thought: We live in a society that is governed by laws.
6 The only appropriate response to lawlessness is the
7 application of those laws. Our obligation under the law --
8 and by "our" I mean your obligation, my obligation and the
9 obligation of the lawyers here -- is to try this case
10 according to the rules. All the parties here, the
11 government and each of these defendants, have a right to
12 have this case decided based only on the evidence that is
13 presented in this courtroom.

14 Your duty under the law is to decide the case
15 based only on the evidence presented in this courtroom. It
16 would be lawless for any of us to let this event deter us
17 from doing what each of us is legally obligated to do.

18 With that I will wish you a pleasant evening. We
19 will see you tomorrow at 9:30. Good night.

20 (Jury was excused)

21 (In open court, jury not present.)

22 THE COURT: Mr. Bernstein.

23 MR. BERNSTEIN: One short matter. I have a
24 problem regarding being here tomorrow morning. I have
25 deputized, with her permission, Ms. Stewart to stand in for

1 me, given that we stand along the same lines on what may
2 come up regarding sequestration. In other words, if based
3 upon what happens tonight there are issues in the morning,
4 she and I are on the same side.

5 THE COURT: OK. Mr. Amir Abdelgani, do you
6 understand what Mr. Bernstein just told me?

7 DEFENDANT AMIR ABDELGANI: Yes.

8 THE COURT: Is that acceptable to you?

9 DEFENDANT AMIR ABDELGANI: Yes.

10 THE COURT: Thank you very much.

11 MR. BERNSTEIN: Thank you, Judge.

12 THE COURT: OK. See you tomorrow.

13 (Proceedings adjourned to April 20, 1995 at 9:30
14 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

April 20, 1995
9:30 p.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

District Judge

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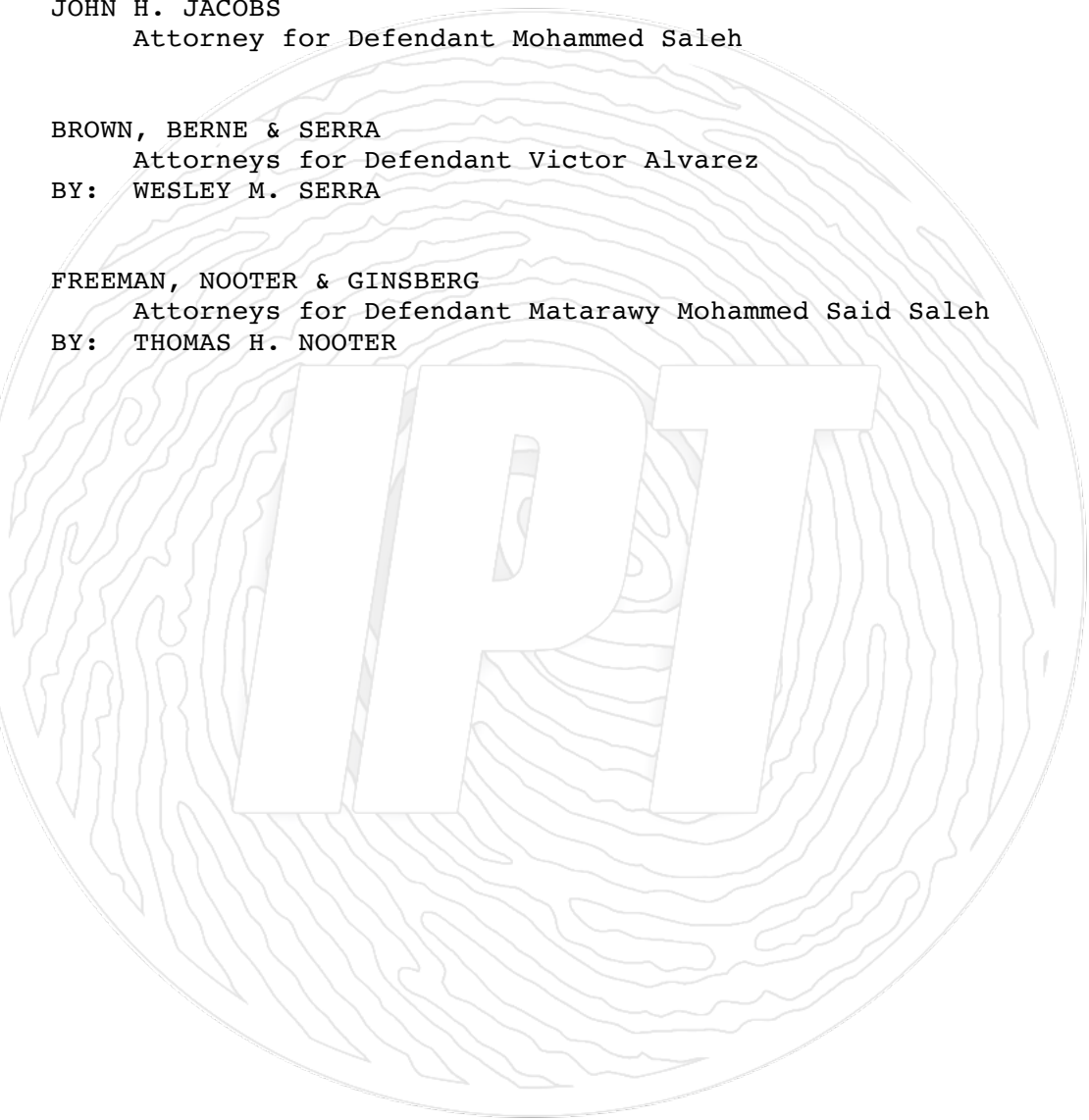
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1 (In open court; jury not present)

2 THE COURT: Good morning. Mr. Ricco?

3 MR. RICCO: Yes, your Honor. Mr. El-Gabrownny has
4 an application to not sit for this morning's proceedings --
5 today's proceedings, and he has asked the court for
6 permission to go back to the MCC so he can get rest.

7 He is willing to waive his appearance up until
8 the testimony of Detectives Corrigan and Burke, and I have
9 spoken to the government and it appears as though we can get
10 through a great deal of today's work without their testimony
11 today. He is prepared to sit tomorrow for purposes of being
12 here for that tomorrow.

13 THE COURT: Do you understand what Mr. Ricco just
14 told me, Mr. El-Gabrownny?

15 DEFENDANT EL-GABROWNY: Yes.

16 THE COURT: You are willing to waive under those
17 circumstances?

18 DEFENDANT EL-GABROWNY: For today, your Honor.

19 THE COURT: For today. All right.

20 Again, I hope you feel better. You are excused.

21 DEFENDANT EL-GABROWNY: Thank you very much, your
22 Honor.

23 MR. FITZGERALD: Judge, that is perfectly
24 acceptable to the government. I just wanted to alert --

25 THE COURT: I assumed it was. He wouldn't have

1 said it was if it wasn't.

2 MR. FITZGERALD: I want to alert you that we may
3 have issues as to proof that we will raise this afternoon.

4 I discussed it with Ms. Stewart. We may have
5 some issues regarding some FISA proof which he may have some
6 applications on.

7 THE COURT: I get paid to decide those.

8 MR. FITZGERALD: OK. Very good.

9 THE COURT: All right.

10 THE COURT: Mr. Jacobs, you had your hand up?

11 MR. JACOBS: Your Honor, yes. I rise on behalf
12 of all the defendants and counsel, who I have consulted with
13 this morning, to ask your Honor to conduct an individual
14 voir dire of the jurors with two lawyers and no defendants
15 present and, obviously, a government representative.

16 THE COURT: No.

17 MR. JACOBS: May I just be heard, your Honor?

18 THE COURT: If you want to it put it on paper,
19 you can put it on paper. Are you talking about the
20 publicity yesterday?

21 MR. JACOBS: Yes, your Honor.

22 THE COURT: I have thought that through. I am
23 not going to do it. If you want to put it on paper to make
24 a record, I will let to you put it on paper to make a
25 record. I am not going to delay the start this morning for

1 that. There was no publicity relating to this event that
2 was not anticipated, and I am not going to voir dire the
3 jury at the crest of the publicity in connection with this
4 matter. If there is any voir dire of the jury that is going
5 to go on -- and that is a big "if" -- it is going to go on
6 when we get to the point that they have to deliberate; not
7 now.

8 MR. JACOBS: Just to be clear, I told this to
9 government this morning, I cited United States v. Gaggi. I
10 don't have the citations, but I did discuss with
11 Mr. McCarthy where during that trial with Judge Duffy back
12 in 1985 Paul Castellano was murdered. There was
13 one-twentieth -- one-hundredth of the publicity in that
14 case. The defense lawyers moved for a sequestered jury and
15 for individual voir dire. Judge Duffy denied the
16 sequestration, but conducted individual voir dire, which the
17 Second Circuit said was appropriate to do in light of the
18 publicity, and Judge Duffy conducted that voir dire as I
19 have outlined to the court.

20 THE COURT: I take it Judge Duffy did not
21 instruct the jury before the publicity about Castellano
22 murder, which is to say before the Castellano murder itself,
23 about the upcoming publicity. I am second to nobody in my
24 admiration for Judge Duffy, other than perhaps Judge Duffy,
25 but I don't think even he was prescient enough to have

1 foreseen that event.

2 MR. JACOBS: Your Honor, I think the distinction
3 between the two cases is self-evident. I was shocked to see
4 the amount of link that the press and the news media had
5 with the World Trade Center and with the sheik last night.
6 I am concerned about the conversations which we all
7 anticipated which might have gone on between the jurors and
8 their families, and it is inconceivable to me that we should
9 wait several months to ask these jurors what impact that
10 had.

11 THE COURT: No. I think that is the wiser
12 course. If you want to put it on paper, you can put it on
13 paper.

14 MR. JACOBS: Paper isn't going to add anything to
15 what's been done. I just close by saying that my
16 five-year-old son this morning asked me if Mr. Mohammed did
17 the Oklahoma City explosion, and if my five-year-old son
18 could make such a deduction and assumption and feel that, I
19 would say --

20 THE COURT: I assume you gave your five-year-old
21 son something like the instruction that I gave that jury
22 yesterday.

23 MR. JACOBS: I did, your Honor.

24 THE COURT: Good.

25 MR. JACOBS: When he sees dead babies, I am just

1 concerned on the impact it has on the jury. I made my
2 request; your Honor has ruled.

3 THE COURT: I'm concerned about it, too, but if
4 there is any time to measure it, it isn't now.

5 Do you want to be heard?

6 MR. McCARTHY: The only thing I wanted to add,
7 your Honor, is just another material difference between this
8 case and Gaggi is that, unlike when Mr. Castellano was
9 killed, there is already a record in this case and empirical
10 evidence that when the jury has heard things that seem to
11 run against what the court's instructions have been, they
12 have notified the court. Unless we get some indication of
13 that --

14 THE COURT: I would like to get started, I really
15 would.

16 MR. McCARTHY: Yes, your Honor.

17 MS. AMSTERDAM: Your Honor, I just wanted to add
18 one thing: Putting aside the issue of the publicity or
19 exposure to publicity, putting that aside, I would ask the
20 court to conduct at least inquiry as to whether or not any
21 of the jurors have family or relatives in Oklahoma City and
22 I would want some type of inquiry as to the level of fear in
23 terms of this --

24 THE COURT: I will not do that today.

25 MS. STEWART: Judge, I would --

1 THE COURT: And I will not hear from anybody
2 else. Anybody else can put it on paper.

3 MS. STEWART: I am moving for a mistrial, Judge,
4 so maybe --

5 THE COURT: The motion is denied.

6 MR. STAVIS: I have a different application, your
7 Honor.

8 THE COURT: Yes.

9 MR. STAVIS: It may, in fact, save us some time.

10 THE COURT: Music to my ears.

11 MR. STAVIS: I thought so.

12 Your Honor, several of the witnesses that the
13 government anticipates calling this morning -- specifically,
14 Mr. Byer, Mr. Kennamer, and Mr. Miles -- were law
15 enforcement agents who went to the crater at the World Trade
16 Center and recovered things like wheel rims, tire treads,
17 VIN numbers.

18 THE COURT: You want to stipulate to that?

19 MR. STAVIS: I would gladly stipulate to all of
20 those things, and I would just ask the court to consider
21 that the pieces of this circumstantial puzzle have already
22 been fit together in a prior trial, and I made my record
23 yesterday.

24 THE COURT: I think we did some of that
25 yesterday. Do you want to be heard?

1 MR. FITZGERALD: Yes, Judge.

2 Defense counsel has had the record of that trial
3 for two years. Last week I wrote a letter to counsel saying
4 here are the witnesses we intend to call. It was greatly
5 scaled down from the last trial. There were just three
6 people recovering parts. We laid out the schedule. We
7 said, look, if people are going to be examining long or
8 short, let us know. We flew these people in from out of
9 town.

10 THE COURT: I talked about the 403 balance
11 yesterday, and that really hasn't changed. We are going to
12 go ahead on the same basis that we went ahead yesterday.
13 You have your objection. Let's go.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.

16 JURORS: Good morning.

17 THE COURT: Once again, we are still not on the
18 right starting time, and I am sorry for that, but we are
19 doing better than we did yesterday, and hopefully we will
20 continue to improve.

21 Mr. McCarthy?

22 MR. McCARTHY: Thank you, your Honor. The
23 government calls Frederick Ferby.

24 FREDERICK FERBY,

25 called as a witness by the Government,

1 having been duly sworn, testified as follows:

2 THE COURT: Mr. Ferby, if you could lean forward,
3 there are two microphones, if you talk into either one of
4 them we can hear you.

5 THE WITNESS: OK.

6 THE COURT: If you don't, we can't.

7 Go ahead, Mr. McCarthy.

8 MR. McCARTHY: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. McCARTHY:

11 Q. Good morning, Mr. Ferby.

12 A. Good morning.

13 Q. Sir, are you working right now?

14 Are you working at the moment?

15 A. No.

16 Q. Are you on disability?

17 A. Workmen's compensation, disability.

18 Q. Can you tell us where you were working when you
19 were working.

20 A. I was working at one World Trade Center.

21 Q. What was your job there, sir?

22 A. I was a mechanical -- HVAC mechanical helper.

23 Q. A mechanical helper?

24 A. Yes.

25 Q. What was the company that you were working for as

1 a mechanical helper?

2 A. Ogden Allied Mechanical Services.

3 Q. Let me direct your attention, Mr. Ferby, to
4 February 26, 1993 at around noon. Can you tell us what you
5 were doing at that time.

6 A. At that time I was having lunch down on subgrade
7 B-4, and in building One World Trade Center.

8 Q. That was subgrade B-4?

9 A. One World Trade Center.

10 At the same time I was eating lunch, I was
11 cleaning my asbestos mask and replacing the filters, and
12 then I put it on to test it.

13 Q. Let me ask you for just a moment to explain to
14 the ladies and gentlemen of the jury what your asbestos mask
15 is and how you use that in your job.

16 A. An asbestos mask has two filters that protect you
17 against asbestos fibers. When you are doing steam repair or
18 steam inspections, OK, sometimes the insulation has asbestos
19 in it and you have to wear the filters in order to protect
20 yourself and do your job.

21 Q. After you had your lunch that day, did you put
22 your mask on?

23 A. Yes, I did.

24 Q. Shortly after you put your mask on, can you tell
25 us whether something happened.

1 A. Shortly after I put my mask on, I was walking to
2 the back of my shop to cut some insulation, and I was blown
3 across the room.

4 Q. Tell us what happened, please, when you were
5 blown across the room.

6 A. The lights had went out, and I was buried under
7 debris. The lockers from my shop and the lights and
8 everything went out, and I was screaming at the time.

9 Q. Sir, how long, if you recall, were you buried
10 under debris?

11 A. I think it was for a short time, but once I
12 stopped screaming and I was looking around for a little --
13 in my pouch for a flashlight, then I was able to see what
14 was on top of me.

15 Q. Can you tell us what you saw when you were able
16 to observe things?

17 A. There was a concrete debris on top of me, two
18 lockers that were in our shop, and there was soot and smoke
19 that was all around me.

20 Q. What happened then, sir?

21 A. I had to try to get out. You know, I was trying
22 to dig myself out, get out, and once I finally got out, I
23 heard other people screaming out in the hallway.

24 Q. Can you explain to the ladies and gentlemen of
25 the jury, sir, what you did when you got out from the

1 rubble.

2 A. Well, when I got out from the rubble, I went
3 through the hallway. I had sent my partner upstairs to turn
4 some paperwork in, and I was kind of insistent on it. I was
5 saying, "Oh, my God, something happened."

6 I sent him up there into that, and I was just
7 trying to get up there and try to find him.

8 Q. How did you try to go up, sir?

9 A. First I tried to -- I went out, the two guys that
10 were laying on the floor with debris on them, I helped them
11 up and got them out. They went out the parking lot on
12 subgrade B-4. They went up that way. And --

13 Q. Let me interrupt you for a moment.

14 What did you have to do to get them out?

15 A. They were -- they had -- there were cinder blocks
16 and stuff in the hallway, right, and they were, they had
17 some stuff on them, but it wasn't that much, but I had to
18 pull them up and with the flashlight because it was dark,
19 then they were able to orient themselves.

20 Q. Can you describe for us what the smoke conditions
21 were like.

22 A. It was dark, OK. I had to actually feel around
23 to find them, OK. When I did find them and I got them up, I
24 knew where my shop was and how to get out. They didn't know
25 that because they were like construction workers that came

1 in to do some job.

2 Q. What happened when you got them up and out?

3 A. Once I got them up and I walked them down the
4 hallway to the parking area, I sent them up the ramp, and it
5 was pretty clear there, it was right next to where the PATH
6 train comes up, and they went up that way.

7 Q. Sir, after you got those gentlemen out, what
8 happened next?

9 A. I came back, and I was -- I went up B staircase.
10 The smoke in there was so dark and sooty that I went up one
11 flight and eventually I got up to to subgrade B-2.

12 Q. If we could clarify where you started and where
13 you were walking up from. You started on the B-4?

14 A. I started on the B4 level.

15 Q. You went up one flight?

16 A. I went up at one flight. I stopped at B-3.

17 Q. What happened at B-3?

18 A. B-3 I saw one of the guys from the stockroom
19 laying down -- actually I didn't see him. I walked ahead
20 and I just heard people yelling. When we got up there, he
21 actually came forward, part of the stockroom there was
22 like -- was clear, OK.

23 And he went trying to get -- he was trying to get
24 a flashlight, right, and then I came back out and went up,
25 started to go up to B-2.

1 Q. Did you get up to B-2?

2 A. Yes, I got up to B-2. I was trying to go the
3 normal way that we went to our shop, but it looked like a
4 rat tunnel, and, as I was going forward, the heat, there was
5 such -- such tremendous heat that I had to back off and I
6 couldn't go that way. I had to go the back way to our shop.

7 So once I went the back way, I came down the
8 hallway and you just all heard all this screaming and -- all
9 over the place, people were just screaming. I walked down,
10 and, as I walked down, when I got to the end of the hall,
11 there was people in the elevator, OK, which was just sitting
12 there. They were just laid out in the elevator.

13 Q. Can you tell us what the conditions were in the
14 elevator and the conditions around the framing of the
15 elevator.

16 A. OK. The smoke was coming, it was real thick.
17 OK. I had to get down -- I got down low, and went down, and
18 the smoke was going to the elevator and going up, I guess
19 going up the shaft because the elevator, as you got to it,
20 it was pretty clear.

21 Q. What happened at the elevator, Mr. Ferby?

22 A. At the elevator the people were in there and they
23 were saying that they couldn't get out, right. There was
24 somebody knocking on the door for the electrical shop, and
25 they were trying to get that door open, but the concrete

1 slab, which the ceiling was concrete, had come down and
2 crushed part of the door and they couldn't open it.

3 Q. They couldn't get the elevator door open because
4 of the --

5 A. No, the elevator door was open. I am talking
6 about there is a door that was right next to the elevator,
7 that was the electrical shop.

8 Q. Were there people on the other side of the door?

9 A. Yes. They were trying to pry it open with a
10 crowbar and other stuff, but they couldn't get it open.

11 Q. What did you do, Mr. Ferby?

12 A. First I tried to kick the door, and that wasn't
13 working. Then I started getting back and I was running into
14 the door, and eventually, I think the third time, I knocked
15 it open.

16 Q. What happened after you knocked it open?

17 A. After we got -- got it open, the people in the
18 elevator, we got them out and sent them up upstairs.

19 Q. What happened next to you Mr. Ferby?

20 A. Next, I was -- I had to get going to the shop
21 where I sent my partner. And I could hear, you could still
22 hear the people screaming. And I had my mask on, I had to
23 change the filters. I kept two pouches, one with extra
24 filters in it, and my normal one that I kept my flashlight
25 and other stuff in.

1 Q. Mr. Ferby, let me just interrupt you for a
2 second. Why did you have to change the filter?

3 A. Because it got clogged up and I couldn't breathe
4 anymore. You know, that is how much soot there was. And I
5 changed it real quick and went into the shop. I -- when I
6 first went in, I couldn't get in, so I had to climb over
7 this desk. Some of the walls were gone. And when I climbed
8 over the desk, I grabbed something and I started shaking,
9 you know, I got shocked from something.

10 Q. You got a shock?

11 A. Yes. Whatever happened, it stopped shocking me
12 and I continued to go through the shop. I couldn't see
13 anything. I was feeling my way around. I kept hearing
14 this, like little alarms, and when I got close -- we have,
15 we had a computer in our shop, and the computer, all the
16 alarms were going off in the shop. Then I was able to
17 orient myself where I was.

18 I could hear people yelling and screaming, but
19 you couldn't see them, and you couldn't find them. So what
20 I started doing was walking forward. I know that forward
21 from my -- from the computer was our lunch room. I went and
22 I crawled over something and then I got to a point where I
23 could put my leg down, I put my leg down, but I didn't feel
24 anything. I didn't feel nothing at all. The flash --

25 Q. I'm sorry. This is when you tried to climb over?

1 A. Yeah, I climbed up on top of whatever I was
2 crawling on, and I crawled over, and I went a little
3 distance and then when I got to the edge of this thing, I
4 was trying to step, to climb off, and when I put my foot
5 down there was nothing there.

6 Q. What did you do then?

7 A. I went back. I turned around and went back, and
8 I crawled back the other way. As I was crawling, coming
9 back, I heard some people screaming, and it was Bo and
10 another guy that worked in my shop.

11 Q. You said Bo?

12 A. Yeah, Bo. Floyd Edwards. That his was his
13 nickname.

14 Q. And another guy who worked in the shop?

15 A. Yes. I couldn't -- it was hard for me to find
16 them. I could hear them yelling. They couldn't see my
17 flashlight, as thick as the smoke was. But I was saying if
18 you -- I was calling, trying to find them.

19 I just kept going forward. I was bumping into
20 stuff, and I just -- I told them to stick their hand out,
21 you know, whatever you could do. They eventually saw, I
22 think, a glimmer of the light or something, and I was able
23 to pull them out.

24 When I pulled them out -- I grabbed them, and I
25 was carrying them, and when I got to a point where I

1 couldn't go any further, there was something there, I
2 didn't -- you know, I didn't -- I kind of panicked. But I
3 remember I climbed over a desk in order to get in there, so
4 I climbed over that and we all fell over.

5 Q. Where were the two gentlemen that you were
6 carrying at the time that you had to climb over the desk?

7 A. They were under each arm. I had them under each
8 arm, OK. When I got them over that, then I had to carry
9 them up the -- take them through the electrical shop, and
10 then I had to carry them up from B--2 up to the first floor.

11 That was like almost four floors because subgrade
12 floors were like deeper, and when I got up to the top
13 flight, another guy from electrical named Fred grabbed me.

14 I was about to fall back, and he pulled me forward.

15 We put them on the -- well, I asked these --
16 there was a coffee shop there, and I asked them for the
17 cart, and they didn't want to give the cart. So I just told
18 them, "Give it to me," and I grabbed it, and we put the guys
19 on the cart.

20 We couldn't go through building one because there
21 was a lot of smoke in the lobby, so we wheeled them out to
22 the northeast plaza side, Building Five, and there Bo looked
23 like he was dying --

24 Q. And the other man whose name you don't
25 remember --

1 A. The other man --

2 Q. I am not asking you his name, sir. Just what
3 happened.

4 A. He was, we took him out. And the police that
5 were there got him oxygen, and we were trying to get him on
6 the ambulance. We were trying to move the people because
7 they were like all around, and finally we got them to the
8 ambulance, you know. I was screaming at people, "Move the
9 hell out of the way." They moved. I guess they knew I was
10 upset, so they moved, and the ambulance came in, and I went
11 to the hospital with one of them, and then I came back with
12 the ambulance --

13 Q. You went to the hospital with the ambulance and
14 then you came back to the World Trade Center?

15 A. I came back, yes.

16 Q. What did you do when you came back?

17 A. When I came back, I went back downstairs. At
18 that time I was going down with a couple of guys from my
19 shop, Victor Reyes, Louis Schura, and we went down, and we
20 were searching for other people from our shop.

21 Q. All right.

22 A. And that is when we -- when we went down there we
23 found Bill Macko. We found Steve Knapp. Steve Knapp had
24 died. Bill Macko I used to do high-pressure steam with, so
25 it was like --

1 Q. Let me just stop you for a moment.

2 Were those men dead, sir?

3 A. Yes, they were dead.

4 Q. Did you have occasion to go back to the World
5 Trade Center, sir, after the day of the blast?

6 A. Yes. I didn't think I was going to have a job.
7 Our job was like totally -- the shop was totally ripped
8 apart. And when they called and told me to come in, I came
9 in. I was sore, but, you know, I went in anyway.

10 Q. Mr. Ferby, I am showing you 520A and 520B.

11 MR. McCARTHY: I'm sorry, your Honor, I should
12 say W520A and W520B for identification.

13 Q. I would ask you to take a look at these
14 photographs and tell us if you recognize the scene depicted
15 in them.

16 A. Yes. This is our shop, OK. I used to work at
17 the desk sometimes, and the desk is over here.

18 Q. If I may --

19 A. OK.

20 Q. -- just stop you for a moment. 520A you say you
21 recognize as your shop. Is that after the blast?

22 A. That is after the blast, yes. I took a lot of
23 the pictures.

24 Q. 520B?

25 A. Yes. This is definitely where the desk was. The

1 computer -- this is the door that was in back of the desk to
2 the elevator pit.

3 Q. Let me stop you for just a moment, sir.

4 A. OK.

5 MR. McCARTHY: Your Honor, the government offers
6 W520A and W520B.

7 MR. STAVIS: Objection, your Honor.

8 THE COURT: Overruled. 520A and B are received.

9 (Government's Exhibits 520A and 520B for
10 identification were received in evidence)

11 Q. Mr. Ferby, sir, let me just ask you to step down
12 for a moment.

13 A. OK.

14 (The witness stepped down from the stand)

15 Q. And, if you could, walk to this side of the
16 easel. Thank you.

17 Let me ask you to just briefly describe the scene
18 depicted in 520A.

19 MR. JACOBS: Your Honor, objection. 403.

20 THE COURT: Overruled.

21 A. This is our shop. We had to go in here to
22 recover tools from our tool lockers, the heavy tool lockers
23 with these blue stickers on them. You know, we had to put
24 them on. The tools were all under this. You know, we took
25 pictures as we went along. OK. The desk I used to work at

1 was over here. OK.

2 Q. That is on the right side of the picture as you
3 look at it?

4 A. Right. The beige lockers were part of our tool
5 lockers, the small tool lockers for individuals. These big
6 gray lockers were for our big tools, you know, the very
7 heavy-duty tools that we had.

8 Q. Let me just ask you: Was there a time before the
9 blast that there were walls where we currently don't see
10 walls?

11 A. Yes. As a matter of fact, do you see where the
12 light is? OK. That is over where the pit is.

13 Q. I'm sorry. What is what you referred to as the
14 pit?

15 A. That was ground zero, OK. There was a big hole,
16 deep, and it was just -- when I went in and I was feeling my
17 way around, OK, that was part of the hole, when I stuck my
18 leg through.

19 Q. Can you briefly describe 520B to us.

20 A. Yes, this is definitely the desk in the backside
21 of this picture over here. I used to sit at the desk and
22 get the work orders, and this was the elevator pit door
23 because it was an unpainted, like, grayish like color. All
24 right. You can see some of our books that were there. All
25 right.

1 Q. Let me ask you again, Mr. Ferby: Are there or
2 were there at one time walls in any of the places where we
3 have open space?

4 A. Yes. This whole area was the wall. This wall
5 that's back here, OK, was up further, and the door was
6 attached to it. Everything was blown back, and the only
7 reason that it stopped there is because that was the wall of
8 the elevator pit that is there.

9 Q. Thank you.

10 A. OK.

11 Q. You can resume your seat, sir.

12 (The witness resumed the stand)

13 MR. McCARTHY: Thank you, Mr. Ferby.

14 THE WITNESS: OK.

15 THE COURT: Any cross?

16 MS. STEWART: No, your Honor.

17 MR. STAVIS: No, your Honor.

18 THE COURT: Thank you. You are excused,

19 Mr. Ferby.

20 (Witness excused.)

21 MR. STAVIS: Your Honor, before the next witness,
22 may I be heard at the side bar?

23 THE COURT: Yes.

24 (Continued on next page)

25

1 (At the side bar)

2 MR. STAVIS: If the court please, in light of
3 Mr. Ferby's testimony, I move for a mistrial. As your Honor
4 will recall, I moved under Rule 403 yesterday to preclude
5 this witness. This witness is a victim in the World Trade
6 Center, and not only did he testify concerning his own
7 victimization, but he testified concerning finding the
8 bodies of coworkers, Bill Macko and Steve Knapp. I would
9 note for the record that his eyes, as I could see, welled up
10 with tears at that point. I believe it had a devastating
11 impact on the jury, particularly in light of events of the
12 last 24 hours in Oklahoma, and your Honor's instruction
13 concerning the bombing in Oklahoma. To have this man come
14 in and testify concerning finding his colleagues' dead
15 bodies and moving through the rubble and rescuing people
16 from the rubble has had a devastating impact on this jury,
17 from which no instruction or nothing the court can do short
18 of a mistrial would be able to repair the prejudice.

19 THE COURT: Your motion is denied. I watched the
20 jury during his testimony. They were solemn and intent, but
21 otherwise behaved entirely responsibly. His voice, for the
22 record, did not break at all during his testimony. If you
23 saw his eyes well up with tears, then it certainly didn't
24 reflect itself in his testimony.

25 MR. McCARTHY: The only thing I want to add is

1 that when Mr. Jacobs cross-examined Mr. Salem, with no
2 objection from any defense counsel, he went through the list
3 of all the dead at the World Trade Center.

4 I also just for the record want to point out that
5 Mr. Ferby also found the pregnant woman who was dead. I
6 didn't bring that out because I thought that was a little
7 much. I cut him off in his testimony and simply asked him
8 the leading question, whether the gentlemen he found were
9 dead rather than have him describe the scene.

10 THE COURT: The short of it is, as I said
11 yesterday, 403 is a compromise between outrageously
12 inflammatory testimony in view of the nature of the
13 underlying events and permitting the government to prove
14 what the underlying events in fact were. They have no
15 obligation, it seems to me, to make it completely abstract
16 and bloodless.

17 I think we are within the bounds of 403. The
18 applicants is denied. Let's proceed.

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1 (In open court)

2 MR. FITZGERALD: The government calls Terry Byer.

3 TERRY BYER,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 THE COURT: Go ahead, Mr. Fitzgerald.

7 MR. FITZGERALD: Thank you.

8 DIRECT EXAMINATION

9 BY MR. FITZGERALD:

10 Q. Mr. Byer, could you tell the jury how you are
11 employed.

12 A. Yes. I am employed by the bureau of Alcohol,
13 Tobacco & Firearms, and I work out of Atlanta, Georgia.

14 Q. What is your job with ATF?

15 A. I am an explosives enforcement officer with the
16 explosives technology branch.

17 Q. How many years' experience do you have working in
18 the explosives field?

19 A. 28 years.

20 Q. For how long have you worked for ATF?

21 A. Since July of 1988.

22 Q. Prior to working for ATF, who did you work for?

23 A. I worked for the U.S. Navy as an explosives
24 ordnance disposal technician.

25 Q. Let me direct your attention to the period after

1 February 26, 1993. Did you have occasion to work on the
2 case involving the explosion at the World Trade Center?

3 A. Yes, I did.

4 Q. Can you tell us what your assignment was.

5 A. OK. I arrived in New York on the 27th, and,
6 after several meetings, was assigned the task to examine and
7 evaluate evidence that was recovered by the various working
8 teams from the task force.

9 I would evaluate the evidence that they would
10 find and determine if, in fact, in my opinion it should be
11 considered as evidence, as part of the bomb, or, no, it was
12 just debris and should be put aside.

13 Q. Can you briefly describe what type of items you
14 look for to examine further.

15 A. Any debris that would indicate it was part of the
16 vehicle that was used in the bombing and any components that
17 could have been used to construct or manufacture the bomb.

18 Q. About how many people with experience in
19 explosives were working in the crater site looking for
20 evidence?

21 A. Approximately 50.

22 Q. Can you just describe the general method in which
23 they worked.

24 A. Generally they were in previously selected areas,
25 and they would methodically go through the debris, working

1 from the highest debris and working down to floor level.

2 Once they would get down to the lower levels,
3 where the particles and debris were smaller, they would
4 actually have to use lights and small tools, small picks,
5 small shovels, and even down to spoons and mag lights to
6 evaluate the smaller particles. We also had sifting and
7 screening mechanisms in place to help us to go through the
8 many, many tons of soil that was in these areas also.

9 Q. Let me approach you with what's been premarked as
10 Government Exhibits W571 and W572. Showing you what's been
11 premarked as Government Exhibit W571 and Government Exhibit
12 W572, do you recognize what they depict?

13 A. Yes, sir, I do.

14 Q. What do they depict?

15 A. 572 shows some of these personnel that are
16 assigned the task of evaluating the debris to recover
17 explosives, bomb components and vehicle components, and they
18 are down to the last stages of sifting through that debris.
19 They are actually on their hands and knees going through
20 that debris.

21 Q. Does Government Exhibit W572 fairly and
22 accurately depict the sifting process that was going in the
23 weeks following the World Trade Center explosion?

24 A. Yes, it does.

25 Q. The same question with regard to Government

1 Exhibit W571.

2 A. Yes.

3 MR. FITZGERALD: Your Honor, I would offer those
4 two exhibits.

5 MR. STAVIS: Objection, your Honor.

6 THE COURT: Overruled. 571 and 572 are received.
7 (Government's Exhibits W571 and W572 for
8 identification were received in evidence)

9 MR. FITZGERALD: I would ask you to step down
10 very briefly, Agent Byer.

11 (The witness stepped down from the stand)

12 Q. I will try to have you speak into the microphone.
13 If you could just briefly explain what this is and what is
14 going on.

15 A. Yes, sir. These are all personnel that are
16 assigned to the task force. They are New York Police
17 Department, FBI, ATF personnel that are trained in the task
18 of bomb investigation.

19 Basically what they are doing here, they have
20 removed residues from the floor and put them in these trays.
21 This will have a coarse screen in the first tray, and a
22 little finer screen in the second tray. Basically they are
23 just sifting, and the larger pieces, of course, would remain
24 in the top for them to evaluate and to look at.

25 Q. Looking at the photograph, can you tell roughly

1 what stage, or how long after the bombing this photograph
2 would have been taken?

3 A. Yes, sir. This is into the investigative phase,
4 probably well over a week. The debris in this particular
5 area, which I believe is the office area, would initially
6 have debris up to approximately shoulder level. It's been
7 taken all the way down so that you can actually see the
8 floor in places. So this took many, many days of hard work.

9 Q. Showing you Government Exhibit W572, if you could
10 briefly explain what is depicted in that photograph.

11 A. Yes, sir. Once the area had been, again, cleared
12 down to floor level, this material was actually what was
13 left on the floor, and they are just going through the final
14 stages, once again, of trying to recover and identify those
15 components that may be part of the vehicle or part of the
16 bomb itself.

17 MR. FITZGERALD: Thank you. If you could just
18 resume your seat for a moment.

19 (The witness resumed the stand.)

20 Q. What was your role while the sifting and sorting
21 process was going on?

22 A. OK. I was sort of, I guess my task would be
23 identified as a roving technical expert. As they would find
24 objects of interest, they would call me on the radio, and I
25 would respond to whatever site they were working, and I

1 would evaluate the material.

2 I also kept a piece of paper with me, and I would
3 keep a drawing, I was making a drawing as I was working
4 through this material to depict where car parts and bomb
5 parts were being found in reference to a reference line.

6 We had a rope going from the top of the blast up
7 in the Vista Hotel, dropped all the way down to the bottom,
8 and that was our reference point, to the best of our
9 ability, that we could use at that point in time. That was
10 our reference, and all my drawings were drawn with that
11 reference as the center focal point.

12 Q. So that was the way you could identify on a map
13 where the piece was recovered?

14 A. That's correct.

15 Q. You mentioned you had 28 years' experience
16 working in explosives. Did you in the past have a side job
17 in addition to working the explosives field?

18 A. No, sir.

19 Q. Do you have any familiarity with cars?

20 A. Oh, I'm sorry. Yes, sir. I do have a
21 familiarity with automobiles. I had a paint and body shop
22 as a part-time sideline business for a number of years.

23 Q. You mentioned that you got to New York on
24 February 27, 19 93, is that correct?

25 A. Yes, sir, the 27th, that's correct.

1 Q. Directing your attention to the day after you
2 arrived, February 28, 1993, did there come a time when you
3 were summoned to a particular location at the World Trade
4 Center crater site?

5 A. Yes, sir.

6 Q. Can you tell us what happened when you got to
7 that location.

8 A. Basically, I met with three gentleman: An ATF
9 agent named Kevin Washington; my partner, explosive
10 enforcement officer Joe Hanlon; and Don Sidowy, who is a New
11 York Police Department bomb squad technician. They had been
12 assigned the task of taking chemical swabbings, or samples,
13 of some of the residues, and during this task, they located
14 a rear-end component, part of a frame and part of a fender.

15 They actually did recover these items. They put
16 them on a medical gurney, covered them up with a blanket to
17 keep the public from seeing what had been recovered, and
18 they were transported up to the ground level at the Vista
19 Hotel area, and then they were transported to the New York
20 Police Department laboratory and were studied.

21 Q. When you went to the World Trade Center crater
22 area, is that where you first saw that piece?

23 A. Yes, sir.

24 MR. FITZGERALD: Your Honor, if I could just take
25 a moment and ask Detective Corrigan to assist in bringing

1 Government Exhibit W3028.

2 (Pause)

3 Q. Mr. Byer, if you could step down and just examine
4 Government Exhibit W3028.

5 (The witness stepped down from the stand)

6 Q. If you could look at it and tell us if you
7 recognize what it is.

8 A. Yes, sir. This exhibit is one of the pieces that
9 was recovered that evening and transported to the NYPD
10 laboratory.

11 Q. You mentioned a piece of frame and a piece of
12 fender that you saw on the gurney that was transported to
13 the NYPD laboratory. Is this that piece?

14 MR. STAVIS: Your Honor, this item has not been
15 introduced into evidence.

16 THE COURT: I know that. He is being asked to
17 identify it. Go ahead.

18 A. Yes, sir. This is that item.

19 MR. FITZGERALD: Your Honor, I offer Government
20 Exhibit W3028.

21 MR. STAVIS: I would object to the admissibility
22 of this evidence under Rule 403, your Honor.

23 THE COURT: Overruled. 3028 is received.

24 (Government's Exhibit W3028 for identification
25 was received in evidence)

1 MR. FITZGERALD: Why don't you resume your seat
2 for awhile and we will come back to the exhibit.

3 (The witness resumed the stand)

4 Q. What did you do once you were at the scene and
5 this piece had been removed on a gurney covered with the
6 blanket? Can you take the jury through the steps that you
7 took then.

8 A. Yes. I visually examined it, and said that, yes,
9 in fact these pieces did need to be logged in and
10 transported to the lab as evidence and they certainly may
11 have a significant impact on this case.

12 Q. Was it taken to the lab?

13 A. Yes, sir.

14 Q. Did you travel with the item?

15 A. No, sir.

16 Q. Once it went to the NYPD laboratory, did you see
17 it again at that location?

18 A. Yes, sir, I did.

19 Q. Can you tell us what you did when you saw this
20 item at the New York City Police Department laboratory?

21 A. I spent the majority of a half a day examining
22 some numbers and some letters that we found on this frame
23 piece. We used alcohol and acetone to clean some of the
24 residues off of this number, and then we actually took
25 fingerprint dust and poured it down into the etchings of

1 these numbers and letters, took Mylar tape and made an
2 imprint, then took that imprint and photo-enlarged it for
3 the numbers to be more easily read, took those numbers and
4 turned them over to the automobile identification section
5 personnel both with the FBI and the New York Police
6 Department.

7 Q. Can you tell us who you were working with at the
8 NYPD laboratory in an effort to read the numbers on the
9 metal?

10 A. Yes. Ed Sardone and Dave Mason, both technicians
11 with the NYPD laboratory.

12 Q. Do you know what type of work they did?

13 A. Yes. One person is a fingerprint expert and the
14 other is a document examiner. We used their equipment,
15 their lights and their alcohol and their enlarging system
16 and their tape.

17 Q. Let me approach you with what's been premarked as
18 Government Exhibit W3028, I believe, E. I ask you to take a
19 look at this item and tell me if you recognize it.

20 A. Yes, sir, I do. This is a photograph of that
21 item.

22 Q. Is it a fair and accurate depiction of that item
23 after you had cleaned it in an effort to locate the numbers?

24 A. Yes, sir, it is.

25 MR. FITZGERALD: Your Honor, the government would

1 offer Government Exhibit 3028E.

2 MR. STAVIS: Objection, your Honor.

3 THE COURT: Overruled. 3028E is received.

4 (Government's Exhibit W3028E for identification
5 was received in evidence)

6 Q. Let me also show you Government Exhibit W3028C
7 and D. Looking at Government Exhibit W3028C, is that a fair
8 and accurate picture of this item?

9 A. Yes, sir, it is.

10 Q. Government Exhibit W3028D.

11 A. Yes, sir, it is.

12 Q. How does that differ from the picture that is C?

13 A. Exhibit W3028D is focused in on the numbers and
14 letters that we raised and makes it so you can legibly read
15 them.

16 MR. FITZGERALD: Your Honor, the government would
17 offer Government Exhibits 3028C and D.

18 MR. STAVIS: Objection, your Honor.

19 THE COURT: Overruled. 3028C and D are received.

20 (Government's Exhibits W3028C and W3028D for
21 identification were received in evidence)

22 Q. Now, Mr. Byer, if I could ask you to step down
23 one more time, pointing to the original exhibits, and if you
24 could tell us where the numbers are located and then show us
25 how that appears on the photograph chart marked W3028E.

1 (The witness stepped down from the stand)

2 A. The letters and numbers were found in this
3 area -- the numbers and the letters were found in this area
4 here. You can see this is bent over. Originally, when this
5 was part of the vehicle, it would have been more in this
6 configuration here, more square angles. You can see here
7 it's bent up.

8 Q. If you could explain, using the picture blowup,
9 W3028E -- I guess it's not a blowup, but a picture.

10 A. Yes. This is the picture that -- it is actually
11 a picture of this item.

12 Q. If you could point to where the numbers are on
13 the picture.

14 A. The two red arrows sort of highlight where the
15 numbers and letters were found.

16 Q. You can resume your seat, thank you.

17 (The witness resumed the stand)

18 MR. FITZGERALD: Your Honor, if I could just note
19 that the jurors have in their books copies of W3028C and D.

20 THE COURT: That is a thin loose-leaf volume that
21 says that it is the W series of exhibits. There should be a
22 tab with 3028A and B.

23 MR. FITZGERALD: It is Government Exhibit W3028C
24 and D.

25 THE COURT: C is the third exhibit under that

1 tab, and D is the fourth.

2 MR. FITZGERALD: It is the last two pages of the
3 book, your Honor, if that makes it easier.

4 Q. In looking at Government Exhibit 3028C, Mr. Byer,
5 is it fair to say the numbers were written on the shiny part
6 of the metal that has been cleaned?

7 MR. STAVIS: Objection as to form, your Honor.

8 THE COURT: Sustained.

9 Q. Can you describe to the jury where the numbers
10 were located.

11 A. OK. At the center of the object and at the top
12 of the object you will see an area of metal that appears to
13 be more of an aluminized color than the rest of the frame.

14 Q. Had you changed that area of the metal since the
15 time it was recovered from the crater site?

16 A. Yes, sir. We washed that area with alcohol and
17 acetone.

18 Q. Turning to Government Exhibit W3028D, can you
19 tell us what that photo is again.

20 A. That is an enlargement of the letters and the
21 numbers that we were able to identify.

22 Q. Can you tell us what numbers and letters you read
23 there.

24 A. Yes, sir. You have an asterisk sign followed by
25 an LHAP5633, and an asterisk.

1 Q. What do you read after the LHA? I am sorry. The
2 fourth character after LH and A, what do you read?

3 A. Oh, it may be a 7 instead of a P. I believe that
4 is a 7.

5 MR. FITZGERALD: I have nothing further, Judge.

6 MR. STAVIS: No cross-examination.

7 THE COURT: All right. Thank you. You are
8 excused.

9 (Witness excused)

10 MR. FITZGERALD: The government calls Dennis
11 Kennamer.

12 MR. JABARA: Your Honor, may I have a side bar,
13 there is an application I would like to make.

14 THE COURT: Is this anything like the two side
15 bars we had earlier?

16 MR. JABARA: On a different basis, yes.

17 THE COURT: I will hear you.

18 (Continued on next page)

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1 (At the sidebar)

2 MR. JABARA: I would like to move for a mistrial
3 or for a continuance or adjournment in this case, on the
4 basis that this witness is allowed to introduce certain
5 photographs of devastation from a car bomb when this country
6 experienced another huge devastating explosion yesterday
7 with a car bomb.

8 THE COURT: This is identical to what we
9 discussed earlier.

10 MR. JABARA: I am talking about these
11 photographs.

12 THE COURT: Keep your voice down. You are
13 talking about these photographs --

14 MR. JABARA: Right.

15 THE COURT: -- as a subset of what we discussed
16 before. The application is denied.

17

18 DENNIS KENNAMER,

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. Mr. Kennamer, can you tell the jury how you are
24 employed?

25 A. I am an agent for the Bureau of Alcohol, Tobacco

1 and Firearms.

2 Q. How long have you been an AFT agent?

3 A. Six years.

4 Q. What is your current assignment?

5 A. Knoxville, Tennessee.

6 Q. Do you have any training in explosives as part of
7 your qualifications as an ATF agent?

8 A. Yes, sir, I do.

9 Q. Will you basically just tell the jury, very
10 briefly, what that is.

11 A. In ATF basic school we go through a series of
12 training where we have explosive identification,
13 reconstruction of bomb scenes, also two-week school for
14 explosives use and identification.

15 Q. Turn the microphone to your left and point it at
16 you. It will help project your voice.

17 Directing your attention to the period after
18 February 26, 1993, were you assigned to assist in the
19 investigation of the World Trade Center bombing site?

20 A. Yes, sir, I was.

21 Q. Let me direct your attention in particular to
22 March 7, 1993. Were you working that day?

23 A. Yes, sir, I was.

24 Q. Were you searching in the World Trade Center
25 crater area?

1 A. Yes, sir, I was.

2 Q. Do you recall what part of the crater area you
3 were working in?

4 A. I was on the West Street side, working the part
5 of the slab that was blown down.

6 Q. Do you know what level you were on?

7 A. The B2 level.

8 Q. Did you recover anything in particular that day
9 when you were working?

10 A. Yes, sir, I did.

11 Q. What did you recover?

12 A. A piece of bent and twisted frame rail, which is
13 the structural backbone of a vehicle.

14 Q. Can you describe the condition of the metal, the
15 twisted piece of metal?

16 A. It was twisted and bent and appeared to be in an
17 advanced state of rust.

18 Q. Did you notice anything particular on that
19 rusted, twisted piece of metal?

20 A. It had a date and some numbers stamped into it.

21 Q. Let me approach you with what has been premarked
22 as Government Exhibit W358. I ask you to take a look at it
23 and tell us if you recognize what it is.

24 A. This is the piece of the frame rail that I found
25 on the West Street side.

1 MR. FITZGERALD: Your Honor, the government would
2 offer Government Exhibit W358.

3 MR. STAVIS: Objection, under Rule 403, your
4 Honor.

5 THE COURT: Overruled. It is received.

6 (Government Exhibit W358 was received in
7 evidence.)

8 Q. Looking at Government Exhibit W358, will you
9 point out where it is that you saw some numbers on the item?

10 A. On the front side here you have a date and some
11 other letters and things that are stamped into the metal
12 here, and on the side right up here at the top are some dot
13 matrix type numbers.

14 Q. Let me show you what has been premarked as
15 Government Exhibit W358D and ask you to take a look at it
16 and tell us if you recognize it.

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. This is a photograph of this piece of frame that
20 I found showing the dot matrix type numbers on the top of
21 the frame.

22 Q. Is it a fair and accurate depiction of that
23 section of Government Exhibit W358 which bears the dot
24 matrix numbers?

25 A. Yes, sir, it is.

1 MR. FITZGERALD: Your Honor, I would offer
2 Government Exhibit W358D.

3 MR. STAVIS: Objection, your Honor.

4 THE COURT: Objection overruled. Government
5 Exhibit W358D is received.

6 (Government Exhibit W358D was received in
7 evidence.)

8 Q. And if I could show you a series of photographs,
9 Government Exhibits W358A, 358B, 358C. If you would take a
10 look at those three photographs, A, B, and C and tell us if
11 you recognize what is depicted in each photograph.

12 A. 358A, the first photograph, shows this piece of
13 metal that I found in the actual location where it was
14 found. The other two photographs are also of the same piece
15 of metal.

16 Q. Is 3458B, W358B, taken in some sort of lab
17 department after it has been removed?

18 A. It appears to be, sir.

19 Q. And W358C?

20 A. It is a photograph of the same piece of metal
21 showing the dot matrix numbers.

22 MR. FITZGERALD: Your Honor, the government would
23 offer those three exhibits, Government Exhibit 358A, B and
24 C.

25 MR. STAVIS: Objection, your Honor.

1 THE COURT: Overruled. Government Exhibits 358A,
2 B, and C are received.

3 (Government Exhibits 358A, 358B, and 358C were
4 received in evidence.)

5 Q. If I could, Judge, just ask that Agent Kennamer
6 step down. I hold 358. If you will pointed out to the jury
7 where, exactly, the dot matrix numbers are. On 358D, the
8 blow up, point out the corresponding location on that
9 photograph.

10 If you would just point out on the metal where
11 the numbers are located.

12 A. They are right here.

13 THE COURT: Excuse me, you are not getting any
14 sound through that.

15 Q. If you could just indicate where on 358 the
16 numbers were located.

17 A. The numbers are located across the frame rail
18 right in this area right here.

19 Q. And using 358D, show the closeup.

20 A. The numbers are shown in this area right across
21 here.

22 Q. You can resume your seat. Thank you.

23 MR. FITZGERALD: Judge, if I could point out that
24 Government's Exhibits W358A, B and C are in that same
25 notebook that the jurors have.

1 THE COURT: Under the tab marked 358. Go ahead.

2 Q. Agent Kennamer, using 358A, B and C, would you
3 just point out to the jurors where the numbers are in each
4 photograph -- or just 1C. And tell us what numbers you
5 read. That is W358C.

6 A. They are just above the ruler, the FBI ruler,
7 that is laying in the picture, along the top side.

8 Q. Can you read those numbers.

9 A. May I use this picture here?

10 Q. Sure.

11 A. It appears to be LHA, and then the rest of the
12 numbers are hard to read in the picture.

13 MR. FITZGERALD: Thank you. I have nothing
14 further.

15 MR. STAVIS: No cross-examination.

16 THE COURT: Thank you very much.

17 (Witness excused)

18 MR. FITZGERALD: The government calls Kevin
19 Miles.

20 MR. BERNSTEIN: Judge, with respect to this
21 witness, I have an application, but given some of what I
22 have heard in prior applications, I will make it later, to
23 go on the record.

24 THE COURT: Thank you.

25 MR. STEWART: Judge, I would like to state to the

1 court that there was twisted metal, and gloves were used by
2 the Assistant U.S. Attorney, in the proffer of the last
3 piece of evidence before the jury.

4 THE COURT: Correct.

5

6 KEVIN G. MILES,

7 called as a witness by the government,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FITZGERALD:

11 Q. Mr. Miles, can you tell the jury what you do for
12 a living?

13 A. I am a Special Agent with the Federal Bureau of
14 Investigation.

15 Q. For how long have you been an FBI agent?

16 A. Almost five years.

17 Q. Where are you assigned?

18 A. Buffalo, New York.

19 Q. In addition to doing your regular case work with
20 the Buffalo FBI office, do you do any other duties with the
21 FBI?

22 A. I do.

23 Q. What is that?

24 A. I am a bomb technician.

25 Q. How many years' experience do you have in the

1 explosives field?

2 A. Fifteen.

3 Q. Where did you first start learning about
4 explosives?

5 A. In the Marine Corps.

6 Q. For how many years were you working in the Marine
7 Corps with explosives?

8 A. Four years.

9 Q. Where did you get your further bomb experience?

10 A. With a local police department, bomb squad.

11 Q. And then you went to the FBI?

12 A. Yes.

13 Q. Let me direct your attention to the period after
14 February 26, 1993. Did you have occasion to be assigned to
15 the investigation of the World Trade Center crater site?

16 A. I did.

17 Q. What were you doing there?

18 A. I was a team leader at the main crater, 4 to
19 midnight shift.

20 Q. If I can direct your attention to a particular
21 day, March 12 of 1993, were you working that day on the 4 to
22 midnight shift?

23 A. Yes, I was.

24 Q. Do you recall if you found any particular large
25 items that day?

1 A. Yes.

2 Q. What did you recover?

3 A. I recovered a mangled wheel rim from the main
4 crater, actually just to the right of the center of the main
5 crater.

6 Q. Let me approach you with what has been premarked
7 as Government Exhibit W313. I ask you to take a look at
8 Government Exhibit W313 and tell me if you recognize what it
9 is.

10 A. This is the wheel rim that I picked up out of
11 that.

12 MR. FITZGERALD: Your Honor, I offer Government
13 Exhibit W313.

14 MR. STAVIS: I would object to the admission of
15 this exhibit under Rule 403, your Honor.

16 THE COURT: Objection overruled. 313 is
17 received.

18 (Government Exhibit W313 was received in
19 evidence.).

20 Q. In inspecting the wheel rim marked as Government
21 Exhibit W313, did you notice any writing on the item?

22 A. Yes, I did.

23 Q. What did you see on the item?

24 A. It was the Ford Motor Company logo.

25 Q. If you would look at the photograph in front of

1 you. I ask you to take a look at Government Exhibit W313A,
2 and tell me if you recognize what it is.

3 A. It is the tire rim from the main crater.

4 Q. Is that a fair and accurate photograph of the
5 item, Government Exhibit W313?

6 A. Yes, it is.

7 MR. FITZGERALD: Your Honor, I would offer
8 Government Exhibit W313A.

9 MR. STAVIS: Objection, your Honor.

10 THE COURT: Overruled. 313A received.

11 (Government Exhibit W313A was received in
12 evidence.)

13 Q. And if I could ask you if you recall recovering
14 any other items of metal on that same day in March of 1993.

15 A. Yes. I recovered several pieces of jagged metal
16 from the same vicinity.

17 Q. Let me approach you with what has been premarked
18 as Government Exhibit 448. You can take a look inside that
19 item and tell me if you recognize what Government Exhibit
20 W448 is.

21 A. These are the pieces of jagged metal that I
22 removed from the main crater on that day.

23 MR. FITZGERALD: Your Honor, I would offer
24 Government Exhibit W448.

25 MR. STAVIS: Objection, your Honor.

1 THE COURT: Objection overruled. 448 is
2 received.

3 (Government Exhibit W448 was received in
4 evidence.)

5 Q. Looking at the same book, I am going to point you
6 to Government Exhibit 448A, if you can look at the tab.
7 Look at the photograph that is Government Exhibit W448A.
8 Tell us if you recognize what that is.

9 A. That is another jagged metal piece that I removed
10 from the main crater.

11 Q. If I may approach for one second.

12 I should have made clear before that W448 was two
13 bags. If you can look at the item in the second bag and
14 tell us if you recognize what that is.

15 A. Yet another jagged piece of metal that I removed
16 from the main crater that day.

17 MR. FITZGERALD: Your Honor, if I didn't make it
18 clear, I meant that to be part of Government Exhibit W448.

19 MR. STAVIS: Your Honor, my objection would cover
20 both pieces of metal.

21 THE COURT: So would my ruling. Go ahead.

22 Q. If you could look at the picture, Government
23 Exhibit W448A, and tell us how that corresponds to the piece
24 of metal you have in your hand.

25 A. It's the same.

1 Q. Is that a fair and accurate picture of that
2 particular piece of metal you have in your hand?

3 A. Yes, sir, it is.

4 MR. FITZGERALD: Your Honor, I would offer
5 Government Exhibit W448A.

6 MR. STAVIS: Objection to the introduction of the
7 photograph under Rule 403.

8 THE COURT: That objection is overruled.
9 Received.

10 (Government Exhibit W448A was received in
11 evidence.)

12 MR. MCCARTHY: The jurors in their books have of
13 both photographs, W313A and W448A. I will begin the first
14 question with W313A.

15 Q. Just briefly, Agent Miles, that is the picture of
16 the wheel rim that you have, that was before you a moment
17 ago?

18 A. Yes.

19 Q. If I can direct your attention now to Government
20 Exhibit W448A, I would like to question you in particular
21 about that exhibit. That would be 448A.

22 In looking at that exhibit, can you tell the jury
23 what letters you can read off that exhibit?

24 A. I can see E R T Y, and a space, then O F, then
25 another space, and then A G L W, and I can't make out the

1 next one.

2 Q. At the time you recovered that fragment in the
3 World Trade Center crater, did you then know what the
4 letters AGL stood for?

5 A. No, I did not.

6 MR. FITZGERALD: I have nothing further, Judge.

7 MR. STAVIS: No cross-examination for this
8 witness, your Honor.

9 THE COURT: All right. You are excused.

10 (witness excused)

11 MR. FITZGERALD: The government next calls
12 William Fritz.

13 (Pause)

14 MR. FITZGERALD: Judge, could we have a brief
15 recess. It appears the witness --

16 THE COURT: All right. Ladies and gentlemen, we
17 are going to take a short break. Please leave your notes
18 and other materials behind. Please do not discuss the case
19 or anything related to the case. We will see you in a few
20 minutes.

21 MR. FITZGERALD: I apologize, Judge.

22 (The jury left the courtroom.)

23 THE COURT: Yes?

24 MR. FITZGERALD: One brief item on the record.

25 this morning Mr. Patel brought to my attention that part of

1 Agent, I believe it is, Miles' background was that he worked
2 in the Tulsa, Oklahoma, bomb squad. So at his request I
3 redacted that because I didn't want to bring it up today.

4 MR. PATEL: It was done at my request, your
5 Honor.

6 THE COURT: Thank you very much: You were astute
7 enough to notice and point it out.

8 MR. BERNSTEIN: Obviously I was out earlier this
9 morning when an application was made. I was informed when I
10 came in an application was made for voir dire of the jury
11 and it was denied. I guess the Court understands my
12 position obviously with respect to that application, given
13 my position yesterday. I understand subsequent to that Ms.
14 Stewart, I am not sure if it was because of the denial of
15 voir dire or for other reasons, made a motion for a
16 mistrial. I join in that.

17 THE COURT: That was denied.

18 MR. BERNSTEIN: The application --

19 THE COURT: There was another motion for a
20 mistrial or two made at the sidebar. I assumed you would
21 have joined in those.

22 MR. BERNSTEIN: At this point I have an
23 application. I ask for some relief, given the nature of
24 this testimony. It is my view that the evidence coming in
25 now, as far as I am concerned, may as well be bringing in

1 pieces of material from Oklahoma City and trying that case
2 in this courtroom now. Given whether it is the coincidence
3 or the difficult coincidence of timing, what is now
4 happening is we are seeing twisted metal, we are seeing
5 gloves, we are seeing the very things this jury saw on TV
6 last night, that we all saw.

7 It seems to me that if we are not going to have a
8 mistrial and we are not going to have a voir dire of this
9 jury, then at least there should be a continuance of this
10 type of evidence in a trial that is taking three or five or
11 six months to try. There's got to be a means by which we
12 can have a continuance, either of the trial or this type of
13 evidence at this juncture at this time.

14 I understand the Court felt yesterday that it
15 makes no difference, the jury is going to find out about
16 some of the things, but there are some ways to ameliorate
17 the impact of what happened last night. At this point there
18 is no amelioration. It is effectively grinding into the
19 jurors' mind that which, in my mind, is prejudicial.

20 So, other than joining in the applications I
21 already joined, I am asking for a continuance of this type
22 of testimony. If the Court is going to deny that, because I
23 know the Court wants to manage this trial as best it can, I
24 don't want to stand up and make 403 objections
25 continuously -- I assume that if the Court denies my

1 application, that I have a continuing objection under 403 to
2 all of this testimony so that I don't have to get up and
3 repeat it in front of the jury or make the application,
4 unless the Court wants me to. I will do whatever the Court
5 obliges me to do under 403.

6 THE COURT: No. You will do whatever you have to
7 do to protect your client's rights and interests, as you are
8 doing now. The only thing that gives me unease is what you
9 mean by "this type of testimony." We will get into that in
10 a minute. Do you want to respond?

11 MR. McCARTHY: The only thing I would add to what
12 was said yesterday, your Honor, is that all reports that we
13 have this morning indicate that it could be, even by
14 comparison to the World Trade Center incident, an
15 excruciatingly long time, long-drawn-out time, while the
16 excavation work and what hope there is for rescue mission
17 continues. It is at least equally reasonable, if not more
18 reasonable, to think that there is less prejudice in simply,
19 now that we are at the point where we are at, getting
20 through this part of the trial and moving on to the next
21 part of the trial, than dragging this out for any continued
22 period of time, and then, after that excruciating effort is
23 over, putting this part of the case in, which has been part
24 of the case from the beginning.

25 MR. JACOBS: Your Honor?

1 THE COURT: Mr. Jacobs?

2 MR. JACOBS: Just to be clear, and I am not going
3 to go into anything, we will submit something in writing in
4 connection with the voir dire, but just so that the Second
5 Circuit is clear, I assume your Honor at least is somewhat
6 familiar with the publicity that has been generated. I
7 don't want to -- I will supplement it --

8 THE COURT: I will tell you what I have seen.

9 MR. JACOBS: I don't want the Second Circuit to
10 think that I didn't try, your Honor, to review some of it,
11 because I will supplement some of it later.

12 THE COURT: I will tell you what I have seen. I
13 channel surfed through the network coverage last night. I
14 saw CNN. Those, in my estimation, were two very different
15 experiences. The networks featured this story but it was
16 not by any means the only story; in fact, on the network
17 broadcasts that I watched, it was over within the first five
18 or ten minutes of the broadcast. We are talking about
19 half-hour news broadcasts. CNN, on the other hand, ran it
20 continuously for hour upon hour upon hour.

21 I saw the three tabloids this morning and The New
22 York Times, all of which featured the story prominently on
23 page 1, the tabloids, two of them, having an identical
24 photograph of a fireman carrying a child. I forget what was
25 on the third. The Times had photographs of equal impact on

1 the front page.

2 Is that what you had in mind?

3 MR. JACOBS: Having gone through some of these
4 cases, it usually takes defense counsel some time to
5 supplement the record with the actual exhibits and things
6 like that, but I thank your Honor for putting that on the
7 record.

8 THE COURT: I will volunteer to provide you, if
9 you want, with my copies of those newspapers.

10 MR. JACOBS: I just want --

11 THE COURT: I am sorry. Having said --

12 MR. JACOBS: Just so we are clear, Judge, some of
13 the comments that I saw on national TV's and local CNN
14 obviously stated it is believed the suspects were Muslim
15 terrorists. In fact, almost every station has broadcast a
16 wanted for Middle Eastern people dressed in beards, and they
17 identified a vehicle. I believe the FBI at a news
18 conference a short time ago, where that was officially
19 stated, it was a 10 a.m. news conference this morning. Just
20 so we are clear, at least two national stations and CNN had
21 the sheik's picture coming out of various courtrooms. And
22 CNN and James Fox, who we had before, specifically
23 identified this case and this trial as one of the leading
24 suspects, that they should look out as far as the incident
25 in Oklahoma, Fox mentioning this case on trial specifically

1 as well.

2 We will supplement the record, and obviously we
3 will do some legal memo as far as the case is concerned for
4 your Honor, so that we can close the matter.

5 THE COURT: Mr. Serra?

6 MR. SERRA: Your Honor, just for the record, your
7 Honor, I don't intend to argue anything any further than
8 anything has been. The Court knew yesterday it was obvious
9 on the record that there was a difference of opinion by
10 defense counsel as to the issue of sequestration. But I
11 believe that the 403 applications, the applications that
12 were made at sidebar, are joined in by all defendants -- at
13 least I join in.

14 THE COURT: I assume that anybody who has not
15 specifically disassociated himself or herself from the 403
16 applications has joined them. Hearing no dissent, I think
17 that is fair.

18 MS. LONDON: That also applies to the mistrial
19 application?

20 THE COURT: It does.

21 MR. FITZGERALD: One fact I think we should just
22 make clear for the record that I don't think is in dispute
23 is that all of this testimony was listed on a schedule sent
24 by the government last week, so that later on no one would
25 think we timed it --

1 THE COURT: No. That is clearly fortuitous.

2 MR. FITZGERALD: And, secondly, the only change
3 has been we dropped one witness who we thought would be
4 extremely upset.

5 THE COURT: I just point out also that the nature
6 of the testimony this morning has been focused principally
7 on identifying marks on various vehicles, both where they
8 were found and the marks themselves. I assume these are
9 ultimately going to be connected to the vehicle it is
10 alleged that Mr. Salameh was driving; correct?

11 MR. FITZGERALD: The next witness, and we are
12 done with this part.

13 THE COURT: Is the assumption correct?

14 MR. FITZGERALD: Yes.

15 THE COURT: That to me was the principal focus of
16 that evidence, not to the twisted and distorted nature of
17 the pieces of metal.

18 I also think that we are here, after all, dealing
19 with a bombing. A jury is going to be asked to draw certain
20 conclusions about how a particular person was focused on and
21 identified. The government has the right to have enough put
22 into evidence so that they can have some confidence in that
23 process, rather than simply having it presented as a stark,
24 sterile fact, but yet not to the point where it becomes
25 waving a bloody shirt. That is what I talked about under

1 403 yesterday and at the sidebar. I think that line has
2 been pretty well walked in this case.

3 MR. JACOBS: I don't disagree with your Honor's
4 characterization. These are some of the largest photographs
5 that I have seen in a criminal case that the government is
6 offering. It isn't just pieces of twisted metal. We have
7 got giant photographs of bomb craters, giant photographs of
8 damage to the World Trade Center, so that it isn't just
9 putting in a little piece of evidence on a day that the
10 front page of all the papers have, as I think Mr. Stavis
11 characterized this morning, the identical photographs. So
12 this jury is seeing -- well, the photographs speak for
13 themselves, but I don't think to characterize this as just
14 twisted pieces of metal is what we as defense lawyers see it
15 as. So your Honor has his impressions.

16 THE COURT: I do.

17 MR. JACOBS: I guess we have ours.

18 THE COURT: Ms. Stewart? There is one other
19 point that I want to make, but go ahead. Why don't you go
20 ahead first.

21 MS. STEWART: Judge, many months ago you and I
22 had a discussion about fortuitous circumstances. I don't
23 think the government is that insensitive to characterize
24 what happened in Oklahoma as fortuitous of the case.

25 THE COURT: No. First of all, fortuitous was my

1 word, so if anybody is going to be accused of insensitivity,
2 it should be me, not they. But secondly, what I was saying
3 was that it was another word for coincidence, not fortunate
4 but just that it was coincidental that on the day we are
5 talking about the World Trade Center evidence, those events
6 happened in Oklahoma City. That is all I meant. And he was
7 pointing out that he had projected this a month before.

8 MS. STEWART: There is no question about that.
9 There is no reason to wave a bloody shirt in the courtroom;
10 the bloody shirt is being waved outside. And to think of
11 the emotional wallop of Mr. Ferby on the same day the people
12 read the front page, even if they didn't read the story, or
13 where the people were reading the story, that that doesn't
14 really carry an almost unbelievable and, in my mind,
15 insurmountable emotional wallop for these jurors. I think
16 we all feel it ourselves and how much more so they must. I
17 just think that we have to be particularly sensitive.

18 That is why we first asked at the sidebar for the
19 continuance, feeling that time does have a way of assuaging
20 those raw feelings, and what we are faced with today is very
21 raw feelings. That we all have, we are subdued here right
22 in this courtroom. And I think that to be presenting this
23 evidence, and you could say oh, it is a twisted piece of
24 metal, it conjures up those feelings that we all had all
25 night as, not us, we weren't at MCC, but after 10 o'clock, I

1 mean, it was nonstop, not only on CNN but on other cable
2 channels as well. That is the reason why we say that these
3 pieces of twisted metal are just added fuel to the fire.

4 THE COURT: The additional point that I was going
5 to make is simply this: I believe, given the posture that
6 we are in, in this case now, with this jury, that the best
7 way to mitigate the effects of what is going on outside this
8 courtroom is to focus diligently and to keep focused
9 diligently on what is going on in this courtroom, and simply
10 to keep pushing ahead with the proof.

11 I recognize a continuance is one of the measures
12 that is spoken of in mitigation of publicity. Usually, in
13 my experience, it is done pretrial rather than during trial,
14 but that doesn't rule out the possibility of doing it during
15 the trial. Granting a continuance is simply going to bring
16 us back to where we were with additional material having
17 been discovered in the interim on the outside, plus it
18 leaves them at loose ends without the mitigating effect of
19 focusing on the legal technicalities here and being
20 instructed on a repeated basis about their obligation to
21 focus on this case.

22 That is the reason that I am doing what I am
23 doing, and I still think that it is the better course, and I
24 am going to continue doing it.

25 MS. AMSTERDAM: Is it your intention to give your

1 instruction again at the close of business today? And I
2 would request that you do.

3 THE COURT: You mean to repeat it in haec verba,
4 the same words?

5 MS. AMSTERDAM: Why not? I mean, it is up to the
6 Court's discretion.

7 THE COURT: I will give an abbreviated version of
8 it. I am not going to repeat the same thing. I will repeat
9 the same thought in summary form and stress to them how
10 important it is to keep focused on this case. By "this
11 case," I mean simply the events going on in this courtroom.
12 I will do that, I did it last night, and I will do it again
13 today. I thought they received it, on the whole, very well
14 last night. There were no gasps, they listened soberly, and
15 left. They were perfectly calm this morning and, if we all
16 keep our dignity and calm, they will stay calm. If you
17 start disrupting things and doing bizarre things, then I
18 think they will take a clue from that and behave
19 accordingly.

20 MS. AMSTERDAM: I would just make one additional
21 request: that in the Court's instructions today, modified
22 or summarized, I would request that you repeat your earlier
23 instruction: "That should you see any publicity about this,
24 please report it to my courtroom deputy."

25 THE COURT: Any publicity about what?

1 MS. AMSTERDAM: About the events in Oklahoma
2 City.

3 THE COURT: Should they see any -- they are all
4 going to tell it as they saw it. I am going to --

5 MS. AMSTERDAM: There should be some modification
6 of that. But I would like the jury to be reminded of what
7 we have told them many months ago, which is that if there
8 are things that come up in the news and you think that they
9 should bring to the Court's attention, please communicate
10 that information to the courtroom deputy. Time has a way of
11 making people forget the obvious. I am simply asking that
12 the Court give them some guidance that if they have issues
13 that are troublesome to them, that the Court is available to
14 hear them. I don't know, for example, whether or not any of
15 these jurors have friends or relatives in Oklahoma City, and
16 I just want them to know that there is a mechanism for
17 communicating that information to the Court.

18 MR. JACOBS: Your Honor, at 5 o'clock your Honor
19 gave an instruction yesterday when the jurors had no idea
20 what happened because they had been here all day and they
21 had lunch inside. Secondly, and I don't want to argue the
22 point again, I will cite the appropriate, at least try to
23 cite the appropriate Second Circuit law with respect to
24 conducting voir dires on pretrial publicity. But I don't
25 ever recall a case with the situation which last occurred

1 here where the Court didn't conduct a brief voir dire of the
2 jury. Sometimes, rarely, most of the time individually, but
3 certainly a question to the jury whether they have been
4 affected somehow of what has taken place.

5 THE COURT: Mr. Jacobs --

6 MR. JACOBS: I will supplement that.

7 THE COURT: Mr. Jacobs, if we were at the stage
8 of this case now where we were about to enter into
9 deliberations, then obviously, or at least it is obvious to
10 me, that I would do exactly what you suggested. We are not
11 at that stage. I don't see any useful purpose whatsoever to
12 be served by conducting a voir dire now. There may come a
13 time later on, before we get to the point of deliberations,
14 when a voir dire will be in order, and I think that is
15 something we ought to think about at that time.

16 MR. JACOBS: Your Honor, the simple question is,
17 when you ask, have you seen or discussed anything that might
18 cause you not to be impartial, in light of the publicity, in
19 light of the reactions that most families have, in light of
20 the fact that people like us are affected by it, we are
21 affected by it as lawyers, and it has an impact on us, it is
22 inconceivable to me that our jurors haven't been impacted.
23 Whether that makes them fair and impartial is a critical
24 question that I think needs to be answered today, and, as
25 with most District Court judges I see over the years, they

1 ask it every morning when the jurors come in. I have seen
2 it done in many cases, I have seen Judge Sand do it, where
3 publicity comes every day. Every day the jurors who come
4 out -- and I have seen Judge Keenan ask every morning, "Have
5 you seen anything in today's papers that make you other than
6 fair and impartial?" I have seen them go on for months of
7 judges doing it. I completely disagree with your Honor's
8 position on this. It won't be the first time and it won't
9 be the last time. We will supplement it legally, that's
10 all.

11 THE COURT: I am not going to hear from anybody
12 else.

13 MR. STAVIS: This is on a different point.

14 MS. LONDON: I was up first, your Honor.

15 THE COURT: Yes?

16 MS. LONDON: Your Honor, because you are not
17 prepared to ask the jurors the general question, I would ask
18 the Court to advise the jury that if they do hear reports
19 that suggest a connection to the events in Oklahoma City,
20 and this case, that they should advise the Court of that so
21 that they can be questioned further.

22 THE COURT: I will not do it at this stage.
23 Thank you very much.

24 MR. STAVIS: A different --

25 THE COURT: I am not going to listen to any more

1 on that. Take your seat. You have something different?

2 MR. STAVIS: Yes.

3 THE COURT: Thank you.

4 MR. STAVIS: I had objected to the introduction
5 of the forensic evidence that was recovered from the World
6 Trade Center that links up the van and Muhammed Salameh. I
7 would like the record to reflect my standard objection under
8 Rule 403 to the admissibility of these metal parts and
9 various other items linking up unindicted co-conspirators to
10 the bombing of the World Trade Center, with the Court's
11 indulgence.

12 THE COURT: I will be happy to give you as much
13 indulgence as you want, but that raises the question that I
14 think was raised by -- I don't know if it was Mr. Jacobs --
15 somebody else who said "this kind of evidence." I don't
16 know where the line is drawn between "this kind of evidence"
17 and another kind of evidence. If you have got specific
18 exhibits that you want to list 403 objections to, so you
19 don't have to keep standing up, I am happy to accommodate
20 you in that respect. But I am not going to give somebody a
21 blanket objection, then to be considered at leisure when, as
22 and if there has to be an appeal, if there has to be appeal.

23 MR. JACOBS: I think what I suggested yesterday
24 was that transcripts be read and things like that. When I
25 said "this type of evidence," I meant World Trade Center

1 evidence and photographs -- I don't mean the sheik, but we
2 have thousands of transcripts in this case, and I just
3 didn't think --

4 THE COURT: We are now doubling back on a point
5 that was made earlier, which is we don't know how long this
6 is going to go on, "this" being the investigation in
7 Oklahoma City, and what is going to be unearthed there and
8 how long it is going to take to do it. Therefore, the
9 suggestion you made, in my view, is impractical. I want to
10 keep proceeding.

11 Let's take a short break.

12 Just to clear up one additional and frivolous
13 point for the record. When I suggested earlier that the
14 only person of a higher opinion of Judge Duffy than I had
15 was Judge Duffy, I was referring to the person that he
16 refers to as the real Judge Duffy, namely, his wife, the
17 Honorable Irene Duffy.

18 (Recess)

19 (Pages 8638 and 8639 were sealed by order of the
20 court)

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1 (In open court; jury not present)

2 THE COURT: Before we get started, I should tell
3 you about a conversation or part of a conversation, at
4 least, that I had inside with Mr. Ricco about one juror who
5 inquired into the absence of Mr. El-Gabrowny. What I intend
6 to do is simply to explain, in brief, colorless fashion, why
7 Mr. El-Gabrowny is not here and that we are all going ahead
8 in his absence with his consent, and then we will proceed.

9 MR. JACOBS: What juror? Number?

10 THE COURT: No.

11 (Jury present)

12 THE COURT: Before we start the testimony, one or
13 more of you may have noticed that Mr. El-Gabrowny has not
14 been here for some or all of the last couple of days. I
15 should simply tell you that he is having difficulty with his
16 back, so he has been excused by the Court. He has consented
17 to have us go forward in his absence, and his lawyer, of
18 course, is here. And he will be back. That is the
19 explanation for that. Go ahead.

20 MR. FITZGERALD: Thank you, Judge.

21 The government calls William Fritz.

22

23

24

25

1 WILLIAM FRITZ,

2 called as a witness by the government, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Mr. Fritz, if you could speak into the microphone
7 directly in front of you, perhaps pick up the speaker a
8 little bit and that will carry your voice.

9 Will you please tell the jury what you do for a
10 living?

11 A. I am an agent with the National Insurance Crime
12 Bureau, commonly known as the NICB.

13 Q. Is that a government agency?

14 A. It is a private organization.

15 Q. Will you tell the jury briefly what that
16 organization is?

17 A. We're a private, nonprofit organization, funded
18 by the insurance industry. We have three regional offices
19 throughout the United States. We have over 200 field
20 agents. We conduct investigations on vehicle thefts,
21 various insurance frauds, and we maintain a database
22 somewhere in the neighborhood of 300 million records on file
23 pertaining to the manufacturing of vehicles, thefts,
24 recoveries, vehicle impounds, and so on.

25 Q. Will you just describe generally what your duties

1 are as a field agent for the National Insurance Crime
2 Bureau?

3 A. As a field agent, I conduct investigations on
4 vehicle thefts and possible frauds. I also conduct seminars
5 for law enforcement on the latest identification of
6 vehicles, the latest methods of identifying vehicles.

7 Q. Are you familiar with what is known as a VIN
8 number or a Vehicle Identification Number?

9 A. Yes. A Vehicle Identification Number is the
10 number that is affixed to the left portion of the dashboard
11 of a vehicle that is manufactured in this country. It has
12 17 characters.

13 Q. And by 17 characters, you mean 17 letters or
14 numbers in a series and it is screwed in to the left side of
15 your dashboard?

16 A. That's correct.

17 Q. What records does the National Insurance Crime
18 Bureau keep with regard to vehicles and their VIN numbers?

19 A. We are supplied on a monthly basis by all
20 manufacturers in the country, they supply us on a monthly
21 basis of all vehicles manufactured, the factories they are
22 manufactured in, and the Vehicle Identification Numbers of
23 each vehicle.

24 Q. Now, if someone wanted to look at the VIN number
25 of their car, they could just look in the windshield. But

1 is the VIN number or any part of it placed anywhere else in
2 the vehicle?

3 A. Well, the full identification number is not
4 placed any place else except there is a federal sticker on
5 the driver's door which indicates the full VIN number, and
6 then there is a VIN derivative, a part of that VIN number,
7 that is at a location on the vehicle. We prefer to call it
8 the secondary Vehicle Identification Number, rather than a
9 confidential number.

10 Q. Is the secondary VIN number, is the existence of
11 those numbers fairly well known?

12 A. I would say not.

13 Q. Do different manufacturers place the secondary
14 VIN numbers in different places?

15 A. That's correct.

16 Q. Is the National Insurance Crime Bureau kept
17 apprised of where different manufacturers place those
18 numbers?

19 A. We are. The NICB is provided with that
20 information, and I believe the Federal Bureau of
21 Investigation is also supplied.

22 MR. BERNSTEIN: Objection to his belief.

23 THE COURT: His belief is stricken. Go ahead.

24 Q. If someone gives you a VIN number, how do you
25 yourself as a field agent determine what information is in

1 the computer database of the National Insurance Crime
2 Bureau? Is there a method, a computer method you use to
3 research a VIN number?

4 A. We have what they call a VIN assist method. If I
5 enter that VIN into my computer, it will tell me if that is
6 a valid VIN number or not.

7 Q. Can you tell us what the different digits in the
8 VIN number signify, the 17 characters?

9 I will come back to that later when we use the
10 chart.

11 Directing your attention to the period after the
12 explosion at the World Trade Center, February 1993, were you
13 given an assignment with regard to that explosion?

14 A. On March 3 of '93, I received an assignment from
15 our Woodbury office, myself and another agent, Michael
16 Mechow, were told to go to the --

17 MR. STAVIS: Objection as to what he was told,
18 your Honor.

19 THE COURT: Overruled. Just tell us what you
20 were told to do, not any background information which you
21 were given. Go ahead.

22 A. We were told to respond to the World Trade
23 Center.

24 Q. What did you do when you were at the World Trade
25 Center?

1 A. When we arrived there, members of the joint auto
2 larceny task force showed us some photographs of what
3 appeared to be a secondary VIN stamping.

4 Q. What did you do when you saw what appeared to be
5 a secondary VIN stamp?

6 A. We contacted our office, gave them the secondary
7 VIN stamping, and they came back within a minute or so with
8 the full Vehicle Identification Number.

9 Q. And besides doing that by phone and having your
10 office identify that number, did you later perform that task
11 yourself?

12 A. I did.

13 Q. Did you generate a printout from the VIN assist
14 program?

15 A. Yes, I did.

16 Q. Let me approach you with what has been premarked
17 as Government Exhibit W508.

18 Looking at Government Exhibit W508, I ask you to
19 tell us if you recognize what it is.

20 A. I do. This is a blown-up version of our VIN
21 assist.

22 Q. Is this the blown-up version of the printout for
23 that number which you were given?

24 A. It is.

25 MR. FITZGERALD: Your Honor, I would offer

1 Government Exhibit W508.

2 THE COURT: Hearing no objection to 508, 508 is
3 received without objection.

4 (Government Exhibit W508 was received in
5 evidence.)

6 THE COURT: Go ahead.

7 Q. Would you step down, please. Step over here.

8 Now, using Government Exhibit W508, if you could
9 point to the numbers you were given in March 1993.

10 A. The photographs showed the letter L, which
11 indicated the year of the vehicle, the letter H, which
12 indicated the assembly plant at Lorain, Ohio, and the last
13 six characters represent the sequential number of the
14 vehicle.

15 Q. Once you were in this VIN assist program, what
16 numbers were generated?

17 A. The full 17 character VIN number.

18 Q. And going through that character number, which
19 would be 1FTHE34Y0LHA75633, can you tell us, in that order,
20 what each character means?

21 A. The number 1 is the country of origin. The
22 vehicle was manufactured in the United States. The letter
23 F, the manufacturer, means it was Ford vehicle. T is the
24 vehicle type, which was indicated as a truck. H is the
25 gross weight of the vehicle. E34 is the series, in this

1 case an Econoline cargo van. Y is the engine type. The 0
2 was a check digit.

3 When this 17 character VIN is entered into our
4 VIN assist, if there is anything wrong with any of the
5 characters on there, it will show, this check digit won't
6 match.

7 The letter L is for the year, which is 1990. The
8 letter H is the plant, Lorain, Ohio. And the A75633 was the
9 sequential number, which means as that vehicle comes down
10 the number it increases by one number each vehicle. The
11 next vehicle behind this one on the assembly line would be
12 75634.

13 Q. Thank you. You can resume your seat.

14 Q. Just so we are clear, when you look at the last
15 few digits, such as LHA75633, are they unique to the
16 vehicle?

17 A. The last portion?

18 Q. The last eight digits.

19 A. The last eight digits are unique to that
20 particular vehicle.

21 Q. So there wouldn't be a different type of car,
22 like a Chevy red car that would have those last eight
23 digits?

24 MR. STAVIS: Objection as to form, your Honor.

25 THE COURT: Overruled.

1 A. No.

2 Q. Those other digits in the front are determined by
3 the make and model of the car?

4 A. Right, yes.

5 Q. And the check digit, is that different for
6 different vehicles?

7 A. Yes, it is.

8

9 (continued on next page)

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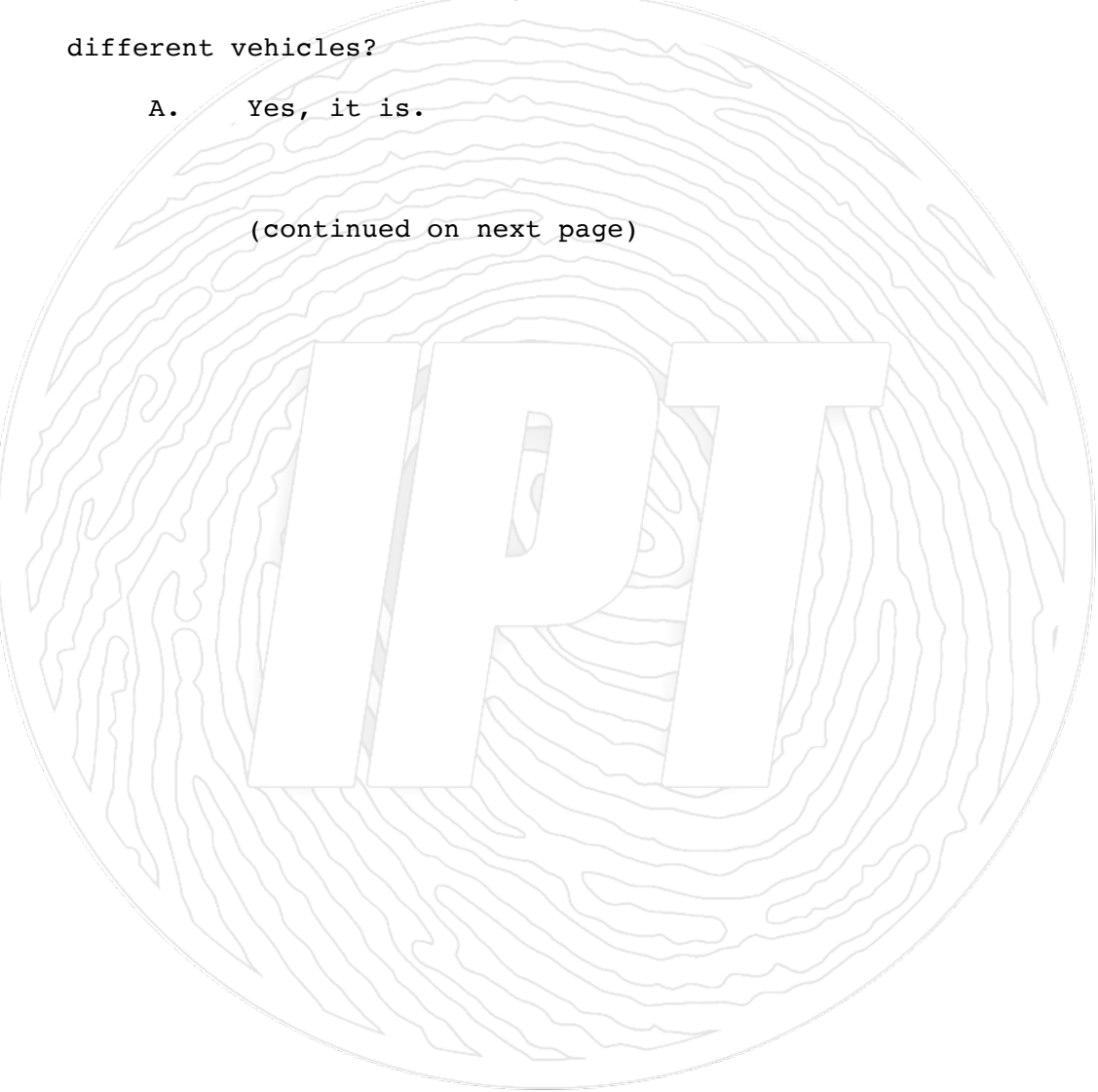
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1 Q. How is that determined?

2 A. Well, the computer determines that. In other
3 words, as that is put in, that check digit can be anywhere
4 from one to ten.

5 Q. So if someone were to try to alter a VIN number,
6 that digit is used to make sure that all the numbers check
7 out.

8 MR. STAVIS: Objection as to form, your Honor.

9 THE COURT: Sustained as to form.

10 Q. For this vehicle, it is a Ford truck with that
11 VIN number, is that correct?

12 A. That is correct.

13 MR. FITZGERALD: I have no further questions,
14 your Honor, but at this time I would like to read a
15 stipulation.

16 THE COURT: Go ahead.

17 MR. FITZGERALD: It has been stipulated by the
18 parties that the vehicle with VIN No. 1FTHE34Y0LHA7563 was a
19 van --

20 THE COURT: 633?

21 MR. FITZGERALD: 633 was a van belonging to the
22 Ryder Truck Rental Company, which was assigned the internal
23 identification number No. 115141 by the Ryder company.

24 Nothing further.

25 THE COURT: Cross?

1 MR. STAVIS: No cross-examination, your Honor.

2 THE COURT: Thank you. You are excused.

3 MR. FITZGERALD: The government calls Abdou
4 Zohny.

5 ABDEL FATTAH ZOHNLY,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FITZGERALD:

10 Q. Mr. Zohny, if you could just keep your voice up,
11 speak into the microphone in front of you. If you point
12 towards it, it will carry your voice.

13 Could you just tell the jury what you do for a
14 living.

15 A. I am in the travel business.

16 Q. What is the name of your travel business?

17 A. Zohny Travel.

18 Q. Let me approach you with what's been premarked as
19 Government Exhibits W751A and B and Government Exhibit W752.

20 Looking first at Government Exhibit W751A, do you
21 recognize that exhibit?

22 A. Yes.

23 Q. Is that a record of your business, Zohny Travel?

24 A. Yes, sir.

25 Q. The same question as to W751B. Do you recognize

1 that exhibit?

2 A. Yes.

3 Q. Is that a record of your company, Zohny Travel?

4 A. Yes.

5 Q. As to W752, do you recognize that exhibit?

6 A. Yes.

7 Q. Is that a record of Zohny Travel?

8 A. Yes, sir.

9 Q. Are all three items records kept in the ordinary
10 course of the business of Zohny Travel?

11 A. Yes.

12 MR. FITZGERALD: Your Honor, I would offer W751A
13 and B and W752.

14 THE COURT: Hearing no objection, W751A and B and
15 W752 are received without objection. Go ahead.

16 (Government's Exhibits W751A, W751B and W752 for
17 identification were received in evidence)

18 Q. Could you describe to the jury, Mr. Zohny, what
19 W751A is. I believe that is the pink piece of paper in your
20 hand.

21 A. It is an invoice from our office for an airline
22 ticket that was sold to Mr. Mahmud Abouhalima on March 1,
23 1993, I think.

24 Q. The fellow Mahmud Abouhalima, did you know him at
25 all?

1 A. No. No, I don't know him, but I just know him as
2 a neighbor of my area where I used to have a store, in
3 Brooklyn.

4 Q. When you had a store in Brooklyn, where was it?

5 A. On 7209 5th Avenue.

6 Q. 7209 5th Avenue, Brooklyn?

7 A. Yes.

8 Q. Approximately when did you have the store on 5th
9 Avenue in Brooklyn? Just a year.

10 A. It's about two, three years ago.

11 Q. You said that Mr. Mahmud Abouhalima was a
12 neighbor then?

13 A. Yes.

14 Q. Did you know him well?

15 A. No.

16 Q. Directing your attention to 751A, you said that
17 that was a ticket sold on March 1, 1993.

18 A. Yes.

19 Q. Can you tell the jury what the ticket was for.
20 What airline and what destination?

21 A. OK. It was on Saudi Airline, and the final
22 destination was to Khartoum, which is in Sudan.

23 MR. JACOBS: Your Honor, I am having trouble
24 hearing.

25 THE COURT: The final destination was to

1 Khartoum.

2 A. The final destination was to Khartoum, but he was
3 going for Omra.

4 MS. STEWART: Your Honor, can he pull the mike
5 out a little bit?

6 THE COURT: If you could just talk into the
7 microphone ahead of you.

8 THE WITNESS: OK.

9 A. The final destination was to Khartoum, and he was
10 planning to go for Omra, which is the lesser Haj pilgrimage.

11 Q. The lesser pilgrimage, and that is called Haj?

12 A. Haj.

13 Q. You said the final destination was Khartoum?

14 A. Yes.

15 Q. Is that Khartoum in the Sudan?

16 A. Yes.

17 Q. Was that a connecting flight? Were there two
18 flights on the ticket?

19 A. It is the connecting flight with the Saudi
20 Airline.

21 Q. What was the first stop on the Saudi Airline
22 before Khartoum?

23 A. Jiddah.

24 Q. That is in Saudi Arabia?

25 A. Saudi Arabia.

1 Q. Do you know when it was that Mr. Mahmud
2 Abouhalima paid for the ticket?

3 A. I think -- this coming from Exhibit No. 751B,

4 Q. OK.

5 A. On 27th of February, the booking was made, but I
6 think in March 1 is a payment came, and in that time we
7 issued the invoice.

8 Q. So people make a booking with you, but you don't
9 issue the invoice until they pay for the ticket?

10 A. Most of the time, yes.

11 Q. Your records indicate that the booking was made
12 on February 27 and the ticket was issued on March 1?

13 A. Yes. It might be it was a phone order, ordered
14 by telephone, someone called up and made the reservation.

15 Q. When was the flight scheduled to leave?

16 A. March 2.

17 Q. When was it due to arrive in Jiddah, Saudi
18 Arabia?

19 A. March 3.

20 Q. When was the connecting flight due to arrive in
21 Khartoum in the Sudan?

22 A. March 5.

23 Q. If you could look at Government Exhibit W752, is
24 that another invoice from Zohny Travel?

25 A. Yes, sir.

- 1 Q. Can you tell us who the customer was on that
2 invoice?
- 3 A. Abouhalima, Mary Ann.
- 4 Q. Who did you understand Mary Ann Abouhalima to be?
- 5 A. I think his family.
- 6 Q. Can you tell us the date of this invoice.
- 7 A. March 8, '93.
- 8 Q. On the March 8, 1993 invoice, can you tell us how
9 many tickets were listed.
- 10 A. Five tickets.
- 11 Q. Can you tell us who the people were that were
12 going to fly on those tickets.
- 13 A. Mrs. Abouhalima, I believe, and his kids.
- 14 Q. And that would be three children and an infant?
- 15 A. Three children and an infant.
- 16 Q. When was the flight to leave that these people
17 were to travel on?
- 18 A. March 9, 1993.
- 19 Q. Where was it to arrive?
- 20 A. To Cairo.
- 21 Q. Cairo in Egypt?
- 22 A. In Egypt, yes.
- 23 Q. On March 10?
- 24 A. March 10, yes.
- 25 Q. So for the invoice on March 1, the ultimate

1 destination was the Sudan, and for the invoice on March 8,
2 the ultimate destination for the family was Cairo?

3 MR. STAVIS: Objection as to form, your Honor.

4 THE COURT: Overruled.

5 Q. Is that correct?

6 A. Yes. This one to Cairo, yes.

7 MR. FITZGERALD: Thank you, nothing further.

8 THE COURT: Cross? Mr. Ricco, representing
9 Mr. El-Gabrownny. Go ahead.

10 CROSS-EXAMINATION

11 BY MR. RICCO:

12 Q. Good morning, Mr. Zohny.

13 A. Good morning.

14 Q. You knew Mr. Abouhalima from the community in
15 Brooklyn, isn't that right?

16 A. Yes, from Brooklyn, yes.

17 Q. In fact you previously testified at the World
18 Trade Center case, isn't that correct?

19 A. Correct, sir.

20 Q. At that time you told the jury that you knew him
21 because you knew "a lot of people in our community," and
22 that he used to live upstairs from your offices in Bay
23 Ridge, is that correct?

24 A. That's correct, please.

25 Q. In fact, you often saw him with his children?

1 A. Yes.

2 Q. You knew him because you recognized him as a
3 person in the community, isn't that correct?

4 A. That's correct.

5 Q. But he wasn't a personal friend of yours?

6 A. No.

7 Q. The Egyptian community in Brooklyn is a small
8 community, isn't that right?

9 A. You're right.

10 Q. Even though you know who he is, right?

11 A. Yes.

12 Q. And you know who his children are, you don't know
13 him personally?

14 A. I don't know the children, no. If I see them
15 now, I don't know them, yeah.

16 Q. But you have seen them many times?

17 A. Yes.

18 Q. Mr. Abouhalima purchased a single, one-way ticket
19 to Saudi Arabia, isn't that correct?

20 A. Yes.

21 Q. He have left New York on or about March 3, isn't
22 that right?

23 A. Yes.

24 Q. His wife and their four children also left New
25 York on one-way tickets, isn't that right?

1 A. That's correct.

2 Q. When we say "one-way tickets," this means that
3 they had tickets to leave, but not to come back, isn't that
4 right?

5 A. It's a one-way ticket. I don't know. Maybe it's
6 budget. They don't have the money to pay for round-trip
7 tickets, or he is buying one-way for now and going to buy
8 another one --

9 THE COURT: He is not asking you about what they
10 intended. He's simply asking you whether according to the
11 ticket it was a ticket to go only one way.

12 THE WITNESS: One way.

13 THE COURT: Without a return?

14 THE WITNESS: Yes.

15 THE COURT: OK. Go ahead.

16 MR. RICCO: Thank you, your Honor.

17 Q. The tickets were paid for in cash?

18 A. Yes.

19 Q. The price for all five tickets came to well over
20 \$2,000, isn't that correct? Will you check your invoices,
21 please.

22 A. There is a payment for the tickets, was \$1860,
23 \$1,860.

24 Q. That's almost \$2,000?

25 A. Yes, almost.

1 Q. It was paid to you in cash, isn't that correct?
2 A. That's correct, sir.
3 Q. For Mr. Mahmud Abouhalima's ticket, someone from
4 your office went with him to pick that ticket up, isn't that
5 correct?

6 A. That's correct.

7 Q. Who was that person?

8 A. Mr. Edelbi, Mohammed Edelbi, one of my sales
9 people.

10 Q. In order for Mahmud Abouhalima and his family to
11 exit the United States on those one-way tickets, what type
12 of travel documents would have been required to be produced
13 to exit the United States?

14 A. You will have to have a passport and visa.

15 Q. Did your offices assist Mr. Mahmud Abouhalima
16 with obtaining the visas, if you remember?

17 A. I cannot recall because he was not dealing with
18 me personally.

19 MR. RICCO: I have no further questions. Thank
20 you.

21 THE COURT: Mr. Jacobs?

22 MR. RICCO: If I can have a minute, your Honor.

23 THE COURT: I am sorry.

24 (Pause)

25 MR. RICCO: Thank you, Judge.

1 THE COURT: Another question?

2 MR. RICCO: A couple.

3 THE COURT: OK.

4 Q. Mr. Zohny?

5 A. Yes.

6 Q. The tickets that Mr. Abouhalima's wife and his
7 children traveled on, those tickets came to \$1800, isn't
8 that correct?

9 A. Yes.

10 Q. But Mr. Abouhalima's ticket was approximately
11 \$680?

12 A. Yes.

13 Q. Those were paid for separately?

14 A. That's correct.

15 Q. So the purchase of both tickets, or all of the
16 tickets were well over \$2,000 --

17 A. That's correct.

18 Q. They were all paid for in cash?

19 A. That's correct.

20 Q. Your records in this case, your business records
21 were subpoenaed by the FBI, isn't that correct?

22 A. That's correct.

23 Q. You readily turned those records over, isn't that
24 correct?

25 A. That's correct.

1 Q. You are not testifying here today -- you sold
2 Mr. Abouhalima a ticket and his family tickets, isn't that
3 right?

4 A. Repeat it, please.

5 Q. You sold the tickets to them --

6 A. Yes.

7 Q. -- to travel?

8 You are not testifying here today under any grant
9 of immunity, are you?

10 A. No.

11 Q. The answer is no?

12 A. No, no, no.

13 MR. RICCO: I have no further questions.

14 Thank you, your Honor.

15 THE COURT: Anything else, Mr. Fitzgerald?

16 MR. FITZGERALD: No, Judge.

17 THE COURT: Thank you, Mr. Zohny. You are
18 excused.

19 (Witness excused)

20 THE COURT: Do you want to call your next
21 witness.

22 MR. McCARTHY: Yes, your Honor. The government
23 calls Patrick Galasso.

24 PATRICK JOSEPH GALASSO,

25 called as a witness by the Government,

1 having been duly sworn, testified as follows:

2 MR. McCARTHY: May I proceed, your Honor?

3 THE COURT: Please.

4 DIRECT EXAMINATION

5 BY MR. McCARTHY:

6 Q. Good afternoon, Mr. Galasso?

7 A. Good afternoon, sir.

8 Q. Could you explain to the ladies and gentlemen of
9 the jury what you do for a living.

10 A. I sell used cars, and I rent Ryder trucks.

11 Q. What is the name of your business?

12 A. DIB Leasing, Incorporated is my business.

13 Q. DIB?

14 A. DIB.

15 Q. What is your position at DIB Leasing?

16 A. I am the owner, sir.

17 Q. Directing your attention to February of 1993, can
18 you tell us where your business was located at that time.

19 A. On Kennedy Boulevard in Jersey City.

20 Q. Where on Kennedy Boulevard?

21 A. 1558.

22 Q. Can you tell us how close Kennedy Boulevard is to
23 Pamrapo Avenue.

24 A. Ramapo Avenue, sir?

25 Q. Yes.

1 A. A block away.

2 Q. Directing your attention again to February of
3 1993, and specifically to February 23, did there come a time
4 that you met a man by the name of Mohammed Salameh?

5 A. Yes, sir.

6 Q. Mr. Galasso, I have placed before you
7 Government's Exhibit 5E in evidence. Do you recognize the
8 person depicted in that photograph?

9 A. Yes, sir.

10 Q. Who is that, sir?

11 A. That's Mohammed Salameh.

12 Q. Can you explain to us under what circumstances it
13 was that you met Mr. Salameh on February 23, 1993.

14 A. He came into my place of business to rent a
15 truck.

16 Q. Did he come alone or was --

17 A. No, he was with someone else.

18 Q. Did you meet the person he was with?

19 A. Yes, sir.

20 Q. Did you meet him by name?

21 A. No, sir.

22 Q. Did you have some discussion with Mr. Salameh and
23 the person he was with?

24 A. Yes, sir.

25 Q. Let me step back for a moment and ask you, if you

1 recall, how did they arrive?

2 A. By car.

3 Q. Do you recall what kind of car it was?

4 A. It was a red car, sir. It pulled up in my
5 driveway.

6 Q. When they got there you had some conversation
7 with them?

8 A. Yes.

9 Q. Can you describe the conversation.

10 A. We talked about renting a truck. They wanted to
11 know the size trucks that we had for rent and the price of
12 the trucks.

13 Q. On their side of the transaction, who carried the
14 discussion?

15 A. Mohammed Salameh.

16 Q. Did you speak directly with the other gentleman?

17 A. No, sir.

18 Q. Did the other gentleman and Mr. Salameh speak
19 with each other in your presence?

20 A. Yes, sir.

21 Q. Did you understand what they were saying?

22 A. No, sir.

23 Q. Can you tell us why not?

24 A. They were speaking in a foreign language, sir.

25 Q. Can you tell us what the discussion was, if you

1 recall, about the size of the vehicle they wanted to rent?

2 A. They wanted to know the size trucks that we had.

3 I told them we had like a number of sizes, a ten-foot, a

4 fifteen-foot. And Mohammed made a phone call --

5 Q. Let me stop you for a moment.

6 You say Mr. Salameh made a phone call?

7 A. Yes, sir.

8 Q. Did he make the phone call before or after he
9 decided what kind of truck he wanted to buy?

10 A. After --

11 Q. I'm sorry, to rent.

12 A. He made a phone call before, sir.

13 Q. Did he make the phone call in your presence?

14 A. Yes, sir.

15 Q. Were you able to understand what he was saying on
16 his side of the conversation?

17 A. No, sir.

18 Q. Why not?

19 A. It was a language I did not understand.

20 Q. After Mr. Salameh finished his phone call, did he
21 decide what kind of vehicle he wanted to rent?

22 A. Yes, sir.

23 Q. What kind was that, sir?

24 A. It was a ten-foot cargo van, sir.

25 Q. Did you rent him a van on that day?

1 A. Yes, sir.

2 Q. Mr. Galasso, I have placed before you Government
3 Exhibits W1 and W2 for identification. I ask you, sir, if
4 you recognize those documents.

5 A. Yes, I do, sir.

6 Q. Can you describe, without reading from the
7 document, generally what is W1 and then what is W2.

8 A. W1, sir, is an open agreement contract.

9 Q. And W2.

10 A. W2 is a safety tip form.

11 Q. Are W1 and W2 the rental agreement contract and
12 the safety form that were executed in connection with the
13 transaction you did with Mr. Salameh on February 23?

14 A. Yes, sir.

15 MR. McCARTHY: Your Honor, the government offers
16 W1 and W2.

17 THE COURT: Hearing no objection, W1 and W2 are
18 received without objection.

19 MR. McCARTHY: Thank you, your Honor.

20 (Government's Exhibits W1 and W2 for
21 identification were received in evidence)

22 Q. Can you please describe for us the vehicle that
23 you rented to Mr. Salameh that day.

24 A. It was a ten-foot cargo van.

25 Q. It is a Ryder van?

1 A. Ryder van.

2 Q. How can you identify at your business the
3 vehicles that you rented for Ryder?

4 A. We go by unit number, sir.

5 Q. Is that the Ryder unit number?

6 A. Yes, the Ryder unit number.

7 Q. Can you read into the record, directing your
8 attention to W1, the Ryder unit number of the Ryder van that
9 you rented to Mr. Salameh?

10 A. Yes, sir. 115141 was the unit number, sir.

11 Q. Thank you, sir.

12 In connection with the condition of the van, did
13 you have some discussion with Mr. Salameh on February 23,
14 1993?

15 A. Yes, sir.

16 Q. What was that discussion?

17 A. It was concerning the right-side mirror. It was
18 broken at the time.

19 Q. Can you please describe for us briefly what your
20 discussion was about the right side mirror.

21 A. I told him that it was broken, it was either
22 cracked or there was a piece missing, and I would try to
23 replace it as soon as I could.

24 Q. What was his response to that?

25 A. He wanted it replaced very quickly.

1 Q. Did you come to some agreement with him about
2 when it would be replaced?

3 A. Yes. I told him I would fix it the next morning.

4 Q. Directing your attention to W2 for
5 identification, can you tell us briefly what that is and how
6 it relates to this transaction.

7 A. This is a part of a -- or a safety tip, sir.
8 This goes together with the open contract.

9 Q. Do you do a safety tips form each time that you
10 do a contract?

11 A. Yes, sir.

12 Q. Is there on W2 any reflection of -- I don't want
13 to say reflection of the mirror -- is there anything that
14 relates to the discussion that you had about the mirror?

15 A. Yes, sir.

16 Q. Can you tell us about that, please.

17 A. Under "Damage Description," I wrote, "right-side
18 mirror missing."

19 Q. Did Mr. Salameh sign both W1 and W2?

20 A. Yes, he did.

21 Q. Can you tell us, please, how he signed his name.

22 A. MOH -- it looks like an L, sir. I really don't
23 know.

24 Q. He signed these in your presence?

25 A. Yes, sir.

1 Q. Directing your attention to W2, does that appear
2 to be "MOH'D"?

3 A. Yes, sir.

4 Q. W1, does that appear to you to be roughly the
5 same?

6 A. Yes, sir.

7 Q. Mr. Galasso, did you have some conversation with
8 Mr. Salameh about how long he was going to keep the van and
9 what you planned to charge him?

10 A. Yes, sir.

11 Q. Can you describe that conversation for us.

12 A. They wanted to know which would be cheaper: To
13 rent it by the day or to rent it by the week.

14 Q. What was ultimately decided?

15 A. By the week, sir.

16 Q. What agreement did you make with him? Let me
17 withdraw that and ask you a different question.

18 Did you require of him a deposit?

19 A. Yes, sir.

20 Q. How much of a deposit?

21 A. \$400.

22 Q. Did he pay you \$400?

23 A. In cash.

24 Q. What form of cash did he pay you \$400 in, sir?

25 A. Four \$100 bills.

1 Q. Let me direct your attention now to the next day,
2 February 24, 1993. Did you see Mr. Salameh that day?

3 A. Yes, sir.

4 Q. Can you describe to the ladies and gentlemen of
5 the jury under what circumstances you saw him.

6 A. I saw him leaving my office with a package, sir.

7 Q. Did you recognize the package that Mr. Salameh
8 was carrying?

9 A. Yes, sir.

10 Q. What was the package?

11 A. It was the mirror, the broken mirror.

12 Q. Did you have any conversation with Mr. Salameh
13 that day?

14 A. No, sir.

15 Q. Did there come a time that you heard from
16 Mr. Salameh again?

17 A. Yes, sir.

18 Q. Do you recall when that was?

19 A. The following -- Friday of the, of that same
20 week, sir.

21 Q. Sir, am I correct that the Friday of that week
22 was February 26, 1993?

23 A. Yes, sir, February 26.

24 Q. Did you become aware on February 26, 1993 that
25 there had been an explosion at the World Trade Center?

1 A. Yes, sir.

2 Q. Did you hear from Mr. Salameh before or after
3 that explosion?

4 A. After the explosion, sir.

5 Q. How was it that you heard from Mr. Salameh? That
6 is, was it a phone call, did he come to see you?

7 A. He came to my office.

8 Q. Can you tell us what happened when he came to
9 your office.

10 A. He came to my office to report the truck stolen,
11 sir.

12 Q. Approximately what time of the day was this on
13 February 26?

14 A. It was early afternoon, I would say, just after
15 2.

16 Q. Did you have a conversation with Mr. Salameh on
17 that day at that time?

18 A. Yes, sir.

19 Q. Can you describe the conversation for us.

20 A. He told me that the truck was stolen the previous
21 night, which would be Thursday, at a shopping center on
22 Route 440.

23 Q. Do you recall what shopping center?

24 A. A Shop-Rite, sir.

25 Q. Are you familiar with that location?

1 A. Yes, sir.

2 Q. About how far is that from your business?

3 A. Half a mile, maybe less.

4 Q. Did you have further discussion with him about
5 the circumstances under which the van had been in his words
6 "stolen"?

7 A. I'm sorry. I didn't hear the question.

8 Q. Did you have further discussion with him about
9 the alleged theft of the van?

10 A. Yes, sir.

11 Q. Can you describe that for us.

12 A. He explained to me like he was coming out of the
13 Shop-Rite with a number of packages and the truck wasn't
14 there. The truck was not in the parking place that he left
15 it.

16 Q. Did you have any discussion with him about
17 whether he had reported it?

18 A. Yes, I asked him, did he report it. He said he
19 didn't know what to do.

20 Q. Did you have any discussion with him about the
21 money that he had deposited?

22 A. Yes, sir. He asked me if I could give him his
23 deposit back at that time.

24 Q. What did you tell him?

25 A. I told him, no, I needed a police report.

1 Q. Was there any further discussion about that
2 matter?

3 A. He asked me exactly what to do, "How do I obtain
4 this police report?"

5 Q. What did you tell him?

6 A. I told him he has to go back to the Shop-Rite
7 parking lot, to either see security there or go to the
8 precinct in that district and report the truck stolen.

9 Q. Did there come a time after the February 26, 1993
10 when you spoke with Mr. Salameh again about the van?

11 A. Yes, sir.

12 Q. About how long after, if you recall?

13 A. It was the following week, sir.

14 Q. Do you recall what day of the following week?

15 A. It was Thursday morning.

16 Q. What do you recall about Thursday morning?

17 A. I received a phone call from Mr. Salameh --

18 Q. All right.

19 A. -- in the morning.

20 THE COURT: Mr. McCarthy, could you come to a
21 convenient break point in the next couple of minutes.

22 MR. McCARTHY: This actually is a good point,
23 your Honor.

24 THE COURT: Ladies and gentlemen, we are going to
25 break for lunch. Please leave your notes and other

1 materials behind. Please do not discuss this case and we
2 will see you after lunch at 2 o'clock.

3 (The jury was excused)

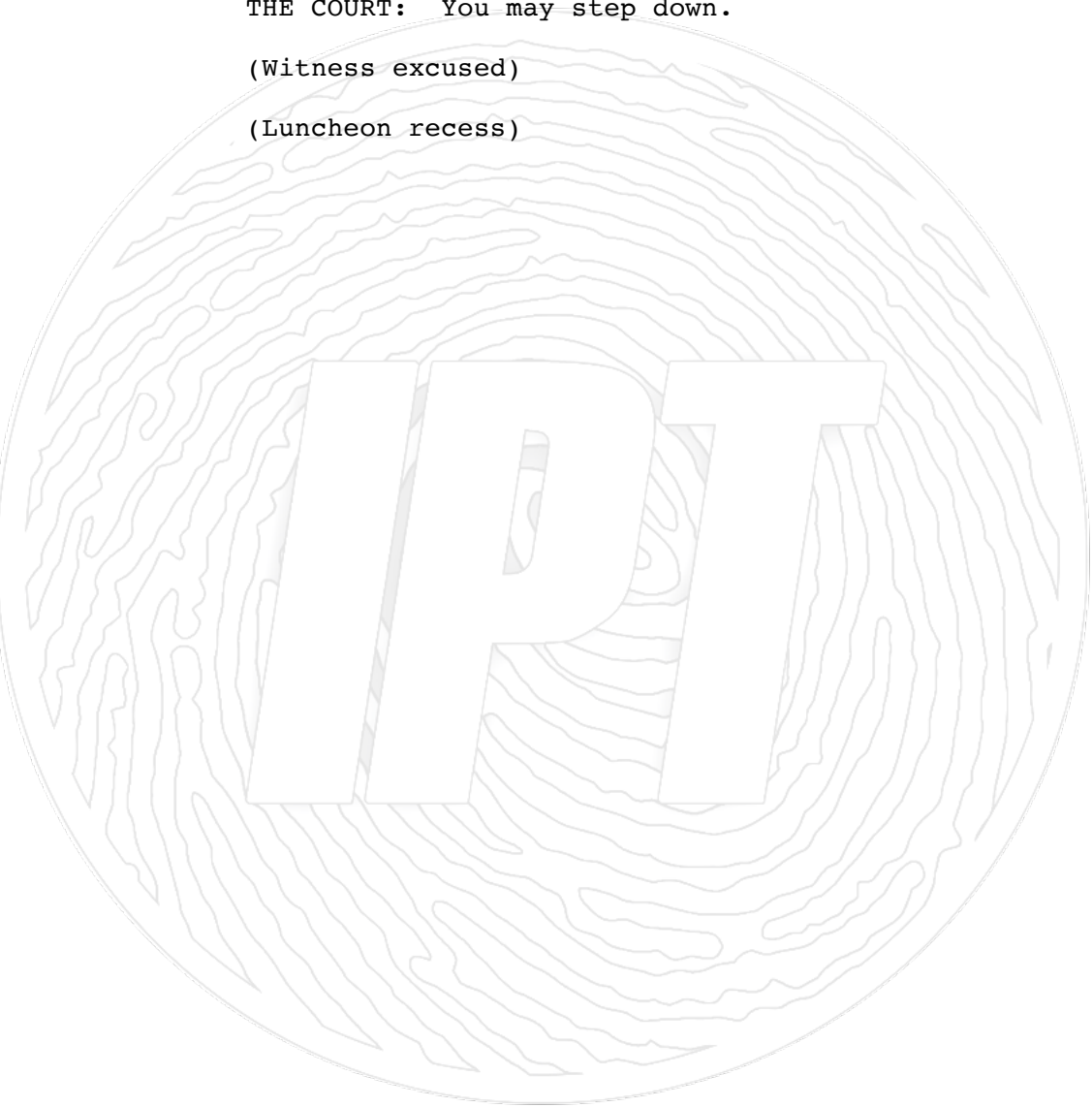
4 (In open court, jury not present)

5 THE COURT: You may step down.

6 (Witness excused)

7 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:10 p.m.

3 (Trial resumed; jury not present)

4 MR. JABARA: Your Honor, I would like to make an
5 application relative to the publicity that has surrounded
6 the --

7 THE COURT: Make it on papers.

8 MR. JABARA: Pardon?

9 THE COURT: Make it on papers. Take your seat.

10 MR. JABARA: Thank you.

11 (Jury present)

12
13 PATRICK GALASSO, resumed.

14 THE COURT: Good afternoon.

15 JURORS: Good afternoon.

16 MR. McCARTHY: May I proceed, your Honor?

17 THE COURT: Yes.

18 DIRECT EXAMINATION (Continued)

19 BY MR. McCARTHY:

20 Q. Good afternoon, Mr. Galasso.

21 A. Good afternoon, sir.

22 Q. Sir, before we broke you had told us about the
23 conversation that you had with Mr. Salameh on February 26,
24 1993. Do you recall that?

25 A. Yes, sir.

1 Q. And I asked you then when you next recalled
2 seeing him, and I believe you said the following Thursday.
3 Is that correct?

4 A. Yes. That is what you asked me, yes.

5 Q. Did you, sir, on a prior occasion in federal
6 court testify about the matters that you are testifying
7 about here today?

8 A. Yes, sir.

9 Q. Did you get an opportunity, Mr. Gallaso, over the
10 lunch break to review your testimony that you gave on the
11 prior occasion?

12 A. Yes, sir.

13 Q. Having reviewed the testimony, do you now recall
14 whether you saw Mr. Salameh on another occasion prior to
15 Thursday, March 4, 1993 --

16 MR. STAVIS: Objection, your Honor. No failure
17 of recollection.

18 THE COURT: Overruled.

19 Q. Do you recall, sir, whether you saw him on
20 another occasion?

21 A. Yes, sir.

22 Q. Do you recall what occasion that was or what date
23 that was?

24 A. Yes, sir. It was Monday, the following Monday, I
25 think was the first.

1 Q. Can you describe, first of all, where that
2 occurred?

3 A. In my office.

4 Q. Mr. Salameh came to DIB Leasing?

5 A. Yes.

6 Q. Will you explain please what happened that day?

7 A. I remember it being early afternoon. He came
8 into my office wanting his deposit back, wanted to know if I
9 could close the agreement, rental agreement, and get his
10 deposit back.

11 Q. What did you tell him?

12 A. I told him I needed a police report.

13 Q. You had told him that on the prior occasion as
14 well?

15 A. Yes, sir.

16 Q. What was his reaction when you told him you
17 needed the police report?

18 A. He was getting very angry.

19 Q. What happened?

20 A. Well, I told him I needed a police report, I
21 needed to see the police report.

22 Q. I am sorry, Mr. Gallaso, your voice is low. It
23 may be only me, but I can't hear what you are saying.

24 A. He asked me if I can give his money back and
25 close the contract, asked if I could give his deposit back.

1 I said I needed a police report. He said he didn't have it,
2 but he could go get a police report, but he didn't
3 physically have it at that time.

4 So then I proceeded to call my superior and told
5 him that the customer is getting angry about the deposit, to
6 close the contract, and she said, "Does he have the police
7 report with him?" I said no. She said, "You cannot close
8 the contract until you see the police report."

9 Q. Is that what you told Mr. Salameh?

10 A. Yes, sir.

11 Q. There came a time when you saw him again?

12 A. Yes, sir.

13 Q. What date was that?

14 A. That would be that Friday -- Thursday, I am
15 sorry. Thursday.

16 Q. It would have been the 4th of March?

17 A. Yes.

18 Q. Did you, between the 1st of March, when you saw
19 Mr. Salameh, and the 4th of March, when you saw him again,
20 speak with agents of the FBI?

21 A. Yes, sir.

22 Q. On March 4, was there anyone from the FBI at your
23 office?

24 A. Yes, sir.

25 Q. Who was that, sir?

1 A. There were two FBI officers in my office.

2 Q. And FBI agents doing what in your office?

3 A. I am sorry, I didn't hear the question.

4 Q. FBI doing what at your office, sir?

5 A. They were, they were -- they were going to be --

6 we made them -- like, it's hard to explain -- they were

7 there to --

8 Q. Let me ask you this: Did they identify

9 themselves to you as people who came in as FBI?

10 A. I can't hear you, sir.

11 Q. I am sorry. Did they identify themselves --

12 withdrawn.

13 Did there come a time that Mr. Salameh came to

14 your business on March 4?

15 A. Yes.

16 Q. Did you hear from him before he came to your

17 business that day?

18 A. He called that day.

19 Q. Did you have a conversation with him?

20 A. Yes, on the phone.

21 Q. Describe that conversation, if you would.

22 A. He called and asked me can he come in and get his

23 deposit back.

24 Q. What did you tell him?

25 A. I said yes.

1 Q. Did there come a time that he arrived at DIB
2 Leasing?

3 A. Yes, sir.

4 Q. Did you refer him to somebody?

5 A. Yes, sir.

6 Q. Who did you refer him to?

7 A. The FBI agent.

8 Q. Did you tell him that the person that you were
9 referring him to was an FBI agent?

10 A. No, sir.

11 Q. Mr. Gallaso, I place before you W166 for
12 identification. Do you recognize that document?

13 A. Yes, sir.

14 Q. What did you recognize it to be?

15 A. It's a closed rental agreement, Ryder rental
16 agreement, sir.

17 Q. Is it a Ryder rental agreement in connection with
18 the transaction with Mr. Salameh?

19 A. Yes, Mohammad Salameh.

20 MR. McCARTHY: The government offers W166.

21 THE COURT: Absent any objections, received
22 without objection.

23 (Government Exhibit W166 was received in
24 evidence.)

25 THE COURT: Go ahead.

1 MR. McCARTHY: Thank you, your Honor.

2 Q. Mr. Gallaso, on March 4, 1993, when Mr. Salameh
3 came to your business, whom did he deal with?

4 A. He dealt with me first, and then I turned him
5 over to the agent.

6 Q. Did there come a time that you provided some
7 money to pay or to settle Mr. Salameh's account?

8 A. Yes, sir.

9 Q. And how much money was that, sir?

10 A. \$200.

11 Q. Why \$200, briefly?

12 A. It was just to make -- it was easy, sir, just
13 easy to give him back \$200.

14 MR. McCARTHY: I have no further questions at
15 this time.

16 THE COURT: Cross? Mr. Ricco representing
17 Mr. El-Gabrownny. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. RICCO:

20 Q. Good afternoon, Mr. Galasso.

21 A. Good afternoon, sir.

22 Q. Mr. Gallaso, this encounter that you had with
23 Mr. Salameh, it happened a couple of years ago?

24 A. Yes, sir.

25 Q. And earlier you testified this morning concerning

1 the times when he came, you were a little mistaken as to
2 whether or not he came back on a certain date or not; right?

3 A. Yes, sir.

4 Q. Can we characterize that just as honest mistake
5 as to what the dates were?

6 A. Absolutely, sir.

7 Q. It is just a little difficult to remember exactly
8 each date he was in your office on?

9 A. I am sorry, I didn't hear the question.

10 Q. It is just a little difficult to remember exactly
11 how many days he came and what day it was, isn't that right?

12 A. A little, sir.

13 Q. And so you went over your testimony just to help
14 you remember the exact days he was on and basically what was
15 said on those days. Isn't that right?

16 A. Yes.

17 Q. It is true, though, that you have a general
18 recollection, a strong recollection, of having
19 met Mr. Salameh and having dealt with him; isn't that
20 right?

21 A. Yes, sir.

22 Q. And you have a distinct recollection of
23 his attitude and the way he conducted himself, isn't
24 that right?

25 A. Yes, sir.

1 Q. This man came into your business with another
2 man, isn't that right?

3 A. Yes, sir.

4 Q. And when he came in, he was asking about renting
5 a truck or van, isn't that right?

6 A. Renting a truck, sir.

7 Q. You told him at that time, though, that you
8 really didn't have -- you showed him what was available and
9 what wasn't available, isn't that right?

10 A. Yes, sir.

11 Q. Then ultimately he decided on the van, isn't that
12 right?

13 A. Yes, sir.

14 Q. However, there was a problem with the van, isn't
15 that right?

16 A. Yes, sir.

17 Q. The problem was that the mirror was missing,
18 isn't that right?

19 A. I think it was broken, sir.

20 Q. Well, the report that you wrote down said --

21 A. I meant missing.

22 Q. It doesn't say broken, does it?

23 A. That's right.

24 Q. The mirror was missing, isn't that right?

25 A. That's right.

1 Q. And he decided he really wanted that van, though,
2 isn't that right?

3 A. Yes, sir.

4 Q. And he was willing to take the van even though
5 the mirror was missing, provided you would give him the
6 mirror the next day. Isn't that right?

7 A. Yes, sir.

8 Q. And he left with the person that was with him,
9 right?

10 A. I am sorry?

11 Q. He left, Mohammad Salameh left your business,
12 right?

13 A. Yes.

14 Q. And in fact he came back the next day to get that
15 mirror, isn't that right?

16 A. Yes, sir.

17 Q. And you didn't put the mirror on for him. He
18 said he'll take care of putting the mirror on for himself.
19 Isn't that right?

20 A. Yes, sir.

21 Q. When he came back that next morning to get the
22 mirror, he had an attitude with the woman that worked in
23 your office, isn't that right?

24 A. Yes, sir.

25 Q. And in fact he displayed a little attitude with

1 you a little later on about getting his money back, isn't
2 that right?

3 A. Yes, sir.

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5 (continued on next page)

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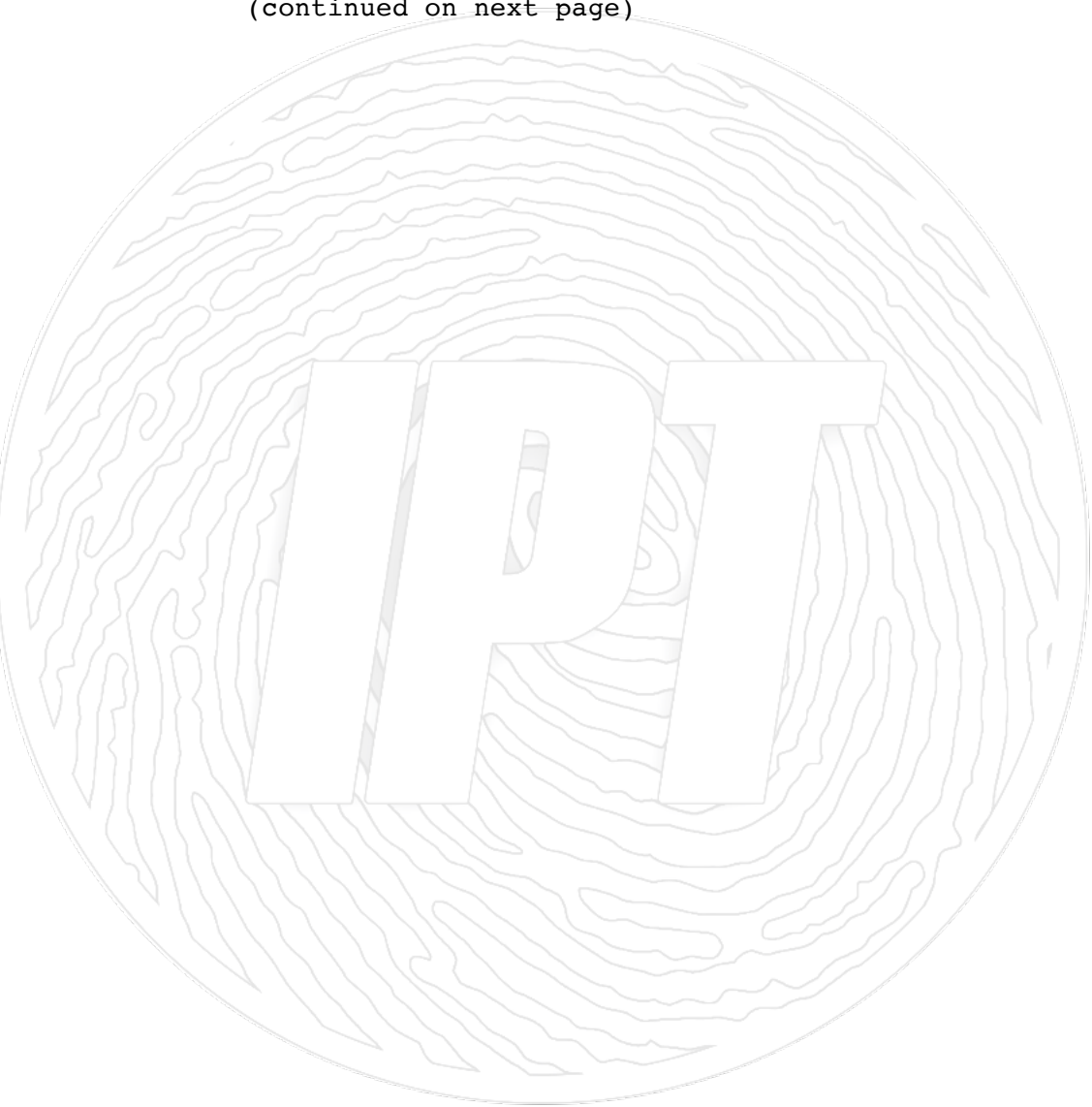
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1 Q. You had an opportunity to talk to Mr. Salameh
2 prior to the bombing of the World Trade Center.

3 Did you have the impression that he was a man who
4 was determined to get a van?

5 A. No, sir.

6 Q. No? He was not determined to get the van?

7 A. No, sir.

8 Q. He took the van, didn't he?

9 A. Yes, sir.

10 Q. He took it even though it had a problem with it,
11 isn't that right?

12 A. Yes, sir.

13 Q. The guy that was with him never identified
14 himself to you, isn't that right?

15 A. Yes, sir.

16 Q. In fact, he never said anything to you, isn't
17 that right?

18 A. Yes, sir.

19 Q. The guy that did all the talking was Mohammed
20 Salameh, isn't that right?

21 A. Yes, sir.

22 Q. The other guy tried to stay back a little bit,
23 isn't that right?

24 A. Yes, sir.

25 Q. But at times Mohammed Salameh had to turn around

1 to him and they would talk a little bit and then Mohammed
2 Salameh would come back and speak to you, isn't that right?

3 A. Yes, sir.

4 Q. The guy that was with him, he never spoke to you,
5 isn't that right?

6 A. I think so, sir, right.

7 Q. He never identified himself to you, isn't that
8 right?

9 A. Yes, sir.

10 Q. You later were able to identify who that person
11 was for the FBI, isn't that right?

12 A. Yes, sir.

13 Q. The FBI came to you, they showed you a photo
14 spread, you picked out No. 5, and No. 5 was a guy by the
15 name of Nidal Ayyad, isn't that correct?

16 A. Yes, sir.

17 Q. But the whole time Mr. Ayyad was in your office
18 he tried to lay back, isn't that right?

19 A. Yes, sir.

20 Q. When Mohammed Salameh came back, he didn't --
21 withdrawn.

22 When Mohammed Salameh came back on February 26
23 for the first time, that was the day of the World Trade
24 Center bombing?

25 MR. McCARTHY: Objection to form. "The first

1 time."

2 MR. RICCO: I didn't hear the basis of the
3 objection, your Honor.

4 THE COURT: The basis was to form.

5 MR. RICCO: I will change the question.

6 THE COURT: Thank you.

7 Q. He came back on February 26 in the afternoon,
8 isn't that right?

9 A. Yes, sir.

10 Q. That would be the day of the World Trade Center
11 bombing, isn't that right?

12 A. Yes, sir.

13 Q. When he came back after the World Trade Center
14 bombing, he didn't have the other guy with him, did he?

15 A. No, sir.

16 Q. When he came back to your office that Monday,
17 that would be March 1, the guy that laid back, who never
18 said anything to you, he wasn't with him then either, was
19 he?

20 A. No, sir.

21 Q. When Mohammed Salameh came back on March 1, he
22 was interested in one thing, and that was getting his money,
23 isn't that right?

24 A. Yes, sir.

25 Q. You told him, "You are going to have to have the

1 proper documentation in order for me to close out the
2 contract," isn't that right?

3 A. Yes, sir.

4 Q. Mohammed Salameh then left, he called you again
5 later on during the week, and eventually came back, isn't
6 that right?

7 A. Yes, sir.

8 Q. Before he came back, however, some FBI agents
9 came out to your business, isn't that right?

10 A. Yes, sir.

11 Q. Some agents interviewed with you on March 3,
12 isn't that right?

13 A. Yes, sir.

14 Q. You called them, didn't you?

15 A. I called the agents, sir?

16 Q. Yes.

17 A. No, sir.

18 Q. I'm sorry. The agents contacted you about the
19 van, isn't that right?

20 A. Yes, sir.

21 Q. When they came to meet with you, you discussed
22 with them the encounter that you had with Mohammed Salameh
23 and the other fellow that laid back, isn't that right?

24 A. Yes, sir.

25 Q. You provided them with access to your records

1 relating to the rental of the van, isn't that right?

2 A. Yes, sir.

3 Q. On this van rental there was no secondary driver
4 listed, was there?

5 A. No, sir.

6 Q. There was only one driver listed on the van,
7 isn't that right?

8 A. Yes, sir.

9 Q. That was Mohammed Salameh, isn't that right?

10 A. Yes, sir.

11 Q. Mohammed Salameh, when he rented the van from
12 you, he used an address, isn't that right?

13 A. Yes, sir.

14 Q. The address that he gave was 17 Park Street
15 Jersey City, New Jersey, isn't that right?

16 A. I think --

17 Q. Take a look at the exhibits, please.

18 Mohammed Salameh gave you the address of 17 Park
19 Street, Jersey City, New Jersey, isn't that right?

20 A. Yes, sir.

21 Q. He didn't give you the address of 34 Kensington
22 Avenue, did he?

23 A. No, sir.

24 Q. He gave 17 Park Street, Jersey City, New Jersey,
25 isn't that right?

1 A. Yes, sir.

2 Q. He also presented a New York State driver's
3 license, isn't that right?

4 A. Yes, sir.

5 Q. The other guy didn't present any driver's license
6 or any form of identification, did he?

7 A. No, sir.

8 Q. Mohammed Salameh rented this van by giving you
9 \$400 in cash, correct?

10 A. Yes, sir.

11 Q. You provided the FBI with that information on
12 March 3, 1993, isn't that right?

13 A. I think so, sir.

14 Q. On March 4, Mohammed Salameh called, said he had
15 the report, he wanted to come get his money, isn't that
16 right?

17 A. No, sir.

18 Q. When did he call and say he wanted to come and
19 get his money?

20 A. He called on March 4, but he didn't say he had
21 the report, sir.

22 Q. I'm sorry. He still said he was interested in
23 getting his money?

24 A. Yes, sir.

25 Q. The agents were there. They were going to pose

1 as workers for your business, isn't that right?

2 A. Yes, sir.

3 Q. What you told him over the phone was, "Come on
4 down here, and you can get your money," isn't that right?

5 A. Yes, sir.

6 Q. And when he came down to your place of business,
7 you were going to have him deal with one of the agents
8 posing as a claims adjuster of some sort, isn't that
9 correct?

10 A. Yes, sir.

11 Q. But when you spoke with Mohammed Salameh, you
12 gave him the impression that the light was green and he
13 could come on down and get his money, isn't that right?

14 A. Yes, sir.

15 Q. So Mohammed Salameh in fact did show up on March
16 4, isn't that right?

17 A. Yes, sir.

18 Q. Just one other point: Mohammed Salameh gave you
19 this elaborate story about how the van was stolen, isn't
20 that right?

21 A. Yes, sir.

22 Q. He told you about having bags and he parked in
23 front of the grocery store and it was a long, drawn-out
24 story, wasn't it?

25 A. Yes, sir.

1 Q. It wasn't very convincing to you, was it? Did
2 you believe it?

3 A. I don't remember.

4 Q. Mr. Galasso, when Mohammed Salameh rented this
5 van, did you do any background check to determine whether or
6 not it was a valid New York State driver's license?

7 A. No, sir.

8 Q. Mr. Salameh was renting a van with a New Jersey
9 address, but a New York State driver's license, isn't that
10 correct?

11 A. Yes, sir.

12 Q. Did you do a TRW check on Mohammed Salameh?

13 A. No, sir.

14 Q. Did Mr. Salameh present any credit cards at the
15 time he rented the van?

16 A. No, sir.

17 Q. He put \$400 out, single \$100 bills?

18 A. Yes, sir.

19 Q. And you rented him the van, isn't that right?

20 A. Yes, sir.

21 MR. RICCO: I have no further questions.

22 Thank you very much, sir.

23 THE COURT: Anything else, Mr. McCarthy?

24 MR. MCCARTHY: No redirect, your Honor. Thank
25 you.

1 THE COURT: I'm sorry. Mr. Jacobs?

2 MR. JACOBS: Nothing.

3 THE COURT: Anything else, Mr. Ricco?

4 MR. RICCO: No. No, sir. Thank you.

5 MR. McCARTHY: Thank you, your Honor. No.

6 THE COURT: You are excused Mr. Galasso.

7 (Witness excused)

8 MR. McCARTHY: Your Honor, the government calls
9 William Atkinson.

10 THE COURT: I will ask everyone not to talk or
11 shuffle papers when a witness is being sworn. Thank you.

12 WILLIAM ATKINSON,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 MR. McCARTHY: May I proceed, your Honor?

16 THE COURT: Go ahead.

17 DIRECT EXAMINATION

18 BY MR. McCARTHY:

19 Q. Good afternoon, sir.

20 A. Good afternoon.

21 Q. Can you tell us, please, what you do for a
22 living.

23 A. Yes. I am a special agent with the Federal
24 Bureau of Investigation, assigned to the Newark division in
25 Newark, New Jersey.

1 Q. How long have you been an FBI agent?

2 A. It will be eleven years next month.

3 Q. Let me direct your attention, Agent Atkinson, to
4 March 4, 1993. Did you have an assignment that day?

5 A. Yes, sir, I did.

6 Q. What was your assignment?

7 A. I was assigned in an undercover capacity to
8 travel to DIB leasing at 1558 Kennedy Boulevard in Jersey
9 City, New Jersey.

10 Q. What were you posing as in your undercover
11 capacity?

12 A. I was posing as a Ryder loss prevention officer
13 for Ryder truck rental.

14 Q. At DIB leasing, did you see Mr. Galasso, the
15 gentleman who just testified here?

16 A. Yes, sir, I did.

17 Q. Did there come a time on March 4, 1993 in the
18 morning when you met with a man named Mohammed Salameh?

19 A. Yes, sir, there did.

20 Q. Do you recall approximately when that was?

21 A. That was approximately 9:50 a.m.

22 Q. What was the nature of your assignment in
23 connection with Mr. Salameh that day?

24 A. I was in possession of a questionnaire that I was
25 going to question and request information from Mr. Salameh

1 recording his rental of the van and his reported loss of
2 that van.

3 Q. Did you have any recording equipment with you
4 that day, audio recording equipment?

5 A. Yes, sir. I was wearing a Nagra body recorder.

6 Q. Did you tape record your conversation with
7 Mr. Salameh?

8 A. Yes, sir, I did.

9 Q. Did you have any video equipment that day?

10 A. Yes, sir. I had a still camera in a bag that I
11 secreted behind me to take pictures of myself and
12 Mr. Salameh.

13 Q. Agent Atkinson, I am placing before you
14 Government Exhibits W737A, B, C, and D. I would ask you to
15 take a look at those and ask you if you recognize the scene
16 and the people depicted in those photographs.

17 A. Yes. On A, B, C, and D I recognize photographs
18 of myself and Mr. Salameh taken inside DIB Leasing on that
19 March 4 date.

20 MR. McCARTHY: Your Honor, the government offers
21 those four photographs, W737A through D.

22 THE COURT: Those are received without objection.
23 Go ahead.

24 (Government's Exhibits W737A through D for
25 identification were received in evidence)

1 Q. Agent Atkinson, I next show you what is marked
2 for identification as Government's Exhibit W165, and I would
3 ask you to take a look at that and tell us if you recognize
4 it.

5 A. Yes. This is the original questionnaire
6 information sheet that I used to record the answers that
7 Mr. Salameh gave me on that day.

8 THE COURT: There is no prefix on that? There is
9 no W on that?

10 MR. MCCARTHY: My mistake. It is W.

11 Q. Is W165 in the same condition today as it was
12 when you finished with it on March 4, 1993?

13 A. No, sir. When I finished with it it was in
14 regular bond paper, clean, with just my handwriting on it.
15 It appears to have been tested for latent fingerprints.

16 Q. Other than that the fading and the handwriting,
17 does it appear the same?

18 A. Yes, sir, it does.

19 MR. MCCARTHY: Your Honor, the government offers
20 W165.

21 THE COURT: There being no objection, W165 is
22 received.

23 (Government's Exhibit W165 for identification was
24 received in evidence)

25 Q. Next let me show you W736 for identification and

1 ask you if you have reviewed it, a cassette tape, prior to
2 your testimony here today.

3 A. Yes, sir, I have. That is a recording of the
4 conversation at DIB Leasing which I initialed and dated
5 3/4/93.

6 Q. Let me also show you W736A for identification and
7 ask you if you recognize that item.

8 A. Yes, sir. This is an accurate transcription of
9 the conversation on the cassette tape which has also been
10 initialed by me.

11 Q. You say it is an accurate transcript. Did you
12 review the transcript against the tape?

13 A. Yes, sir, I did.

14 Q. Let me ask you this: The conversation that you
15 had with Mr. Salameh, was that in the English language?

16 A. Yes, sir, it was.

17 MR. McCARTHY: Your Honor, the government offers
18 W736 into evidence for all purposes, and W736A as an aid to
19 the jury.

20 MR. JACOBS: Voir dire?

21 THE COURT: Go ahead.

22 MR. JACOBS: May I approach, your Honor.

23 THE COURT: Yes.

24 VOIR DIRE EXAMINATION

25 BY MR. JACOBS:

1 Q. Agent, the tape that Mr. McCarthy showed you is a
2 copy of the original Nagra, is that correct?

3 A. Yes, sir.

4 Q. On that day, were you wearing the Nagra yourself?

5 A. Yes, sir, I was.

6 Q. I assume there it was someplace, somehow
7 concealed on your body?

8 A. Yes, under my shirt.

9 Q. Pardon me?

10 A. Under my shirt.

11 Q. In addition to the Nagra, I think you testified
12 that there were some photographic equipment, correct?

13 A. Yes, sir.

14 Q. Were you also wearing a transmitter or was
15 anybody else wearing a transmitter that day?

16 A. A voice transmitter?

17 Q. Yes.

18 A. No, sir.

19 Q. Have you listened to the original Nagra yourself?

20 A. The original Nagra?

21 Q. Yes. The tape.

22 A. As I recall -- I want to say yes I have, but I
23 can't immediately say that. I don't remember if I did
24 listen to the original tape.

25 Q. But as far as you know, that is a full and

1 accurate, at least a transcript of the entire conversation
2 you had that day?

3 A. Yes, sir.

4 MR. JACOBS: I have nothing further. I have no
5 objection, your Honor.

6 THE COURT: All right. Hearing no objection, 736
7 is received. 736A may be used as an aid to the jury in
8 following 736.

9 (Government Exhibits 736 and 736A for
10 identification were received in evidence)

11 DIRECT EXAMINATION

12 BY MR. MCCARTHY:

13 Q. Agent Atkinson, the original Nagra tape Mr.
14 Jacobs showed you, that is W736B?

15 A. Yes, sir.

16 Q. This is the tape inside the envelope?

17 A. Yes, sir, it is.

18 Q. It doesn't have a little white envelope, does it?

19 A. No, sir, it does not.

20 Q. In your experience working for the FBI, are Nagra
21 tapes -- withdrawn.

22 What is the process for recording evidence such
23 as Nagra tapes that come into the FBI?

24 A. Once we obtain the tape or make the tape, we take
25 the tape off the reel, put it inside an envelope -- well, we

1 make a copy of it, put it inside an envelope and seal it.

2 Q. All right. The envelope that you put it inside,
3 what envelope is that?

4 A. That is the envelope marked W736B.

5 Q. Is that the FBI evidence envelope, this yellow --

6 A. Yes.

7 Q. -- or brownish envelope?

8 A. Yes.

9 Q. Does this tape have a serial number on it, the
10 reel?

11 A. I don't believe that it did. Let me check.

12 No, sir, there has no number on it.

13 Q. Thank you.

14 A. You're welcome.

15 MR. McCARTHY: Your Honor, at this time the
16 government would offer to play W736 in evidence and refer
17 the jury to the transcript that's been given to them as an
18 aid.

19 THE COURT: OK. This is also in the W series.
20 It is in your books under a tab marked 736A.

21 MR. JACOBS: Your Honor, I think I left my
22 transcripts up there.

23 MR. PATEL: I have it.

24 MR. JACOBS: Thank you.

25 MR. McCARTHY: Your Honor, there appears to be a

1 problem with some of the jurors' books, I think.

2 THE DEPUTY CLERK: Let me check.

3 (Pause)

4 THE COURT: Ladies and gentlemen, after you find
5 the transcript if you would put on your headsets, that way
6 we will know when everybody has found the transcript and is
7 ready to go.

8 (Pause)

9 MR. McCARTHY: Agent, there is a headset by you.

10 THE COURT: One second. Could you stop it,
11 Mr. McCarthy, and rewind it, please.

12 MR. McCARTHY: Yes, Judge.

13 THE COURT: OK. You can go.

14 MR. McCARTHY: Your Honor, I am sorry. In
15 rewinding it, I rewound it to a leader of the tape that's
16 not in evidence. I would ask if everyone could just remove
17 their headsets for a second so I can get it to the right
18 point. I'm sorry.

19 THE COURT: Ladies and gentlemen, if you could
20 take your headsets off for a minute, we will get it to the
21 right place and then we will put them back on.

22 OK.

23 (Pause)

24 MR. McCARTHY: OK. We are ready. Thank you.

25 THE COURT: Put your headsets on now.

1 (Tape played)

2 THE COURT: Could you come to a convenient break
3 point in the next five minutes or so?

4 MR. McCARTHY: Yes, your Honor. It will be take
5 me about one minute actually.

6 THE COURT: OK.

7 Q. Agent Atkinson, can you just tell us, who is
8 Brian Dunbar?

9 A. He is a detective sergeant with the New Jersey
10 State Police assigned to our squad.

11 Q. Was he on this assignment with you?

12 A. Yes, he was.

13 Q. Did Mr. Salameh leave the premises after the
14 conversation we just heard?

15 A. Yes, he did.

16 MR. McCARTHY: Thank you.

17 Thank you, your Honor.

18 THE COURT: Ladies and gentlemen. We are going
19 to take a short break. Please leave your notes and other
20 materials behind. Please don't discuss the case, and we
21 will resume in a few minutes.

22 THE DEPUTY CLERK: Please follow me.

23 (Recess)

24 THE COURT: Does somebody want to retrieve Mr.
25 Nooter?

1 MS. AMSTERDAM: I am sorry. What did you say,
2 your Honor?

3 THE COURT: I asked if somebody would retrieve
4 Mr. Nooter.

5 MS. STEWART: I will stand in for Mr. Saleh,
6 Judge, if it helps. I think he was headed for the men's
7 room when I saw him last.

8 THE COURT: Mr. Saleh is nodding. That means
9 that that is satisfactory to him. Ms. Amsterdam, do you
10 want to come back. We have made an arrangement.

11 One second. We need a substitute for Mr.
12 Lavine's substitute.

13 MS. AMSTERDAM: I will be the substitute for the
14 substitute.

15 THE COURT: Is that satisfactory to
16 Mr. Abdelgani?

17 I think we are about to have a quorum.

18 MR. STAVIS: Or a minyan, as it was.

19 THE COURT: I resisted that.

20 Ms. Amsterdam asked me this morning whether I
21 would given another instruction at the end of the day or
22 repeat the instructions that I gave yesterday at the end of
23 today, and I drafted up something during the lunch break
24 which I would be happy to read to you. It involves
25 submitting to them yesterday's instruction, but then adding

1 something. I will do it for you as I will do it for them:

2 Ladies and gentlemen, before you left last
3 evening, I gave you a set of instructions dealing with the
4 events in Oklahoma City. Obviously, they continue to apply.
5 I don't want to sit here and read them to you again, but I
6 have taken the liberty of copying the transcript page on
7 which they appear. I will ask Ms. Schwartz to give you that
8 page to read now. You may take it with you if you wish.

9 We will then hand out that transcript page, which
10 has been edited to exclude everything other than the
11 instruction as given. I will then add the following after
12 they have read it:

13 A principal point of those instructions is to
14 remind you of your oath to decide this case based on the law
15 and the evidence presented in this courtroom and of the
16 obligation that comes from that oath. Oaths are important
17 here. That is why I require everyone to pay attention when
18 a witness is taking an oath, and no witness may testify here
19 before he or she has taken an oath. Each of these lawyers
20 had to take an oath before they were permitted to practice
21 in this court. I had to take an oath before I took up my
22 duties.

23 You have taken two oaths. The first was before
24 you were questioned when you sworn to give true answers to
25 all questions put to you touching upon your qualifications

1 to serve as jurors, and we went through a three-week
2 procedure during which you fulfilled that oath. The second
3 was when you were sworn in as a juror, which was to render a
4 true verdict based on the law and the evidence, nothing
5 else.

6 We have an elaborate set of rules here to make
7 sure that what comes before you is admissible evidence. But
8 ultimately your ability to live up on your oath is entrusted
9 to your care. That oath, again, is to render a true verdict
10 based on the law as I give it to you and the evidence
11 received during the trial.

12 I have asked you not to do anything, hear
13 anything, see anything, or say anything that will endanger
14 your ability to live up to that oath. The best way to do
15 that is to avoid to the extent you can news reports not only
16 about this case, but also about the events in Oklahoma City,
17 and, in any event, not to discuss any of those events or
18 this case with anyone.

19 Sir?

20 MR. JABARA: Your Honor, we would object to this
21 instruction to the jury on the basis that we feel that this
22 will not cure the problem that has been created by this
23 adverse publicity, and that absent voir dire or a mistrial,
24 nothing can cure that prejudice to the defendants in this
25 case.

1 THE COURT: That is the basis for your objection?

2 MR. JABARA: Yes.

3 MR. STAVIS: I would join that application, your
4 Honor.

5 THE COURT: Ms. London?

6 MS. LONDON: I do.

7 MR. BERNSTEIN: I assume we mustn't opt out.

8 THE COURT: Well, there have been two classes of
9 objections here. The mistrial motions I have assumed that
10 everybody joined in. Am I to assume also that everybody
11 joins in the request that I voir dire the jury?

12 MR. JACOBS: I think I stated that this morning,
13 your Honor.

14 THE COURT: Right. So there have been other
15 matters requested here that I was not told that everybody
16 joined in, although it is conceivable that everybody does.
17 There was a request for a continuance.

18 MR. BERNSTEIN: Yes, there was.

19 MR. NOOTER: Judge, I think that was a
20 continuance of the World Trade Center testimony.

21 THE COURT: I understood that to be a continuance
22 of the trial as an alternative.

23 MR. BERNSTEIN: My application at one point had
24 been for a continuance of either the trial or the World
25 Trade Center evidence. That is correct. So that is at

1 least part of my application. I stand with Mr. Jabara, and
2 on behalf of my client, on the continued position we take
3 regarding sequestration, mistrial and voir dire of the jury.
4 I can't stop the court from giving an instruction in the
5 absence of the court already denying those applications.

6 MS. AMSTERDAM: Your Honor, for the record, while
7 I share my colleagues' concerns and have joined in
8 sequestration motions, motions for mistrial, motions for
9 voir dire, and I would have moved to re-order the World
10 Trade Center evidence, I did not join in the application in
11 the absence of all of those remedies for a continuance of
12 the trial.

13 THE COURT: All right. Assuming, as I think it
14 is fair for you to do, that I am not going to do what I have
15 said that I am not going to do, does anybody want to be
16 heard with respect to the instruction?

17 MR. JACOBS: Yes.

18 THE COURT: Mr. Jacobs?

19 MR. JACOBS: Your Honor, I think the instruction
20 misses the most important point, which is whether Oklahoma
21 has had any impact on the jurors and whether that will
22 prevent them from being fair and impartial.

23 While your Honor, quite properly so, instructed
24 them not to read and not to discuss it and things like that,
25 what seems to me to be the critical issue that the Court of

1 Appeals talks about in many cases, and what we have been
2 confronted with over the years --

3 THE COURT: Is this a request for voir dire?

4 MR. JACOBS: No, it is a request that the
5 following statement be given: Does any juror feel that the
6 events of Oklahoma --

7 THE COURT: That is voir dire, isn't it?

8 MR. JACOBS: Well, it's more of a statement, but
9 if anybody raises a hand -- I am not sure if that is voir
10 dire.

11 THE COURT: You are not sure? Sit down.

12 Yes?

13 MS. STEWART: More immediately, Judge --

14 THE COURT: Yes.

15 MS. STEWART: -- it is my understanding if and
16 when this witness finishes the government intends to move
17 into FISA tapes with regard to my client. I admit this was
18 put off from Tuesday when they were originally supposed to
19 go in. I just would ask that, if we break early even, so
20 that it doesn't have to happen today.

21 The theory of those FISA tapes, first of all, is
22 that it is proof for the government that my client was
23 involved in some kind of far-ranging worldwide terrorist
24 conspiracy, in fact, directing same. I just really feel
25 that it is too close to the bone here, given what's been

1 broadcast -- we understand there have now been some
2 arrests -- and what they will be hearing tonight.

3 THE COURT: Wait a second. What is the projected
4 date for the appropriateness of that evidence?

5 MS. STEWART: I don't know, Judge. Maybe even
6 Monday, but at least it is further off than today. My
7 client is the only defendant we mentioned today, Judge.

8 THE COURT: You think it is better to get it in a
9 double dose rather than a single dose?

10 MS. STEWART: No.

11 THE COURT: It escapes me frankly.

12 MS. STEWART: I don't understand what a "double
13 dose" means.

14 THE COURT: "Double dose" means somebody
15 presumably overhears something tonight and then they get
16 another dose on Monday in the form of the FISA tapes in this
17 case.

18 MS. STEWART: The double dose I am concerned
19 about, Judge, is that everybody, raw and bleeding, turns on
20 their television set tonight and sees a picture of my client
21 juxtaposed against the three new arrestees and draws a
22 logical conclusion from the media point of view, but not a
23 logical conclusion from our point of view.

24 THE COURT: You mean they disregard the
25 instruction that they are being given again that they were

1 given yesterday?

2 MS. STEWART: You heard our position, Judge.

3 THE COURT: I did.

4 MS. STEWART: No instruction. That is our
5 position.

6 THE COURT: Ms. Amsterdam.

7 MS. AMSTERDAM: Would your Honor consider giving,
8 in addition, a modification of the instruction that you had
9 previously given about press coverage and the reasons in the
10 preliminary instructions: The reason I urge you not to
11 follow the press is because very often the press is wrong or
12 do not have all the facts. That might somehow possibly
13 contribute to thwarting the impact should they see such
14 coverage.

15 THE COURT: All right.

16 I will add that thought at the beginning before I
17 re-read the instruction and simply point out that in essence
18 what I said would eventuate has eventuated; namely, that
19 there has been all kinds of speculation in the media about
20 the events in Oklahoma City and that, as I told them
21 earlier, it often happens that the press gets things
22 incorrect.

23 MS. AMSTERDAM: Thank you. In addition, would
24 your Honor consider the possibility --

25 MS. STEWART: I believe I have an application

1 pending.

2 THE COURT: I just dealt with that.

3 Your application is?

4 MS. STEWART: That we finish with this witness
5 and not go into the FISA tapes.

6 MR. FITZGERALD: Your Honor, we prefer to proceed
7 for the same reason we described yesterday: These are calls
8 to Pakistan, not Oklahoma. There is nothing particularly
9 inflammatory about it. I think we just need to do as your
10 Honor said: Put our head down and move forward.

11 THE COURT: I don't see that there is anything to
12 be gained by Monday as opposed to today.

13 MS. STEWART: Then I just want to also alert you,
14 having pre-thought that that might be your ruling, I had
15 alerted Mr. Fitzgerald earlier that we have the same
16 relevance objections to these tapes. We have some
17 particular parts that we would ask that the court exclude
18 for being nonrelevant.

19 THE COURT: Did you review those?

20 MR. FITZGERALD: Yes, the particular part, if I
21 have a minute with her, I think we agree on all but a few
22 sentences.

23 THE COURT: Fine. Do you want to do that now?

24 MR. FITZGERALD: Yes. I will do that right now.

25 MS. AMSTERDAM: On the instruction, one last

1 thing if that would be appropriate: Would your Honor
2 consider at the very end adding a statement to the effect
3 that, if at any time a juror feels that they are not capable
4 of fulfilling their oath, that that should be communicated
5 promptly to the court?

6 THE COURT: I may add that at a future time. I
7 am not going to add it now because fulfilling the oath
8 involves rendering a verdict, and they are not going to be
9 asked to render a verdict now.

10 MS. AMSTERDAM: Living up to one's oath?

11 THE COURT: I am not going to add that now.

12 (Continued on next page)

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1 MR. FITZGERALD: We have agreed on the particular
2 sections.

3 THE COURT: On the redactions?

4 MR. FITZGERALD: Yes, Judge.

5 MS. STEWART: Not on the relevance of each and
6 every tape, which we still claim, Judge. Each one deals
7 with foreign country and is not relevant for a seditious
8 conspiracy case.

9 THE COURT: Have we been over these?

10 MR. FITZGERALD: No, Judge. I think you reviewed
11 them yesterday, but the government only offered four
12 yesterday, and we only argued four, and these are the
13 remaining ones that you have reviewed, but we have not
14 discussed.

15 THE COURT: Then let's talk about them now.
16 One second.

17 (Continued on next page)

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1 MR. FITZGERALD: I will provide the numbers.

2 THE COURT: One second. I had some notes on
3 them. Starting with 713?

4 MR. FITZGERALD: Yes, Judge.

5 THE COURT: 713 and 714 I didn't understand.

6 MR. FITZGERALD: 713, your Honor, is the phone
7 call referred to by Emad Salem, and I think Ms. Stewart
8 actually cross-examined him about the substance of the call,
9 where Emad Salem said he was present for a call on the
10 speakerphone, and that --

11 THE COURT: One second. Yes?

12 MS. STEWART: That is conceded, Judge.

13 THE COURT: That is conceded?

14 MS. STEWART: That is conceded.

15 THE COURT: Then 714?

16 MR. FITZGERALD: At 714, at or about page 2 in
17 particular, that is where defendant Abdel Rahman said, "I
18 contacted the people in London and told them to take an
19 action and to do anything. He agreed and told me he would
20 take prompt and effective actions." It is offered to show
21 his control of matters overseas, after talking about people
22 making arrests in Pakistan.

23 Also, there is some discussion of the Islamic
24 Group as well.

25 THE COURT: Where?

1 MR. FITZGERALD: At page 11, where he is talking
2 about the refusal of the United States to meet with Al
3 Gama'a Al Islamia.

4 THE COURT: One second.

5 THE COURT: All right. I will allow that.

6 720 -- I am sorry -- 718 also, as my notes
7 indicate, involve conversation about Al Gama'a Al Islamia.

8 MS. STEWART: The objection is the same. They
9 asked for a 404(b) in their letter asking to introduce other
10 acts. They now wish to bring it in under the indictment per
11 se.

12 MR. FITZGERALD: Your Honor, we never
13 characterized the involvement of Al Gama'a Al Islamia as
14 404(b) proof. I think our letter made clear we considered
15 that not to be 404(b) proof because that proof is part of
16 the indictment to show his status in the conspiracy.

17 THE COURT: 718 is in.

18 THE COURT: 720 was a discussion of computers.
19 What is the relevance of that?

20 MR. FITZGERALD: I am sorry, I missed your
21 comment.

22 THE COURT: 720, my notes say, was a discussion
23 of computers. What is that?

24 MR. FITZGERALD: Also, Judge, it asked about
25 moving people to Karachi. I believe, at page 5, defendant

1 Abdel Rahman asked about the brother that went to Karachi
2 and asked whether they were going to leave. It was
3 indicated that arrangements were going to be made to take
4 care of them. It was also indicated that Abu Khalid, who is
5 referred to in other calls, was going to be a substitute to
6 a brother in Karachi to take care of simple matters. And
7 the calls that have already been read involving that person,
8 and I believe the calls to be read later, talk about
9 movements, getting people out of Pakistan, people breaking
10 out of jail, people going to London and Denmark, obtaining
11 visas, things like that.

12 THE COURT: That is in.

13 MS. STEWART: Judge, if I were to tell you that
14 this is about people who were being detained in Pakistan
15 during a period of time before a Supreme Court ruling there
16 holding these detentions to be illegal, and the
17 conversations dealt with moving people to a place where they
18 would be able to get out so they would not be extradited to
19 Egypt, would that change your mind at all as to the
20 relevance of these conversations? It basically says
21 something about moving brothers to Karachi on the southern
22 border.

23 THE COURT: It also talks about Abu Khalid being
24 a person --

25 MS. STEWART: What does that mean to your Honor,

1 Abu Khalid?

2 THE COURT: The proffer --

3 MR. FITZGERALD: Your Honor, what emerges from
4 the calls, taken as whole rather than in isolation, is that
5 Ms. Stewart's characterization is correct but they are
6 moving Gamat people. And the fact that Gamat people want to
7 avoid extradition in Pakistan, who want to avoid arrest,
8 just corroborates that he is leading this organization,
9 directing movements internationally of different brothers
10 from Karachi to Denmark to London, getting people out; that
11 he is a hands-on person who has sought the advice of our
12 master. He tells them what to do, he gives them advice.
13 These are operational phone calls.

14 THE COURT: I will allow it.

15 THE COURT: 726 involved passports to Denmark?

16 MR. FITZGERALD: Yes, Judge, at page 5 to 6,
17 there is a reference that, instead of going to Uruguay or
18 Mexico, they should move people to London or Copenhagen, so
19 that from there we can maneuver, our brothers are there,
20 they can transfer.

21 MS. STEWART: They are his sons, Judge.

22 MR. FITZGERALD: The sons whom they were talking
23 about yesterday, about some Jihad matters and reference to
24 the boys. The matter is that moving people internationally
25 and showing his contacts and ability to do so.

1 THE COURT: That is in.

2 728.

3 MR. FITZGERALD: In 728, Judge, they begin by
4 asking to instruct us to do anything, and then report --

5 THE COURT: Yes, that was conversation. That is
6 where they are telling Al Gama'a Al Islamiya people in jail
7 to tone down certain statements lest the connection between
8 Dr. Abdel Rahman and that organization be made clear. That
9 is in.

10 739.

11 MR. FITZGERALD: In that conversation, Judge,
12 Sheik Rahman first indicates that no doubt the telephones
13 are under surveillance, so it shows his consciousness of
14 electronic interception. He also is given guarded messages
15 that certain important people from the Middle East are
16 greeting him but the names are not specified. And then the
17 caller asks: By God if we can talk freely and get some
18 advice from your Eminence, and Abdel Rahman says, talk,
19 talk, I don't care myself. And then defendant Abdel Rahman
20 asked if someone will remain in Peshawar and there is a
21 reference to him as the emir, Al Gama'a Al Islamiya, all in
22 that same conversation.

23 THE COURT: Where is that?

24 MR. FITZGERALD: That was page 20.

25 MS. STEWART: That was reported, I believe, on

1 CNN, Judge. They put the flyer under his name on CNN. It
2 is on page 20. But if the government --

3 MR. FITZGERALD: She is correct. 20, at the
4 bottom, the person says: "With their name on: 'Dr. Omar
5 Abdel Rahman, the emir of Al Gama'a Al Islamia, etc.'"

6 But it is clear from the earlier conversation
7 they are talking about the boys in Pakistan, phones are
8 under surveillance, they are asking for direction, they are
9 wishing they could talk more freely, and he is urging them
10 to talk more freely anyway.

11 MS. STEWART: I just want to say that Mr. Salem
12 had just, at the government's behest, debugged the sheik's
13 apartment, so if he thought it was being bugged, it would be
14 because Mr. Salem told him he was.

15 MR. FITZGERALD: We will offer further proof in
16 other conversations that he was conscious of surveillance,
17 but certainly he stated in his own words on that occasion,
18 no doubt the telephones are under surveillance, and it is
19 crystal-clear, from the person he is speaking with, that
20 they are conscious of being bugged. They are having a
21 cryptic conversation overseas. They are trying to ask him
22 what they should do without being overheard. And I think it
23 is important to show the method of operation.

24 THE COURT: But if he gets that from Salem, then
25 what are you doing other than rebroadcasting something

1 that --

2 MR. FITZGERALD: It shows that they are asking
3 from Pakistan that they want to get messages from him,
4 that --

5 MS. STEWART: It is to Saudi Arabia, I believe.

6 MR. FITZGERALD: To Saudi Arabia, but he talks
7 about the boys in Pakistan. The person in Saudi Arabia is
8 telling them that highly placed people are sending their
9 greetings but he does not specify their names. They are
10 asking his direction. It shows his role as the emir, he is
11 the leader. They are not calling up just to chat. They are
12 saying we need some direction, we need some guidance. It
13 shows the situation that he is in at that time that they are
14 trying to get messages to each other without being
15 intercepted. And we don't agree that he obtained his
16 concern about electronic surveillance from Mr. Salem. Mr.
17 Salem offered evidence of that, but I think this shows,
18 independent of what Salem did, he had concerns. In fact, if
19 Salem debugged the apartment, then defendant Abdel Rahman
20 only had the concerns raised by the defendant Salem and he
21 wouldn't be concerned by this phone call. But our position
22 before the jury would be he was always conscious of law
23 enforcement, conscious of surveillance independence of Emad
24 Salem.

25 MS. STEWART: Ironically, of course, the sheik

1 was wiretapped from the beginning of February till June, and
2 at the time the World Trade Center was blown up, which we
3 have had graphic conversations of, the best conversations
4 they have are those from Pakistan and Denmark.

5 THE COURT: That is a jury argument.

6 MS. STEWART: It is.

7 THE COURT: It is.

8 MS. STEWART: I would still argue that, whatever
9 Abdel Rahman was doing worldwide, it has nothing to do with
10 the charges in this case, and to attempt to paint with that
11 broad brush is unfair to him and unfair to this jury.

12 THE COURT: I don't think I would characterize it
13 as a broad bush, but go ahead.

14 MR. FITZGERALD: One last point. In her opening
15 statement Ms. Stewart told the jury that his phone was
16 tapped and that was a window on his world and they came up
17 with nothing. This is to show we did come up with
18 something, and on that window on his world he tried to pull
19 the shade closed.

20 THE COURT: I think I will let it in.

21 (Jury present)

22 WILLIAM ATKINSON, resumed.

23 THE COURT: Is there anything else, Mr. McCarthy?

24 MR. McCARTHY: No. Thank you.

25 THE COURT: Mr. Patel?

1 MR. PATEL: Your Honor, may I give these to the
2 witness.

3 CROSS-EXAMINATION

4 BY MR. PATEL:

5 Q. Good afternoon, Agent Atkinson.

6 A. Good afternoon.

7 Q. On March 4, '93, what time did you get up to the
8 DIB Leasing?

9 A. It was approximately 7:30 in the morning.

10 Q. You had a meeting with some other agents before
11 you went out there; is that fair to say?

12 A. Yes, sir.

13 Q. And was that that morning or the night before?

14 A. I met with agents that morning.

15 Q. Out there or in the New York office?

16 A. No, in the Newark office.

17 Q. Newark?

18 A. Newark.

19 Q. As in Newark, New Jersey.

20 A. Newark, New Jersey.

21 Q. Thank you. And how many agents attended that
22 meeting?

23 A. Well, I am not sure what meeting you are
24 referring to.

25 Q. How many meetings were there?

1 A. You asked me did I meet with other agents. Yes,
2 I was getting ready to go out on my assignment. I met and
3 talked to other agents. We didn't have a sit-down meeting,
4 unless you are referring to something in the New York
5 office.

6 Q. Was there a meeting in -- well, let's go back.
7 This meeting, this event on March 4, out in
8 Jersey at the leasing company, was something that you had
9 planned for, the FBI had planned for; is that fair to say?

10 A. Yes, sir.

11 Q. And you didn't go out there alone, right?

12 A. Correct.

13 Q. There was you and I believe there was an Officer
14 Dunbar?

15 A. No, Detective Dunbar.

16 Q. Detective Dunbar. And you were inside the
17 building, right?

18 A. Yes, sir.

19 Q. And outside the building, it is fair to say,
20 there were some special operations people; correct?

21 A. Yes, sir, there were some surveilling units on
22 the scene there.

23 Q. That is what special operations does, right?

24 A. Yes.

25 Q. How many surveilling people were there?

1 A. I can't say how many there were, because when I
2 arrived on the scene I just spoke to one, the agents on the
3 street, and I proceeded to DIB to await the arrival of the
4 other. I didn't talk to a group of agents at that time.

5 Q. Were you in communication with any of the
6 surveilling agents?

7 A. No, sir.

8 Q. Do you know if agent -- excuse me -- Detective
9 Dunbar was in communication with any of the surveilling
10 agents?

11 A. I believe he was in contact by telephone to the
12 New York office, and I imagine the information could be
13 relayed, but I can't testify what that information was.

14 Q. Do you know how many cars the surveilling agents
15 had with them that day?

16 A. No, sir.

17 Q. It is fair to say that this was a very important
18 meeting?

19 A. Yes, sir.

20 Q. And you had the full resources of the FBI
21 essentially at your disposal that day?

22 MR. McCARTHY: Objection to form.

23 THE COURT: Sustained as to form.

24 Q. If you needed a helicopter you could have gotten
25 one, right?

1 A. Me personally?

2 Q. No, if for the FBI investigation of this meeting,
3 if the team had needed a helicopter, you could have gotten
4 one?

5 A. I can't say yes or no to that.

6 Q. You could have gotten a video camera?

7 A. I believe the camera I got was the best I could
8 get, so I am not sure as to the availability of other
9 equipment.

10 Q. And the camera that you had was a still camera,
11 correct?

12 A. Yes, sir.

13 Q. And it was hooked up to a motor drive, right?

14 A. No, sir.

15 Q. Did you have to advance the film or did it do it
16 automatically?

17 A. When I would take the picture, yes, it would
18 advance automatically.

19 Q. And that is done with the motor, right?

20 A. I don't know. I don't know anything about the
21 cameras. I just took the pictures.

22 Q. It had an electronic device that you touched with
23 what, it looks like, if you look at the pictures --

24 MR. PATEL: And I understand that they are in the
25 W binder, the government exhibit binders. If you look at --

1 THE COURT: That is the thin binder.

2 MR. PATEL: The thin binder with the government
3 exhibit tabs on it.

4 THE COURT: Which exhibits, Mr. Patel?

5 Q. If you look at Government 737B, and your right
6 hand is down, it looks like, on a table, is that right?

7 A. It looks like, on B, it looks like my right hand
8 is in front of me, maybe holding the pen. My left hand
9 appears to be down on the counter.

10 Q. What is your left hand doing there?

11 A. It is taking the picture.

12 Q. So that is the remote device for activating the
13 camera?

14 A. Correct. It can be seen better in, it looks
15 like, picture D.

16 Q. D.

17 A. If you go to D.

18 Q. Will everyone turn to picture D. And that is the
19 remote activating device. And there is some wire that goes
20 from that device to the camera?

21 A. No, sir.

22 Q. It is some kind of radio thing?

23 A. I believe. I don't know what kind of beam it
24 sets out or if it is radio, but it is not connected --

25 Q. You press a button on this device and the picture

1 gets taken?

2 A. Correct.

3 Q. I gather, from the way you are answering these
4 questions, it is fair to say that that camera and this
5 automatic device belonged to the Bureau?

6 A. Correct.

7 Q. This is not your personal equipment.

8 A. Correct.

9 Q. Was there a discussion with a supervisor or other
10 members of the team or with Mr. Dunbar as to what equipment
11 you were going to bring with you that day?

12 A. It was suggested, I don't know by whom, that I
13 take a camera, so that I could get pictures of whomever
14 showed up. And in conversations with our photo tech, photo
15 clerk, whatever, it was decided you that this might be an
16 opportunity.

17 Q. I couldn't hear the last thing you said.

18 A. It was decided that between myself and the photo
19 supply person, that this might be an opportune way of taking
20 the pictures easily.

21 Q. Had there been a discussion of bringing a video
22 camera with you?

23 A. I don't recall a discussion of that. I don't
24 know the availability of that video equipment, 630 in the
25 morning on that day. I don't recall that.

1 Q. Have you ever done video surveillances?

2 A. No, sir.

3 Q. Do you know if any of the surveilling officers
4 had video cameras?

5 A. No, sir.

6 Q. And you had with you --

7 MR. PATEL: I will stop here, Judge. Thank you.

8 THE COURT: Mr. Jacobs?

9 MR. RICCO: I think I --

10 THE COURT: Mr. Ricco?

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q. Good afternoon, Agent.

14 A. Good afternoon.

15 Q. On March 3, 1993, you met at DIB with Galasso,
16 isn't that right?

17 A. Yes, sir.

18 Q. And on March 3 of 1993, he informed you about
19 this man who had come there to rent a van but under the name
20 of Mohammad Salameh, isn't that correct?

21 A. Yes, sir.

22 Q. And on March 3 of 1993 he provided you with
23 information about the man Muhammed Salameh. Isn't that
24 correct?

25 A. Other than possibly a name and a description,

1 that was the information we obtained.

2 Q. He gave you a name, description and an address,
3 isn't that right?

4 A. I don't recall an address.

5 MR. RICCO: I would like to show the witness
6 3577A.

7 Q. Having reviewed 3577A, Agent Atkinson, does it
8 help you refresh your recollection as to whether or not Mr.
9 Galasso gave you an address at that time?

10 A. Well, this is a report that I did initial. I
11 can't say I recall this, but I do say that I did get the
12 information, and obviously did document it.

13 Q. And that address was 17 --

14 A. 17 Park Street.

15 Q. -- Park Street, Jersey City, New Jersey; correct?

16 A. Yes, sir.

17 Q. And he also gave you a telephone number, a Jersey
18 telephone number?

19 A. Yes, sir.

20 Q. And a New York State driver's license
21 identification?

22 A. Yes, sir.

23 Q. With no New York State address, isn't that
24 correct?

25 A. Yes, sir.

1 Q. This information was given to you on March 3,
2 isn't that correct?

3 A. Yes, sir.

4 Q. At that time you gave Mr. Galasso some
5 instructions as to what to do in the event that this
6 gentleman calls back. Isn't that correct?

7 A. I believe so, yes.

8 Q. What was to happen was, if he was to call back,
9 he was to be told to come in and get the money, and an
10 operation would be set up to get information -- additional
11 information from Mohammad Salameh, isn't that correct?

12 A. Yes, sir.

13 Q. And to perhaps arrest him, depending on what
14 happened during the time that you would be talking to him.
15 Isn't that correct?

16 A. On the 3rd, I don't think we decided, you know,
17 what was going to happen at any kind of meeting. I don't
18 think we relayed that to Mr. Galasso.

19 Q. As far as an arrest. But as far as having him
20 come back down so additional information could be gotten
21 from Muhammed Salameh, that was discussed with Galasso
22 wasn't it?

23 A. Yes, sir.

24 Q. And the incentive to get him down there was to
25 tell him that he was going to be getting his money back,

1 isn't that correct?

2 A. I believe he had called requesting his money
3 back, so that was the reason he was planning to come back.
4 We didn't tell Mr. Galasso that. Mr. Galasso told us that.

5 Q. I didn't hear the end of your answer, I am sorry.

6 A. We didn't tell Mr. Galasso to offer him the
7 money. Mr. Galasso advised us that he wanted his money.

8 Q. Mohammad Salameh walks in to DIB Leasing on the
9 morning of March 4, 1993. Isn't that correct?

10 A. Yes, sir.

11 Q. And at that time that he walks in to DIB leasing,
12 you are prepared to give him some money back, aren't you?

13 A. Yes, sir.

14 Q. And in fact at the end of the meeting you gave
15 him the money back, isn't that right?

16 A. Yes, sir.

17 Q. And there was some haggling over how much he
18 would get, right?

19 A. Correct.

20 Q. And we listened to that on the tape, isn't that
21 right?

22 A. Yes, sir.

23 Q. And ultimately he was given \$200 back, isn't that
24 right?

25 A. Correct.

1 Q. And I think Mr. Salameh promised that if he came
2 back with the -- well, there was a promise made that if he
3 came back with the key, he would get an additional \$5 or \$15
4 for gas or something of that sort, isn't that right?

5 A. I believe it was \$20, yes.

6 Q. \$20 altogether? And Mohammad Salameh comes in,
7 and you are posing as some type of claims adjuster, isn't
8 that correct?

9 A. Loss prevention, correct.

10 Q. But you are posing in that position, isn't that
11 right?

12 A. Sure. Yes, sir.

13 Q. And the purpose of it is to make Mohammad Salameh
14 think that he is talking with a bona fide representative of
15 Ryder, isn't that correct?

16 A. Yes, sir.

17 Q. And the goal of it was to not make him think that
18 he was talking to an FBI agent, isn't that right?

19 A. Yes, sir.

20 Q. And so what you did with Mohammad Salameh is that
21 you engaged in conversation with him to extract information
22 from him, isn't that right?

23 A. Yes, sir.

24 Q. And the goal was to get him to talk as much as he
25 could without getting suspicious, isn't that correct?

1 A. Yes, sir.

2 Q. And so what you did during the course of this
3 conversation was to get him to talk about where he claimed
4 he lost the van, isn't that right?

5 A. Yes, sir.

6 Q. And he had a whole elaborate story about how the
7 van was lost, isn't that right?

8 A. Yes, sir.

9 Q. He talked about the bags, three bags, and I think
10 you said something like baa baa sheep and he didn't get the
11 joke, right?

12 A. Yes, sir.

13 Q. And he talked about this mysterious friend that
14 was at the shopping mall who gave him information about what
15 to do, right?

16 A. Correct.

17 Q. And he also gave you the name of some
18 individuals, isn't that correct?

19 A. Yes, sir.

20 Q. He claimed that he was using this van to move.
21 Do you recall that?

22 A. Yes.

23 Q. And in fact he stated that he did move even
24 though the van was stolen; right?

25 A. Yes.

1 Q. And he came up with this story about a station
2 wagon, right?

3 A. Correct.

4 Q. And he gave you the name of a person by the name
5 of Abdel Mohammad and he gave you a telephone number of this
6 person, he claimed that this person lived in Woodbridge,
7 right?

8 A. Adil and not Abdel.

9 Q. He also, as part of this story that he was
10 telling you about moving, he indicated to you that he was
11 moving from 26 Weldon Street, Jersey City, to 34 Kensington
12 Avenue in Jersey City, isn't that correct?

13 A. I'd have to look at the transcript. I think
14 those are the two addresses. I think those are the two
15 addresses.

16 Q. And what he said to you was that he had just
17 moved from 26 Weldon Street to this Kensington Avenue
18 address. Isn't that correct?

19 A. I believe that's correct.

20 Q. And he gave you the name of a man that he lived
21 with at that address, and he said his name was Abdou Waly,
22 isn't that right?

23 A. Yes, sir.

24 Q. And he gave you the telephone number of Abdou
25 Waly, isn't that right?

1 A. I believe so. I have to look at the transcript.

2 Q. What Mohammad Salameh was doing at that time was
3 he was trying to convince you that this story of moving and
4 using the van for moving was legitimate, isn't that right?

5 A. Yes, sir.

6 Q. But you had other beliefs about what Mohammad
7 Salameh had rented that van for and did with it, isn't that
8 correct?

9 A. Yes, sir.

10 Q. And in the course of your investigation in this
11 case, you found out that Abdou Waly was in fact a real
12 person who lived at 26 Weldon Place, isn't that correct?

13 A. Weldon Street, yes, sir.

14 Q. Weldon Street. Isn't that correct?

15 A. Yes, sir.

16 Q. And in fact Abdou Waly testified here in this
17 case on behalf of the government, isn't that right?

18 A. I don't know.

19 Q. That you don't know.

20 A. I don't know.

21 Q. Did you discover, in the course of your
22 investigation, that Mohammad Salameh did not move from 26
23 Weldon Place in March of 1993 but he had in fact moved from
24 Weldon Street back in May of 1991? Did you discover that?

25 A. No, sir. I mean, I didn't discover that. I

1 don't know that to be a fact.

2 Q. You don't know that to be a fact.

3 A. No, sir.

4 Q. But what Mr. Mohammad Salameh was attempting to
5 do at DIB Leasing, he was attempting to use the name, the
6 address, and the telephone number of a person by the name of
7 Abdou Waly for the purposes of getting his money back.
8 Isn't that right?

9 A. I don't know why he did it. I don't know what he
10 was thinking when he did that.

11 Q. He was trying to get his money back, wasn't he?

12 A. He was trying to get his money back, but I don't
13 know what he was thinking, why he was using those names.

14 Q. Was he at DIB Leasing, to your knowledge, for any
15 other purpose other than getting his money back?

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained.

18 Q. When he left DIB Leasing he left with the money,
19 didn't he?

20 A. Yes, sir.

21 Q. He also gave the name, I think you told us, of
22 Abdel Mohammad?

23 A. Adil Mohammad.

24 Q. And he also gave the name of Fouad Aziz, and he
25 pretended to be looking for his business card in his wallet

1 at the time he was talking to you, isn't that right?

2 A. I believe he was looking for his business card.

3 Q. And you told him, never mind, that's not
4 important. Isn't that correct?

5 A. I don't know how I phrased it but yes.

6 Q. However, in your conversation with Mr. Salameh on
7 March 4, after he was told he can come down and get his
8 money, he told you that he actually lived at 34 Kensington
9 Avenue, isn't that correct?

10 A. Yes, sir.

11 Q. He didn't say he lived at 17 Park Street, isn't
12 that right? He said a mosque was at 17 Park Street?

13 A. I'd have to look at the transcript. I thought he
14 referred to 17 Park in the beginning of the transcript,
15 where he alluded to a residence there, either his former or
16 previous or current. I'd have to check that.

17 Q. It is in evidence, the transcript is in evidence.
18 At the time that Mohammad Salameh told you about
19 34 Kensington Avenue, this was already six days after the
20 World Trade Center bombing, isn't that correct?

21 A. Yes, sir.

22 Q. And that was the first time that you had heard
23 that address was from Mohammad when Mohammad Salameh gave it
24 to you at DIB Leasing, isn't that correct?

25 A. That is the first time I heard the address,

1 correct.

2 Q. Now, one of the things that you can hear in the
3 tape-recorded conversation is someone at DIB asking Mohammad
4 Salameh, "Did you put the mirror onto the side of the
5 vehicle?" and he turns to him and says, "Yes, I put it on."
6 Do you recall hearing that as the tape was being played this
7 afternoon?

8 A. Yes, sir.

9 Q. And I think that you indicated to him, "I know
10 you're in a hurry but I got to get some of this information
11 from you." Right?

12 A. Correct.

13 Q. And in fact Mr. Salameh appeared to you, did he
14 not, as being agitated, isn't that right?

15 A. Anxious, I would say.

16 Q. Anxious? And in a hurry. And in a hurry.

17 A. He appeared to be.

18 Q. Are you aware that at the time Mr. Mohammad
19 Salameh was arrested -- are you aware of the time he was
20 arrested?

21 A. I would say it's close to 10:30.

22 Q. He was arrested at a bus stop right outside DIB
23 Leasing, isn't that correct?

24 A. Yes, sir.

25 Q. And at the time that he was arrested, he had his

1 passport on him, isn't that right?

2 A. I don't know. I didn't go over with any of the
3 others on that.

4 Q. So you were not participating in the arrest of
5 Mohammad Salameh?

6 A. Correct.

7 Q. But you do know that he was arrested right
8 outside a few minutes after he walked out of DIB Leasing?

9 A. Yes, sir.

10 MR. RICCO: I have no further questions. Thank
11 you very much.

12 THE COURT: Mr. Jacobs.

13 CROSS-EXAMINATION

14 BY MR. JACOBS:

15 Q. Agent Atkinson, you have been a member of the FBI
16 for nine years?

17 A. Close to eleven.

18 Q. Close to eleven. You testified in the World
19 Trade Center case where Salameh was a defendant, correct?

20 A. Yes, sir.

21 Q. And the tape that is in evidence here was played
22 in front of a jury when you testified in that case?

23 A. Yes, sir.

24 Q. The transcript was admitted into evidence,
25 correct?

1 A. Yes, sir.

2 Q. That day, on March 3, there was a series of
3 planned things that the Department of Justice was planning
4 that day, including a questionnaire form; correct?

5 MR. McCARTHY: Objection.

6 MR. JACOBS: I will reframe it.

7 Q. There were a number of things that were planned
8 that the Department of Justice wanted to occur, like using
9 this questionnaire; correct?

10 MR. McCARTHY: Objection.

11 THE COURT: Sustained.

12 Q. Was one of the things that was discussed was a
13 questionnaire form that the FBI wanted Salameh to --

14 MR. McCARTHY: Objection.

15 THE COURT: Sustained.

16 Q. Did you hand Salameh this form, 165?

17 MR. JACOBS: I think it is in evidence,
18 Mr. McCarthy.

19 MR. McCARTHY: Yes, it is.

20 MR. JACOBS: March 4, I am sorry.

21 (Paper handed to the witness by Mr. Jacobs)

22 Q. On March 4, one of the things that was planned
23 was for the use of this form that is in evidence, 165. Is
24 that correct?

25 A. Yes, sir.

1 Q. This was to get information from Salameh,
2 correct?

3 A. Yes, sir.

4 Q. This is not a DIB Leasing form, correct?

5 A. No, sir.

6 Q. This was a document prepared by members of the
7 Department of Justice, isn't that correct?

8 A. Yes, sir.

9 Q. In fact, at least approved by the United States
10 Attorney's Office for the Southern District of New York. Is
11 that correct, sir?

12 A. Yes, sir.

13 Q. Do you know if this is an actual form used by DIB
14 Leasing or is this created by the Department of Justice,
15 this document the form?

16 A. I don't believe it is a DIB Leasing form. I
17 believe it was created for this purpose.

18 Q. So, in other words, as part of what was going to
19 take place on March 4 with Salameh, you were going to
20 attempt to get Salameh to fill out this form, correct?

21 A. Yes, sir.

22 Q. You were going to take pictures of Salameh that
23 Mr. Patel questioned you about, these little snapshots;
24 correct?

25 A. Yes, sir.

1 Q. And in addition to having you present, an FBI
2 agent and a New Jersey state trooper and Galasso, you also
3 were going to tape record what he said; correct?

4 A. Yes, sir.

5 Q. And the reason for the tape recording, to your
6 knowledge, was so that everything he said could be recorded,
7 preserved, and eventually played to a jury. Correct, sir?

8 A. If it was going to be used as evidence in a
9 trial, yes, it would be played for the jury.

10 Q. Did you know ahead of time that, no matter what
11 happened, if he showed up he was getting locked up, isn't
12 that correct?

13 A. No, sir. That is not correct.

14 Q. Were there discussions about whether he was going
15 to be arrested before he entered the premises?

16 MR. McCARTHY: Objection.

17 Q. If you know.

18 MR. McCARTHY: Involving the witness?

19 Q. If you know.

20 THE COURT: Discussions in which he participated?

21 Q. Yes, where you participated.

22 A. There were discussions prior to my entering DIB
23 Leasing?

24 Q. Yes. That he was going to be arrested no matter
25 what took place.

1 A. No, sir. It was my understanding he was going to
2 be followed.

3 Q. Followed.

4 A. Followed.

5 Q. At about 6:50 in the morning, they gave you a
6 Nagra to wear with the tape?

7 A. Yes.

8 Q. About 6:50 in the morning? Did you get the tape
9 from other agents or did other agents give you the tape of
10 the Nagra already loaded? What happened?

11 A. As I recall, it went to another one of the
12 criminal squads, obtained a Nagra, obtained a tape, brought
13 it down to my squad area where I was assisted having it put
14 on, and recorded a brief statement as to my name and what I
15 was going to do that day.

16 Q. Did you load the tape into the machine that day
17 or did somebody else do it for you?

18 A. I believe I was assisted by another special
19 agent. I believe it was Eric Pilker.

20 Q. P-i-l-k-e-r?

21 A. Yes, sir.

22 Q. Is he with New Jersey or New York?

23 A. New Jersey.

24 Q. What squad were you with at the time?

25 A. With the Squad C10.

1 Q. What is that? Is that a terrorist task force
2 squad or what kind of squad is that?

3 A. Yes, sir. It's a terrorism task force.

4 Q. Terrorism task force. OK. And you put the tape
5 on, you put a little intro into it, you had the meeting with
6 Salameh, and the tape was removed from you at about 12:20
7 that day. Correct?

8 A. I believe. I'd have to look at that.

9 Q. In other words, you made a report of the time you
10 put the tape on and you made a report of the time you took
11 the tape off. Correct, sir?

12 A. Correct.

13 Q. 302, correct?

14 A. I haven't seen it, but yes, probably.

15 Q. 3578A for identification. I ask you, if you will
16 excuse some markings on it (handing to the witness), that is
17 a 302, in part containing the information about when you put
18 the tape on, when you took it off. Correct?

19 A. Yes, sir.

20 Q. And is that standard procedure to do that, make a
21 302 like that out?

22 A. I believe that it was, yes, sir.

23 Q. I think this has been marked for identification
24 as W736B for identification. The FBI evidence envelope and
25 the Nagra.

1 MR. JACOBS: I offer that into evidence at this
2 time, your Honor.

3 MR. McCARTHY: No objection.

4 MR. JACOBS: With Mr. McCarthy's permission, can
5 we use that identification number?

6 THE COURT: No objection. 736B is received.

7 MR. JACOBS: Can we stay with the numbers, your
8 Honor? Is it all right?

9 THE COURT: It will be required that we stay with
10 the numbers.

11 MR. JACOBS: Thank you, Judge, because I don't
12 know where my numbers are.

13 (Defendant Saleh Exhibit 738B was received in
14 evidence.)

15 Q. Agent, take out the tape, if you might, please.
16 Take a look at it. Do you see the tape in front of you in
17 your hand?

18 A. Yes, sir.

19 Q. Do your initials appear on that tape?

20 A. I believe they do.

21 Q. Where are they?

22 A. I believe they are on the leader which is inside
23 at the end of the tape.

24 Q. At the end of the tape.

25 A. Yes, sir.

1 Q. Is the leader in the beginning of the tape or the
2 end?

3 A. Well, it is in the beginning, but I believe the
4 beginning in that is now the end, and the end is in here,
5 which is the beginning.

6 Q. So on the tape itself you put some initials,
7 correct?

8 A. I believe. I'd have to probably unroll it to
9 make sure.

10 Q. How about the actual, the outside, the plastic,
11 did you put your initials on that?

12 A. No, sir, I did not.

13 Q. Now, Mr. McCarthy asked you something about a
14 white envelope. Let me show you in our case 331 in
15 evidence, CM32, and ask you, have you ever seen a white
16 envelope like this before in your eleven years with the
17 Federal Bureau of Investigation?

18 A. Not that I recall, sir.

19 Q. Are you aware of any requirement that when an
20 informant wears a tape he is supposed to record the tape
21 number when you use an informant as opposed to an agent?

22 A. No, sir.

23 Q. And you have never seen such an envelope in your
24 eleven years with the Federal Bureau of Investigation?

25 A. To the best of my recollection, no, sir.

1 Q. How about a tape that has a serial number? In
2 your eleven years as an FBI agent, have you ever seen a
3 Nagra tape that has serial numbers on it?

4 A. I can say that I don't recall having seen them,
5 no, sir.

6 Q. What is the method, to your knowledge, of FBI
7 procedure, of recording and making sure that the tape that
8 is being recorded is actually the original? To your
9 knowledge, what is the method?

10 A. As I understand it, before you begin the tape,
11 you initial it, you date it on the leader, you wind it onto
12 the recorder that you use so you don't tape over that
13 portion that you have written on. You go out and do your
14 consensually monitored tape recording, you bring it back,
15 you put it in one of these envelopes after you have filled
16 it out and you seal it. You initial and date time it, so
17 that the chain of custody is clear.

18 MR. JACOBS: I have nothing further.

19 THE COURT: Anybody else? Any other questions?

20 MR. McCARTHY: No, your Honor.

21 THE COURT: You are excused.

22 (Witness excused)

23 THE COURT: May I see counsel at the sidebar.

24 (At the sidebar)

25 THE COURT: Do we have any five-minute-or-so

1 tasks?

2 MR. McCARTHY: I have Abdel Hafiz to put in
3 FISAs, I think.

4 MS. STEWART: I am going to be longer than five
5 minutes with him. We could do his direct.

6 THE COURT: Why don't we do direct and cross on
7 the same day. I think we will just break now and I will do
8 the instruction.

9 (In open court)

10 THE COURT: Ladies and gentlemen, we are going to
11 break for the day. Before you left last evening, I gave you
12 a set of instructions dealing with the events in Oklahoma
13 City. Obviously they continue to apply. I don't want to
14 sit here and read them to you again verbatim, but I have
15 taken the liberty of copying the transcript page on which
16 they appear. I am going to ask Ms. Schwartz to give you
17 that page to read now. After you are done reading it, you
18 may take it with you if you wish, and I will tell you a few
19 more things after you have read it.

20 (Handed to the jury)

21 THE COURT: As I indicated in those instructions,
22 of course there has been a great deal of reporting about
23 Oklahoma City and there has been a great deal, as I said
24 there would be, of speculation about those events and about
25 the other subjects that I said there would be speculation

1 about. As I told you, actually, before you were selected as
2 jurors in this case, speculation being what it is and quick
3 reporting being what it is, a great deal of that has been
4 and no doubt will continue to be inaccurate. But a
5 principal point of those instructions was to remind you of
6 your oath to decide this case based on the law and the
7 evidence presented in this courtroom and to remind you of
8 the obligation that comes from that oath.

9 I am sure you realize oaths are important here.
10 In fact, everything we do here depends on oaths. That is
11 why I require everyone to pay attention when a witness is
12 taking an oath and no witness is allowed to testify here
13 before he or she takes an oath. Each of the lawyers
14 participating in this trial had to take an oath before that
15 lawyer was permitted to practice in this court, and I had to
16 take an oath before I was allowed to assume my duties here.

17 You have taken two oaths. The first of them was
18 before you were impaneled and it was an oath where you swore
19 to give true answers to all the questions put to you based
20 upon your qualifications to serve as jurors. And we went
21 through a three-week procedure in which you fulfilled that
22 oath. The second oath you took was when you were sworn in
23 as a jury and that was to render a true verdict based on the
24 law and the evidence -- the law and the evidence and nothing
25 else.

1 We have an elaborate set of rules here to make
2 sure that the only thing that comes before you is admissible
3 evidence. But ultimately your ability to live up to your
4 oath is entrusted to your care. That oath is to render a
5 true verdict based on the law as I give it to you and on the
6 evidence received during the trial.

7 I asked you last night and I am asking you again
8 not to do anything, not to hear anything, not to say
9 anything, not to see anything, that will endanger your
10 ability to live up to that oath. The best way to do that is
11 to avoid, to the extent that you can, any news reports
12 dealing not only with this case but also with the events in
13 Oklahoma City and, in any event, not discuss any of those
14 events or this case with anyone.

15 Good night and we will see you tomorrow at 9:30.

16 (The jury left the courtroom.)

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18 (continued on next page)

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1 (Jury not present)

2 THE COURT: Sir?

3 MR. JACOBS: Your Honor, can some of the lawyers
4 see you on some MCC matters if you have a few moments? Is
5 that possible?

6 THE COURT: You may, and I do.

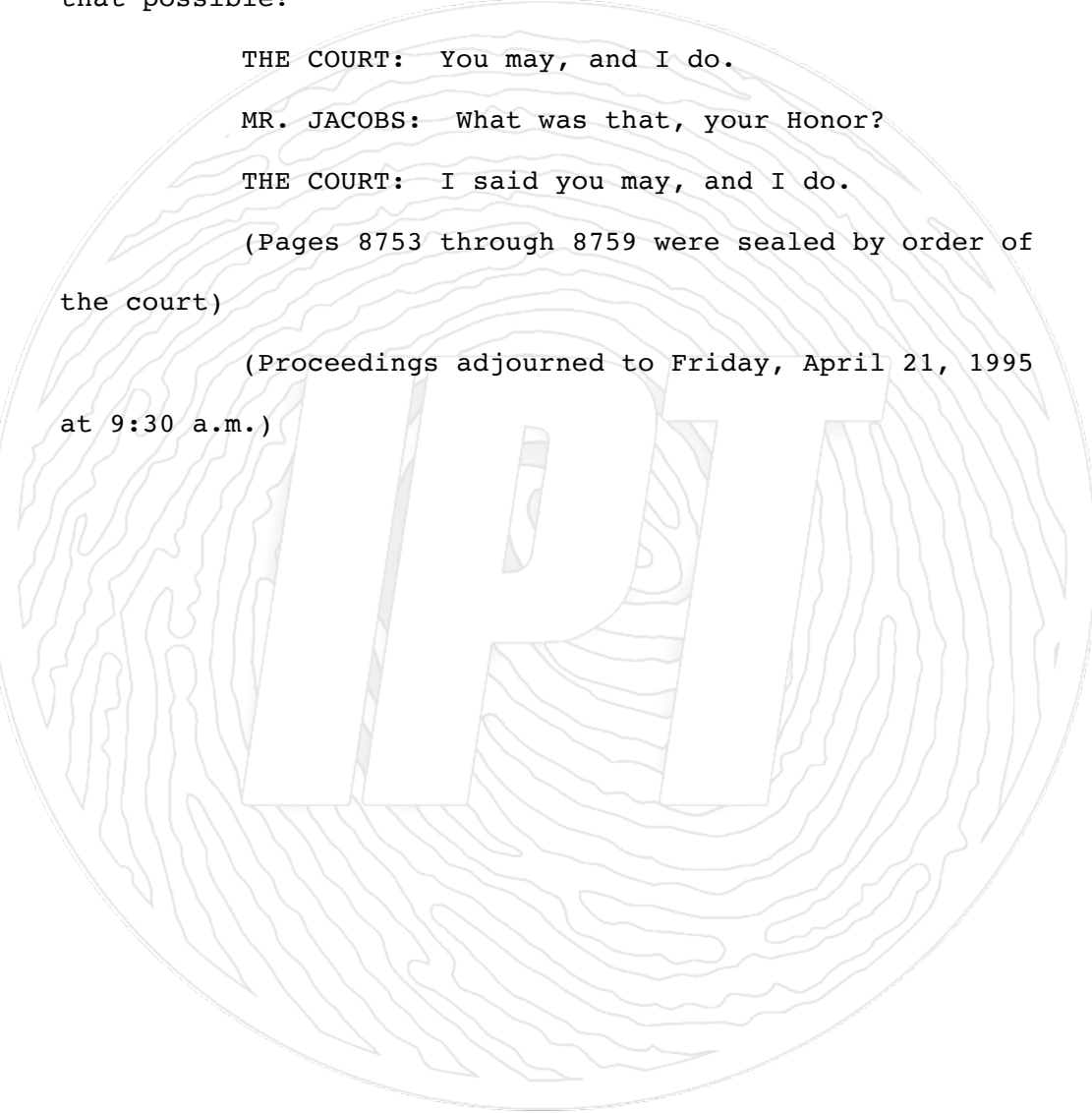
7 MR. JACOBS: What was that, your Honor?

8 THE COURT: I said you may, and I do.

9 (Pages 8753 through 8759 were sealed by order of
10 the court)

11 (Proceedings adjourned to Friday, April 21, 1995
12 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

April 21, 1995
9:45 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

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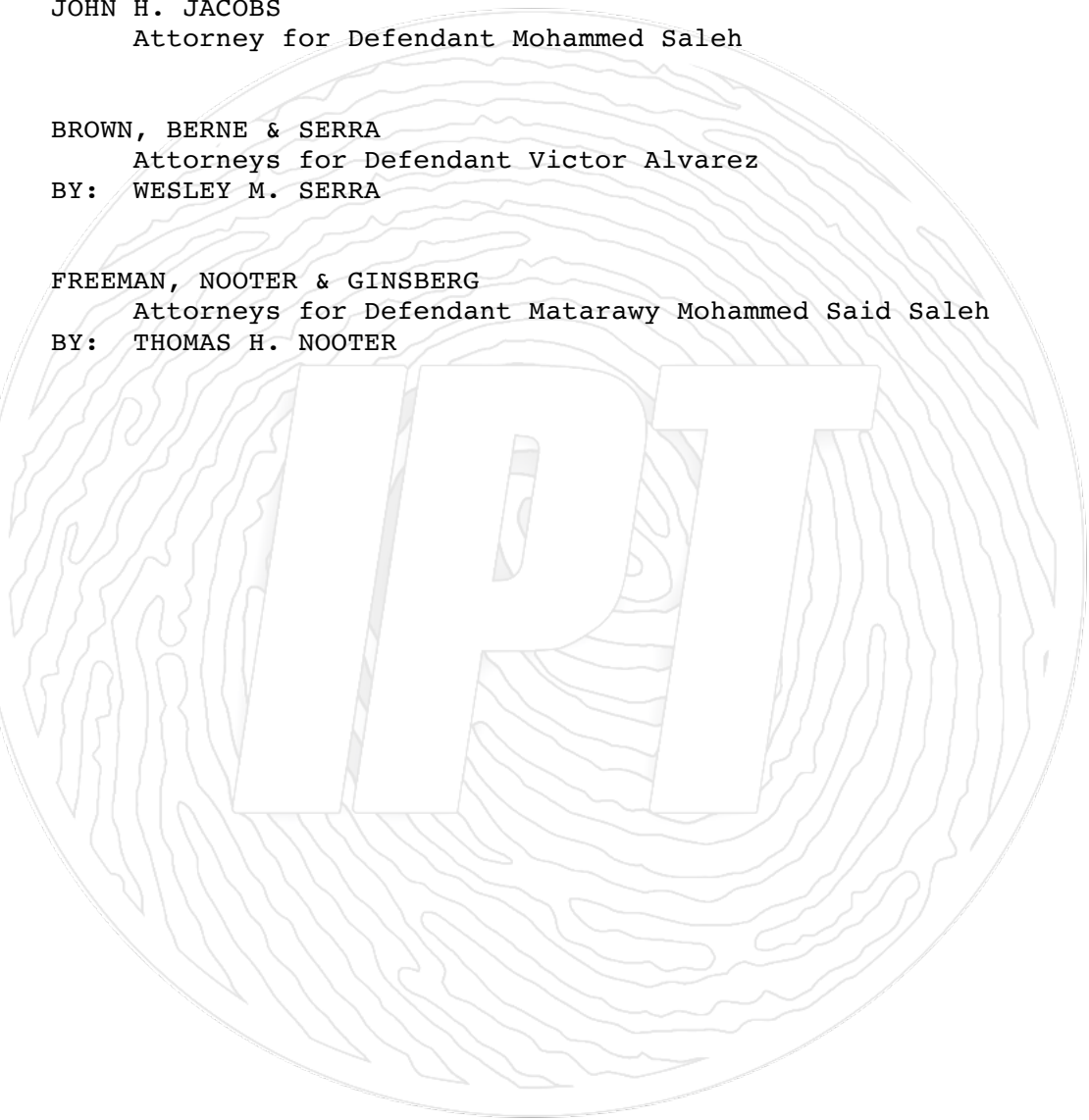
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BY: THOMAS H. NOOTER



1 (Trial resumed)

2 (In open court, jury not present)

3 MR. JACOBS: Your Honor?

4 THE COURT: Good morning. Yes?

5 MR. JACOBS: Your Honor, following your honor's
6 request, Ms. London spent most of the night preparing a
7 letter and a memo on the publicity issues, which we will --

8 THE COURT: I did not request --

9 MR. JACOBS: I am sorry.

10 THE COURT: -- that be done.

11 What I am saying is if you want an outlet for
12 your nervous energy, that is a way that you can do it. But
13 I didn't ask for it.

14 MR. JACOBS: OK. We took your Honor's
15 suggestion, and we will have it in by midday a little later.

16 THE COURT: You do what you like.

17 MR. JACOBS: In any event, as far as this morning
18 is concerned, we are renewing or request for the voir dire
19 and, in the alternative, for a mistrial, and I have one
20 request: For purposes of our memo and letter, we would like
21 to know the government's position with respect to individual
22 voir dire of the jurors.

23 Does the government think we should not do it or
24 do they think we should? We have not had the government's
25 position.

1 THE COURT: I don't know whether they have a
2 position or not.

3 MR. JACOBS: Well, if possible, we would like to
4 have clarified for the record what the Department of
5 Justice' position is with respect to this issue of the voir
6 dire.

7 MR. McCARTHY: Your Honor, I had occasion either
8 yesterday or the day before to take a look at United States
9 v. Eisen, which I believe may be the -- at least the last
10 time that I am aware of that the Court of Appeals in this
11 circuit wrestled with the question of sequestering the jury
12 and related issues. The law of this circuit is and remains
13 that the jury is presumed to follow the instructions of the
14 court. We think the instructions of the court were
15 adequate, and we do not seek individual voir dire of the
16 jury.

17 THE COURT: All right. Mr. Jacobs?

18 MR. JACOBS: Rather than argue, we have a memo.
19 We will submit that later today.

20 THE COURT: Fine. May I just point out to you
21 that what those cases say, all of them in the aggregate,
22 Eisen and the others, is that there is a wide range of tools
23 available to solve particular problems. The question of
24 which tool you use is not resolved by those cases. It
25 depends on what the nature of the problem is that confronts

1 you. You don't solve an electrical problem with a hammer.

2 MR. JACOBS: In any event, your Honor, I cited
3 Gaggi off the top of my head yesterday morning. We will
4 cite Lord and Chang An-Lo later for your Honor's
5 consideration.

6 THE COURT: I should tell you that I have spoken
7 to both judges who were involved in those cases, and I don't
8 know whether it sets your mind at ease, but they both agreed
9 with what I did. I talked to them after I did it, not
10 before.

11 MR. JACOBS: I was there before Judge Duffy in
12 Castellano. I read what the Second Circuit had to say about
13 it. We have read Lord. Ms. London's been up most of the
14 night. We will have the memo later today, your Honor.

15 THE COURT: I am sorry to hear that.
16 Let get started.

17 (Jury present)

18 THE COURT: Good morning, ladies and gentlemen.

19 JURORS: Good morning.

20 THE COURT: Mr. Fitzgerald?

21 MR. FITZGERALD: Yes, Judge. The government
22 calls Kevin O'Rourke.

23 KEVIN O'ROURKE,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. FITZGERALD:

3 Q Now, if you could just point the microphone
4 directly in front of you.

5 A This one here?

6 Q The one to your left. If you could point it at
7 you, it will pick up your voice better.

8 If you could lean forward and tell the jury what
9 you do for a living.

10 A I am a special agent with the Federal Bureau of
11 Investigation.

12 Q How long have you been an FBI agent?

13 A Since January of 1987.

14 Q What is your current assignment?

15 A I am assigned to the Special Operations division
16 of the New York office.

17 MR. PATEL: I am sorry, your Honor --

18 MR. FITZGERALD: You need to keep your voice up a
19 little bit.

20 A I'm sorry. I am with the Special Operations
21 division of the New York office.

22 Q Can you describe generally what you do in the
23 Special Operations division.

24 A We assist the case people by doing surveillances.

25 Q Did you have a surveillance assignment back in

1 1993?

2 A Yes, I did.

3 Q Let me direct your attention to a particular day,
4 March 4 of 1993. Did you have occasion to go to Jersey City
5 that day?

6 A Yes, I did.

7 Q Is that where you started your assignment that
8 day?

9 A En route to our assignment, we were diverted to
10 Jersey City.

11 Q Can you tell the jury where you went in Jersey
12 City.

13 A To a truck rental -- actually a Ryder rental
14 agency on Kennedy Boulevard.

15 Q Can you tell the jury how you were dressed on
16 that day.

17 A I believe I was wearing jeans, sneakers, a shirt
18 and a winter coat.

19 Q Were you wearing anything that indicated you were
20 with the FBI?

21 A No.

22 Q What did you do when you got to the vicinity of
23 the Ryder rental agency on Kennedy Boulevard?

24 A We had set up a surveillance of the rental
25 agency, we were basically told about a subject that we were

1 looking for would potentially come to that location.

2 Q Did you see that person come to the location?

3 A Yes, we did.

4 Q Who was that person?

5 A That was Mohammed Salameh.

6 Q What did you see happen when Mohammed Salameh
7 arrived in the area of the Ryder rental agency?

8 A He had entered the building, and then from there,
9 you know, we couldn't see once he was inside.

10 Q Did there come a time when he came out of the
11 building again?

12 A Yes, he did.

13 Q How long after he went in did you see him come
14 out, roughly?

15 A To the best of my recollection, it was probably a
16 half hour or so.

17 Q What did you do when Mr. Salameh left the Ryder
18 rental agency?

19 A We attempted to surveil him, trying to find out
20 where he was going, whether he was going to go to a
21 residence, to a vehicle, and our assignment was to maintain
22 contact with him.

23 Q Tell us what he did once he left the Ryder rental
24 agency.

25 A He exited the building. He walked, I believe it

1 was north on Kennedy Boulevard, approximately a half a block
2 to a block, and stopped at a bus stop.

3 Q Without telling us what was said, did you have
4 any communication with your command center at that point?

5 A Yes, we did.

6 Q What did you then do?

7 A At the direction of the command center, we were
8 told to arrest the subject.

9 Q What did you actually do?

10 A I had walked up the street, approached him,
11 identified myself as an FBI agent, drew my weapon and told
12 him to lay down on the sidewalk.

13 Q Did you then arrest him?

14 A Yes, we did.

15 Q Were you responsible for transporting him to the
16 FBI headquarters?

17 A My responsibility at that time was, I placed
18 handcuffs on him, removed items that were in his pockets,
19 and handed him over to another vehicle that transported him
20 to the New York office.

21 Q Did you in fact remove items from the pockets of
22 Mr. Salameh?

23 A Yes, I did.

24 Q Do you recall the general nature of those items
25 that you removed?

1 A The best that I can recall, they were one or two
2 address, telephone-type books. He had some papers, and I
3 think he had some money, and I can't recall exactly what
4 else.

5 Q What did you do with the items you removed?

6 A We placed everything that we took off his person
7 in a bag which was then transported with him in another
8 vehicle to 26 Federal Plaza.

9 Q Once you took the items and put them in a bag and
10 gave them to someone else, were you responsible for
11 inventorying them?

12 A No.

13 MR. FITZGERALD: Your Honor, I have nothing
14 further.

15 MR. PATEL: Just a moment, your Honor.

16 THE COURT: Cross?

17 Mr. Patel, representing Mr. Nosair. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. PATEL:

20 Q Good morning, Agent O'Rourke.

21 A Good morning.

22 Q You are part of the Special Operations division
23 in the New York office, right?

24 A That's correct.

25 Q In March of 1993, how many agents were in your

1 division?

2 A I would take a guestimate at approximately 200.

3 MR. BERNSTEIN: I'm sorry, Judge. Can the
4 witness please speak up.

5 THE WITNESS: Is that any better?

6 MR. PATEL: Yes.

7 Q When did you first find out that you would be
8 going to Jersey City on March 4?

9 A In the morning when I had been driving towards
10 New York City.

11 Q You had a radio with you?

12 A Yes.

13 Q You were told to go to someplace in Jersey City?

14 A That's correct.

15 Q What time did you arrive in Jersey City?

16 A Somewhere around I guess 8, maybe even earlier
17 than that.

18 Q How many agents from your division eventually
19 arrived in Jersey City?

20 A From my division we had one team which I believe
21 totaled six, maybe seven people.

22 Q Who was in charge of that team?

23 A The team leader at that time was Jeff Carrie.

24 Q Jeff?

25 A Jeff Carrie, C-A-R-R-I-E.

1 Q You are a special agent, right?

2 A That's correct.

3 Q Is he a supervisory special agent?

4 A No, he is a special agent also.

5 Q Was there a supervisory special agent at the
6 scene in Jersey City on March 4?

7 A No.

8 Q In addition to the agents in your division, there
9 were some case agents there, correct?

10 A As far as I know, there were some people inside
11 the rental agency?

12 Q Those people were not from the Special Operations
13 division, they were from some other unit of the FBI?

14 A That's correct.

15 Q Was there someone who was in overall command of
16 the, what was going on in Jersey City that day for the FBI?

17 A On site was Jeff Carrie.

18 Q He was in contact with someone in the New York
19 field office, is that correct?

20 A That's correct.

21 Q Who was he in contact with there?

22 A There were numerous people. The one individual
23 that I can recall on the air was Supervisory Special Agent
24 Dan Gibney.

25 Q Gibney?

1 A Dan Gibney.

2 Q Do you know how to spell that?

3 A Yes. G-I-B-N-E-Y.

4 Q Is he a supervisory special agent of the Special
5 Operations division or some other division?

6 A Of the Special Operations division.

7 Q Was there someone who was running liaison between
8 Special Operations and -- the officers who were inside, they
9 were from the Joint Terrorist Task Force, is that right?

10 A I am not sure what individuals were inside.

11 Q Was there someone who was doing liaison work
12 between your Special Operations group and whatever group it
13 was that was inside the building?

14 A I can't answer that. I really don't know.

15 Q When you arrived there, you had your own vehicle,
16 right?

17 A That's correct.

18 Q Is it fair to say there were six or seven agents
19 there, and they each had their own vehicle?

20 A Yes.

21 Q In addition to the radio that you had in your
22 car, what other equipment did you have with you?

23 A I'm not getting the point of the question.

24 Q OK. Let me rephrase it.

25 In the Special Operations group, one of your

1 primary tasks is doing surveillance?

2 A That's correct.

3 Q Essentially I think you said there were like 200
4 agents in the New York office who do surveillance?

5 A Yes.

6 Q When you do surveillance, you have at your
7 disposal an array of tools and equipment?

8 A Yes.

9 Q You have surveillance vans?

10 A Right.

11 Q The surveillance vans have photographic equipment
12 in them?

13 A Yes.

14 Q Some of them have video equipment in them?

15 A Correct.

16 Q Some of them have shotgun microphones for
17 audiotaping?

18 A Not that I am aware of.

19 Q What about thermal imaging devices?

20 A Not that I am aware of.

21 Q On that day, would it be fair to say that
22 whatever you guys needed, you could have gotten on the radio
23 and gotten?

24 A It's possible.

25 Q Let's say on that day you had needed a

1 helicopter. You could have gotten one if you needed one to
2 do the surveillance?

3 A I really can't answer that, I don't know.

4 Q You set up surveillance. Is that the term you
5 used?

6 A Yes. We set up surveillance at the rental
7 agency.

8 Q That means the agent in charge told you to go
9 someplace, right?

10 A That is correct.

11 Q Before he told you to go someplace, somebody told
12 you what to look for, right?

13 A Once we had got on site, we had a briefing as to
14 what we were doing there.

15 Q This briefing, who attended that briefing?

16 A The six or seven agents that were assigned to the
17 team.

18 Q Who told you the target of your surveillance?

19 A Jeff Carrie.

20 Q Did he show you a picture?

21 A No.

22 Q Did he give you a physical description?

23 A We had a description yes, which was given. I am
24 trying to remember if that came from the New York office or
25 from Jeff. But, yes, we got a physical description.

1 Q Were you directly in contact with the New York
2 office?

3 A We all listened to the same channel so we can
4 hear, you know, information. But he has direct contact. He
5 would make a telephone call.

6 Q What I am trying to find out is where you get a
7 description of the target of your surveillance.

8 A From the team leader, Jeff Carrie.

9 Q And you got that at that meeting --

10 A At the briefing.

11 Q -- at 8 o'clock in the morning?

12 Where was that meeting held?

13 A It was approximately -- I want to say about a
14 half a mile south of -- I think there is a McDonald's off of
15 Kennedy Boulevard. There is a parking lot.

16 Q When you got your original broadcast or your
17 radio call to go someplace, that is where you were told to
18 go?

19 A That's where we all gathered together, yes.

20 Q Had you been working on the Trade Bomb case prior
21 to March 4?

22 A No.

23 Q Part of your work in Special Operations is they
24 grab teams as they need them for whatever operations are
25 going on?

1 A That's correct.

2 Q There came a time when you personally arrested
3 Mr. Salameh, is that correct?

4 A Yes.

5 Q When you arrest someone -- well, you approached
6 him?

7 A Yes, I did.

8 Q How many other agents approached him at the same
9 time you did?

10 A Myself and another agent.

11 Q So there were two of you?

12 A Yes.

13 Q You both had your guns out, right?

14 A I don't know if the other agent did.

15 Q You did?

16 A Yes, I did.

17 Q You carry a .357 magnum?

18 A Smith & Wesson 10 millimeter.

19 Q 10 millimeter?

20 A Yes.

21 MR. PATEL: Excuse me for one moment.

22 Q You told Mr. Salameh to get on the ground?

23 A I told him that I was the FBI, that he was under
24 arrest, and to lay on the pavement.

25 Q Would it be fair to say that you didn't calmly

1 walk up to him with a rather large gun in your hand and say
2 to him, "Mr. Salameh, would you please get on the ground"?

3 A That's correct.

4 Q You ran up to him, grabbed him, and put him on
5 the ground?

6 A No, I didn't grab him.

7 Q Any physical contact?

8 A Once he was on the ground, yes.

9 Q But before he got on the ground, you were making
10 as much noise as you and the other agent could possibly
11 have, nothing else to identify yourself as federal officers?

12 A No.

13 Q Quiet?

14 A I'm sorry?

15 Q You were quiet?

16 A No, I was not quiet.

17 Q He's in the bus stop. Did you come from the same
18 direction, you and the other -- who was the other agent?

19 A Steve Weishaupt.

20 Q Did you and Mr. Weishaupt come from the same
21 direction?

22 A Steve Weishaupt was coming up from my right rear.
23 I started to approach him first, and we were heading in the
24 same direction.

25 Q As you approached you had your gun out and you

1 were announcing yourself as FBI?

2 A Yes. As I drew my weapon, I had a badge that I
3 wear on a chain around my neck, I pulled that out at the
4 same time, and then I identified myself.

5 Q In a loud, clear voice?

6 A Yes, as loud as I could at the time.

7 Q And Special Agent Weishaupt -- am I saying that
8 correctly?

9 A Weishaupt, yes.

10 Q He also had his shield out?

11 A I was not watching him at the time.

12 Q He was also identifying himself as a federal
13 officer?

14 A Yes.

15 Q In a loud, clear voice?

16 A Yes.

17 Q The two of you were running towards Mr. Salameh?

18 A I was not running.

19 Q How did you approach him?

20 A I basically walked up to him. At the time that
21 they told us to make the arrest, I was probably ten feet
22 away from him, and I think I took maybe two or three more
23 steps and announced who I was.

24 Q When you say -- ten feet away from him at the
25 time they told you to make the arrest?

1 A Yes.

2 Q You were in your car?

3 A I was on foot.

4 Q You had a radio with you?

5 A Yes, I did.

6 Q Is this one of the earpiece radios like the

7 marshals are wearing here in court?

8 A No, it was not.

9 Q It was a walkie-talkie type?

10 A It was a hand-held, yes.

11 Q You got an audio --

12 THE COURT: May I see counsel at the side

13 briefly.

14 MR. PATEL: Sure.

15 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Is there a point to this?

3 MR. PATEL: I am just about done.

4 THE COURT: What the hell is the point of this?

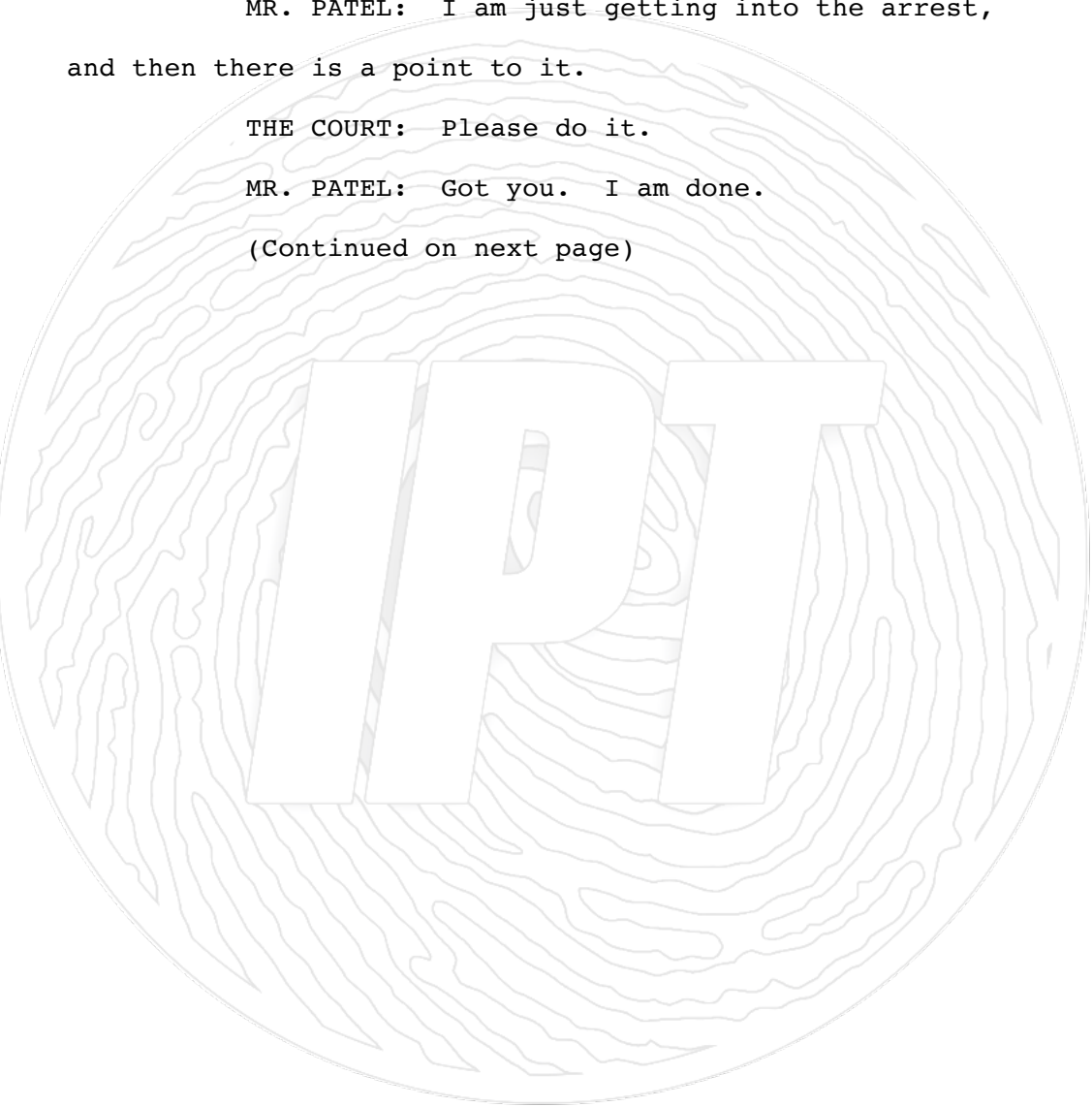
5 MR. PATEL: I am just getting into the arrest,
6 and then there is a point to it.

7 THE COURT: Please do it.

8 MR. PATEL: Got you. I am done.

9 (Continued on next page)

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1 (In open court)

2 Q You told Mr. Salameh to get down on the ground,
3 and he got down on the ground?

4 A Yes.

5 Q You cuffed him behind his back?

6 A That's correct.

7 Q You proceeded to pat him down, is that --

8 A Yes, I did. I asked him if he had any hypodermic
9 needles. He said, "No." I proceeded to pat him down, and
10 then started removing items off his person.

11 Q As you sit here today you recall that you were
12 the one who removed his wallet?

13 A Whatever he had on his person, I removed, yes.

14 Q You put it in an evidence bag?

15 A I don't know if it was an evidence bag. I know
16 we had a bag at the time. We placed the items in it.

17 Q When you say "we," who is "we"?

18 A Well, the agents that were there at the scene,
19 Steve Weishaupt, myself and then the other agents that came.

20 Q But you don't personally remember producing this
21 bag from someplace?

22 A I recall probably -- I think I asked somebody to
23 get a bag so we could put this stuff in it. I don't know
24 where it actually came from.

25 Q As you sit here today, you recall reaching into

1 Mr. Salameh's pockets and removing these various things?

2 A Yes, I did.

3 MR. PATEL: Thank you, your Honor. No further
4 questions.

5 THE COURT: Mr. Ricco, representing
6 Mr. El-Gabrowny. Go ahead.

7 CROSS-EXAMINATION

8 BY MR. RICCO:

9 Q Good morning, Agent O'Rourke.

10 A Good morning.

11 Q When Mr. Salameh arrived on the scene, he arrived
12 by public transportation, isn't that correct?

13 A I am not sure how he arrived.

14 Q He was arrested in a bus stop, isn't that right?

15 A That's correct.

16 Q He was standing there waiting for a bus?

17 A That's correct.

18 Q At the time he was arrested, property was removed
19 from him?

20 A That's correct.

21 Q Was one of the items that was removed from him a
22 passport, a Jordanian passport?

23 A I don't recall looking at the item. I remember
24 just, you know, I didn't read them or anything, I just took
25 them off his person and placed them in the bag.

1 Q Can you tell us on that morning what agent was
2 responsible for cataloguing the items that were taken from
3 Mr. Salameh, if you know.

4 A No, I do not know.

5 Q You were working with Stephen O'Rourke? You are
6 Stephen -- I'm sorry.

7 A Kevin O'Rourke.

8 Q Right.

9 A Steve Weishaupt.

10 Q You were working with Charles Christopher, right?

11 A That's correct.

12 Q And Stephan Weishaupt?

13 A That's correct.

14 Q Would one of those two have been responsible for
15 cataloguing the documents that were seized?

16 A It's possible. I don't know who catalogued the
17 items.

18 Q Did you have an opportunity to review the FBI 302
19 that was written for the activities that you participated in
20 on that day?

21 A Yes. This was an arrest 302?

22 Q Yes.

23 A Yes.

24 Q Can I show that to you?

25 A Sure.

1 MR. RICCO: The witness is being shown 3591B.

2 A OK.

3 Q Can you tell us whether or not on this morning
4 the morning of March 4, 1993, whether a Jordanian passport
5 in the name of Muhammad Amin Abdul-Raheen Salama was
6 recovered from Mohammed Salameh's pockets?

7 A According to this, yes.

8 Q Can you tell us whether or not on that morning a
9 document was in his possession which was an application for
10 granting a residence permit for the country of Germany?

11 A Again, according to this document, yes.

12 Q Can you also tell us whether or not Mr. Salameh
13 had on his possession a New York State driver's license
14 listing his address as 57 Prospect Park Southwest, Apartment
15 4, Brooklyn, New York?

16 A Again, according to this document, yes.

17 Q Can you also tell us whether or not he also had
18 on his possession a Social Security card in the name of an
19 individual by the name of Alaa Eldean Mahrous?

20 A Yes, according to this document.

21 Q He also had on his possession a New York State
22 identification card in the name of Mohammad Salameh, with
23 his address listed as 36-05 30th Street, Apartment 6, Long
24 Island City, New York?

25 A Again, according on to this document, yes.

1 Q Also, according to your document he had various
2 different types of business and identification cards on him
3 at the time of his arrest?

4 A Yes, according to the document.

5 Q The FBI document that I showed you, or a copy of
6 it, is a document that is made by the agents around the time
7 of the arrests for the purposes of memorializing what
8 happened on that morning, isn't that correct?

9 A Yes.

10 MR. RICCO: I have no further questions, thank
11 you.

12 THE COURT: Any other cross?

13 Any redirect?

14 MR. FITZGERALD: Brief, Judge.

15 REDIRECT EXAMINATION

16 BY MR. FITZGERALD:

17 Q Agent O'Rourke, if I could show you a copy of the
18 same document Mr. Ricco referred to, 3591B.

19 A OK.

20 Q If you look at page 3 of the document in the area
21 where I circled.

22 A Yes.

23 Q When Mr. Salameh was arrested, did he have a
24 business card of Nidal Ayyad on his person?

25 A Yes, he did.

1 Q As you sit here today, do you know whose names
2 and phone numbers were in the phone books you seized?

3 A No, I do not.

4 MR. FITZGERALD: Thank you, nothing further.

5 THE COURT: Anything else?

6 MR. PATEL: No, thank you.

7 THE COURT: All right. You are excused.

8 Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 MR. FITZGERALD: Your Honor, at this time the
12 government would like to read a one-page transcript, which
13 would be Government Exhibit 601-4T. Which should be in the
14 jurors' books, in a thick book.

15 THE COURT: 601-4T?

16 MR. FITZGERALD: 601-4T.

17 THE COURT: This should be in a thick binder.

18 MR. McCARTHY: Your Honor, it is the thick binder
19 marked 300.

20 MS. LONDON: Excuse me, your Honor. Can we get
21 the exhibit number that the government is going to read
22 from?

23 THE COURT: 601-4T.

24 MS. LONDON: Thank you, your Honor.

25 (Pause)

1 THE COURT: I think we are all singing out of the
2 same hymnal now. Let's go.

3 MR. FITZGERALD: Thank you, Judge. Mr. McCarthy
4 will read the voice of Emad Salem, and I will read the voice
5 of Ibrahim El-Gabrownny. Date: March 4, 1993.

6 (Government Exhibit 601-4T was read to the jury)

7 MR. FITZGERALD: The government now calls
8 Detective Thomas Corrigan.

9 MR. PATEL: Your Honor, may we approach the side
10 bar.

11 THE COURT: Yes.

12 (Continued on next page)

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1 (At the side bar)

2 MR. PATEL: Your Honor, I believe when the
3 government first distributed this transcript, I had objected
4 to it under 403 hearsay grounds, and your Honor indicated
5 that when it was introduced you would give an instruction.

6 THE COURT: You want me to give the instruction
7 now?

8 MR. PATEL: Yes.

9 THE COURT: Fine.

10 MR. McCARTHY: Yes, your Honor. That is correct.

11 THE COURT: This is obviously not received for
12 the truth. He is simply relating what was on the
13 television.

14 MR. PATEL: Exactly.

15 THE COURT: That statement has no evidentiary
16 value with regard to the proof in this case.

17 MR. McCARTHY: Thank you, your Honor.

18 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, in the
3 transcript that was just read, you heard Mr. Salem, or the
4 part that was attributed to Mr. Salem, saying that there had
5 been a news broadcast on March 4, 1993 stating that there
6 had been an arrest in the World Trade Center case and that
7 that was somehow connected with the murder of Rabbi Kahane.

8 Now, I hope it's obvious to you that that was not
9 introduced to establish that there was in fact such a
10 connection, but merely to show that Mr. Salem told that to
11 Mr. El-Gabrowny, that is, that there had been such a news
12 broadcast and to show that Mr. El-Gabrowny heard that from
13 Mr. Salem. That is the only thing that that was offered to
14 show.

15 Go ahead.

16 MR. FITZGERALD: Thank you, Judge.

17 THOMAS CORRIGAN,

18 called as a witness by the Government,
19 having been duly sworn, testified as follows:

20 Q Detective Corrigan, how long have you worked for
21 the New York Police Department?

22 A Approximately 14 and a half years.

23 Q For how long have you been a detective?

24 A Approximately eight years.

25 Q Let me direct your attention to March 4, 1993 at

1 about 2 o'clock in the afternoon. Were you working on that
2 day at that time?

3 A Yes, sir, I was.

4 Q Can you tell us what your assignment was at that
5 time?

6 A I was assigned as the entry team to a
7 court-authorized search warrant at 57 Prospect Park
8 Southwest, Brooklyn, New York, the residence of Ibrahim
9 El-Gabrownny.

10 Q 57 Prospect Park Southwest, what kind of building
11 is that?

12 A A multi-dwelling building. I believe it had a
13 brown front with a courtyard that went back to a vestibule.

14 THE COURT: When I say multi-dwelling, do you
15 mean it was an apartment house?

16 THE WITNESS: Yes.

17 THE COURT: All right. Go ahead.

18 Q Can you tell us, 57 Prospect Park Southwest, what
19 is on the other side of the street from the building?

20 A It is, I believe it is a park, sir.

21 Q The name of the park, is that Prospect Park?

22 A I believe so, but I am not sure.

23 Q Can you tell us who you were with at the time.

24 A Special Agent Thomas McNally -- he was my
25 partner. He is assigned to the FBI -- and Special Agent

1 Michael Burke, who is with Alcohol, Tobacco & Firearms, an
2 ATF agent.

3 Q Can you tell us how each of you were dressed that
4 day as best you can recall.

5 A I believe myself and Mr. McNally were dressed in
6 plainclothes with raid jackets on, and I believe Special
7 Agent Burke had an ATF raid jacket on. I don't know what
8 kind of clothes he had on underneath.

9 Q Can you tell us what your raid jacket looks like.

10 A It says FBI, NYPD Joint Terrorist Task Force on
11 the front and the back, I think it's JTTF on the sleeves.
12 It is a blue jacket. It has large yellow lettering.

13 Q Did you have any other items on you that
14 indicated you were law enforcement?

15 A I had my detective shield hanging from a chain.

16 Q Where were you, Agent McNally and Agent Burke at
17 around 2 o'clock?

18 A We were directed to south of 11th Avenue on
19 Prospect Park Southwest, facing northbound. We were in my
20 vehicle, and we were facing the front door of the apartment
21 building.

22 Q The three of you were in a car facing north?

23 A That's correct. I was driving. Agent McNally
24 was in the passenger's seat, and Special Agent Burke was in
25 the back seat.

1 Q Did there come a time, without telling us what
2 you were told, when you received a radio transmission?

3 A Yes, sir, I did.

4 Q After the radio transmission, what did you do?

5 A Well, the radio transmission basically directed
6 me to --

7 MR. STAVIS: Objection.

8 THE COURT: He said don't tell us what you were
9 told. Tell us what you did after you got the transmission.

10 A OK. After the transmission, I observed an
11 individual wearing a three-quarter length gray coat, I
12 believe, with blue jeans on and I think some sort of boots.

13 Q Can you tell us, could you see the person's face?

14 A No, sir, I could not.

15 Q Why not?

16 A Because he had a hood over his face, and his head
17 was tilted down, and his hands were in his pockets.

18 Q This person in the gray jacket, what was he
19 doing?

20 A Walking southbound towards 11th Avenue on
21 Prospect Park Southwest.

22 Q Where had he come from, as best you could tell?

23 A He appeared to be coming out of the apartment
24 building.

25 Q Tell us what you saw him do as he headed south

1 toward 11th Avenue.

2 A Well, he crossed over 11th Avenue. At that
3 point, I maneuvered the vehicle, I did a U-turn, and
4 traveled southbound on Prospect Park Southwest to go a
5 little bit further down so that I had some room to watch him
6 as he continued to walk.

7 Q Did there come a time when this person stopped
8 walking southbound on Prospect Park Southwest?

9 A That's correct, sir.

10 Q Just tell the jury what you saw him do.

11 A I observed this individual in the gray coat come
12 to a bend in the road. It seemed to be a little indentation
13 in the road. He stopped, he turned around, he turned back
14 southbound. A second or two later he turned back
15 northbound, and then proceeded to walk northbound.

16 Q While this was happening, while the person
17 stopped and turned around and then turned around again, did
18 you see anyone else doing anything in the immediate
19 vicinity?

20 A Of the individual?

21 Q Yes. In the vicinity of 57 Prospect Park
22 Southwest.

23 A No, sir.

24 Q Do you know what the other agents were doing at
25 this point?

1 A At the point that this individual stopped in the
2 bend, there was an execution to, to start the search
3 warrant, there was an order to execute the search warrant.

4 Q What did you see happening?

5 A At that point, nothing. I just heard the order.

6 Q After he turned around twice and faced
7 northbound, what did you see this person do?

8 A Started to walk back towards, northbound back
9 towards 11th Avenue.

10 Q What was in his line of sight at that point?

11 A At that point just his building.

12 Q And what happened next?

13 A Well, I could see coming northbound -- southbound
14 on Prospect Park Southwest, I could see vehicles coming in
15 actually my direction because I was pointed northbound.
16 There was also vehicles coming off 11th Avenue on to
17 Prospect Park Southwest.

18 Q What kind of vehicles were these?

19 A Well, there was one bomb squad truck coming
20 southbound on Prospect Park Southwest, and then there were
21 some unmarked vehicles and most of the vehicles that came
22 off 11th Avenue onto Prospect Park Southwest were unmarked
23 vehicles.

24 Q Where did these vehicles go?

25 A They all converged on the front of 57 Prospect

1 Park Southwest.

2 Q Then what did the people inside these vehicles
3 do?

4 A They started to exit.

5 Q How were they dressed?

6 A All of them had raid jackets on. There was task
7 force members, that would be the Terrorist Task Force, with
8 their raid jackets on as well as members of the bomb squad,
9 and I think there was members of the arson explosion unit
10 from the NYPD.

11 Q While this was going on, what was the person who
12 was in walking in the three-quarter length gray jacket
13 doing?

14 A Well, he had crossed back over 11th Avenue, OK,
15 more closer to -- closer to his building. It was about
16 maybe 15 or 20 feet after he had crossed over that the
17 people started pouring out of their cars towards the front
18 of the building.

19 Q What did he do then?

20 A He still had his hands in his pockets, head down,
21 he was, he pace steamed to quicken towards the building.

22 Q What did you do at this point?

23 A Well, I got out of the vehicle, ran up behind the
24 individual with the gray coat and grabbed him by the wrists.

25 Q You mentioned earlier that you were in a car with

1 Agent McNally and Agent Burke. When you got out of the car
2 to run up behind the person in the gray jacket, where were
3 Agents Burke and McNally?

4 A Well, when I ran out of the car, I couldn't see
5 what their movements were. It wasn't until after I grabbed
6 the individual's wrists that I remember, I think it was
7 Agent Burke came up to my right-hand side.

8 Q Did you come to learn who the person in the gray
9 jacket was?

10 A Yes, sir, I did.

11 Q Who was it?

12 A That's Ibrahim El-Gabrowny.

13 Q What did you do once you grabbed Mr. El-Gabrowny
14 by the wrists?

15 A I had him by the wrists, and I pulled his hands
16 out, slowly out of his jacket. At that point I believe
17 Agent Burke grabbed his right arm, and then I removed my
18 hand, my hand from his wrist, and put it on to his left
19 elbow area.

20 Q During this time what, if any, conversation did
21 you have with Mr. El-Gabrowny?

22 A Well, he was asking us who we were, what's going
23 on, questions like that.

24 I explained to him: "We're the FBI, NYPD. Relax
25 calm down." You know: "Take care. Everything is going to

1 be all right. Just relax. Don't worry about anything."

2 I advised him that there was going to be a search
3 at his residence, just to relax. He was asking a lot of
4 questions, well, you know, who we were, continually asked
5 who we were, you know, what did we want, that type of
6 questioning.

7 Q When you pulled his hands out of his pockets, did
8 you see anything in his hands?

9 A In his hands?

10 Q Yes.

11 A No, sir.

12 Q No weapons or things like that?

13 A No, sir.

14 Q What did you do once you had a hold of one of
15 Mr. El-Gabrowny's wrists and Agent Burke took a hold of the
16 other?

17 A Well, I had his wrists originally. I let go of
18 Mr. El-Gabrowny's right hand when Agent Burke came along. I
19 moved my hands up to more or less his elbow area, turned him
20 towards the building line, which would have been his
21 building, I think it was his building.

22 Q Can you describe what the front facade of his
23 building looks like.

24 A Well, it's a bit of an indented courtyard that
25 goes back, I don't know, maybe 30 or 40 feet. There is a

1 vestibule with, I guess, some glass doors, and then there is
2 a lobby area through the glass doors.

3 Q When you first approached Mr. El-Gabrowny and
4 grabbed his wrists, where were you standing in relation to
5 the courtyard, in front of the courtyard or to the side?

6 A No. We were further south of the courtyard.

7 Q What did you and Agent Burke do with
8 Mr. El-Gabrowny once you physically stopped him at that
9 location.

10 A We moved him over to the building line, asked him
11 to put his hands up on the wall, which he initially did, put
12 his hands up, against, I think it was a window ledge.

13 Q Did he keep his hands up against the window
14 ledge?

15 A No, sir, he did not.

16 Q What did he do?

17 A Continued to pull his hands down from the window
18 ledge, turned back towards us, continued to ask the same
19 questions: "What are you doing to me? Who are you? What's
20 going on? Who are you?"

21 Each time he asked, you know, asks a question, we
22 tried to answer the best we could. I remember Agent Burke
23 telling him who he was. I think he said he was an ATF
24 agent. I said I was NYPD, you know: "The FBI is here.
25 Relax, calm down." You know, answering his questions in

1 that manner.

2 Q What happened when he dropped his hands from the
3 wall? What did you do?

4 A I instructed him to put them back on the wall.
5 "Don't take your hands off the wall. Leave them up there.
6 Calm down. Relax." You know, same thing, the conversation
7 occurred, I guess it was for maybe 10 or 12 seconds after we
8 initially brought him over to the wall area.

9 Q Did you notice him do anything else?

10 A At one point, he had his hands on the wall, he
11 turned towards me, and he made a motion like this. He came
12 off -- I grabbed his left arm and forced it, physically
13 forced it back up on the wall.

14 Q Then what did you do?

15 A At that point, I think I moved my right hand up
16 to the wall, so I was standing over from him and my weapon
17 was away from him. I then did a pat search with my left
18 hand in around the front area of his jacket.

19 Q What, if anything, did you find or feel when you
20 did the pat search?

21 A Almost immediately after I started doing the pat
22 down, I felt -- in his jacket area I could feel, it was kind
23 of loose. I grabbed a little -- it seemed like a
24 rectangular object that was fairly hard. It wasn't that
25 pliable. It was a pretty hard surface or substance.

1 Q Once you felt this item through the jacket, what
2 did you do?

3 A Well, I felt it a little bit further. I was a
4 little concerned about it. At that point I think I tried to
5 look at Agent Burke or make a gesture to Agent Burke, I
6 don't recall exactly what I did at this time.

7 Q What did you and Agent Burke do at that point?

8 A There came a time that either I said to him or,
9 like I said, I made a gesture to him to move him, or I just
10 brought him off the wall. I can't recall at this time.

11 We moved him towards the front of the courtyard
12 area that I described earlier, the indented courtyard,
13 brought him into that area, walked him arm in arm. I had
14 Mr. El-Gabrownny's left arm; Agent Burke had
15 Mr. El-Gabrownny's right arm. We walked him towards the
16 front of the vestibule.

17 Q Why did you move him from the front of the
18 building to the courtyard?

19 A To be honest with you, I was looking for
20 assistance from some of the other agents and detectives that
21 were at that area.

22 Q What assistance were you looking for?

23 A At the time a bomb tech or an NYPD bomb
24 technician also.

25 Q What did you think the hard object was?

1 A I thought it would be plastic explosive or C-4.

2 Q Can you tell us what conversation you had with
3 Mr. El-Gabrowny as you walked him from the front of the
4 building to the side and then walked him down into the
5 courtyard.

6 A The same thing: "What are you doing? Get your
7 hands off me. Who are you?" Repetitive questions basically
8 giving the same answers again.

9 "Calm down. We are the police, FBI. Relax."
10 You know: "Things are going to be all right. Just calm
11 down."

12 It was, that was a constant from the time that we
13 stopped him until the time that we brought him to the
14 vestibule area.

15 Q Tell the jury what happened when you, Agent Burke
16 and Mr. El-Gabrowny arrived in the area of the courtyard.

17 A All right. We walked him back towards the front
18 of the building, again, towards the vestibule area. We were
19 still technically outside. I moved him to the left of the
20 vestibule, the glass doors -- over I think there was a large
21 window there.

22 Same thing again: "Put your hands on the wall.
23 Keep your hands up there." He still wouldn't comply with
24 those orders. He would continually drop his hands.

25 I remember one time going again to physically

1 put, hold his hand up there. At that point he came off the
2 wall quickly, with his elbow turned like this, in a swinging
3 motion. He caught me in the jaw. I remember falling back a
4 little ways. I remember slipping a little bit. He then
5 continued on in a rocking motion, and I think he hit Agent
6 Burke in the chest.

7 MR. RICCO: Move to strike as to what the agent
8 thinks.

9 THE COURT: Overruled.

10 Q After you were hit in the jaw what happened?

11 A Well, I fell back a little bit. Actually, I was
12 a little shocked that I got hit. I was surprised.

13 I went to grab him. I remember slipping, and I
14 remember grabbing his arm. I guess I actually grabbed his
15 jacket. With that I pulled down on him to try to pull him
16 off the wall. With that, Agent Burke came around like in a
17 whip-like motion, and kind of just -- we all came down to
18 the floor together, the three of us collapsed on the floor.

19 Q What happened when you, Mr. El-Gabrownny, and
20 Agent Burke were lying on the floor?

21 A I remember struggling with his left hand. He
22 wouldn't release the hand so that I could put it behind his
23 back. He kept pulling it in, trying to pull it away from
24 me. I grabbed it. I was finally able to subdue him, and
25 then I got his hand behind his back into the small of his

1 back.

2 Q What happened then?

3 A I believe Special Agent Chuck Frahm handcuffed
4 Mr. El-Gabrowny. I think he handcuffed my wrist first and
5 then Special Agent Burke because he was having the same
6 problem that I was getting the hand to the back of --
7 getting his arm to the small of his back.

8 THE COURT: When you say your wrist, you mean the
9 wrist that you were holding?

10 THE WITNESS: Yes, sir, I'm sorry.

11 Q For how long were you, Agent Burke and
12 Mr. El-Gabrowny on the floor during this trying to pull his
13 arms behind his back?

14 A I don't know. Maybe 10 to 15 seconds.

15 Q Once Mr. El-Gabrowny was handcuffed, what
16 happened next?

17 A Well, we stood him up. We stood him up on his
18 feet, walked him through the two glass vestibules, walked
19 him over to the right of the lobby. There was a wall there.
20 There was a set of stairs that went up. We put him up
21 against the wall that was adjacent to the stairs.

22 Q What did you do then?

23 A At that point, I unzipped his jacket very
24 carefully, brought it down, I opened the flap up. He had an
25 inside breast pocket. So when I opened it up, I looked, I

1 felt again, I could see yellow on the top. I pulled out a
2 yellow envelope. It was sealed with rubber band because it
3 had been opened previously. I took it out of his jacket. I
4 walked over to Special Agent Burke. We walked maybe two or
5 three feet away from Mr. El-Gabrownny and then in back
6 towards the vestibule door again. I turned the package over
7 to Agent Burke.

8 Q What did Agent Burke do with the package once you
9 gave it to him?

10 A Initially sniffed it, he looked at it, he felt
11 he, he sniffed it. I started to carefully unravel the
12 rubber bands. I think there was one or two rubber bands on
13 the envelope. He then opened it very carefully, took his
14 time with it, and then opened it up and then turned it,
15 turned the top towards me, and where there was a slit where
16 I guess it had been opened earlier, I could see the top of
17 blue booklets.

18 Q What did you do once you saw that there were blue
19 booklets in the package?

20 A Well, I opened it up, I opened the envelope up a
21 little further, and I removed the booklets.

22 Q Was there any C-4 or explosives in the item?

23 A No, sir, there wasn't.

24 Q Anything in there besides the blue booklets?

25 A There were some papers. I remember some papers

1 in -- I think it was the Spanish language.

2 Q Let me approach you with what's been premarked as
3 Government Exhibits 135A through H, 136A through E, 137A and
4 B, and 138.

5 Showing you first 135A, B, C, D, E, and F, I ask
6 you to take a look at those six items and tell us whether or
7 not you recognize what they are.

8 A These are the passports I removed from
9 Mr. Ibrahim El-Gabrownny, the yellow envelope.

10 Q Is it fair to say that the Government Exhibit
11 stickers were not on them at that time?

12 A No, sir, they weren't.

13 Q There are some paper clips and exhibit stickers
14 from the FBI that were not on them at the time?

15 A That's correct, sir.

16 Q Has there been some discoloration since then?

17 A Yes, sir.

18 Q Other than that, they are in the condition that
19 you saw them?

20 A Yes, sir.

21 MR. FITZGERALD: Your Honor, I would offer
22 Government Exhibits 135A through F.

23 THE COURT: Show them to counsel.

24 MR. FITZGERALD: I'm sorry?

25 THE COURT: Show them to counsel.

1 MR. RICCO: Your Honor, I have previously seen
2 them. There is no objection.

3 THE COURT: All right. 135A through F are
4 received.

5 (Government's Exhibits 135A through F for
6 identification were received in evidence)

7 Q If I can show you what's been premarked as
8 Government Exhibits 135G and H. I ask you to look at those
9 items. Can you tell us whether or not you recognize what
10 they are?

11 A Yes, sir, I do.

12 Q What are they?

13 A These were documents that I took -- that I also
14 took out of the yellow envelopes.

15 MR. FITZGERALD: Your Honor, I would offer 135G
16 and H.

17 MR. RICCO: No objection.

18 THE COURT: 135G and H are received without
19 objection.

20 (Government's Exhibits 135G and 135H for
21 identification were received in evidence)

22 Q Let me show you what's been premarked as
23 Government Exhibits 136A through E. I ask you to take a
24 look at those items and tell us whether or not you recognize
25 what they are.

1 A Yes. These are documents that came out of the
2 yellow envelope also.

3 Q Were they the same color then that they are now?

4 A They were the same color, pink, I believe. But
5 they weren't as discolored as they are, markings all over
6 them.

7 MR. FITZGERALD: I would offer, Judge, 136A
8 through E.

9 MR. RICCO: No objection.

10 THE COURT: 136A through E are received without
11 objection.

12 (Government's Exhibits 136A through E for
13 identification were received in evidence)

14 Q Let me show you Government Exhibits 137A and B.
15 I ask you to take a look at those two items and tell us if
16 you recognize what they are.

17 A Yes. These are the yellow envelopes that the
18 documents that I described earlier came in.

19 Q Can you tell us how 137A and B related to each
20 other? Were they separate envelopes or was one inside the
21 other?

22 A No, sir. One was inside the other.

23 Q Can you tell us which envelope was the outer
24 envelope.

25 A The one that's marked 137A, Government Exhibit

1 137A was the outside envelope. 137B was the inside
2 envelope.

3 MR. FITZGERALD: Your Honor, the government
4 offers 137A and B.

5 MR. RICCO: No objection.

6 THE COURT: 137A and B are received without
7 objection.

8 (Government's Exhibits 137A and 137B for
9 identification were received in evidence)

10 Q Finally, I show you Government Exhibit 138 and
11 ask you to take a look at that item and see if you recognize
12 what it is.

13 A Yes, sir, I do.

14 Q What is it?

15 A It was a document that was taken out of the
16 yellow envelopes. The only difference is that the photo
17 here is discolored. It wasn't discolored that day.

18 MR. FITZGERALD: Your Honor, the government
19 offers Government Exhibit 138.

20 MR. RICCO: No objection.

21 THE COURT: 138 is received without objection.

22 (Government's Exhibit 138 for identification was
23 received in evidence)

24 Q Detective Corrigan, if you could read the --

25 MR. FITZGERALD: I will just read it, Judge. The

1 return address on Government Exhibit 137A: "Consulado
2 General de la Republica de Nicaragua."

3 Detective Corrigan, looking at 135A, the
4 passport, can you tell us what country issued that passport.

5 A The United States of America.

6 Q Looking at 135, can you tell us whose name the
7 passport is issued in?

8 A El Sayyid Abdul Aziz.

9 Q Is there a picture on that passport?

10 A Yes, sir, there is.

11 Q Do you recognize the person whose picture is on
12 the passport?

13 A Yes, sir, I do.

14 Q Who is it?

15 A It's Mr. El Sayyid Nosair.

16 Q Looking at Government Exhibits 135B, C, D, E and
17 F, if you could tell us what country issued those passports
18 or what country's name is listed on the face of the
19 passports.

20 A Republic of Nicaragua.

21 MR. FITZGERALD: Your Honor, if I could pass 135A
22 through F, the passports and 137A and the Item 138 to the
23 jury?

24 THE COURT: Go ahead.

25 MR. FITZGERALD: Actually, Judge, I might as well

1 pass all of the items at once if that is OK.

2 (Exhibits published to the jury)

3 MR. FITZGERALD: Just a few more questions,
4 Detective Corrigan.

5 Q Following Mr. El-Gabrowny's arrest, did you seek
6 any medical treatment that day?

7 A Yes, sir, I did.

8 Q Where did you go?

9 A I went to Beth Israel Hospital's emergency room.

10 Q Did you get checked out?

11 A Yes, sir, I did.

12 Q Since that occasion, have you seen any other
13 doctors about any -- what was the injury you complained of?

14 A Lower back pain.

15 Q Have you seen doctors since then about the
16 incident?

17 A Yes, sir, I have.

18 Q How many times?

19 A I went to a couple of chiropractic treatments,
20 and then back at the end of 1994 I went to an orthopedic
21 surgeon.

22 Q Have you missed any work because of the event?

23 A No, sir, I haven't.

24 Q Are you able to run now?

25 A Yes, sir.

1 Q How about lift weights and things like that?

2 A No problem. Yes, sir.

3 MR. FITZGERALD: OK. Nothing further.

4 THE COURT: All right. Can you come up to the
5 side briefly.

6 (Continued on next page)

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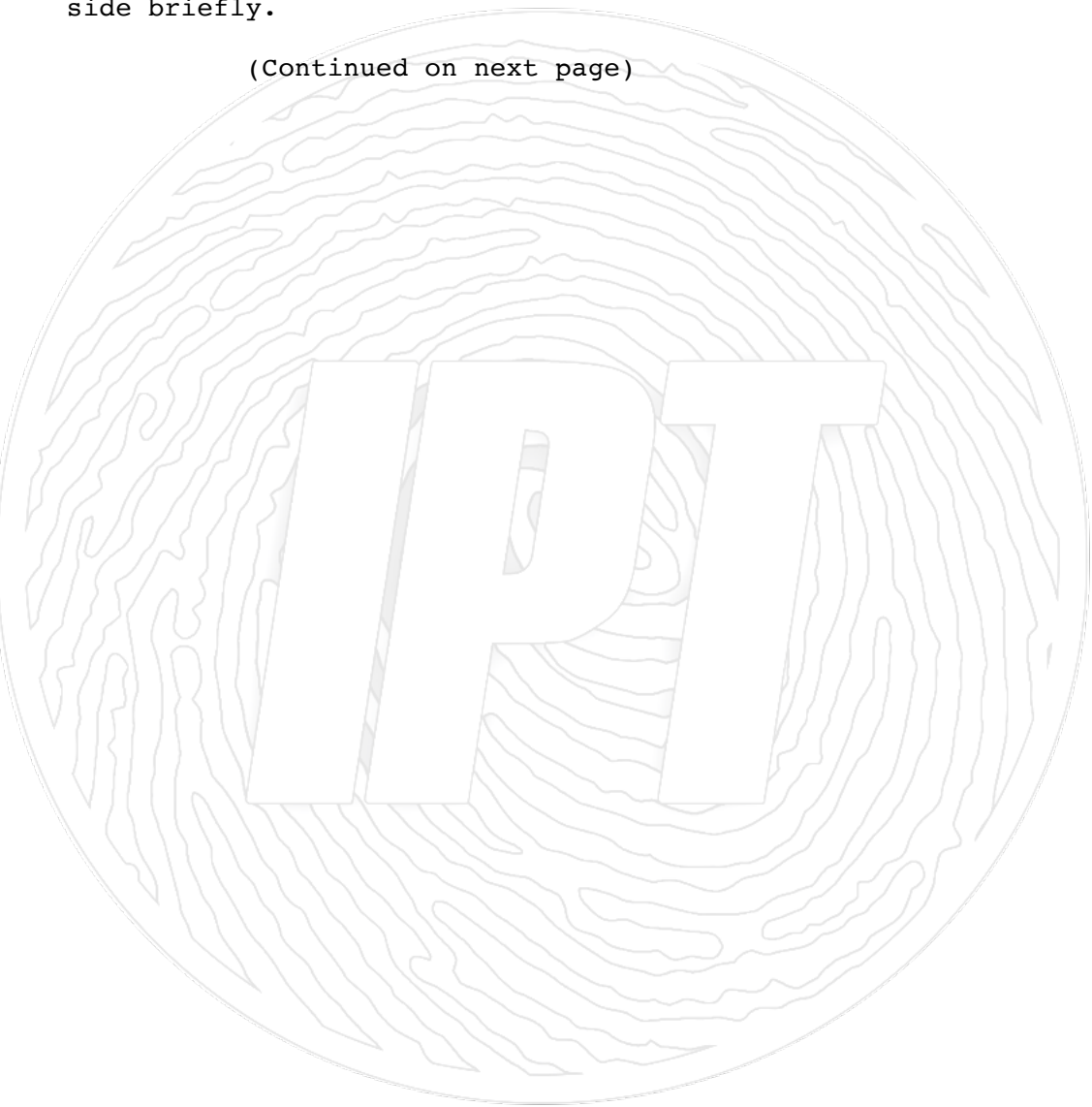
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1 (At the side bar)

2 THE COURT: Do you want to do five or ten
3 minutes, and then break, or do you want to break?

4 MR. RICCO: That would be great.

5 THE COURT: First do five or ten minutes?

6 MR. RICCO: Yes. Judge, if you could click me,
7 because I won't keep track of the time.

8 THE COURT: Oh, come on.

9 MR. RICCO: I have maybe ten minutes.

10 (Continued on next page)

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1 (In open court)

2 THE COURT: Cross.

3 Mr. Ricco, representing Mr. El-Gabrowny. Go
4 ahead.

5 MR. RICCO: Your Honor, can Mr. El-Gabrowny stand
6 up for one second?

7 THE COURT: OK.

8 CROSS-EXAMINATION

9 BY MR. RICCO:

10 Q Detective Corrigan, is it fair to say that
11 Mr. El-Gabrowny and I are about the same height?

12 A Mr. El-Gabrowny might be a little taller, well --

13 Q OK. Thank you.

14 A I don't want to hurt your ego, but --

15 Q Detective Corrigan, I want to go directly to the
16 vestibule, the events that took place in the vestibule.

17 By the vestibule, are we talking about the glass
18 doors or the courtyard outside?

19 A The courtyard.

20 MR. RICCO: Can he come off the stand and come in
21 front of the jury box, your Honor?

22 THE COURT: OK.

23 (The witness left the stand)

24 Q Detective Corrigan, Mr. El-Gabrowny was basically
25 parallel to the side of the building inside the courtyard

1 area?

2 A Parallel, standing straight up?

3 Q Facing the building, correct?

4 A Yes. He had some bit of, I guess, an incline.

5 Q You said that his hands were on the windshield --

6 window. I am sorry.

7 A I don't think there was a car there.

8 Q His hands were up by the window?

9 A I believe there was a ledge. I'm not sure where

10 the window was, but there was a ledge.

11 Q Can you place my arms about where

12 Mr. El-Gabrowny's arms were.

13 A I would say about like that.

14 Q What side of Mr. El-Gabrowny were you standing

15 on?

16 A This side, sir, to his left side.

17 Q Can you show me what part of Mr. El-Gabrowny's

18 left elbow struck your jaw?

19 A He came in a motion like this.

20 Q OK. When he struck your jaw --

21 A Right.

22 Q -- you say he went the other way?

23 A This is what happened, sir. Stand there. I was

24 like this with my hand up like this. He came across like

25 this, hit me in the jaw, I went back like this. With that,

1 he spun and struck Agent Burke, I believe in the chest area.

2 Q What did you do next?

3 A Well, if you could just move over, I could
4 probably explain it better.

5 Q OK, good.

6 A What happens is, I got hit in the jaw. I went
7 back like this, and I remember trying to get forward and
8 slipping. I kind of went backwards, I don't know how far.
9 I was trying to grab, and I couldn't reach. I remember
10 grabbing his jacket. I'm sorry.

11 Q Pull away.

12 A I pulled him like this, kind of down. I'm sorry.

13 Q That is OK.

14 A Then we all went down to the ground. I'm sorry.

15 Q All right.

16 A I'm sorry.

17 Q Is it fair to say that in the few seconds that
18 this happened, it was as if he turned, he struck you, you
19 were falling, you grabbed him, and everybody ended up on the
20 ground?

21 A Actually, no.

22 Q OK.

23 A He went back the other way. Like I said, when he
24 went back this way, I believe that is the reason why I
25 couldn't reach him.

1 Q But you were on the left side?

2 A Right. What happens is, after he hit me, I kind
3 of went to the right side. I wish I was an immovable
4 object.

5 Q OK.

6 A What happens is, he hit me. And, again, I might
7 have gone back. I remember reaching and grabbing the bottom
8 of his jacket and pulling it.

9 Q In your direct you said that you reached up and
10 pulled him off the wall. Did he ever go back towards the
11 wall?

12 A No, I don't think I said I pulled him off the
13 wall. I think what I said is he came off the wall.

14 Q He came off the wall?

15 A Right.

16 Q And everybody just ends up on the ground?

17 A Well, it wasn't just -- there was a sequence of
18 events. The swing in the arm, where I got hit back towards
19 Agent Burke. Then I grabbed him. I don't know if he was
20 coming back, you know, with his motion that took him this
21 way. When I grabbed him, his forward motion, we all came
22 this way. It was like a whip. Agent Burke came around that
23 way.

24 MR. RICCO: OK. Thank you very much.

25 THE COURT: All right. Ladies and gentlemen, we

1 are going to take a short break. Please leave your notes
2 and other materials behind. Please don't discuss the case,
3 and we will resume in a few minutes.

4 (The jury was excused)

5 THE COURT: You may step down.

6 (Witness excused)

7 THE COURT: OK. Just a couple of things: First
8 of all, as I told some counsel at the end of the day
9 yesterday, the noble experiment of sitting Friday mornings
10 to catch up will begin and end with today because it is my
11 view that the amount of inconvenience to everybody -- you,
12 them, everybody -- just isn't worth the gain. I will tell
13 them that at the close of business.

14 I haven't drafted a particular instruction to
15 give them at the end of business today. I will reiterate
16 the substance of what I have already told them. They
17 already have a copy of what I told them the first day, and
18 that will do it for that.

19 I received some materials from Mr. Jabara, and I
20 have reviewed them and I have spoken to other people about
21 them. I understand your position, I understand your point,
22 but we are going to take one day for that festival, which is
23 May 9. We will sit the other days that week. That is my
24 position on that.

25 OK. Yes, sir?

1 MR. STAVIS: I have a scheduling matter, since we
2 are talking about scheduling.

3 THE COURT: Sure.

4 MR. STAVIS: One week from today was the original
5 deadline set by your Honor for the submission of requests to
6 charge.

7 THE COURT: It is a movable deadline.

8 MR. STAVIS: Would it be possible for us to get
9 four weeks from that date or does that --

10 THE COURT: Wait a second. What does it take it
11 out to? I don't have my calendar.

12 MR. STAVIS: The date was April 28.

13 THE COURT: Right.

14 MR. STAVIS: Three weeks would be -- well, I will
15 ask the court for three weeks.

16 THE COURT: That is until May something. May 19?

17 MR. FITZGERALD: 19th.

18 MS. AMSTERDAM: On that issue, your Honor, the
19 requests to charge, I know that your Honor, because your
20 Honor showed it to some counsel, has a rough draft of your
21 Honor's charge.

22 THE COURT: I haven't shown it. I have shown --

23 MS. AMSTERDAM: I mean "shown", that is, a stack
24 of papers.

25 THE COURT: Right.

1 MS. AMSTERDAM: Without actually showing them the
2 draft.

3 MR. McCARTHY: It could have been a flash roll,
4 your Honor.

5 THE COURT: Mr. McCarthy referred to it as a
6 flash roll.

7 MS. AMSTERDAM: I wonder if your Honor would
8 consider letting counsel see that in rough form,
9 specifically the more standard charges -- reasonable doubt,
10 presumption of innocence, definition of a conspiracy -- so
11 that counsel knows whether or not it is really worthwhile to
12 spend an enormous amount of time in terms of proposing
13 alternative language, or if counsel could just address
14 themselves to the specific language that the court is going
15 to charge.

16 THE COURT: It would take me more time to pick
17 out what somebody would consider standard language then I
18 think it is worth. There are a number of you who have tried
19 cases in front of me. I don't know whether you still have
20 the charges from those cases.

21 Mr. Jacobs has. Mr. Stavis has.

22 MR. STAVIS: Yes, your Honor.

23 THE COURT: And maybe we have some other veterans
24 here. But I am disinclined to start improvising on the
25 kinds of things that I have done before, as I think I told

1 you. In any event, you will certainly see the charge before
2 it is given, and we will have a charging conference based on
3 the charge as it is to be given. If I were you, I wouldn't
4 spend a whole lot of time pioneering in the area of
5 reasonable doubt.

6 MS. AMSTERDAM: I would just ask your Honor that
7 we get the charge with sufficient time in advance so that we
8 can put in writing specific objections or alternative
9 language to certain parts of your Honor's charge rather than
10 having a charging conference where your Honor says
11 basically, "This is the charge. Is there an objection?"

12 I do think that it might be helpful to all
13 parties concerned if we had the charge with sufficient time
14 so that if there was an objection, we would have ample time
15 for all tentative language which we could propose.

16 THE COURT: Let me tell you what I envision for
17 that portion of the trial, and I don't know whether it is
18 consistent with your plans or not.

19 At the close of the evidence, it would be my
20 intention to give you the charge and then to wait some
21 period of days and have a charging conference, which would
22 also give you the time to work on and refine your
23 summations.

24 We would then have a charging conference, and we
25 would then proceed to summations. I would envision some

1 period of days, plural, between the close of the evidence
2 and the onset of summations during which time you would
3 review the charge and also plan your summations.

4 MR. STAVIS: Thank you, your Honor.

5 THE COURT: That is the way I see it happening.

6 OK. Thank you.

7 (Recess)

8 (Jury not present)

9 THOMAS CORRIGAN, resumed.

10 THE COURT: Would somebody please tell
11 Ms. Schwartz that we don't have our interpreters.

12 THE INTERPRETER: Our apologies, your Honor.

13 THE COURT: That is all right.

14 (Continued on next page)

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1 (Jury present)

2 THE COURT: Mr. Ricco, go ahead.

3 MR. RICCO: Thank you, your Honor.

4 CROSS EXAMINATION (Continued)

5 BY MR. RICCO:

6 Q Detective Corrigan, I would like to go back to
7 the demonstration that we just performed in front of the
8 jury. No, stay there.

9 A OK.

10 Q That wasn't the first time that Mr. El-Gabrownny
11 tried to move his arms down, isn't that correct?

12 A At that location, sir, or where I originally
13 stopped him?

14 Q Originally, since the time you stopped him.

15 A No, sir.

16 Q In fact, he had, as you testified to the jury on
17 a number of occasions, put his arms down, isn't that
18 correct?

19 A Well, when you say, "put his arms down," tried to
20 take his arm off the wall. I don't want to give the
21 impression that he had dropped to the side at all.

22 Q On a number of occasions he tried to move himself
23 from the position that you were asking him to stay in, isn't
24 that correct?

25 A Again, moving in a position he would drop his

1 hands, his hands would come off the wall, he would try to
2 turn, yes.

3 Q That happened a couple of times, as you explained
4 to the jury, isn't that right?

5 A That's correct, sir.

6 Q There came a number of times when you had to
7 physically put his hands on the wall?

8 A Actually, the first time at the building line
9 when I first stopped him.

10 Q We will get to each one.

11 A OK.

12 Q But there were at least two occasions when you
13 had to physically put his hands back up on the wall?

14 A Physically twice I took his hands and put them on
15 the wall?

16 Q Yes.

17 A That's correct.

18 Q He had asked you -- well, withdrawn.

19 He questioned who you were, what's going on,
20 isn't that right?

21 A Repeatedly, sir, and what we were doing.

22 Q And what you were doing.

23 In fact, as far as you could determine,

24 Mr. El-Gabrownny was walking down the street with his hands
25 in his pockets, his head was slightly bowed, correct?

1 A That's correct, sir.

2 Q Do you recall if it was raining that day?

3 A I know it was overcast, but I don't know if it
4 was raining at that particular time, sir.

5 Q He's walking down the street, it's in the
6 afternoon, right?

7 A That's correct, sir.

8 Q We are in New York City, right?

9 A Brooklyn, New York. That's correct.

10 Q Two men run up behind him, one man grabs both
11 hands and keeps them in his pockets, right?

12 A That's correct. I grabbed his wrists, sir.

13 Q And you kept his hands in his pockets for a
14 moment?

15 A That's correct.

16 Q And then you pulled his hands out of his pockets,
17 right?

18 A That's correct, sir.

19 Q And at this point you're behind Mr. El-Gabrowny,
20 right?

21 A That's correct, sir.

22 Q And you move him over to the wall, right?

23 A That's correct, sir.

24 Q And I would imagine, I don't want to put words in
25 your mouth, when this happened he started to question and

1 struggle a little bit?

2 A I don't remember him turning. I think he was
3 more startled than anything else. I don't think he was
4 turning, or we didn't get into that motion at that point,
5 but I think I startled him coming up from behind him.

6 Q From a law enforcement standpoint, the purpose of
7 your actions were to move up behind him and to grab him
8 before he would have an opportunity to create any danger to
9 you or your partners, isn't that correct?

10 A Yes. The officers that were running past him,
11 that was my concern, correct, sir.

12 Q And the maneuver that you did was designed to
13 sort of catch him off guard, isn't that right?

14 A Well, it was designed that I could control his
15 hands so in the event that he had a weapon, I had my hands,
16 I could hopefully secure whatever he had in his hand.

17 Q As far as you recall, you did in fact catch him
18 off guard, isn't that right?

19 A I believe a little bit, sir, yes.

20 Q Mr. El-Gabrowny asked you, "What are you doing?
21 What's going on?" and you answered those questions to the
22 best of your ability under the circumstances, isn't that
23 correct?

24 A Well, the first question I remember was, "Who are
25 you?"

1 I told him that we were the police and the FBI,
2 but I remember when he got to that location and I actually
3 grabbed his wrists, he was able to see, or his line of sight
4 was in the building line. At that point there was possibly
5 15 to 20 officers with raid jackets running into that --
6 into the courtyard area.

7 Q In fact, when Mr. El-Gabrowny was walking down
8 the street with his hands in his pockets, as you grabbed him
9 agents were running past him, isn't that correct?

10 A Right before I grabbed him, I recall two or three
11 agents actually going right by him, correct, sir.

12 Q OK. You were at the location to effect a search
13 warrant of Mr. El-Gabrowny's apartment, isn't that right?

14 A I was assigned to the entry team for that search
15 warrant. My duties that day would have been -- I'm sorry.
16 I'm sorry, sir.

17 Q First I want to just get straight the reason why
18 you were there, and then we'll go into your duties if you
19 don't mind.

20 A No problem. I'm sorry.

21 Q The reason for being there was to execute a
22 search warrant of Mr. El-Gabrowny's apartment, isn't that
23 correct?

24 A That's correct.

25 Q You were not there to arrest Mr. El-Gabrowny,

1 isn't that correct?

2 A That's correct, sir, no.

3 Q In fact, Mr. El-Gabrowny was not arrested until
4 after he engaged in, or after there was a struggle with you,
5 and that point you decided to handcuff him, isn't that
6 correct?

7 A After Mr. El-Gabrowny assaulted me, that's when
8 he was placed under arrest.

9 Q After he assaulted you with the elbow he was
10 placed under arrest?

11 A Myself and Agent Burke, yes, sir.

12 Q But before that you were not there to arrest
13 Mr. El-Gabrowny, isn't that correct?

14 A There was no arrest warrant issued for
15 Mr. El-Gabrowny.

16 Q Did you have an opportunity to see the warrant
17 before you went to the location?

18 A I don't recall if I did or I didn't, no, sir.

19 Q But you are clear --

20 A You know something? No, sir. I didn't see the
21 warrant before the execution of the search warrant. No, I
22 didn't.

23 Q You did not?

24 A No, sir, I didn't.

25 Q But you are clear in your mind that on that

1 morning you were not there to arrest Mr. El-Gabrowny?

2 A There was no arrest warrant issued for
3 Mr. El-Gabrowny at that time. When I left the squad area to
4 go out, we were sent out there to execute the search
5 warrant. At that time, when we left the squad area, there
6 was nothing or no further information that would dictate
7 that Mr. El-Gabrowny would be arrested or a search warrant
8 would be issued for his arrest.

9 Q Thank you.

10 Now, when Mr. El-Gabrowny was walking either away
11 from his building or back towards his building, he never
12 ran, did he? He never ran from his building, did he?

13 A A full-stride run?

14 Q How about a jog?

15 A No, sir, not a jog either, no, sir.

16 Q Did he jog back towards his building?

17 A No, sir.

18 Q Did he ever get in a stance with you, a fighting
19 stance?

20 A With me, sir?

21 Q Yes.

22 A Oh, no.

23 Q Did he ever get into a fighting stance with ATF
24 Agent Burke?

25 A No, sir. I guess you're meaning like a boxing

1 stance?

2 Q Yes. With his hands up in a threatening stance.

3 A No, sir.

4 Q Did Mr. El-Gabrowny ever use threatening words
5 with you?

6 A I don't recall. I remember that he was very
7 abusive. Again: "Get your hands off me. Who are you?
8 What are you doing?" That was constant. I don't remember
9 if he threatened me or not.

10 Q In your mind those questions: "What are you
11 doing? Get your hands off me? What's going on?" that's
12 abusive?

13 A Well, it was actually, too, he wouldn't comply --
14 he was well aware that we were law enforcement officers, you
15 know, by our identities. I explained to him who we were,
16 our jackets, my shield, the other agents running into the
17 building. There was no time, except for the initial time
18 that I put Mr. El-Gabrowny's hands on the wall, did he
19 comply. He just didn't go along with the program, so to
20 speak.

21 Q OK. "The program" was for agents to go into his
22 apartment and conduct a search, isn't that right?

23 A No, maybe I, I gave you the wrong interpretation.
24 What I meant by "program," I meant he didn't go along with
25 the orders that I was asking him or Agent Burke. It had

1 nothing to do with what was occurring at the courtyard or
2 his apartment or anything else.

3 When I talk "program" I am talking about what I
4 had asked Mr. El-Gabrowny to do in my attempt to secure him
5 so that he wouldn't pose a danger to any of the agents or
6 detectives.

7 Q You became aware, did you not, that inside of
8 Mr. El-Gabrowny's apartment at the time of this execution of
9 the warrant was his wife and his children, isn't that right?

10 A There came a time that I knew after?

11 Q Did there come a time on that morning that you
12 became -- that afternoon, I'm sorry -- that you became aware
13 of that?

14 A Yes. After Mr. El-Gabrowny had been handcuffed.

15 Q Mr. El-Gabrowny was handcuffed and he was placed
16 on the floor inside of his building, isn't that right?

17 A No, sir, he wasn't. The only time that he was
18 prone on the floor was after the tussle that I described
19 earlier in front of the jury.

20 Q Subsequent to those events, you were able to
21 discover that inside of Mr. El-Gabrowny's apartment was his
22 wife and his five small children, isn't that right?

23 A I later found that -- again, I never got up to
24 the apartment. I discovered that after Mr. El-Gabrowny had
25 been handcuffed.

1 Q The action of going to Mr. El-Gabrowny and
2 putting your hands on his hands, while they were in his
3 pockets --

4 A No, sir, his wrists.

5 Q I'm sorry. His wrists while his hands were in
6 his pockets?

7 A That's correct, sir.

8 Q Was to prevent him from reaching for any type of
9 weapon, that was one reason, isn't that correct?

10 A Actually what I wanted to do was control his
11 hands. I didn't know if he had a weapon in his hand. I
12 didn't know if he didn't have a weapon in his hand. But I
13 felt that if I grabbed his wrists and controlled his wrists,
14 he wouldn't be able to, if he had a gun in his hand, bring
15 the gun up in a motion that if he wanted to fire that he
16 could. I could control his hands, or I could keep them down
17 at his side.

18 Q Mr. El-Gabrowny in fact had no weapons on him
19 whatsoever?

20 A That's correct, sir. I'm sorry, that's correct,
21 sir.

22 Q None.

23 You were assisted on that morning by ATF Agent
24 Burke, correct?

25 A That's correct, sir.

1 Q Burke was beside you or near you during the time
2 that you had the encounter with Mr. El-Gabrownny out in front
3 of his building and inside of the courtyard area, isn't that
4 correct?

5 A We are talking about the two areas, correct, sir?

6 Q Yes.

7 A Yes, sir.

8 Q In fact, it was Agent Burke that assisted you in
9 getting Mr. El-Gabrownny into the courtyard area?

10 A That's correct, sir.

11 Q When Mr. El-Gabrownny was against the wall outside
12 of the building on the street side --

13 A That's correct, sir.

14 Q -- you informed him then, did you not, that you
15 were executing a search warrant for his apartment?

16 A I don't know if I used those terms, "executing a
17 search warrant." I think I said that something along the
18 lines, "There's a search being done at your residence."

19 Q OK.

20 A I don't know if I --

21 Q But you made him aware of the fact that the
22 agents were searching his apartment?

23 A That's correct, sir.

24 Q That happened outside, that was before the
25 struggle took place inside the courtyard?

1 A That's correct, sir.

2 Q As you walked Mr. El-Gabrowny to his building
3 from outside into the courtyard, did he ever punch to get
4 away, to run into the building?

5 A No, sir, he didn't.

6 Q Now, Prospect Park Southwest runs north to south
7 in Brooklyn?

8 A Right.

9 Q If the bar here is the building line, that's
10 right in front of jury --

11 A OK.

12 Q -- across the street, directly across the street
13 there is a park?

14 A I believe so, yes, sir.

15 Q That's Prospect Park.

16 Basically, is it fair to describe this area as a
17 quiet, residential area?

18 A I have only been in that area once or twice. I
19 don't know what goes on at night, but just from its outward
20 appearance it appeared to be a fairly nice neighborhood,
21 yes, sir.

22 Q There was not a lot of activity or traffic on the
23 street at the time you saw Mr. El-Gabrowny come out of the
24 building and go back to the building?

25 A On Prospect Park Southwest?

1 Q Yes.

2 A No. I don't believe there was a lot of
3 pedestrian traffic, no, sir.

4 Q From Mr. El-Gabrowny's door to the corner, that
5 is a long distance, isn't it?

6 A From his courtyard to 11th Avenue, sir?

7 Q Yes.

8 A If I remember correctly, it's a decent walk.

9 Q There are at least two large apartment houses in
10 between his building and the corner, isn't that right?

11 A I know there's apartment buildings, sir, but I
12 don't know if it's one, two or three.

13 Q At any time when you were observing
14 Mr. El-Gabrowny either leaving his building or coming back,
15 did you ever observe him reach in his pockets to try to
16 throw something down into the gutter?

17 A No, sir.

18 MR. RICCO: I would like to show Detective
19 Corrigan it's one collective exhibit, your Honor, it has 12
20 parts and I would like to call it -- El-Gabrowny?

21 THE DEPUTY CLERK: M.

22 MR. RICCO: M. Thank you.

23 Q Detective Corrigan, do you recognize what has
24 been shown to you as defendant El-Gabrowny's M1 through 12?

25 A Yes, sir.

1 Q With the exception of the wrought-iron gate that
2 is over the basement area in M11, do those pictures fairly
3 accurately show what 57 Prospect Park Southwest looked
4 like on March 4, 1993, with the exception, of course, of the
5 cars?

6 A Right. Of course. Right.
7 Yes, sir. It seems fairly accurate.

8 MR. RICCO: Your Honor, I would move those
9 photographs into evidence. They have been previously shown
10 to the government.

11 MR. FITZGERALD: No objection.

12 THE COURT: El-Gabrowny M1 through 12 are
13 received.

14 (Defendant El-Gabrowny Exhibits M1 through M12
15 for identification were received in evidence)

16 MR. RICCO: Your Honor, I have no further
17 questions -- oh, I do have one, sorry judge. There's always
18 one.

19 Q You went to the hospital either that day or the
20 next day, isn't that correct?

21 A That evening, sir.

22 Q You were released, weren't you?

23 A That's correct, sir.

24 Q Basically, they told you take some Advil and some
25 Tylenol, get some rest and you were released from the

1 hospital?

2 A That's correct, sir.

3 MR. RICCO: I have no further questions. I would
4 like for the jury to see the photographs.

5 THE COURT: OK. Publish those to the jury.

6 (Defendant El-Gabrownny Exhibits M1 through 12
7 were published to the jury)

8 THE COURT: Anyone else? Any other cross?
9 Any redirect?

10 MR. FITZGERALD: No, Judge.

11 THE COURT: Thank you. You are excused.

12 (Witness excused)

13 MR. FITZGERALD: Your Honor, at this time, the
14 government would like to read from three transcripts in the
15 600 series, which again are in the thick binder, the first
16 one being 601-16T.

17 THE COURT: OK. If you would take out the thick
18 binder, again, ladies and gentlemen, and turn to 601-16T.

19 That is right after 601-4T which was read before.

20 MS. STEWART: Can we have the number again,
21 please?

22 THE COURT: 601-16T.

23 (Pause)

24 THE COURT: Go ahead.

25 MR. FITZGERALD: Reading from Government Exhibit

1 601-16T, Mr. McCarthy will read the voice of Emad Salem and
2 I will read the voice of Ali El-Shinawy. Date: March 4,
3 1993.

4 (Government Exhibit 601-16T was read to the jury)

5 MR. FITZGERALD: The next transcript is the
6 following page. That is Government Exhibit 601-19T.
7 Mr. McCarthy will read the voice of Emad Salem, I will read
8 the voice of Ahmed Abdel Sattar, and Ms. Chu will read the
9 voice of the unidentified female. The date is March 4,
10 1993.

11 (Government Exhibit 601-19T was read to the jury)

12 MR. FITZGERALD: Lastly, the government would
13 like to read from the next page past the tab, Government
14 Exhibit 604-1T. Mr. McCarthy will read the voice of Emad
15 Salem, I will read the voice of Mohammed El-Gabrownny, and
16 Ms. Chu will be the voice of the unidentified male.

17 It is not dated.

18 (Government Exhibit 604-1T was read to the jury)

19 MR. MCCARTHY: Your Honor, the government calls
20 Gamal Abdel-Hafiz.

21 MS. STEWART: Your Honor, can we approach for a
22 moment?

23 THE COURT: Yes.

24 (Continued on next page)

25

1 (At the side bar)

2 MS. STEWART: Our Pony Express riders yesterday
3 afternoon said that you did intend to break between 12 and
4 12:30, is that right? Because Hafiz, of course, will
5 testify that he translated, and we will start doing the
6 cross-examination then, but I don't think we will get a
7 chance to read everything or -- I mean, it would just seem
8 to be better to do it as a unit --

9 THE COURT: I would rather get done with him
10 today if we can.

11 MS. STEWART: But they will never get back in
12 time for the juma.

13 THE COURT: They will.

14 MS. STEWART: OK. I am going to be a while with
15 him. I am telling you there are a lot of tapes here.

16 THE COURT: Then we will break at some point
17 around 20, 25 after.

18 MS. STEWART: OK. Fine.

19 (Continued on next page)

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21

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25

1 (In open court)

2 GAMAL ADDEL-HAFIZ,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 MR. McCARTHY: May I proceed, your Honor.

6 THE COURT: Please.

7 DIRECT EXAMINATION

8 BY MR. McCARTHY:

9 Q Good morning, Mr. Abdel-Hafiz.

10 A Good morning, sir.

11 Q I have placed before you a number of cassette
12 tapes and transcripts. Let me read the numbers for the
13 record. The cassettes are Government Exhibits 713, 714,
14 718, 720, 726, 728, and 739.

15 The transcripts are those same numbers with a T
16 after the them.

17 Mr. Abdel-Hafiz, have you reviewed those items at
18 my request prior to testifying?

19 A Yes, sir, I have.

20 Q Are those, the transcripts which are marked with
21 the T numbers, English transcripts which you made from the
22 Arabic on the cassette tapes?

23 A Yes, sir.

24 MR. McCARTHY: Your Honor, the government offers
25 the cassettes 713, 714, 718, 720, 726, 728, and 739. We

1 offer the transcripts, all with corresponding T numbers,
2 with the exception of -- we do not offer 739T. We would
3 offer 739T1, which is a transcript that's been redacted
4 according to the discussion of the parties.

5 MS. STEWART: No objection, Judge.

6 THE COURT: All right. 713, 714, 718, 720, 726,
7 728, and 739, with corresponding T numbers, except for T1 on
8 739 are received without objection.

9 (Government Exhibits 713, 714, 718, 720, 726,
10 728, 739, 713T, 714T, 718T, 720T, 726T, 728T and 739T1 for
11 identification were received in evidence)

12 MR. McCARTHY: Thank you.

13 Q Mr. Abdel-Hafiz, let me just ask you are you
14 familiar with an Arabic concept called da'wa?

15 A Da'wa, yes.

16 Q Could you spell that for us, please.

17 A It is D-A apostrophe W-A.

18 Q Was da'wa referred to in at least one of the
19 transcripts you have put in this morning?

20 A Yes, sir.

21 Q What is da'wa?

22 A It is the call for God.

23 Q Did you translate it as a call for God?

24 A I translated it as "da'wa."

25 Q What was da'wa?

1 A Da'wa is the call for God, which is when you
2 invite people to follow God's rules and laws and the Islamic
3 ways.

4 Q Does that include the Shari'a?

5 A Yes, the Shari'a is the Islamic rule.

6 MR. McCARTHY: Thank you.

7 THE WITNESS: You're welcome.

8 MR. McCARTHY: May I have a moment, your Honor.

9 Thank you.

10 THE COURT: Anything else?

11 MR. McCARTHY: No, thank you.

12 THE COURT: Cross, Ms. Stewart.

13 CROSS-EXAMINATION

14 BY MS. STEWART:

15 Q Good afternoon, Mr. Abdel-Hafiz.

16 A Good afternoon.

17 Q Once again.

18 I take it that in Arabic as in English, or indeed
19 any language, one word may have many meanings, is that true?

20 A Sometimes.

21 Q For example, we talked about the word, I believe,
22 wagiha which you translated --

23 A Wagiha.

24 Q Wagiha?

25 A Yes.

1 Q Excuse me.

2 A That's fine.

3 Q As meaning "front," and then you also said that
4 it could also mean "leader" or "forefront."

5 Do you remember that discussion?

6 A It can mean "leader" if you take it this way.
7 You cannot put the word "leader" there, but you can
8 understand it from the transcript if you read the trans --
9 or the context as a leader. It depends on the context.

10 Q Let me just ask you, in the course of doing these
11 many translations, when you come across a word that can have
12 two meanings, how do you go about deciding which meaning to
13 give it or which word to translate it to?

14 A One of two ways. Whether I take the meaning that
15 I understand it from the context, or if it is, it has the
16 same meaning in all ways, I open the dictionary, and the
17 first word that corresponds to it in the dictionary, that is
18 the one I use.

19 Q When you say "the first word," you mean the
20 preferred meaning, number-one meaning in the dictionary?

21 Is that what you mean?

22 A Yes, ma'am.

23 Q Do you ever consult with anyone from the
24 prosecution about a decision as to what a word means?

25 A No.

1 Q You don't ever say to them, for example, "You
2 know about this case. What would this mean? What would
3 this word mean in the context of the case?"

4 A No, ma'am, I only translate.

5 Q Do you ever come across situations where the
6 alternative meanings are equal, where it could mean either
7 of two things and you are unsure in your mind whether it
8 means one thing or another thing?

9 A I make that decision before --

10 Q You don't put. I am sorry.

11 A -- before I turn in the transcript, I make the
12 decision which word will be used.

13 Q You don't ever put both words down as alternative
14 meanings in your transcripts?

15 A No, ma'am.

16 Q Let me ask you specifically about the tapes that
17 were mentioned. I won't repeat the list, but you have them
18 before you.

19 A Yes, ma'am.

20 Q And you have the transcripts.

21 In each of those occasions, Dr. Abdel Rahman is
22 speaking with someone and that person speaks Arabic with an
23 Egyptian accent, is that fair to say?

24 A Yes.

25 Q Feel free to review them.

1 A That's fair to say.

2 Q Let me just start with 713, if you would look at
3 your transcript.

4 This is a tape from March the 6th, 1993, isn't
5 that correct?

6 MR. McCARTHY: Objection.

7 A April 6.

8 Q April 6. I'm sorry.

9 A All right.

10 Q April 6, 1993?

11 A Yes, ma'am.

12 Q This is a call to Pakistan, is that fair to say?

13 A That's fair to say.

14 Q You started translating at the point at which you
15 have Abdallah saying hello, is that correct?

16 A Yes, ma'am.

17 Q When you listened to the tape, weren't there
18 maybe eight counters or maybe about a moment of conversation
19 that precedes Abdallah saying hello?

20 A I don't recall that on this.

21 Q Do you remember whether or not on that specific
22 tape when you listened to it there was a conversation
23 between Dr. Rahman and Emad Salem?

24 A No, I don't recall that.

25 Q Let me just show you what I would ask to be

1 marked as Exhibit 713T Rahman, I guess, or Abdel Rahman or
2 defendant, whatever.

3 (Counsel conferred)

4 THE COURT: I would rather call it 713T-1 so that
5 I doesn't have the same number, OK?

6 MS. STEWART: That's fine.

7 THE COURT: It's Rahman 713T1.

8 MS. STEWART: Very well, Judge.

9 THE COURT: Go ahead.

10 MS. STEWART: Thank you.

11 (Pause)

12 A No, I haven't heard this conversation.

13 Q You are saying it doesn't refresh your memory as
14 to whether there was a conversation between Dr. Abdel Rahman
15 and Emad Salem on this tape, is that right?

16 A That's correct.

17 Q You were not able to tell from listening to your
18 tape whether or not the conversation was placed on speaker
19 phone, are you?

20 A No. Usually if it is on a speaker phone I can
21 tell, but this one was not on a speaker phone.

22 Q This one was not on speaker phone you say?

23 A This one was not on a speaker phone.

24 Q How can you tell whether it is on speaker phone
25 or not?

1 A Usually hear the low voice like you're speaking
2 in an empty room. When it's on a speaker phone there is an
3 echo to the voice of the person who is on a speaker phone.

4 Q Are you talking now, Mr. Abdel-Hafiz, about when
5 you personally are talking on a speaker phone or about these
6 tapes themselves?

7 A No, on the tapes themselves, if someone on a
8 speaker phone, from my own experience, if I make my own
9 calls or somebody call me and they are on a speaker phone, I
10 can tell. Most of the time I can tell if they are on a
11 speaker phone or not.

12 Q You are aware, as you sit there, that these are
13 FISA tapes? These are seized by the government --

14 A Yes, ma'am.

15 Q -- directly from the telephone line, is that
16 right?

17 A I believe so.

18 Q You are saying that you can hear whether or not
19 it is on speaker phone from these tapes?

20 A Yes, I can tell.

21 Q On this tape of April 6 I believe you told us
22 that the sheik is talking to Pakistan, is that right?

23 A Yes, ma'am.

24 Q He's speaking with someone named Abdallah, is
25 that correct?

1 A That's correct.

2 Q You don't know what the relationship is between
3 Abdallah and the sheik, do you?

4 A No, not really, no.

5 Q They are in fact discussing events that have just
6 taken place in Pakistan, is that right?

7 A Yes.

8 Q Are you aware of a time period in April 1993
9 where the Pakistan government began arresting and expelling
10 persons who were mujahideen who had come to Pakistan to go
11 to Afghanistan?

12 MR. McCARTHY: Objection, scope.

13 THE COURT: Sustained.

14 Q In this tape is it fair to say that the parties
15 are discussing people who have been arrested in Pakistan?

16 A Yes.

17 Q Going to page 2 to start out with, Dr. Abdel
18 Rahman says he wants the name which you will present to the
19 state security investigation.

20 Is that an Egyptian organization, if you know?

21 A Yes.

22 Q Then Abdallah says, "The situation here is
23 extremely bad," does he not?

24 A Yes, ma'am.

25 Q He talks about a sheik who was arrested, is that

1 right?

2 A A sheik, yes.

3 Q Abu Hazim?

4 A Abu Hazim, yes.

5 Q They are concerned about what's happening with
6 these arrests, is that right?

7 A That's true.

8 Q They talk about what is happening to get people
9 released from jail, is that right?

10 A Yes. He asked if he turned in their passports
11 and the reason.

12 Q He talked about people locking themselves in
13 their homes so they can't be arrested by the Pakistani
14 authorities, is that right?

15 A That's true.

16 Q And they discuss, do they not, that Mubarak met
17 in Germany with Nowar al-Sherif --

18 A Yes.

19 Q -- is that right?

20 A Yes.

21 Q Do you know who Norwal al-Sherif is?

22 A No.

23 Q After that meeting, that is when Pakistan started
24 doing these arrests, is that correct?

25 A That's correct.

1 Q You know that eventually everyone that was
2 arrested was released, do you know that?

3 A I have no idea.

4 Q Let me bring you to page 4, Mr. Abdel-Hafiz, near
5 the bottom of the page four attributions up, Dr. Rahman, you
6 translated that as "the son of a bitch." Do you see that?

7 A You said the fourth attribution?

8 THE COURT: From the bottom.

9 MS. STEWART: From the bottom.

10 I'm sorry. From the bottom.

11 MR. McCARTHY: On page 4.

12 A This is not on the fourth attribution. One,
13 two -- this is not on page four here on the fourth
14 attribution from the bottom.

15 THE COURT: Ms. Stewart, would you --

16 MS. STEWART: Maybe we should consult. May I
17 approach.

18 THE COURT: I think you should make sure that you
19 are working with the same piece of paper.

20 MS. STEWART: Yes. Right here.

21 THE WITNESS: OK.

22 Q The fourth from the bottom?

23 A OK. The fourth for Sheik Rahman. All right.

24 OK.

25 Q All right.

1 A Yes.

2 Q Isn't it a fact that he said, "The dog, the dog,
3 the dog"?

4 A Yes.

5 Q A little further down, the next attribution to
6 Sheik Rahman --

7 A Yes.

8 Q -- you translated as that means that, "My brother
9 will not be able to cross here"?

10 A Not to cross, to come here.

11 Q To come here. I'm sorry. I misread it.
12 The words for "my brother," if the name "Abu
13 Khaled" was substituted for that --

14 A No.

15 Q You did not hear that name?

16 A Not on this sentence, no.

17 Q Pardon me?

18 A Not on this sentence.

19 Q You are positive of that?

20 A I am positive.

21 Q How do you translate "my brother"?

22 What are the Arabic words for that?

23 A "Ahoya."

24 Q Say it again.

25 A "Ahoya."

1 Q It couldn't be mistaken for Abu Khaled, even
2 given my bad pronunciation?

3 A There is a possibility.

4 Q Because on the next line he said, "He will not be
5 able to come here at all."

6 A To come there.

7 Q "To come there at all."

8 A Yes.

9 Q We are going to get the there.

10 "There" and "here" are the same word, as you are
11 you're translating it, the word for "there" and "here" as
12 you're using it in this particular transcript?

13 A I don't understand the question.

14 Q Is it the same Arabic word that may mean "there"
15 and may mean "here"?

16 A No.

17 Q "There" is "there" and "here" is "here"?

18 A Yes.

19 Q And they're different?

20 A They are different.

21 THE COURT: Ms. Stewart, if you could come to a
22 convenient break point in the next five minutes or so.

23 MS. STEWART: Judge, I think I will just finish
24 this tape if I could, very quickly.

25 THE COURT: Fine.

1 Q Mr. Gamal Hafiz --

2 A Yes, ma'am.

3 Q -- let me ask you one last question, and then we
4 will break, if the judge will be so kind: There is nothing
5 in this tape about moving troops into Afghanistan and then
6 sending them on to Egypt, is there?

7 A Well, I don't know about moving troops. What's
8 in the tape is moving the people.

9 Q Moving people?

10 A Moving people.

11 Q People who may be subject to arrest, is that
12 right?

13 A Yes.

14 Q But no Army is involved here, is it?

15 A I didn't hear the word "Army."

16 MS. STEWART: I have nothing else at this time
17 for the witness, Judge.

18 THE COURT: OK.

19 Ladies and gentlemen, we are going to break for
20 today and for this week.

21 Before you go, just a couple of things: First,
22 one or more of you had asked Ms. Schwartz about the meaning
23 of some of the numbers that the lawyers occasionally shout
24 out or utter when they make objections: "Somebody will say,
25 'Objection, 403,' or, 'Objection, 801,' what is that all

1 about?"

2 Those correspond to rules of evidence, and those
3 are numbers of rules of evidence. Instead of getting up and
4 arguing about the objection -- which they know I don't like
5 and makes me even more unpleasant than I usually am -- they
6 just get up, and, rather than taking time to go over to the
7 side bar, which also takes up time, they simply give me the
8 number of the rule, and then I either say "sustained" or
9 "overruled." That is what the numbers are all about.

10 Secondly, I told you that we were going to start
11 sitting alternate Fridays in order to make up time and this
12 was to be the first of those alternate Fridays. That was my
13 idea for making up the time. It was not a good idea because
14 the amount of inconvenience to you and to the lawyers and
15 everybody else is really not worth the half day that we get
16 to make up the time. It would be far better to try to make
17 efficient use of Monday through Thursday.

18 So the noble experiment of sitting a half a day
19 on alternate Fridays is now at an end, and we will not sit
20 the alternate Fridays that I had told you we will sit. This
21 is the first and the last of those.

22 It may be that we will do this again during
23 another phase of the case, either during summations or
24 deliberations and so on, but that is a whole different
25 thing. I don't plan to do it unless some emergency arises

1 which I can't now anticipate during the evidence part. So
2 this is the last of those.

3 Finally, I gave you a set of instructions the day
4 before yesterday and a set of instructions yesterday about
5 this case and about the events in Oklahoma City. I am not
6 going to repeat them. You have a copy of what I said the
7 day before yesterday, and I reminded you yesterday about
8 your oath.

9 I just want to tell you that in saying the things
10 that I said on those two days, I understand and everybody
11 here understands that this trial is not the only thing in
12 your life. You continue to have families, you continue to
13 be functioning members of families, and you continue to be
14 functioning members of a city, a state, a country and a
15 world. Nobody expects you to stop being functioning members
16 of a city, a state, a country, and a world anymore than we
17 would expect you to stop being functioning members of your
18 family during this trial.

19 However, what we do want you to do, what I ask
20 you to do, and what you have to do is to continue to do that
21 in a way that is consistent with your obligations here.
22 That is what those instructions were about. So, please do.

23 Please do not discuss this case or Oklahoma City,
24 and please do not read, see or hear anything about that
25 other event to the extent that you can avoid it.

1 Have a pleasant weekend. We will see you Monday
2 at 9:30.

3 Thank you.

4 (The jury was excused)

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 (Jury not present)

9 MR. JACOBS: Your Honor, I have no specific
10 objection to the language that your Honor just gave to the
11 jury. I think it is inadequate under the Second Circuit
12 decisions that I will cite later on. I don't have any
13 corrections to your Honor's statement. I just feel that, as
14 we are going to state --

15 THE COURT: Nor did you submit any language or
16 propose any, but go ahead.

17 MR. JACOBS: Your Honor, there is no language
18 under the Second Circuit rules, as we will cite later, other
19 than a specific voir dire of the jury under the cases that
20 we will cite. So I don't think anything can be submitted.

21 MR. RICCO: Your Honor, before we continue, the
22 defendants would like to attend their religious services and
23 since this is legal argument, I would ask that they be
24 excused.

25 THE COURT: Fine. Why don't we excuse the

1 defendants.

2 MR. RICCO: Thank you, your Honor.

3 (Defendants excused)

4 MR. JACOBS: Your Honor, I'm sorry. I have
5 nothing else to add. Ms. London is finishing it up, and we
6 will submit it this afternoon.

7 THE COURT: To the extent I have to respond to
8 it, I will simply tell you that doing a voir dire under
9 circumstances like the ones that are present here is kind of
10 like using -- do you do any work at home, repair work? Do
11 you know what a level is?

12 MR. JACOBS: Yes.

13 THE COURT: It is one of those things with the
14 glass in it and the little bubble. It is kind of like using
15 a level on a table on a rolling ship. It is not going to
16 tell you anything. If you wait until you get in port and it
17 is sitting quietly in the water, you might find out the
18 table was level the whole time. That is what I propose to
19 do under these circumstances.

20 That is not to say that there are not other
21 circumstances in which it is entirely appropriate and
22 mandated to do the kind of voir dire that you are talking
23 about. I do not believe in my judgment that this is that
24 circumstance. This is a rapidly evolving situation, the one
25 in Oklahoma City. There is at least one story in one of the

1 newspapers today suggesting that it's got zero to do with
2 Middle Eastern politics, and has something instead to do
3 with narcotics. That was in the New York Post.

4 MR. JABARA: May I just say something to your
5 Honor?

6 THE COURT: No.

7 I don't know what the stories henceforth are
8 going to show. We will see what they show, and we will see
9 where we are when it comes time for these people to decide
10 the case and we get near there.

11 You wanted to say something?

12 MR. JACOBS: Your Honor, may I just --

13 THE COURT: Sure.

14 MR. JACOBS: I couldn't disagree with your Honor
15 more. We are going to lay this out in some more detail,
16 but based on our review of the Second Circuit cases, I think
17 they are dead opposite to what your Honor is doing. Having
18 personally participated in Castellano, having seen Judge
19 Duffy, with one-hundredth of the potential prejudice there,
20 twice conduct the individual voir dire, having been present
21 myself for it and seeing the way it was conducted, and
22 having sat through many district court judges every morning
23 where the press is involved in cases asking the jurors
24 generally have they heard anything about it that might
25 affect them, it is a routine practice. I don't want to

1 comment on why your Honor isn't doing it. It doesn't really
2 matter. Your Honor has made a decision.

3 THE COURT: I gave you the reasons.

4 MR. JACOBS: It is your Honor's decision. You
5 have made the decision. We disagree with it. The press
6 speaks for itself as far as what is there. So when we
7 eventually give it to the Second Circuit, what's taken
8 place -- and your Honor has now acknowledged that the jurors
9 have been exposed to it, which is one of the tests under
10 Gaggi and the other cases, that they have seen this press,
11 we think the Second Circuit mandates quite clearly that this
12 court conduct this type of process. Your Honor reads it
13 differently than we do.

14 THE COURT: I do.

15 MR. JACOBS: I hope it doesn't have to go to the
16 Second Circuit on this issue. I just think your Honor is
17 wrong. As I said, we will supplement it with our memo and
18 our letter later.

19 THE COURT: Mr. Jabara was first.

20 Do you want to talk first?

21 MR. JABARA: Yes, your Honor. I would like to
22 bring to the court's attention the fact that the governor of
23 this state yesterday on a CBS Radio interview --

24 THE COURT: If that is what you are going to tell
25 me, don't.

1 MR. JABARA: The thing is, there's been a drum
2 beat, an actual drum beat of media attention that has
3 pointed at this case and at our client here connecting it up
4 with the events in Oklahoma.

5 THE COURT: Wait until the drum stops, Mr.
6 Jabara.

7 Ms. Amsterdam?

8 MS. AMSTERDAM: I have two quick things to add:
9 One is a practical point to bring to the court's attention.
10 If the jurors really do scrupulously abide by their oath and
11 get minimal, if any, additional press coverage, it does
12 occur to me that if the story unfolds in a way that suggests
13 that it has nothing do with this case, that there could well
14 be jurors who don't know that.

15 THE COURT: I will tell them that.

16 MS. AMSTERDAM: That is my first point.

17 THE COURT: Sure.

18 MS. AMSTERDAM: I thought it through, and I
19 wondered what the court's position was going to be.

20 THE COURT: You can stop wondering. That's what
21 the court's position is.

22 MS. AMSTERDAM: The second point that I want to
23 address to your Honor is I understand, I think, where your
24 Honor is coming from when you say let's wait until we get
25 into port and find and assess people's feelings. I would

1 just say this: I think that if something is ongoing --

2 THE COURT: If we do.

3 MS. AMSTERDAM: If we do.

4 THE COURT: Understand that I am going to make an
5 assessment at that time as to whether there has to be any
6 assessment.

7 I should point out now that you have raised it
8 that these folks are not -- with the "these folks" the
9 record should reflect that my index finger was pointed
10 toward the jury box -- are not at all bashful about asking
11 questions, for instance, about the rule numbers and so
12 forth. If they think they have to ask a question, they
13 haven't been bashful up until now, and I don't think they
14 are going to continue to be.

15 MS. AMSTERDAM: I don't know if that is
16 representative of all the jurors, but I wouldn't be in a
17 position to assess that.

18 My only point to the court is it does occur to me
19 that if I were in this jury's position and the story had
20 broken yesterday, and I had any inkling of the story, I
21 would have immediately drawn -- because we are only human --
22 parallels to this case because of the World Trade Center
23 matter. I think that if your Honor does a voir dire later
24 that I think that people may in fact be embarrassed or
25 ashamed, if it pans out that it has nothing to do with this

1 case, to admit that they had those reactions at the time. I
2 think that in assessing whether or not a juror can be fair
3 and impartial --

4 THE COURT: Where does that go?

5 MS. AMSTERDAM: -- we should be able to know what
6 they are thinking about as they go along and not simply get
7 a conclusion at the back end which is colored by many
8 factors, not the least of which is shame to admit that they
9 came to certain conclusions.

10 THE COURT: Unjustifiably.

11 MS. AMSTERDAM: Unjustifiably.

12 THE COURT: Right.

13 MS. AMSTERDAM: Assuming it is unjustifiable.

14 THE COURT: As Mr. Jacobs said to me, I couldn't
15 disagree with you more. Do you want to tell me anything?

16 MR. McCARTHY: I will put it in writing.

17 THE COURT: Thank you.

18 MS. AMSTERDAM: Your Honor, could we have one
19 brief moment about MCC issues, if several of us can see you?

20 THE COURT: Sure.

21 (Pages 8864 through 8866 were sealed by order of
22 the court)

23 (Proceedings adjourned to Monday, April 24, 1995)

24

25

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA,

3 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,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
10 a/k/a "John Medley,"

11 CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
12 a/k/a "Doctor Rashid,"

13 AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"

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

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

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

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

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

20 Defendants.

S5 93 Cr. 181 (MBM)

21 -----x
April 24, 1995
9:30 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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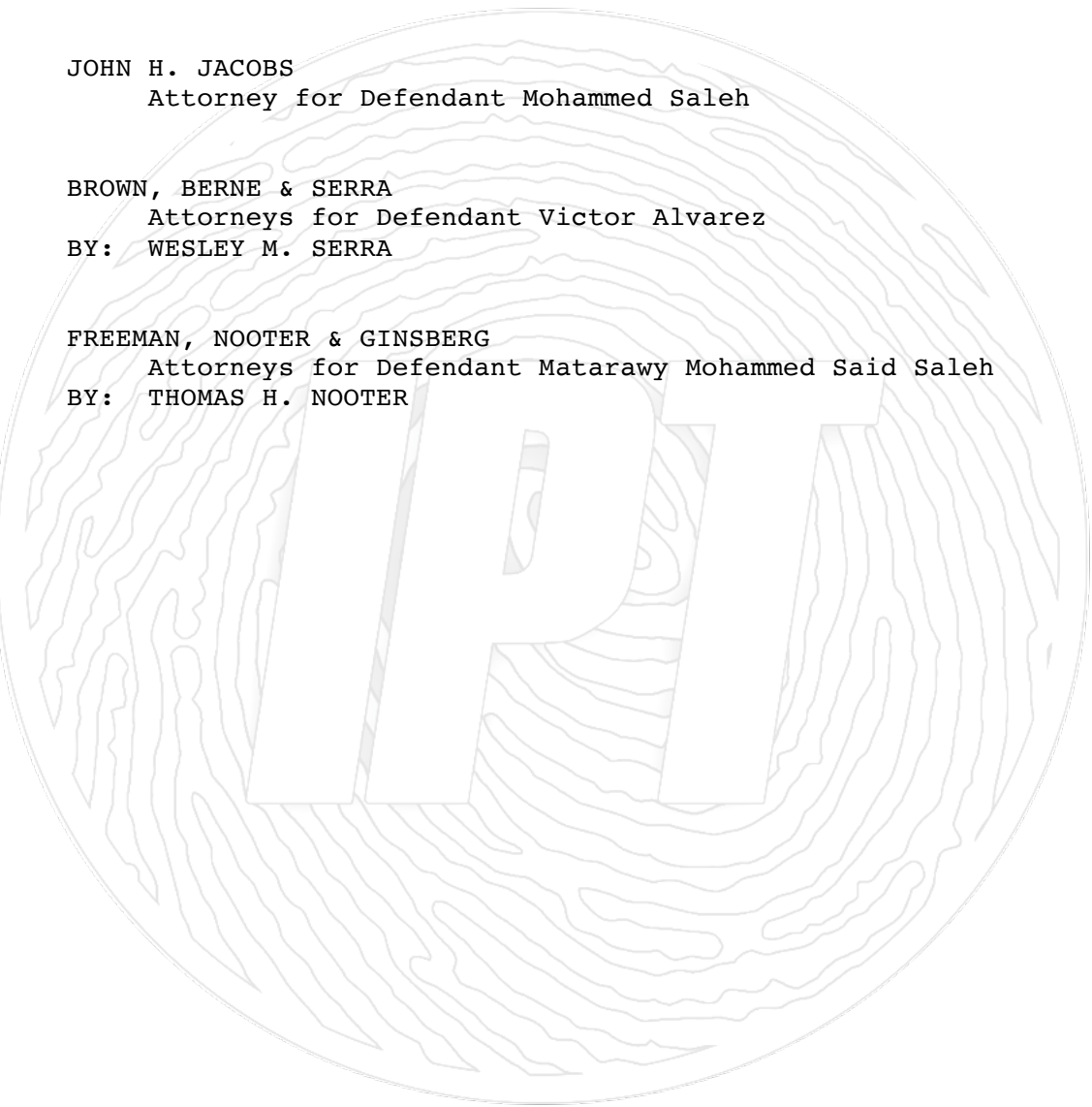
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1 (Pages 8871 through 8872 sealed)

2 (Trial resumed)

3 (In open court)

4 MR. JACOBS: Your Honor, having spoke to all
5 counsel this morning, we again renew our requests for the
6 individual voir dire of the jurors in light of the publicity
7 over the weekend. In particular two items that I have
8 discussed with counsel stand out. The President in his news
9 conference on Friday referred to this case, and said that
10 terrorists who have planned to bomb the bridges and tunnels
11 were arrested, and he went on to describe something about
12 this case. Last night on 60 Minutes --

13 THE COURT: No, that wasn't what he said, but go
14 ahead.

15 MR. JACOBS: I think he said the terrorists were
16 caught who were planning to bomb the bridges and tunnels.

17 Last night on 60 Minutes, after the President was
18 on live they showed, I am not sure if it was our exhibit but
19 they showed a clip of the Lincoln Tunnel. There was a clip.
20 Fox was on live on 60 Minutes, our friend, and they had a
21 clip of the Lincoln Tunnel and some of the terrorist
22 activity. I don't know if it was an exhibit from our trial
23 but they were talking about terrorism in the United States.
24 I only talk about those two incidents because they impact
25 directly on our case.

1 It is obvious to counsel here that the
2 similarities between what happened there and the alleged
3 plans on 26 Federal Plaza with a similar type of device in
4 Oklahoma would mandate a voir dire of the individual jurors.
5 We submitted a letter --

6 THE COURT: Yes. You are talking about the
7 letter of Ms. London?

8 MR. JACOBS: Yes.

9 THE COURT: I may have an individual voir dire as
10 things break down. The kind of voir dire that I would do
11 today would obviously differ from the voir dire that I would
12 have done Thursday.

13 MR. JACOBS: Nothing further.

14 THE COURT: The government indicated that you
15 were going to submit something. Do you have any idea when?

16 MR. McCARTHY: Your Honor, I haven't seen
17 Ms. London's letter yet.

18 THE COURT: You haven't?

19 MR. McCARTHY: I have not.

20 MS. LONDON: It was hand-delivered to the United
21 States Attorney's Office on Friday afternoon, at the same
22 time that it was handed over to the court.

23 MR. McCARTHY: Your Honor, I will get one from
24 Miss London.

25 THE COURT: I thought I had it with me -- I do

1 have it with me. Here you go. It is 22 pages, but I have
2 to tell you that a great deal of it, and no offense because
3 it is the nature of things, has been bypassed by events, in
4 my opinion. But I will read it and then please let me know
5 when you can get in a response and we can figure out what to
6 do.

7 MR. McCARTHY: Yes.

8 THE COURT: Let's proceed.

9 GAMAL ABDEL-HAFIZ, resumed.

10 THE COURT: Is somebody sitting in for Mr. Ricco?

11 MR. SERRA: Yes, I believe Mr. Serra, speaking to
12 Mr. Jacobs.

13 THE COURT: Mr. Serra, are you sitting in for Mr.
14 Ricco?

15 MR. SERRA: Your Honor, I will sit in for Mr.
16 Ricco until he arrives. I have spoken to Mr. Fitzgerald,
17 who tells me there will be no proof specifically about Mr.
18 El-Gabrowny until Mr. Ricco arrives.

19 THE COURT: Is that all right?

20 DEFENDANT EL-GABROWNY: As long as nothing
21 directly related to me, I will be glad for Mr. Serra to
22 represent me.

23 THE COURT: Thank you.

24 (Jury present)

25 MR. McCARTHY: Your Honor, may I take a moment

1 with Miss Stewart while the jury is filing in?

2 THE COURT: Yes. Good morning, ladies and
3 gentlemen.

4 Mr. Abdel-Hafiz, you are still under oath.

5 THE WITNESS: Yes.

6 THE COURT: Miss Stewart.

7 MS. STEWART: Judge, may I inquire of the
8 prosecution if the jury have been given notebooks with these
9 particular transcripts in them? Miss Amsterdam called my
10 attention to the fact that it is easier to follow the cross
11 if you look at the document that is being referred to.

12 THE COURT: Mr. McCarthy nodded his head, I
13 assume indicating an affirmative answer, so if you would
14 indicate the exhibit, the jurors can turn to that exhibit in
15 their books.

16 MS. STEWART: It is 713 and what follows.

17 MR. McCARTHY: Your Honor, I believe it is a
18 pretty fat binder with 700 on the side.

19 THE COURT: It is one volume devoted to the 700
20 series of exhibits. 713T?

21 MS. STEWART: 713T.

22 THE COURT: It says 700 series on the spine.

23 (Continued on next page)

24

25

1 CROSS-EXAMINATION

2 BY MS. STEWART:

3 Q. Mr. Gamal Hafiz, to go back a little bit, Exhibit
4 713T is a transcript of a conversation between Sheik Omar,
5 is that right?

6 A. Yes, ma'am.

7 Q. And a person named Abdallah in Pakistan, is that
8 right?

9 A. Yes, that is correct.

10 I would like to make a comment before we start.
11 When you mentioned on Friday a conversation before this
12 phone call between Sheik Omar and Emad Salem and I said I
13 didn't hear it, I went back to my copy and I found it was
14 there, and Sheik Omar was asking the person that sat next to
15 him to fix beans and make some hot tea for him and Emad
16 Salem, and Emad told him that he was in a hurry, he had a
17 court date against his previous job at 10:00, and he asked
18 the sheik to pray for him. I just wanted to straighten the
19 record on that.

20 Q. This part of the conversation was picked up while
21 the sheik was actually dialing Pakistan, is that right?

22 A. Yes, ma'am was dialing.

23 Q. And I think we ended up Friday by saying that in
24 your translation there was no word such as troops or army in
25 that conversation, is that right?

1 A. No, ma'am, there were not.

2 Q. And no mention of moving the troops to
3 Afghanistan and then to Egypt, is that right?

4 A. Not to word troops, no.

5 Q. Going on to 714 --

6 A. Is there any way I can have a copy of that?

7 Q. Yes, you may.

8 A. Yes, ma'am.

9 Q. This particular conversation is also to Pakistan,
10 is that right?

11 A. I believe so.

12 Q. Some of the substance of the conversation deals
13 with the people who were arrested in Pakistan, is that
14 correct?

15 A. Yes, that is true.

16 Q. And I would just like you to look on page 1 of
17 that tape or -- or of that transcript, rather. About in the
18 middle of the page Sheik Omar says, didn't the Supreme Court
19 give its decision? Is he referring to the Supreme Court of
20 Pakistan in this line?

21 A. Yes.

22 Q. The next attribution to him mentions a person
23 named Qadi Hussein calling for a demonstration.

24 A. Yes.

25 Q. Are you familiar with the Pakistani group called

1 Gama'a Islamiya?

2 A. Not the Pakistania, the one in Pakistan. I am
3 familiar with Gama'a Islamiya in Egypt and all over the
4 world in general.

5 Q. Do you know that in Pakistan it is a charitable
6 group with millions of --

7 MR. McCARTHY: Objection, scope.

8 THE COURT: He already said he doesn't know
9 anything about the group.

10 Q. Two lines further down, Abu Al Hassan Al-Madani,
11 do you see that name?

12 A. Yes, ma'am.

13 Q. Does that name mean anything to you?

14 A. No, it doesn't.

15 Q. If I were to tell you that he were --

16 MR. McCARTHY: Objection, scope. The witness is
17 offered as a translator.

18 THE COURT: Sustained.

19 Q. When you translate Mr. Gamal Hafiz, it is helpful
20 to know the context in which you are translating, isn't that
21 correct?

22 A. That is true.

23 Q. So if you do know the names it gives more meaning
24 to the words that you are translating, isn't that true?

25 MR. McCARTHY: Objection.

1 THE COURT: Is that true?

2 A. Yes.

3 Q. So may I ask again, do you know this person or of
4 this person Abou Al-Hassan Al-Madani? Excuse the
5 pronunciation.

6 A. No, I don't.

7 Q. Turning to page 2 of this transcript, near the
8 bottom of the page the person that is being spoken to in
9 Pakistan, who is identified as unidentified male number 1 --
10 is that right?

11 A. That's right.

12 Q. -- mentions a person person in London, Mr. Salim,
13 is that right?

14 A. Yes.

15 Q. Are you familiar with the Islamic European
16 Council in London?

17 A. No, I am not.

18 Q. Do you know the person Salim that is being
19 referred to here at all? Are you familiar with that name at
20 all?

21 A. No, ma'am.

22 (Continued on next page)

23

24

25

1 Q. So then the word "actions" to you just means the
2 plain meaning, actions, whatever that means. That's in the
3 line four up or five up from the bottom?

4 A. Well, the word "action" means action, just
5 depends on the context that's mentioned, then.

6 Q. Correct. I mean thank you.

7 Moving on to 718, 718 on April 15 is in Pakistan
8 once again, is that correct?

9 A. That's correct.

10 Q. That is the sheik in New Jersey, calling
11 Pakistan, is that correct?

12 A. That's correct.

13 Q. In the course of the conversation they discuss
14 the news in Egypt, is that correct?

15 A. That's correct.

16 Q. He is speaking here with Mohammed, who has been
17 on other tapes, is that right?

18 A. That's right.

19 Q. Among the things they discuss, they talk about a
20 negotiation --

21 A. Let me back up for a second.

22 Q. I am sorry.

23 A. He may have been speaking to Mohammed, but I
24 couldn't recognize the voice on that tape. That is why it
25 was unidentified male.

1 Q. You did not recognize the voice, is that right?

2 A. Not hundred percent, no.

3 Q. In any event, the sheik and the unidentified male
4 in Pakistan talk about a negotiation between the government
5 of Egypt regarding prisoners in Egypt, is that right?

6 A. That's right.

7 Q. And how the government is going to deal with a
8 committee of lawyers, is that correct?

9 A. What?

10 Q. The government of Egypt is going to deal with a
11 committee of lawyers regarding the problem of prisoners in
12 the jails, is that right?

13 A. I don't believe it is a committee of lawyers. It
14 is just a committee to represent Al Gama'a Al Islamiya in
15 general.

16 Q. That is because the government said they would
17 not deal with Gama'a directly, is that correct?

18 A. I am not sure that they said that, that they will
19 not deal with the Gama'a directly.

20 Q. And in the course of the discussion -- well, let
21 me start over.

22 I would like you to turn to page 2, where the
23 sheik is saying, "He must be replaced."

24 Do you see that line?

25 A. Yes, ma'am.

1 Q. The next line is, "It's very important."

2 Are you certain as you sit here that you heard
3 that on the tape?

4 A. That what?

5 Q. Are you certain that you heard the sheik say that
6 on the tape?

7 A. When he said, "If he wants to negotiate"?

8 Q. No, before that.

9 A. Which one?

10 Q. This is page 2 at the top.

11 A. Yes.

12 Q. It's the sheik saying, "He must be replaced."

13 A. Yeah, it is very important.

14 Q. It's very important?

15 A. Yes, ma'am.

16 Q. Are you certain as you sit there that you heard
17 those words in Arabic on the tape?

18 A. I believe I do.

19 Q. If you would go down, then, to perhaps the middle
20 of the page, where you have the translation as, "Yes, what
21 other restrictions do you have about that matter, Sheik?"

22 It's U/M speaking.

23 A. Yes, ma'am.

24 Q. You translated the word "restrictions."

25 Is it possible that the word is "observations" or

1 "views"?

2 A. It can be used maybe "views." Not exactly
3 "observations," but here the word that was used, he meant
4 restrictions.

5 Q. Well, the word is, and forgive the pronunciation
6 once again, "mutrahazat"?

7 A. Malahazat.

8 Q. Malahazat.

9 My own handwriting I can't read.

10 A. Yes. When I talk to my superior and I ask him if
11 he has any malahazat, he can give me his opinion, or, if
12 he's telling me not to do this, not to do that, not to do
13 this, and I ask if he has any other malahazat, that means
14 other restrictions. That is what was meant here.

15 Q. So, in other words, it could be both meanings; it
16 depends on the context, is that right?

17 A. It depends on the context, yes, ma'am.

18 Q. Would you go on to page 3 of the transcript. The
19 U/M, five lines down, says: "The latest is the general's
20 incident."

21 A. Yes.

22 Q. Did you actually hear that on the tape or was it
23 unintelligible and you maybe think you heard it?

24 A. I actually heard it on the tape, yes, ma'am.

25 Q. There is no reference before or after to any

1 general's incident, is there?

2 A. No.

3 Q. It is not just unintelligible?

4 A. No, it is not.

5 Q. Also on page 3, at the very last paragraph there,
6 by the unidentified male the name in that first line, are
7 you familiar with a writer in Egypt by the name of gentleman
8 Zehmay Hewadi?

9 A. The name that's written here Sami Al Huwaidi.

10 Q. Right. But that's what you heard on the tape, is
11 that right?

12 A. Yes.

13 Q. Is it possible it is -- and I will spell it for
14 you, it may be better than to say it again, Z-E-H-M-A-Y,
15 last name, H-E-W-A-D-I?

16 A. No, I am not familiar with the writer of that
17 name.

18 Q. What you heard on the tape, would it be
19 consistent with what I just said?

20 A. It may be.

21 Q. Turning over to page 5 now, Mr. McCarthy asked
22 you about the meaning of the word da'wa, is that correct?

23 A. That's correct.

24 Q. You translated here that this was one of the
25 conditions that the sheik mentioned should be used in the

1 negotiation with the Egyptian government, is that fair to
2 say?

3 A. No. It is not -- it is one of the conditions
4 that they have to release the da'wa.

5 Q. Yes.

6 A. In order for Gama'a Islamiya to start negotiation
7 with the government.

8 Q. He says, does he not, in the second paragraph --

9 MR. McCARTHY: Ms. Stewart. I am sorry.
10 Could you tell me what page you are on.

11 MS. STEWART: I'm sorry. Page 5.

12 MR. McCARTHY: Thank you.

13 Q. In the second paragraph, the first attribution to
14 Dr. Rahman on page 5 --

15 A. Yes.

16 Q. -- he says, "To make a long story short we should
17 demand the release of all political prisoners and the
18 allowance of the call for God. We shouldn't put too many
19 conditions." Are you following me?

20 A. Yes, ma'am, I'm following you.

21 Q. You said that da'wa means the call to God, but
22 doesn't it in this context really mean freedom to preach
23 whatever you wish to preach, not to be restrained in
24 preaching?

25 A. Not actually preaching. I cannot tell if he is

1 here meaning only preaching. When we say the word "da'wa"
2 it's a widespread word with wide meaning to it.

3 Q. In the context in which you translated this --

4 A. Yes, ma'am.

5 Q. -- they are asking for this from the Egyptian
6 government, assuming perhaps that there is no da'wa in Egypt
7 at that time, is that right?

8 A. Well, no. It is not assuming that there is no
9 da'wa. The da'wa is there, but with the restrictions on it.

10 Q. So there is not what we would call here I guess
11 freedom to preach whatever one wishes to preach, is that
12 right?

13 A. Not exactly. What I mean here, they don't have
14 exact freedom to preach what they want to preach as we do
15 here.

16 Q. Right. In other words, people who preached
17 against the government would be summarily taken out of the
18 mosque and arrested, isn't that the fact?

19 MR. MCCARTHY: Objection.

20 Q. If you know.

21 THE COURT: I will allow it. Go ahead.

22 Do you know?

23 THE WITNESS: Sometimes. It depends on what they
24 are talking about against the government.

25 Q. Also, on page 5 in the middle of the page the

1 unidentified mail in Pakistan says, "How about the sentences
2 which have been issued?"

3 Isn't "sentencing" really trials, the word
4 mahakamed? Excuse the pronunciation again.

5 A. No, the word akem. Akem, which is sentence.

6 There is a difference between akem and mahakamed.
7 Akem is the sentences themselves. The mahakamed
8 is the trials.

9 What he asked about here, how about the akem that
10 were issued.

11 Q. But in the next attribution to this person he is
12 talking about trials, cases presented, isn't that right?

13 In other words, not Dr. Rahman says, "What,
14 unintelligible." And then the next thing the person says,
15 for example, he talks about cases in the next attribution,
16 right?

17 A. Yes.

18 Q. Let me ask you about your use of the word "courts
19 marshal" in this translation?

20 A. Yes.

21 Q. Do you understand a courts marshal to be a trial
22 that is held by the military of military personnel?

23 A. That's true.

24 Q. Wouldn't the better translation, given what you
25 know is the context of the trials they are talking about

1 here, be "military courts"?

2 A. It's military courts, but they are not using
3 military rules in this case. They are using the court
4 marshal rules and laws that are being imposed in Egypt since
5 1980 or '81.

6 Q. Yes. It is a military court, am I correct,
7 trying civilians, but they are using court marshal law?

8 A. That's true.

9 Q. Is that right?

10 A. That's correct.

11 Q. So when you talk about court marshal cases, you
12 are really talking about these military court cases, is that
13 right?

14 A. They are not all the cases are of -- are military
15 cases. There are civilian courts, but they all use the
16 court marshal laws.

17 Q. In this particular transcript, when they are
18 talking, the unidentified male in Pakistan and the sheik in
19 New Jersey, about court marshal, and I think it appears in
20 the next line where the sheik says, "Abolish all the court
21 marshal sentences" --

22 A. That's true.

23 Q. -- and on the next page also, you could
24 substitute "the military court sentences" for that as well,
25 is that right?

1 A. You could, yes.

2 Q. On page 6, where the unidentified male says,
3 "Killing the police is in self-defense, your eminence" --

4 A. Where?

5 Q. Do you see that?

6 It's like maybe a quarter of the way down the
7 page. The first --

8 A. Yes. Yes, ma'am.

9 Q. Is that "is in self-defense" or "was in
10 self-defense," as you recall sitting there now?

11 A. I believe it was "is in self-defense."

12 Q. Moving on to 720.

13 This is a conversation with two unidentified
14 persons, is that right?

15 A. That's true.

16 Q. You are not able to determine what the place is
17 that is being spoken to, is that correct?

18 A. That's correct, yes.

19 Q. For the most part this conversation deals with
20 magazine and periodical publishing via computers, isn't that
21 correct?

22 A. That's correct.

23 Q. For instance, on page 4 of 720 at the very top of
24 the page there, where they talk about "Beirut letter," they
25 are talking about a program that's used in a computer, is

1 that right?

2 A. That's correct.

3 Q. There is also talk of brothers in Pakistan on
4 this tape, is that right?

5 A. That's correct.

6 Q. They speak about the moving towards Karachi and
7 that is a person mentioned in other tapes, Abu Khaled?

8 A. Which page are we on now?

9 Q. I am on page 6 now.

10 A. Six. OK.

11 Yes, ma'am.

12 Q. That Abu Khaled will be in charge in Pakistan.
13 If you read the last line of page 5.

14 A. Yes, ma'am.

15 Q. Moving on to 726, OK, this is, once again, a call
16 to Pakistan from New Jersey, is that right?

17 A. Yes, ma'am.

18 Q. It is mainly speaking about arrangements to get
19 people out of Pakistan, is that right?

20 A. Yes, I believe so.

21 Q. Page 4, in the very middle of the page Dr. Abdel
22 Rahman says, "Weren't you able to get any visas for the
23 boys?"

24 A. In the middle of the page?

25 Q. Yes. Page 4 we are on.

1 A. Yes. Yes, ma'am.

2 Q. And by "boys" I think you told us earlier that
3 word could also mean "sons," is that right?

4 A. That means "sons" -- when a man talk to someone
5 about boys, most likely he means sons. Sheik Omar always
6 talked about all the people that he deals with, referred to
7 them as brothers. In this particular case he said "boys."

8 Q. So then the fair inference is that he is talking
9 about his sons when he is talking about these visas, is that
10 right?

11 A. I believe so.

12 Q. He talks about visas for, in the course of this
13 tape for Uruguay, Brazil, Mexico, London, Denmark, is that
14 right?

15 A. Any of them.

16 Q. Any of them.

17 A. He's asking him if he's able to any of these
18 places.

19 Q. Turning to page 7, a little bit up from the
20 middle of the page where Dr. Abdel Rahman says, "Yes. This
21 criminal got what he deserved, this Nawaz Sherif."

22 Do you know who is the person that is being
23 referred to as Nawaz Sherif?

24 A. From previous calls, I believe he's one of the
25 officials in Pakistan.

1 Q. Further on he says, this is about four lines
2 down: "Because he met with the criminal, the head of the
3 criminals in Germany."

4 Do you know who he is referring to when he says
5 "the head of the criminals" in the context of this call?

6 A. He is talking about Mubarak.

7 Q. That's the president of Egypt?

8 A. The president of Egypt, yes.

9 Q. Further down where, Mr. Hazim says -- this is
10 about five lines up from the bottom of page 7 -- "He and Abd
11 Al-Halim Musa got it the same day. They both left the same
12 day."

13 A. Yes.

14 Q. Who, if you know, is Abd Al-Halim Musa?

15 A. He is the minister of interior in the Egyptian
16 government.

17 Q. He was dismissed following this -- at around this
18 time, is that right?

19 A. I didn't keep up with this, but that is what I
20 understand, that they were both dismissed at around the same
21 time.

22 Q. Thank you.

23 Page 9, there is more on this page regarding the
24 visas, is that right?

25 A. Yes.

1 Q. Then there is further discussion about Egypt, the
2 seven who got the death penalty, is that right, near to the
3 bottom of the page?

4 A. Yes, ma'am.

5 Q. Finally, on page 10, the news from Afghanistan,
6 is that right?

7 A. Yes.

8 Q. OK. Moving on to 728, 728 is a call to Denmark,
9 is that correct?

10 A. I believe so, yes.

11 Q. The name of the person that Sheik Omar is
12 speaking with is Talat Fouad, is that right?

13 A. Excuse me.

14 Q. Talat Fouad?

15 A. I couldn't tell from this call.

16 Q. Let me ask you to look at page 4, the first full
17 paragraph on that page.

18 A. Yes, I'm familiar with this paragraph.

19 Q. So it would appear that, from the context of the
20 conversation, the person on the phone says, "They need to
21 call to make sure that I am Talat Fouad," is that right?

22 A. But he did not say that he was Talat Fouad.
23 That's why I couldn't make the determination that he is or
24 he is not. He was trying to deny the fact that he is Talat
25 Fouad. I mean, from his conversation, he didn't like the

1 idea of them saying that he is Talat Fouad, and he said
2 that's against the rule for them to try to find out if he is
3 or he is not and to put pictures together.

4 Q. Did not you translate this as "Denmark to call
5 the Egyptian authorities to make sure that I am Talat Fouad
6 and things like that"?

7 A. Yes.

8 Q. Then he goes on to say, "So they can verify
9 them," meaning his fingerprints and criminal record, "as a
10 solid proof."

11 Is that right?

12 A. Exactly. That's true.

13 Q. But you are saying that in your view he is
14 stepping away from being Talat Fouad, as far as you are
15 concerned?

16 A. That is the way I felt it on the tape.

17 Q. Well, we are looking at this particular
18 paragraph --

19 A. Yes, ma'am.

20 Q. -- he goes on to talk about, "I saw in Al-Wasat,"
21 that's a newspaper, is it not?

22 A. Yes, ma'am.

23 Q. "Things that Talat mentioned from our brother
24 Safwat," do you see that line?

25 A. Things that are not --

1 Q. No. "I saw in Al-Wasat things that Talat
2 mentioned" --

3 A. Yes.

4 Q. -- "from your brother Safwat from the court"?

5 A. Yes. That's true.

6 Q. The word "Talat," does it not have a meaning,
7 that word, in and of not necessarily being a word, I mean, a
8 name -- let me rephrase the question.

9 "Talat" is also a word besides being a proper
10 name, isn't that true?

11 A. Talat, no. Talaha, yes.

12 Q. And "talaha" means "appeared," is that correct?

13 A. Talaha. Not talahat, without the T at the end.
14 "Talaha" it means appearance or coming out of somewhere.
15 But the worth "talihat," it means only a name.

16 Q. They are very close, are they not, to the ear?
17 To a non-Arabic-speaking person they are very close? The
18 only difference is basically the ending T, is that right?

19 A. That's true.

20 Q. But you are certain as you sit there that you
21 heard the name and not the word for "appeared"?

22 A. I believe so, yes.

23 Q. The rest of this particular conversation, once
24 again, involves people talking about computers, is that
25 right? Strike that, I see that there is something I left

1 out?

2 A. OK.

3 Q. Also, on page 3, there is discussion about
4 Pakistan and Afghanistan, right, or Pakistan?

5 A. Yes.

6 Q. He mentioned Hazim, who indeed was on our
7 previous tape from Pakistan, as having called him, this
8 person in Denmark, is that right? That is complicated.

9 A. I don't believe it is the same person Kazem and
10 Hazim. There's Kazem and Hazim.

11 Q. I thought on -- if you look at 726 at the top you
12 have Abu Hazim --

13 A. Kazem, with the Z. This one Abu Hazim with the
14 S.

15 Q. But it's written here with a Z, is that right?

16 A. On which one?

17 Q. On 728, page 3, about five lines down from the
18 top?

19 A. Yes. Hazim. That's Hazim, not Kazem.

20 Q. Even though they are spelled the same?

21 A. No, they didn't spell the same.

22 Q. We must not have the same -- let me look at your
23 transcript.

24 A. Please.

25 Q. The government has called my attention -- if you

1 would wait a minute. Let me get back.

2 A. OK.

3 Q. So the interpreters can hear, too.

4 A. OK.

5 Q. If you would go up one, you see there is Sheik
6 Abdel Rahman saying, "How about Al-Hayat?"

7 Then the next, going up now, he is asking the
8 brother who left the area --

9 MR. McCARTHY: It is the unidentified male
10 speaking.

11 A. OK. That's when he said that he and Kazem called
12 me?

13 Q. Yes.

14 A. That's Kazem.

15 Q. Right.

16 A. Yes.

17 Q. OK. Let me start all over again.

18 A. The name that's mentioned here at 726 is "Kazem"
19 with a K. One with a K and one with an H.

20 Q. No, at the beginning, yes, but look at the -- do
21 you see where it says "Participants" at the very top of 726,
22 726.

23 A. Yes. That's Abu Hazim.

24 Q. Kazem, though?

25 A. Abu Kazem.

1 Q. That is the same name, right?

2 A. The Kazem, yes, but Abu, no.

3 Q. Abu no, but Kazem is?

4 A. Yes. There can be a Kazem and Abu Kazem which is
5 the father of Kazem.

6 Q. OK.

7 A. OK.

8 Q. Anyway, it is talking about Pakistan, is that
9 right?

10 A. That's true.

11 Q. The rest of the tape is basically, once again,
12 about computers and getting a computer that can publish?

13 MR. McCARTHY: You are you can talking about 728,
14 Ms. Stewart?

15 MS. STEWART: 728.

16 A. Yes. At the beginning, yes.

17 Q. Then, again, in the middle, right, on page two,
18 they are talking about the MacIntosh computer to take the Al
19 Nashr Al Maktabi program?

20 A. Yes, ma'am.

21 Q. 739, this is a call to Sheik Omar from Saudi
22 Arabia, is that correct?

23 A. Yes, ma'am.

24 Q. The two persons he speaks with in the course of
25 this conversation, and, indeed, I think you said everyone

1 that he spoke to in these particular conversations speak
2 with Egyptian accents, is that right, their Arabic is
3 Egyptian-accented?

4 A. Not everyone.

5 Q. These two men, is it fair to say they speak with
6 Egyptian accents?

7 A. I believe so, yes.

8 Q. Directing your attention to page 6, first of all,
9 these men are on pilgrimage, is that right, Moslem
10 pilgrimage to Mecca?

11 A. That's correct.

12 Q. Is that correct?

13 Which is an obligation that all Moslem have, is
14 that right?

15 A. Yes, ma'am.

16 Q. Near the bottom of page 6, the Unidentified Male
17 No. 2 says, "And the sheik, and the sheik that was at the
18 Emirates"?

19 A. Yes, ma'am.

20 Q. What is meant by "the Emirates," if you know?

21 A. United Arab Emirates.

22 Q. These are countries, are they not?

23 A. Yes.

24 Q. They are located on the Gulf, is that right?

25 A. On the Gulf, yes.

1 Q. They go on to talk about this sheik and
2 dispatching him to the United States, is that right?

3 A. Yes, ma'am.

4 Q. They speak, do they not, about his having time in
5 which the visa would clear to get his bachelor's degree, to
6 finish his work on his bachelor's degree, that would be at
7 the very bottom of page 7.

8 A. Yes.

9 Q. Did you hear anywhere in your translation that
10 this sheik was coming to Abu Bakr mosque to be the imam
11 there?

12 A. Not the ones I have done.

13 Q. As you sit there today that is not part of your
14 translation?

15 A. As of today, no.

16 Q. Going on to page 8, the sheik once again speaks
17 about his boys --

18 A. Yes.

19 Q. -- meaning his sons and others, whom he calls
20 brothers, as you noted. This is at the top of the page.

21 A. Yes.

22 Q. On page 9, the person that he is speaking to
23 speaks to him in the middle of the page about the boy who
24 killed Sayyid Sha'ban Rashid.

25 A. Yes.

1 Q. Does that name mean anything to you?

2 A. No.

3 Q. Do you know him to be someone who at the age of
4 14 was putting up flyers for the sheik's lecture and was
5 murdered by a security policeman?

6 A. No, I am not aware of that.

7 Q. Also on page 9, five lines up to the bottom, you
8 have there, "The Supreme Court approved the verdict of the
9 military court."

10 That is referring to Egypt, is that right?

11 A. Yes.

12 MS. STEWART: Judge, may I just consult with
13 Mr. McCarthy.

14 THE COURT: Yes.

15 MS. STEWART: We had some page renumbering here.
16 To demystify this, we had some page renumbering, and I am
17 just trying to coordinate my pages with what Mr. Abdel-Hafiz
18 has.

19 THE COURT: OK.

20 Q. I hand you back the transcript.

21 A. Thank you, ma'am.

22 Q. At page 10 you see a reference, do you not, to
23 the Sunnite people?

24 A. Yes, ma'am.

25 Q. What is meant by that, Sunnite? It is a capital

1 S, is that right?

2 A. Yes, ma'am.

3 Q. Could you just explain what is meant by that.

4 A. The Moslem people are split into two groups, the
5 Sunnites are the Sunnis, who are the people who follow the
6 traditions of prophet Mohammed, and they follow the Koran
7 the way it is. The Shi'ite are a group who believe that the
8 Koran should be given to Ali, which is the cousin of
9 Mohammed, peace be upon him, and they believe that Ali is
10 supposed to be the prophet, not Mohammed.

11 Q. The Shi'ites are found mainly in Iran, is that
12 correct?

13 A. In Iran and some of the Gulf area.

14 Q. All right. Going back to that same paragraph, on
15 page 10 it says there, "The brothers who are affiliated with
16 Siddig, those are also good, is that right?"

17 A. Yes.

18 Q. Siddig is a common name, is it not, among Arabic
19 peoples, Muslim peoples?

20 A. Mainly in Sudan, and some of the Saudis have the
21 name Siddig, too.

22 Q. Moving ahead, there are in numerous places in
23 this transcript reflections on the need for security, is
24 that correct, the need not to talk on the phone, do you
25 remember translating those things?

1 A. Yes, I do remember.

2 Q. There is one reference, and I think it is -- here
3 we go with the pages again.

4 Do you have 739T in front of you?

5 A. Yes, ma'am. T-1.

6 Q. Dash 1?

7 A. Yes.

8 Q. The concern about the phones is mainly the
9 concern of the Unidentified Male No. 2, who is speaking,
10 isn't that correct?

11 A. If you direct me to which area exactly, that
12 would refresh my memory.

13 Q. I am trying to. Try page 8, the very bottom of
14 the page.

15 A. Yes, ma'am.

16 Q. The person that is speaking with the sheik says,
17 "We need to fix the telephone problem," is that right?
18 Maybe five lines up from the bottom.

19 A. Yes, I see this, because he wanted -- prior to
20 that he wanted the sheik to find him a secured phone so he
21 can talk to the sheik on it about something else, and the
22 sheik asked him to talk at the beginning of the
23 conversation.

24 He told him, No, this one needs a different
25 phone. Please find me a phone.

1 Then now he's talking about that phone problem:
2 If we can solve the phone problem, I will call you again, or
3 something like that. Or: You'll call me on another phone.

4 Q. Earlier, he wanted to communicated greetings from
5 various people, is that right, but he felt not secure to do
6 it in this conversation, is that right, he talked about
7 greetings?

8 A. Greetings at the beginning. Then he told him:
9 There is something I want to talk to you about.

10 Q. The sheik says to him, this is the next to the
11 last attribution on page 8: "And you, when you speak, there
12 is nothing to it. When you talk and the FBI knows
13 something? Let them know what is going to happen?" You
14 have a question mark at the end of that sentence. Are you
15 certain that it was a question or he just said, Let them
16 know what is going to happen"?

17 A. I believe he said it in a questioning manner.

18 Q. And the fellow that he is on the phone with
19 laughs, right, and says, "God's plan against his enemies,"
20 right, which is an expression, is that right?

21 A. Yes, that's true.

22 Q. At the very end of the conversation they return
23 to this subject. I have it on page 12, but it follows a
24 discussion about Abdallah Al-Gabriel?

25 A. Yes, ma'am.

1 Q. At the very bottom of that page the unidentified
2 male says, "Amen. By God, if we can talk to you over the
3 phone to get some advice from your eminence."

4 Do you see that line?

5 A. Yes.

6 Q. And the sheik says, "Talk and don't be afraid."
7 Isn't that right?

8 A. That's true.

9 Q. He goes on to say, "I don't care myself. I don't
10 care."

11 Then the unidentified male, says, "You don't
12 care, is something known of your eminence. Only God will
13 give you strength and overcome your enemies."

14 And he says, "But we are weak, little people."

15 Is that right?

16 A. That's true.

17 Q. They go on to speak, do they not, and I'm turning
18 to page 14. It is the following page. I think the
19 numbering is different, but he is talking about sending
20 copies of his press conferences to them, is that right?

21 A. Yes.

22 Q. The person he is speaking to says, "Don't send it
23 to Egypt." He says, "By God, not to Egypt," right?

24 This is like near the middle of the page, towards
25 the top.

1 A. Yes.

2 Q. Then he says, "Send it here."

3 And the sheik says, "No, there is a censor
4 there"?

5 A. Yes.

6 Q. What is your understanding of the meaning of the
7 word "censor" in this context?

8 A. That the government of Saudi Arabia, when anyone
9 going in, they check their luggage thoroughly in the
10 airport. Any videotapes, they watch it before they allow it
11 into the country. Any writings or books, they have to know
12 the contents of it before they allow it into the kingdom.

13 MS. STEWART: I have nothing further, Judge.

14 Thank you.

15 THE COURT: Anything else, Mr. McCarthy?

16 MR. McCARTHY: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. McCARTHY:

19 Q. Mr. Abdel-Hafiz, I only want to ask you about
20 Government Exhibit 713, which I believe you have in front of
21 you.

22 A. Yes, sir.

23 Q. I believe you told Ms. Stewart that that was a
24 call from Pakistan or involved a conversation between the
25 defendant Abdel Rahman in New Jersey and someone named

1 Abdallah in Pakistan?

2 A. Yes, sir.

3 Q. And Ms. Stewart asked you whether you heard any
4 mention of troops in the conversation. You told us you
5 didn't, is that right?

6 A. Not the word "troops."

7 Q. Let me direct your attention to page 4 of that
8 conversation. It is 713.

9 A. Yes, sir.

10 Q. The transcript is 713T, the very bottom of the
11 page. Did you translate Abdallah making the following
12 statement: "He will not be able to come there at all
13 because he talked to me, I believe, yesterday and said they
14 are asking for the expulsion of 600 Egyptians from here"?

15 A. Yes.

16 Q. On the following page, about a quarter of the way
17 down, there is an attribution to Dr. Abdel Rahman which
18 says, "Um, and are the Afghani borders open?" -- I'm sorry,
19 "And are the Afghani borders OK?"

20 A. Yes, sir.

21 Q. When Abdallah responds, "Yes, it is almost OK,"
22 Dr. Abdel Rahman responds, "Let them go now for a while."

23 A. That's true.

24 Q. "And then let them go to Afghanistan for a
25 while"?

1 A. That's true.

2 MR. McCARTHY: Thank you.

3 THE COURT: Anything else, Ms. Stewart?

4 MS. STEWART: No, Judge.

5 THE COURT: You are excused. Thank you.

6 (Witness excused)

7 MR. McCARTHY: Your Honor, at this time the
8 government would offer to read the transcripts that were
9 received in evidence last Friday, beginning with 713T.

10 THE COURT: 713, 714, 718, 720, 726, 728 and
11 739T-1?

12 MR. McCARTHY: Yes, your Honor.

13 THE COURT: All right. Go ahead.

14 Beginning with 713?

15 MR. McCARTHY: Yes, your Honor.

16 Your Honor, on the first conversation, 713/T,
17 which is dated April 6, 1993, a conversation between Omar
18 Abdel Rahman and Abdallah, last name unknown, I will read
19 the attributions to the defendant Abdel Rahman, and Mr.
20 Fitzgerald will read the attributions to Abdallah.

21 One moment, please. I just want to verify
22 something with Ms. Stewart.

23 (Pause)

24 MR. McCARTHY: Your Honor, may I alert the court
25 and the jury to a stipulation between counsel?

1 THE COURT: All right. Go ahead.

2 MR. McCARTHY: On page 4 of the transcript 713T,
3 directing your Honor's attention first to the attribution to
4 the defendant Abdel Rahman four up from the bottom, where it
5 says on the transcript, "the son of a bitch" at the
6 beginning of that attribution, the parties have stipulated
7 that that should say, "It's the dog, the dog."

8 THE COURT: All right.

9 (Continued on next page)

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1 MR. McCARTHY: That is page 4 of Government's
2 Exhibit 713T.

3 Two attributions down from there, where the
4 defendant Abdel Rahman says on the tape, "That means that my
5 brother will not be able to come," the parties have
6 stipulated that "my brother" should be stricken and replaced
7 with "Abu Khaled." K-H-A-L-E-D.

8 Thank you, your Honor.

9 MR. FITZGERALD: The date of the call is April 6,
10 1993.

11 (Government Exhibit 713T was read to the jury)

12 MR. FITZGERALD: The next transcript to be read
13 is Government Exhibit 714T, which is between April 4 and 14
14 of 1993. Mr. McCarthy will read the voice of defendant
15 Abdel Rahman. I will read the voice of Unidentified Male
16 No. 1, and then Mr. Khuzami will read the voice of
17 Unidentified Male No. 2.

18 (Government Exhibit 714T was read to the jury)

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1 THE COURT: Ladies and gentlemen, we are going to
2 take a short break. Please leave your notes and other
3 materials behind. Please do not discuss the case. We will
4 resume in a few minutes.

5 (Recess)

6 MR. McCARTHY: Your Honor, the next transcript is
7 718T. It is a conversation dated April 15, 1993. I will
8 read the voice of Abdel Rahman and Mr. Fitzgerald will read
9 the part of the unidentified male.

10 THE COURT: If you would turn to 718T in your
11 books.

12 (Government's Exhibit 718T in evidence was read
13 to the jury)

14 MR. FITZGERALD: The next conversation is
15 Government's Exhibit 720T, April 22, 1993. Again Mr.
16 McCarthy will read the voice of defendant Abdel Rahman, I
17 will read the voice of the first unidentified male, and Mr.
18 Khuzami will read the voice of the second unidentified male.

19 (Government's Exhibit 720T was in evidence was
20 read to the jury)

21 MR. FITZGERALD: The next transcript is 726T and
22 that is the phone call from April 26, 1993. Mr. McCarthy
23 will read the voice of defendant Abdel Rahman, I will read
24 the voice of Kazem, last name unknown, and Mr. Khuzami will
25 read the voice of Abu Hazim.

1 (Government's Exhibit 726T was read to the jury)

2 MR. FITZGERALD: And the next one is 728T. Mr.
3 McCarthy will read the voice of defendant Abdel Rahman and I
4 will read the voice of the unidentified male. It is a
5 conversation taking place on April 28, 1993. It begins with
6 defendant Abdel Rahman asking Gamal, last name unknown, to
7 talk to an unknown male about computers and computer
8 programs, and later the unknown male asks him to put Abdel
9 Rahman on the line and the following conversation takes
10 place.

11 (Government's Exhibit 728T was read to the jury)

12 MR. FITZGERALD: And the last transcript is
13 739T1, dated May 27, 1993. Mr. McCarthy will read the voice
14 of the defendant Abdel Rahman, I will read the voice of
15 unknown male number 1, Mr. Khuzami will read the voice of
16 unknown male number 2.

17 THE COURT: 739T1.

18 MR. McCARTHY: Thank you, Judge.

19 (Government's Exhibit 739T1 was read to the jury)

20 THE COURT: Ladies and gentlemen, we are going to
21 break now for lunch. Please leave your notes and other
22 materials behind. Please don't discuss the case. Have a
23 pleasant lunch, and we will see you again at 2:00.

24 (Luncheon recess)

25

AFTERNOON SESSION

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2

2:00 p.m.

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(In open court; jury not present)

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MR. FITZGERALD: Judge, before we begin, we will be getting to the El-Gabrowny search this afternoon. I believe there are four items as to which we have identified disagreement with Mr. Ricco or Mr. Stavis and Mr. Patel, legal objections.

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THE COURT: I have already sent her out to get the jury. Can somebody tell her to hold it up. What is the issue?

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MR. FITZGERALD: There are four items, your Honor. I will describe them. The first is Government's Exhibit 146, which is a series of still photographs taken from the Kahane video. It is the still shots which depict Mr. Hoffman, and some show, I believe, Salameh. I can hand them up to the court. I will also indicate for the record that part of the exhibit also indicates that they came with some negatives from Blind Justice Investigators. The exhibits are still shots of the video that came from Blind Justice Investigators, and they were recovered in Mr. El-Gabrowny's apartment.

23

THE COURT: They came from who?

24

MR. FITZGERALD: Mr. El-Gabrowny's apartment.

25

THE COURT: I know, but who did they come from?

1 MR. FITZGERALD: The mailer tells me Blind
2 Justice Investigators, who was working on the Nosair defense
3 at the time.

4 THE COURT: Blind Justice is the name of the
5 organization?

6 MR. FITZGERALD: Yes. Your Honor will recall
7 that Emad Salem testified that Mr. El-Gabrowny spoke about
8 Mr. Kahane the dog being killed and showed him some
9 photographs of Kahane, I believe the autopsy photographs.
10 We have reached an agreement with counsel that will
11 establish that the autopsy photographs were in Mr.
12 El-Gabrowny's apartment but we will not offer the
13 El-Gabrowny photographs themselves because they were kept
14 out on 403 grounds. These materials show photos concerning
15 the Kahane homicide and one particularly showing
16 Mr. Salameh.

17 MR. RICCO: Your Honor, with respect to that
18 particular exhibit, I would request that if the court is
19 going to deem it admissible that the entire package of
20 photographs, along with the slip and folders, be introduced
21 in evidence. It is clear that Mr. El-Gabrowny had in his
22 possession in his apartment several documents relating to El
23 Sayyid Nosair's state court proceedings, and this is just
24 another example of that. That is my statement. I believe
25 Mr. Stavis has a different one.

1 MR. STAVIS: The tape is in evidence. I assume
2 the government is not seeking to introduce these photographs
3 just for what they purport to show. I would ask the
4 government what the relevance is of this before I continue
5 to make my argument.

6 MR. FITZGERALD: Again, your Honor, I would
7 repeat that it shows that Mr. El-Gabrownny had photos of
8 Alkaisi and Salameh in his apartment, or the negatives were
9 such. Also, in line with Mr. Salem's testimony that he
10 bragged about the killing of Kahane. As to Mr. Ricco's
11 objection I have amended the exhibit over lunch to include
12 all the photographs, the negatives and the envelope.

13 THE COURT: In other words, you have met Mr.
14 Ricco's objection.

15 MR. FITZGERALD: Yes.

16 MR. STAVIS: Your Honor, they are blow-up
17 photographs from the Kahane videotape that were made at the
18 request of William Kunstler, who was Mr. Nosair's attorney
19 in his state trial, and they were made to show a point, the
20 point not being that the government now alleges that it was
21 Muhammed Salameh and Bilal Alkaisi. That wasn't the point
22 they were made for. They were made to show Mr. Nosair's
23 innocence at his first trial. They were prepared for
24 purposes of the litigation, your Honor, at the request of
25 Mr. Kunstler, and they were made by Mr. Roland Thomas, who

1 is the investigator and the principal of the Blind Justice
2 investigative agency. They are work product, made for
3 purposes of that litigation.

4 THE COURT: That dog won't hunt. What's your
5 next argument?

6 MR. STAVIS: I will shift gears quickly, your
7 Honor. My next and far more compelling argument is a Rule
8 403 objection to this. In light of the purposes for which
9 they were made I believe that they are confusing, I believe
10 they do not show what the government wishes to show from
11 them, and I think that they should be kept out. If the
12 government wanted to have its own blow-ups or whatever,
13 that's a different story. But these were not prepared, and
14 the government is now on notice that these were not prepared
15 to show Mr. Salameh --

16 THE COURT: The purpose for which they were
17 prepared, it seems to me, is beside the point.

18 MR. STAVIS: That's the purpose for which they
19 are being introduced, your Honor, according to what the
20 government just said.

21 THE COURT: The purpose for which they are being
22 introduced is not the purpose for which they were prepared,
23 as you have articulated the purpose.

24 MR. STAVIS: When I said the purpose for which
25 the government is prepared to introduce them is other than

1 the purpose for which they were prepared, so they don't show
2 what the government wishes to show, your Honor.

3 THE COURT: No.

4 MR. FITZGERALD: If I could add one point, Judge.

5 THE COURT: Hold it. I think what you are
6 arguing is the following. They were prepared to illustrate
7 something else. Incidentally they happen to show Salameh
8 and Alkaisi. Therefore, it doesn't prove anything to say
9 that Mr. El-Gabrowny kept in his apartment photographs
10 depicting Salameh and Alkaisi, since that, if that's what
11 they show, could not have been on his mind.

12 MR. STAVIS: That is correct, it is a misleading
13 picture that is being created for the jury.

14 THE COURT: Yes.

15 MR. FITZGERALD: I would point out that one of
16 the issues in the case is, Mr. Ricco has argued to the jury
17 quite forcefully in his opening that Mr. El-Gabrowny could
18 have been a dupe of Mr. Salameh, who was simply using him as
19 a setup to take the fall when he used his license coming
20 back from Mr. El-Gabrowny's address. This shows that Mr.
21 El-Gabrowny knew a lot about Salameh at the time and knew
22 who he was dealing with, and that is another reason it is
23 probative. The jury can be told that they came in an
24 envelope indicating they were prepared for --

25 THE COURT: You are prepared to put in the entire

1 envelope, correct?

2 MR. FITZGERALD: Yes.

3 THE COURT: I am going to receive the entire
4 envelope and you can make whatever arguments you want to
5 make.

6 MR. STAVIS: Will your Honor give an instruction
7 for the purpose as to which this exhibit is being admitted?

8 THE COURT: The purpose as to which it is being
9 introduced? Absolutely not. You want me to make their
10 argument? I simply will not do that. I assume you join in
11 his application and both your applications are denied.

12 MR. FITZGERALD: Yes, I would love your Honor to
13 tell them why we are putting it in.

14 THE COURT: I will not do that.

15 MR. FITZGERALD: The next exhibit is 149, and I
16 can pass it up to the court. That is a picture from the
17 Jewish Press depicting a tombstone and it says "Meir Kahane,
18 never again." My argument would be that there are no
19 articles with that particular newspaper concerning Kahane
20 and it seems to be a trophy item, much like Mr. Salem said
21 that Mr. El-Gabrownny bragged in his apartment about how they
22 killed the dog. Here is a newspaper drawing that says "Meir
23 Kahane, never again."

24 MR. STAVIS: That appears to be a political
25 cartoon from the Jewish Press and I move to preclude it

1 under Rule 403. I believe that this particular political
2 cartoon, which is dated December 6, 1992, which would be
3 approximately 10 days after the murder of Meir Kahane, is
4 very inflammatory, and I would ask the government -- I
5 believe this comes from the El-Gabrowny seizure. I don't
6 know which count in the indictment it would relate to or
7 which defendant it is being introduced against.

8 MR. FITZGERALD: Your Honor, it would go to the
9 association proof that your Honor made clear was admissible.
10 This shows the nature of the association between Mr.
11 El-Gabrowny and Mr. Nosair. Indeed, there has been much
12 discussion at trial about how Mr. El-Gabrowny only believed
13 in peaceful methods and demonstrations, etc., and this goes
14 to show that he believes in the violent method as well.

15 MR. STAVIS: Your Honor, if this shows
16 association between Mr. Nosair and Mr. El-Gabrowny,
17 something that has been conceded and we have had a veritable
18 ton of evidence on, I would reiterate my Rule 403 argument
19 with regard to this particular political cartoon.

20 THE COURT: Yes, this is out.

21 MR. FITZGERALD: Your Honor, there are just two
22 more items, Government's Exhibit 150 --

23 THE COURT: 149 is excluded. 150?

24 MR. FITZGERALD: I believe Mr. Ricco has a
25 hearsay objection to the comment on the reverse side of the

1 envelope which includes a number of jottings, and your Honor
2 may see that under the word Sayyid and a phone number and
3 "urgent" there is the name written Nidal, a phone number,
4 which is Nidal Ayyad's home phone number, and the word
5 "important." For your Honor's edification, the reverse side
6 shows a postmark, February 25, 1993.

7 I believe Mr. Ricco has a hearsay objection to
8 the word "urgent." My response would be it is a
9 coconspirator statement. Even if it is likely, as Mr. Ricco
10 proffers, that Mr. El-Gabrowny's wife wrote the statement, a
11 coconspirator statement need not be made by a coconspirator,
12 so someone calling a wife to leave a message for the husband
13 saying it is urgent or important to call him back would
14 satisfy Rule 801 and make it a coconspirator statement that
15 is not hearsay.

16 MR. RICCO: Your Honor, I don't believe that his
17 wife's message falls into the exception of coconspirator
18 hearsay rules. Certainly there were two telephone calls to
19 Mr. El-Gabrowny's premises by Nidal Ayyad. One was February
20 24 and the other was February 28. I object to the contents
21 of this message, not that a message was left but the
22 contents of the message I object to as hearsay.

23 THE COURT: But isn't it a fair inference from
24 the circumstances that the statement that it was important
25 didn't originate with his wife, it originated with the

1 caller? People generally leave messages that say call me,
2 it's important, and whoever takes the message takes it down
3 and says the caller says it is important.

4 MR. RICCO: Your Honor, I think that is a fair
5 inference, but the other inference could be that his wife
6 thought it was important, that she communicated it.

7 THE COURT: I don't think that is a fair
8 inference. I understand your argument.

9 MR. RICCO: I think it is an equal inference in
10 the reverse because we don't know what the telephone caller
11 said.

12 THE COURT: I don't. That will be received, 150.

13 MR. FITZGERALD: The last item, Judge, is 160,
14 which I can hand up a copy of the draft translation, but in
15 essence it is a written question and answer statement of
16 three pages in which Mr. Nosair apparently authored the
17 answers, and I believe there is a hearsay objection. It
18 would be the government's view that we are not offering it
19 for the truth but for the fact that the statements were
20 made. So that when Mr. Nosair states in there that this is
21 a battle of good versus evil and the Muslims against the
22 Christians and Jews, the government is not offering it to
23 prove that that assertion is true but merely that that is
24 what Mr. Nosair's beliefs are.

25 MR. STAVIS: May I ask which particular count of

1 the indictment this particular item Government's Exhibit 160
2 relates to?

3 MR. FITZGERALD: Just about all of them.
4 Certainly the Kahane murder, which talks about -- obviously
5 a Jewish person was killed, and I think there were
6 statements in the opening about how he went to hear
7 someone's views. And certainly it goes to the seditious
8 conspiracy because the United States is linked not with the
9 Muslims but the Jews and the Christians and the infidels,
10 which goes to the motive for the Kahane homicide among other
11 times.

12 MR. STAVIS: My motion is under 403 to preclude
13 this transcript of a letter. I believe that under Rule 403
14 this letter, which concerns views concerning Muslims,
15 Christians and Jews --

16 THE COURT: Wait a second. Let me find out what
17 the nature of the document is. It looks like a Q and A.

18 MR. FITZGERALD: Yes, Judge, it is a written Q
19 and A document.

20 THE COURT: Go ahead. I am sorry, go ahead.

21 MR. STAVIS: The issue of quarrels between
22 Muslims, Christians and Jews -- by the way, the document, as
23 your Honor will see from the transcript, lumps together
24 Christians and Jews and says that they are enemies of
25 Muslims. I think that the probative value of this with

1 regard to the counts in this indictment, and Mr. Fitzgerald
2 saying it relates to all the counts, this is something other
3 than the case that is being tried, and I believe, your
4 Honor, that this will have an inflammatory effect upon the
5 jury, at the same time as it has absolutely no probative
6 value with regard to the charges in this indictment. I
7 don't understand Mr. Fitzgerald's arguments as to how this
8 relates to a seditious conspiracy to wage a war of urban
9 terrorism against the United States of America. It concerns
10 three of our major religions in the world and the
11 differences between them, and it does that in very
12 inflammatory language, your Honor.

13 MR. FITZGERALD: I would point out that
14 Mr. Stavis opened that Mr. Nosair was part of the jihad in
15 Afghanistan against the Soviet Union and pro America, and
16 that is what the genesis of all the materials in his
17 apartment were. This rebuts that. It shows it is not a
18 battle overseas, it is a worldwide battle between what he
19 perceives to be the forces of good and evil, between the
20 Christians and Jews and basically the nonMuslims. That is
21 what led to the seditious conspiracy, a battle of
22 nonbelievers.

23 MR. STAVIS: I think we are very far afield and I
24 think having reviewed the seizure evidence over the last
25 year and a half or so, I think we are going to open the

1 floodgates into people's religious beliefs that don't relate
2 specifically to the charges in this case. If there is
3 anti-Semitic literature that might be inflammatory to the
4 jury. It doesn't particularly relate to the counts in the
5 indictment and I think it should be kept out, your Honor,
6 under Rule 403.

7 THE COURT: This is of marginal probative value,
8 and it is out.

9 MR. FITZGERALD: We are ready to proceed, Judge.

10 MR. FITZGERALD: The government calls Charlene
11 Trux, T-R-U-X.

12 MR. MCCARTHY: Your Honor, does the court still
13 have GX146, the photographs?

14 THE COURT: No.

15 (Jury present)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 JURORS: Good afternoon.

18 MR. FITZGERALD: The government now calls
19 Charlene Trux, T-R-U-X.

20 (Continued on next page)

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1 CHARLENE J. TRUX,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Miss Trux, if you could keep your voice up and
7 talk directly into one of the microphones so that everybody
8 can hear you.

9 Can you tell the jury what you do.

10 A. Yes, I am a special agent with the FBI, assigned
11 to the New York office.

12 Q. For how long have you been an agent with the FBI?

13 A. Five years.

14 Q. Let me direct your attention to a particular day,
15 March 4 of 1993. Were you working that day?

16 A. Yes, I was.

17 Q. Did you have occasion to see the property taken
18 from Mohammad Salameh?

19 A. Yes, I did.

20 Q. What did you do with the property taken from
21 Mohammad Salameh?

22 A. I inventoried that property.

23 Q. Can you tell the jury where you were when you
24 first saw the property?

25 A. I was in the interview room at 26 Federal Plaza.

1 Q. Who handed you the property?

2 A. The case agent, which would have been Charles
3 Stern.

4 Q. Then you inventoried the property?

5 A. That is correct.

6 Q. Let me approach you with what have been received
7 in evidence already as Government's Exhibits 5G and 5H, and
8 with what have been premarked as Government's Exhibits
9 W2602, W2611, W2617, and W2618. Looking first at 5G and 5H,
10 I ask you if you recognize those exhibits?

11 A. Yes, I do. This is a New York State driver's
12 license and New York State identification card with Mohammad
13 Salameh's name on it.

14 Q. Could you just read the address listed on the ID
15 card and the license.

16 A. The address on the ID card is 3605 30th Street,
17 apartment 6, Long Island City, New York. And the address on
18 the driver's license is 57 Prospect Park Southwest 4C,
19 Brooklyn, New York.

20 Q. Now let me show you what has been marked as
21 Government's Exhibit W2602, and I ask you to take a look at
22 that item and tell us if you recognize it?

23 A. Yes, I do. This is a small address book that was
24 also removed from Mr. Salameh.

25 Q. Showing you Government's Exhibit W2611, I ask you

1 to take a look at that item and tell us if you recognize
2 what that is.

3 A. Yes, I do. This is a green address book, also of
4 Mr. Salameh's.

5 Q. And W2617.

6 A. This is a set of keys that was taken from
7 Mr. Salameh.

8 Q. And finally, P2618.

9 A. This is another set of keys, also taken from
10 Mr. Salameh.

11 MR. FITZGERALD: Your Honor, I would offer at
12 this time Government's Exhibits W2602, W2611, W2617, and
13 W2618, with the notation that the packages that are included
14 in the notations are not offered as part of the exhibits and
15 any tags are not part of the exhibit. I am not going to
16 display them to the jury at this time.

17 THE COURT: There being no objection, W2602,
18 W2611, W2617 and W2618 are received without objection.

19 (Government's Exhibits W2602, W2611, W2617 and
20 W2618 were received in evidence)

21 MR. FITZGERALD: I have nothing further, Judge.

22 THE COURT: Cross, Mr. Stavis. Mr. Ricco?

23 MR. RICCO: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. RICCO:

1 Q. Good afternoon, Agent Trux.

2 Mr. Salameh also had on his person a New Jersey
3 motor vehicle registration for 1978 Chevrolet Nova, isn't
4 that correct?

5 A. I don't recall exactly.

6 Q. I show you a document and ask if that helps to
7 refresh your recollection.

8 A. It is noted on this 302 that that was among his
9 property.

10 Q. Is it true that he also had in his possession a
11 New Jersey insurance identification card for a 1978 Chevy
12 Nova?

13 A. I believe he had an insurance card. The exact
14 type of vehicle I don't recall.

15 Q. Can you take a look at the document and tell us.

16 A. It is noted as a '78 Chevy.

17 Q. Also, Agent Trux, at the time Mohammad Salameh
18 was arrested, he had approximately \$2,650 on his person,
19 isn't that correct?

20 A. He had an amount of money. I don't recall the
21 exact amount.

22 MR. RICCO: Would the government stipulate?

23 MR. FITZGERALD: Yes, Judge. We will
24 stipulate -- I believe it was counted a few days later -- it
25 was 1,500 in U.S. currency and an additional \$1,100 in U.S.

1 currency and Egyptian currency mixed.

2 MR. RICCO: I think it was 1,100 in U.S. currency
3 and \$32 in Egyptian currency.

4 MR. FITZGERALD: We will stipulate subject to the
5 paperwork.

6 MR. RICCO: Nothing further, Judge.

7 THE COURT: Any further recross? Any redirect?

8 MR. FITZGERALD: No, Judge.

9 THE COURT: Thank you. You are excused.

10 (Witness excused)

11 MR. FITZGERALD: The government now calls Special
12 Agent Michael Ernst.

13 MICHAEL J. ERNST,

14 called as a witness by the government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FITZGERALD:

18 Q. Mr. Ernst, if you could just keep your voice up
19 and try to speak directly into a microphone so that everyone
20 hears you.

21 Could you tell the jury what you do for a living?

22 A. I am a special agent with the Federal Bureau of
23 Investigation.

24 Q. For how long have you been an agent with the FBI?

25 A. Since March 1983.

1 Q. Where are you currently assigned?

2 A. To our office in Sacramento.

3 Q. Drawing your attention to 1993, what office were
4 you then assigned to?

5 A. I was assigned to the New York office.

6 Q. Let me direct your attention to March 4 of 1993.
7 Did you have occasion on that day to participate in the
8 execution of a search warrant?

9 A. Yes, I did.

10 Q. Where did you execute the search warrant?

11 A. It was at 57 Prospect Park Southwest, in
12 Brooklyn.

13 Q. Do you know whose residence that was?

14 A. Yes, I did.

15 Q. Whose residence was it?

16 A. It was Ibrahim El-Gabrownny.

17 Q. Can you tell us generally the area of the
18 apartment that you participated in searching?

19 A. I was assigned to the front door area which
20 included a closet, a side closet and the foyer.

21 Q. Do you recall the general nature of the items you
22 seized from that particular location of the apartment?

23 A. Yes, I do.

24 Q. Can you tell the jury what you seized.

25 A. There were two stun guns, a 9 millimeter pistol,

1 four boxes of 9 millimeter shells, two tin snips, wire
2 cutters, miscellaneous papers, and cassette tapes.

3 Q. When you talk about tin snips or wire cutters,
4 you are talking about tools for a handyman or construction?

5 A. Yes.

6 Q. Let me show you with what have been premarked
7 131, 131A, 131B1 through 131B5, and 132A through C. First
8 let me show you what has been premarked as Government's
9 Exhibit 131 for identification and ask you to take a look at
10 the item and tell us whether or not you recognize it.

11 A. Yes, I do.

12 Q. Can you tell us what that item is?

13 A. This is the 9 millimeter pistol.

14 Q. Is that the pistol you recovered in Mr.
15 El-Gabrowny's apartment?

16 A. Yes.

17 MR. FITZGERALD: Your Honor, at this time I would
18 also like to offer, I believe by stipulation, Mr.
19 El-Gabrowny's pistol license, which was also recovered
20 elsewhere in the apartment.

21 THE COURT: Which exhibit is that?

22 MR. FITZGERALD: I believe the pistol permit is
23 Government's Exhibit 141. I would offer together
24 Government's Exhibits 131 and Government's Exhibit 141.

25 MR. RICCO: No objection.

1 THE COURT: 131 and 141 are received without
2 objection.

3 (Government's Exhibits 131 and 141 received in
4 evidence)

5 Q. Showing you, Agent Ernst, Government's Exhibit
6 131B1, I ask you to take a look at that and tell us if you
7 recognize what that is?

8 A. Yes, I do.

9 Q. What is it?

10 A. It is a box of 9 millimeter shells.

11 Q. Where did you recover the box of 9 millimeter
12 shells?

13 A. They were found in the side closet.

14 Q. Let me show you 131B2, 131B3, 131B4, and 131B5,
15 and I ask you if you recognize those items?

16 A. Yes, I do.

17 Q. Can you tell us what they are, being B2, B3, B4
18 and B5 of 131?

19 A. They are three boxes of 9 millimeter shells and
20 one jar of bore cleaner.

21 Q. Would B-O-R-E, bore cleaner, be 131B5?

22 A. Yes.

23 Q. And B2, B3 and B4 are the 9 millimeter shells?

24 A. That is correct.

25 MR. FITZGERALD: The government offers 131B1, B2,

1 B3, B4, and B5.

2 MR. RICCO: No objection.

3 THE COURT: Government's Exhibits 131B1 through 5
4 are received without objection.

5 (Government's Exhibits 131B1 through 131B5 were
6 received in evidence)

7 Q. Showing you Government's Exhibit 131A, can you
8 tell us whether or not you recognize that piece of paper?

9 A. No, I don't.

10 MR. FITZGERALD: Your Honor, I believe we have --
11 if I could speak with Mr. Ricco first. I believe we have a
12 stipulation as to 131A.

13 MR. RICCO: That is correct, your Honor.

14 MR. FITZGERALD: If I could just read from 131A
15 in evidence: Subject ammunition company, date October 28,
16 1992, name Ibrahim A. El-Gabrownny, 57 Prospect Park
17 Southwest, and Beretta 9 millimeter semiautomatic pistol,
18 \$495. It makes reference to the New York City pistol
19 authorization on that document.

20 Your Honor, if I may briefly display Government's
21 Exhibit 131 to the jury, received in evidence. It is
22 unloaded and there is a safety mechanism.

23 THE COURT: What was the date on 131A?

24 MR. FITZGERALD: October 28, 1992.

25 Q. If I may now show you Government's Exhibit 132A

1 and 132B, Agent Ernst. If you could take the items out of
2 the bags and tell us whether or not you recognize what they
3 are.

4 A. 132B I recognize as a stun gun. And 132A I
5 recognize also as a stun gun.

6 Q. Where did you recover these items?

7 A. 132A was in a front door closet, and 132B was in
8 the front door closet also.

9 Q. Let me show you a document marked 132C and tell
10 us whether or not you recognize that document?

11 A. No, I don't.

12 MR. FITZGERALD: Your Honor, I believe we have a
13 stipulation as to the document 132C.

14 THE COURT: Go ahead.

15 MR. FITZGERALD: If I may read from that: Dusty
16 Rhoads, R-H-O-A-D-S, indoor pistol and archery ranges,
17 Marcus Hook, Pennsylvania, date May 23, 1992, one Para stun
18 gun, 90,000 volt, \$89.95. One Para stun gun 120,00 volt,
19 \$117.95.

20 Your Honor, those items are not activated. There
21 is no power in them. May I pass them to the jury?

22 THE COURT: Yes.

23 MR. FITZGERALD: Judge, if I forgot to offer
24 them, I offer them.

25 MR. RICCO: No objection.

1 THE COURT: 132A and B are received.

2 (Government's Exhibits 132A and B were received
3 in evidence)

4 (Pause)

5 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, at this time the
2 government has no more questions of Special Agent Ernst, but
3 we would like to read a stipulation into the record.

4 Mr. Ricco, counsel for Mr. El-Gabrownny, and the
5 government stipulate to the authentication of certain items.
6 I will read the exhibit numbers out and a brief description
7 of the items, and I will also note that Mr. Ricco himself
8 has a fair number of items that will also be authenticated
9 by the same stipulation, which I will let him do on his
10 examination, and there are certain tapes that be
11 authenticated later that we will stipulate to being
12 authentic.

13 THE COURT: Go ahead.

14 MR. FITZGERALD: Exhibits 133, 133A, 133B, 133C-1
15 and 2, and 133 D-1 to 8, consisting of certain photographs
16 and negatives; 134 and 134A through C, consisting of certain
17 photographs; 139, a beeper or paging device; 140, a pop-up
18 telephone book. 141 has already been received, the pistol
19 permit. 142, an airline ticket; 143, a piece of paper with
20 some writing on it; 145A through G, a series of photographs;
21 146 some still photographs, a negative and an envelope for
22 which we will describe the address later; 148, a slip of
23 paper, with some notations on it, including an amount; 150,
24 an envelope with some jottings on it; 151 is authenticated
25 for identification, but not offered in evidence. And the

1 parties have stipulated that 151, Government Exhibit 151 are
2 pictures of Meir Kahane showing his wounds taken in the
3 coroner's office.

4 It is stipulated that those pictures were found
5 in Mr. El-Gabrownny's home, but they are not offered in
6 evidence.

7 Government Exhibit 152 is a packet of newsletters
8 from Peshawar, Pakistan.

9 Government Exhibits 153, 154, and 155 are
10 booklets written in the Arabic language.

11 Government Exhibit 156 is a clipping from the
12 "Jewish Press" in October of 1992.

13 Government Exhibit 157 is a blue phone book.

14 Government Exhibit 158 is a white phone book.

15 And, finally, Government Exhibit 159 is some
16 notes regarding some sums of money.

17 I think that accurately states our stipulation.
18 The government would offer those items listed, with the
19 exception of Government Exhibit 151, which is merely
20 identified, but not offered.

21 MR. RICCO: That is correct, your Honor.

22 THE COURT: OK. Is there any objection to those
23 exhibits?

24 MR. RICCO: No, your Honor.

25 THE COURT: All right. 133, 133A, 133B, 133C1

1 and C2, 133 D-1 through D-8, 134, 134A through C, 139, 140,
2 141, 142, 143, 145A through C, 146, 148, 150, 152, 153, 154,
3 155, 156, 157, 158 and 159 are received without objection.

4 MR. FITZGERALD: Thank you, Judge.

5 (Government Exhibits 133, 133A, 133B, 133C-1,
6 133C-2, 133D-1 through D-8, 134, 134A through C, 139, 140,
7 141, 142, 143, 145A through G, 146, 148, 150, 152, 153, 154,
8 155, 156, 157, 158 and 159 for identification were received
9 in evidence)

10 MR. FITZGERALD: I am just going to pass a
11 limited number of those items.

12 To make the record clear, we offered 145A through
13 G as in giraffe. You may have said A through C.

14 THE COURT: I did say A through C. I am sorry.
15 I couldn't read my own writing. It is A through G.

16 MR. FITZGERALD: For the record, Government
17 Exhibit 146 was broken down into 146A through E, labeling
18 individual photographs, the envelope with the negatives, and
19 Government Exhibit 159, is three pieces of paper, and that's
20 labeled 159A through C.

21 THE COURT: All right.

22 MR. FITZGERALD: The government would first pass
23 145A through 145G after asking Mr. Agent Ernst one question.

24 BY MR. FITZGERALD:

25 Q. I am just going to ask you, Agent Ernst, if you

1 happen to know the person in the white beard in the middle
2 of 145B, if you know who he is?

3 A. No, I don't.

4 MR. FITZGERALD: Your Honor, I will await a later
5 witness to identify the person before passing it. I only
6 have one item to pass to the jury.

7 Q. Agent Ernst, let me approach you with Government
8 Exhibit 150. I ask you just to read to the jury this entry
9 written in red ink.

10 A. Both of them?

11 The first one is, "Saad," S-A-A-D, "No.
12 718-438-1044, Urgent."

13 The second one is "Nidal" and it's NIDAL, "No.
14 201-762-7436. Important."

15 Q. On the reverse side of the document, which says,
16 "Saad, urgent, Nidal important," can you tell us the
17 postmark, the date on the postmark?

18 A. February 25, 1993.

19 Q. Do you know the date that the World Trade Center
20 explosion happened?

21 A. February 26 --

22 MR. JACOBS: Objection.

23 THE COURT: Overruled.

24 Q. The date of the explosion?

25 A. February 26, 1993.

1 Q. Thank you. So the record is clear, the reference
2 to Nidal is handwritten on one side and the postmark is on
3 the other side.

4 A. That's correct.

5 MR. FITZGERALD: Thank you.

6 I have nothing further, Judge.

7 THE COURT: Cross, Mr. Ricco?

8 CROSS-EXAMINATION

9 BY MR. RICCO:

10 Q. Good afternoon, Agent Ernst.

11 A. Good afternoon.

12 Q. Agent, do you have a recollection of being in
13 Mr. El-Gabrowny's apartment on March 4, 1993?

14 A. Yes, I do.

15 Q. Mr. El-Gabrowny's apartment is a small,
16 two-bedroom apartment, isn't that correct?

17 A. I believe so.

18 Q. When you walk into the apartment, behind the door
19 there's a closet, correct?

20 A. That's correct.

21 Q. It is in that closet that you recovered the items
22 that you testified to, the stun gun and the nine millimeter,
23 isn't that correct?

24 A. That is correct.

25 Q. Before we move to that, I want to go over one

1 exhibit with you.

2 MR. RICCO: May I approach the witness, your
3 Honor.

4 THE COURT: Yes.

5 Q. Mr. Fitzgerald asked you questions about
6 Government's Exhibit 150.

7 A. Right.

8 Q. You read to the jury some information from the
9 back of that exhibit.

10 A. That's correct.

11 Q. You told the jury that on the front of that
12 exhibit there was a postmarked date of February 25, 1993?

13 A. Correct.

14 Q. Now, what city postmarked that date?

15 A. Buffalo, New York.

16 Q. So that means that on February 25 this document
17 was postmarked in Buffalo?

18 A. That's correct.

19 Q. It wasn't traveling overnight mail, was it?

20 A. I don't know.

21 Q. Can you see from the postmark what type of mail
22 it traveled?

23 A. Third class.

24 Q. Third-class mail from Buffalo, if you know, takes
25 how long to get to Brooklyn?

1 A. I don't know.

2 Q. Mr. El-Gabrownny's apartment on the day that you
3 went into it was filled with paper documents, isn't that
4 correct?

5 A. There were a lot of paper documents, yes.

6 Q. It was filled with clothing, isn't that correct?

7 A. I couldn't answer that. I was only assigned to
8 the front part of the room.

9 Q. From the part that you saw as you walked in
10 through the door, could you see papers and clothing all over
11 the place?

12 A. Yes.

13 Q. He had a lot of children, isn't that right?

14 A. He has two or three children, yes.

15 Q. There were a lot of children -- like a rocking
16 horse and other things that children play on were crowded in
17 the living room area, isn't that right?

18 A. There were children's toys.

19 Q. In other words, you don't remember the rocking
20 horse and the other things?

21 A. No, I don't.

22 Q. The apartment was very crowded, though, wasn't
23 it, if you remember?

24 A. No, I don't remember that, no.

25 Q. You don't remember the apartment being crowded.

1 I am going to show you El-Gabrowny N, and it will
2 be El-Gabrowny's N1 through 18, and I am going to ask you if
3 these refresh your recollection as to what Mr. El-Gabrowny's
4 apartment looked like on March 4, 1993.

5 Do those photographs help you refresh your
6 recollection as to what his apartment looked like on that
7 day?

8 A. Yes, it does.

9 Q. The apartment was crowded and filled with papers
10 and clothing, isn't that right?

11 A. That's correct.

12 Q. The kitchen was filled with food products all
13 over the place, isn't that correct?

14 A. Yes.

15 Q. Children's toys all over the place, isn't that
16 right?

17 A. That's right.

18 Q. The apartment could be called junky by some
19 people's terms?

20 A. You could say that.

21 Q. At the time you were in the apartment, I think
22 you testified that you recovered some wire clippers?

23 A. That's right.

24 Q. And some tin snips?

25 A. Correct.

1 Q. In fact, Mr. El-Gabrowny had a whole tool set
2 full of construction tools, isn't that right?

3 A. That's right.

4 Q. He had tubs of compound, joint compound, isn't
5 that right?

6 A. I don't recollect that.

7 Q. Do you recollect that he had in his closet wood,
8 dough and other products that are used by a handyman or
9 construction man?

10 A. I don't recollect any wood dough.

11 Q. But you do recollect a large amount of tools
12 being present in his apartment?

13 A. Yes, I do.

14 Q. Those tools were photographed by the FBI, isn't
15 that right?

16 A. I believe so.

17 Q. Also in Mr. El-Gabrowny's apartment, there were
18 blueprints for the building of homes, isn't that correct?

19 You don't recall?

20 A. Well, I did not seize those items. I later saw
21 them.

22 Q. For example, there were many items --

23 THE COURT: Microphone.

24 MR. RICCO: I'm sorry, your Honor.

25 Q. There were many items, as which I am showing you

1 now, they were blueprints of building and construction
2 sites, isn't that correct?

3 A. I have never seen those.

4 Q. You don't know whether or not blueprints were
5 seized from Mr. El-Gabrownny's apartment?

6 A. No, I don't. I was only responsible for the
7 front foyer area.

8 MR. FITZGERALD: Your Honor, the government will
9 stipulate in the other areas of the apartment a number of
10 materials were seized, including those blueprints Mr. Ricco
11 is referring to.

12 THE COURT: OK. So stipulated. Go ahead.

13 Q. I am going to ask you a series of questions. If
14 you don't recall, just let us know.

15 MR. RICCO: I think we may have a stipulation
16 from the government, your Honor.

17 Q. Photographs were seized from the apartment that
18 were photographs of Mr. El-Gabrownny and Mr. Nosair at a
19 prison facility, isn't that correct?

20 A. I don't know.

21 MR. FITZGERALD: Stipulated.

22 Q. There were various business cards from people in
23 the construction profession?

24 A. I don't know.

25 MR. FITZGERALD: Stipulated.

1 Q. There were contracts for services to be provided
2 by Ibra Construction Company?

3 A. I don't know.

4 MR. FITZGERALD: Stipulated.

5 Q. There was literature written on the Nosair
6 committee stationery?

7 A. I don't know.

8 MR. FITZGERALD: Stipulated.

9 Q. For example, the government seized
10 Mr. El-Gabrowny's carpenter union card, isn't that correct?

11 A. I don't know.

12 MR. FITZGERALD: Stipulated.

13 Q. They also seized from Mr. El-Gabrowny several
14 pamphlets on how to improve your own business?

15 A. I don't know.

16 MR. FITZGERALD: Stipulated.

17 Q. Do you know if various documents were seized from
18 Mr. El-Gabrowny's apartment that related to the state court
19 trial proceedings of El Sayyid Nosair?

20 A. I don't know.

21 Q. Do you know whether or not, for example,
22 photographs that were taken in connection with that state
23 court trial proceeding were seized from Mr. El-Gabrowny's
24 apartment?

25 A. No.

1 MR. RICCO: The government?

2 MR. FITZGERALD: Yes, I will stipulate that also
3 in the apartment a number of items from the state court
4 trial were seized.

5 THE COURT: Including photographs?

6 MR. FITZGERALD: Including photographs.

7 Q. Those would also include the photographs of Rabbi
8 Kahane, the morgue pictures that you, that came in by your
9 direct testimony, isn't that correct?

10 A. I didn't, I don't know about those.

11 MR. FITZGERALD: That came in by stipulation, but
12 we will stipulate that those morgue photographs were
13 photographs that were used in the said court proceeding.

14 Q. Also, there were various forms of Islamic
15 literature at Mr. El-Gabrownny's apartment, isn't that
16 correct?

17 A. I don't know.

18 Q. Well, when you were there, were you able to see
19 the different books on the shelves that were in his living
20 room?

21 A. I saw one poster.

22 Q. One poster?

23 A. Yes. I did not go into any other room other than
24 the foyer, because that was my area of responsibility.

25 MR. RICCO: Will the government stipulate that

1 there were various publications seized from his apartment?

2 MR. FITZGERALD: Yes.

3 Q. In sum, there were, I would say, boxes and boxes
4 of evidence and documents taken from Mr. El-Gabrownny's
5 apartment on March 4, 1993, isn't that correct?

6 A. That's correct.

7 Q. The search wasn't just limited to the few items
8 that you introduced into evidence?

9 A. That's correct.

10 MR. RICCO: Can I see 131?

11 (Pause)

12 Q. For example, you testified to Government's
13 131B-1, 131B-2, 131B-4 and 131B-3, and I think you testified
14 that these were cartridges for a nine millimeter gun.

15 A. Yes, I did.

16 Q. These boxes each hold approximately 50
17 cartridges, isn't that correct?

18 A. That's correct.

19 Q. Each one of these boxes was filled, isn't that
20 right?

21 A. I believe so, yes.

22 Q. For example, none of these boxes were half filled
23 or had cartridges taken from them?

24 A. No.

25 Q. Government's Exhibit 131, which was this nine

1 millimeter gun --

2 A. Yes.

3 Q. -- this gun was seized in this box and there was
4 a chain around it, isn't that correct?

5 A. That's correct.

6 Q. He had this chain locked, isn't that correct?

7 A. That's correct.

8 Q. Can you tell us, Agent Ernst, by examining that
9 gun whether or not it's ever been fired?

10 A. I can't tell you, no.

11 Q. Can you tell us from looking at these clips as to
12 whether or not they have ever been loaded?

13 A. No, I can't.

14 Q. Did you find any bullets in clips in
15 Mr. El-Gabrownny's apartment?

16 A. No, I did not.

17 Q. Did you find any loose cartridges in
18 Mr. El-Gabrownny's apartment?

19 A. No, I didn't.

20 Q. The stun guns that were seized from his
21 apartment, are you able to tell us whether or not those have
22 ever been used?

23 A. No, I am not.

24 Q. You found receipts for the stun guns, isn't that
25 correct?

1 A. I did not find those --

2 Q. But they were discovered by agents that day?

3 A. That's correct.

4 Q. You also found a receipt for the purchase of this
5 nine-millimeter gun, isn't that correct?

6 A. I did not find that, but it was found.

7 Q. It was a lawfully-obtained weapon, isn't that
8 correct?

9 A. I don't know.

10 Q. OK. A permit for it was found, isn't that
11 correct?

12 A. I believe so, yes.

13 MR RICCO: Your Honor?

14 THE COURT: Yes, sir?

15 MR. RICCO: May I see you at the side bar for a
16 second.

17 (Continued on next page)

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1 (At the side bar)

2 MR. RICCO: There were a couple of items that I
3 think Mr. Fitzgerald and I were going to agree that were
4 going to go in through this witness, and we need to take a
5 couple of minutes to get them organized.

6 THE COURT: Do you want to break now?

7 MR. RICCO: Yes, please.

8 THE COURT: Sure.

9 MR. PATEL: I just came up to explain to your
10 Honor the reason Mr. Fitzgerald was showing me the
11 exhibits --

12 THE COURT: I wondered about that.

13 MR. PATEL: -- was just to alleviate a potential
14 problem that came up last week.

15 THE COURT: OK. Thank you.

16 MR. RICCO: Thank you.

17 (Continued on next page)

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1 (In open court)

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

6 THE DEPUTY CLERK: Will you follow me.

7 (The jury was excused)

8 THE COURT: You may step down.

9 (Witness excused)

10 THE COURT: At the end of the day it was my plan
11 to tell them, for those who don't know already, as
12 Mr. Amsterdam requested last week, that the events in
13 Oklahoma City have nothing whatsoever to do with this case
14 or any defendant connected with this case.

15 MR. JACOBS: I would like to discuss that with
16 counsel, your Honor, before you give that statement.

17 THE COURT: OK. If you don't want me to tell
18 them, I won't tell them.

19 MR. JACOBS: Can we just think about it for a few
20 minutes?

21 THE COURT: Sure.

22 MR. JACOBS: I would just like to discuss it with
23 counsel.

24 THE COURT: OK. Thank you.

25 (Recess)

1 MR. NOOTER: Your Honor, my client is asking to
2 be excused for the balance of the afternoon.

3 THE COURT: Mr. Saleh, is that correct, you have
4 asked to be excused.

5 DEFENDANT WAHID SALEH: Yes, I said I want to go.
6 I prefer to go stay in the back because I have a problem
7 with my attorney and I don't want to make it worse.

8 THE COURT: You don't want what?

9 MR. NOOTER: He doesn't want to make it worse.

10 DEFENDANT WAHID SALEH: I want to go stay in the
11 back because I am having problems with my lawyer.

12 THE COURT: I will permit you to go to the back.
13 If you are voluntary absenting yourself, you can leave.

14 Take him out.

15 (Defendant Wahid Saleh excused)

16 THE COURT: Mr. Jacobs?

17 MR. JACOBS: Your Honor, after consultation with
18 all counsel, we would recommend the following statement:
19 The bombing in Oklahoma City has absolutely nothing to do
20 with this case. At least one defendant has been arrested, a
21 Timothy McVeigh, from Michigan. All indications are that
22 Mr. McVee is part of an American, militant, right-wing
23 organization that appears to have been motivated by the
24 second anniversary of events in Waco, Texas.

25 THE COURT: I am not going to get into that kind

1 of detail. Do you want to be heard?

2 MR. McCARTHY: Yes, your Honor. We would request
3 that your Honor inform the jury that what happened in
4 Oklahoma has nothing to do with this case. I think it would
5 be a mistake for the court to indicate to the jury in any
6 way that the fact someone has been arrested is of some
7 evidentiary value. I think it will be more than suffice if
8 your Honor advises them, as you have indicated you might
9 last week, that it has nothing to do with this case. If
10 events unfolded that way, which it appears --

11 THE COURT: I thought I would go a little further
12 and tell them that it appears to be strictly a domestic
13 matter that not only can have no legal relevance to anybody
14 in this case, but in fact has no factual connection to
15 anything or anybody in this case.

16 MR. McCARTHY: I have no objection to that, your
17 honor. I don't just don't want anyone to look at the record
18 later on and say that your Honor had indicated that there
19 was some evidentiary importance to the fact that someone was
20 arrested.

21 MR. JACOBS: Well, your Honor, the only question
22 I have is the word "domestic." I assume what your Honor
23 means, and obviously what we will understand is that it was
24 done by people who have only connections with the United
25 States as opposed to some foreign relationships.

1 THE COURT: Right. Or agendas.

2 MR. JACOBS: Pardon me.

3 THE COURT: Or agendas.

4 MR. JACOBS: I just think if you spelled it out
5 some more -- I am not sure if the jurors understand when you
6 say "domestic" exactly what that means.

7 MS. AMSTERDAM: A domestic matter, I mean the
8 World Trade Center was a domestic matter.

9 MR. JACOBS: Everything we are involved with here
10 is to some extent domestic. If your Honor didn't want to do
11 it, I would try to tell the jury -- the only thing, as I
12 said, I mean, I tend to understand what the government means
13 by the arrest, but in point of fact --

14 MS. AMSTERDAM: I think in point of fact when I
15 made this request last week your Honor had already given an
16 instruction saying that the events in Oklahoma City had
17 nothing to do with this case or the defendants involved in
18 this case. What I raised to your Honor was if jurors
19 scrupulously obeyed their oath and were not privy to the
20 press, that in some ways, as the events have now unfolded,
21 we're almost at a disadvantage. When I say "we," I mean the
22 defendants, and, for that matter, the government, because I
23 presume that everybody involved in this case wants this case
24 to be decided on the evidence in this court and not with
25 reference to events that have occurred in Oklahoma City.

1 I would just ask your Honor to be somewhat more
2 specific in terms of what has happened so that they are not
3 tempted to go and read the newspapers to find out more
4 additional information, but feel that they can be satisfied
5 that they have the answers to whatever questions they may
6 have and they can put the issue behind them.

7 I think that's why we would request more
8 specificity, so that the jurors who have obeyed their oath
9 do not feel tempted to go and follow up on news coverage.
10 The more specific we can be, the more comfortable they will
11 be about obeying their oath.

12 MR. JACOBS: I agree. I think using the person's
13 name who was arrested pretty clearly indicates that he has
14 nothing remotely to do with anybody in this case or any
15 co-conspirator listed by the government. To some extent I
16 think that really clarifies for the jurors that this person
17 apparently has roots in Michigan. I think to some extent it
18 helps the situation. It is a public arrest, your Honor.

19 THE COURT: One minute.

20 MR. JABARA: Your Honor?

21 THE COURT: Sir?

22 MR. JABARA: Yes, your Honor. We would continue
23 to object to any instruction to the jury absent an
24 individual voir dire of the jury.

25 THE COURT: There may well be a voir dire of the

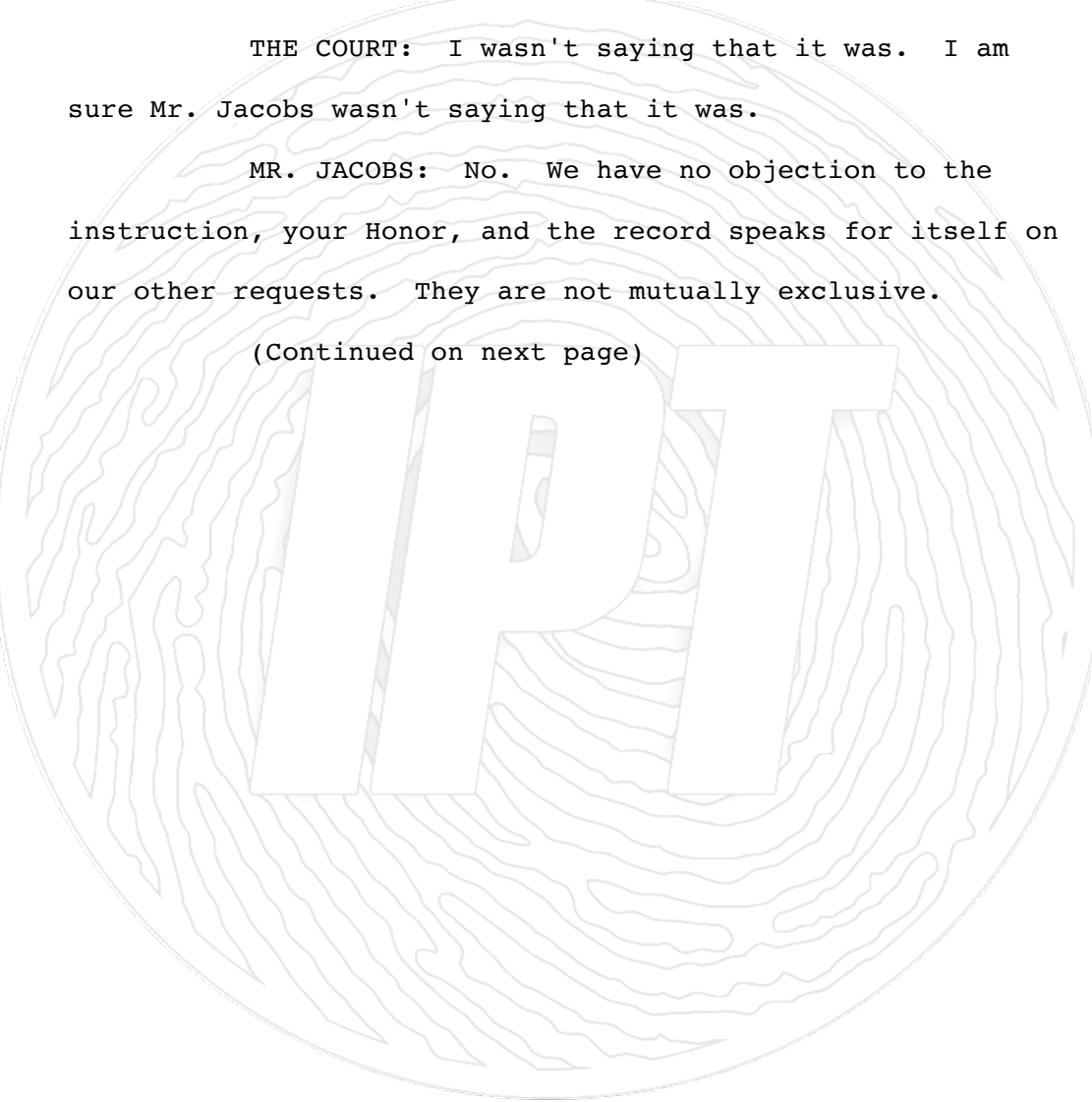
1 jury. The two are not mutually exclusive. You are telling
2 me I can't give an instruction unless I voir dire them
3 first?

4 MR. JABARA: We don't think that the instruction
5 is a substitute for the voir dire.

6 THE COURT: I wasn't saying that it was. I am
7 sure Mr. Jacobs wasn't saying that it was.

8 MR. JACOBS: No. We have no objection to the
9 instruction, your Honor, and the record speaks for itself on
10 our other requests. They are not mutually exclusive.

11 (Continued on next page)



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1 (Pause)

2 THE COURT: This comes fairly close, I think, to
3 what you said. I would simply remind them that I instructed
4 them on the subject of this bombing last week and then I
5 would tell them as follows: I think we already know enough
6 about that matter to be able to say that that bombing not
7 only has nothing to do legally with this case but also in
8 fact cannot possibly be connected in any way to any
9 defendant in this case. There has been one arrest so far in
10 that case of a man named Timothy McVeigh, and all reports
11 suggest that that bombing was the work of Americans whose
12 grievances have nothing to do with any matter discussed in
13 this courtroom.

14 MR. JACOBS: No objection to that.

15 MR. McCARTHY: No objection, your Honor.

16 MS. AMSTERDAM: Your Honor, will you continue to
17 instruct the jurors not to --

18 THE COURT: Yes, I am going to continue because I
19 will also reiterate that notwithstanding that it has nothing
20 to do with this case, there are inevitably comparisons and
21 contrasts -- in the language of your junior high school
22 examinations, compare and contrast -- there are the
23 inevitable comparisons and contrasts drawn with this case,
24 and people then engage in speculation. It is, as they say,
25 a free country, but that is speculation and should have no

1 effect on their deliberations. You do want me to continue?

2 MS. AMSTERDAM: I do want you to continue.

3 THE COURT: Everybody agree?

4 MR. STAVIS: Yes, your Honor.

5 (Witness resumed)

6 THE COURT: I think, just to add one more thing
7 before they come in, I may reiterate the instruction that I
8 gave earlier on at your request, Ms. Amsterdam, that they
9 report to my deputy clerk if they think they have seen
10 anything that in any way interferes with their ability to
11 evaluate the evidence fairly, and that I may have occasion
12 to discuss the matter with them individually, just to
13 prepare them for that, if it should happen.

14 MS. AMSTERDAM: Yes, your Honor.

15 MR. JACOBS: No objection to that.

16 (Jury present)

17 THE COURT: Mr. Ricco.

18 BY MR. RICCO:

19 Q. Agent Ernst, in your direct examination you had
20 testified concerning Government's Exhibit 132B and
21 Government's Exhibit 132A, which were stun guns. Do you
22 recall that?

23 A. Yes, I do.

24 Q. These stun guns are powered by 9-volt batteries,
25 isn't that right?

1 A. I don't know.

2 Q. Did you examine them at the time you seized them?

3 A. No, I didn't.

4 Q. These stun guns appear to be powered by 9-volt
5 batteries, is that correct?

6 A. That is correct.

7 Q. No 9-volt batteries were seized from these stun
8 guns, isn't that correct?

9 A. I don't believe so, no.

10 Q. Batteries would have been listed on the 302,
11 isn't that correct?

12 A. Yes.

13 Q. And you don't list any batteries to the stun guns
14 on your 302.

15 A. No, there isn't.

16 Q. Can you tell from looking at these prongs whether
17 or not they have ever been squeezed open so that a battery
18 could fit in them?

19 A. No, I couldn't.

20 Q. Earlier I showed you some photographs,
21 El-Gabrowny's N1 through 18, and I ask you now, were those
22 photographs an accurate and fair representation of his
23 apartment at the time you went into it on March 3, 1993?

24 A. Yes, they were.

25 MR. RICCO: At this time I move N1 through 18

1 into evidence.

2 MR. FITZGERALD: No objection.

3 THE COURT: The N series, 1 through 18, received
4 without objection.

5 (Defendant El-Gabrowny Exhibits N1 through 18
6 were received in evidence)

7 Q. I think you indicated that there were various
8 periodicals and newsletters and magazines seized from Mr.
9 El-Gabrowny's apartment, isn't that right?

10 A. I believe there were, yes.

11 Q. Many of them were written, if not all of them
12 were written in Arabic, isn't that correct?

13 A. I don't know.

14 MR. RICCO: At this time the defendant moves into
15 evidence Defendant's Exhibit Q, and that would be Al Amal
16 magazine.

17 MR. FITZGERALD: No objection.

18 MR. RICCO: And as an aid to the jury QT, which
19 is a summary transcript.

20 MR. FITZGERALD: No objection.

21 THE COURT: Q and T are received without
22 objection.

23 (Defendant El-Gabrowny Exhibits Q and QT were
24 received in evidence)

25 Q. These are magazines that are similar to the type

1 that were recovered from Mr. El-Gabrowny's apartment, is
2 that fair to say?

3 A. I don't know. I have never seen that.

4 MR. RICCO: I would just like to read a portion
5 from the subject matter that is in this Arabic magazine.

6 THE COURT: Go ahead.

7 MR. RICCO: One of the cover subjects is the
8 American presidential election: Who will the Muslims vote
9 for? Another subject in this Arabic magazine is, the blacks
10 in America, lack of justice and unequal treatment. Another
11 subject is, Bosnia, Herzegovina. Another subject is,
12 elections in Palestine. Other subjects include events that
13 are going on in Afghanistan and other places.

14 At this time the defense enters into evidence
15 El-Gabrowny P, which would be what the government and I call
16 the stun gun letter.

17 MR. FITZGERALD: No objection.

18 THE COURT: P is received without objection.

19 MR. RICCO: PT will be the English translation of
20 that Arabic document.

21 MR. FITZGERALD: No objection.

22 THE COURT: P and PT are received without
23 objection.

24 (Defendant El-Gabrowny Exhibits P and PT received
25 in evidence)

1 MR. RICCO: Essentially the letter requests that
2 Mr. El-Gabrowny purchase stun guns for an individual who
3 lives in the Middle East.

4 At this time the defense offers into evidence
5 Defendant's 01 through 5, and these would be photographs
6 taken from the Nosair state court trial, photographs of Mr.
7 El-Gabrowny and other individuals in front of the
8 courthouse.

9 MR. FITZGERALD: No objection.

10 THE COURT: El-Gabrowny 01 through 5 are received
11 without objection.

12 MR. RICCO: Thank you.

13 (Defendant El-Gabrowny Exhibits 01 through 5 were
14 received in evidence)

15 MR. RICCO: Also, the government stipulates that
16 present in Mr. El-Gabrowny's apartment were various letters
17 written on the stationery of El Sayyid Nosair Defense
18 Committee, Ibrahim El-Gabrowny executive director.

19 MR. FITZGERALD: Correct.

20 MR. RICCO: And one such letter was a petition to
21 state court Judge Alvin Schlesinger dated December 26, 1991,
22 and that letter, under Mr. El-Gabrowny's title, requested
23 the judge that "We appeal to you not to succumb to political
24 pressure on your Honor's person and your court, and not
25 yield to pressure by those who are trying to bring pressure

1 on your Honor and disrespect on the judicial system and the
2 American Constitution," and they ask that he exercise
3 leniency in sentencing.

4 MR. FITZGERALD: Stipulated.

5 MR. RICCO: And that this letter and petition was
6 circulated -- that many of these petitions were present in
7 Mr. El-Gabrowny's apartment.

8 MR. FITZGERALD: Stipulated.

9 MR. RICCO: The government also stipulates that
10 there is a letter dated November 5, 1992, from an attorney,
11 Elizabeth Fink, located at 294 Atlantic Avenue in Brooklyn,
12 and in that letter she is getting information from Mr.
13 El-Gabrowny concerning the perfecting of the appeal of Mr.
14 Nosair's state court conviction.

15 MR. FITZGERALD: That is correct.

16 MR. RICCO: Your Honor, that concludes my cross,
17 with the exception of two matters. One second, your Honor.
18 I am sorry.

19 Government's Exhibit 140 that is in evidence, I
20 would like to read to the jury some of the numbers that are
21 in the telephone book. One number would be the telephone
22 number for --

23 THE COURT: This is 140?

24 MR. RICCO: Yes, your Honor. One of those
25 telephone numbers is of Ali El-Gabrowny. Another telephone

1 number is of Ahmed Abu Sattar. Another telephone number is
2 of Ali Al Shinawy. Another telephone number is Attica
3 Correctional Facility. Imam Nagy Allah, his telephone
4 number, fax number and home number. Telephone number of
5 Dr. Ahmed Badawi. Telephone number of Emad Salem.
6 Telephone number of the Egyptian consulate. Telephone
7 number of the Jihad Office. Telephone number of Hussein
8 Safan. And telephone number of John at the FBI,
9 212-335-2700, extension 3759. In addition in that telephone
10 book is the telephone number of Mohammed El-Gabrownny,
11 Mohammed Moussa, the telephone number of Dr. Mohammed Mahdi,
12 and the telephone number of Nidal, area code 201-762-7436.
13 Also the telephone number of Sheik Omar Rahman, area code
14 201-451-1046, and Dr. Rahman's fax number. In addition to
15 many, many other telephone numbers contained in there.

16 The last exhibit to be introduced, Defendant
17 Nosair's PP1 through 10, and these would be photographs
18 seized from Mr. El-Gabrownny's apartment, of prison visits to
19 Rikers Island and/or Attica.

20 MR. FITZGERALD: No objection.

21 THE COURT: Photos taken during such visits?

22 MR. RICCO: Yes, your Honor.

23 THE COURT: Nosair PP1 through 10 are received
24 without objection.

25 (Defendant Nosair Exhibits PP1 through PP10)

1 received in evidence)

2 MR. RICCO: I would like to circulate amongst the
3 jury the photographs of the visits and the court
4 photographs.

5 THE COURT: Go ahead.

6 MR. RICCO: Thank you very much.

7 (Pause)

8 MR. RICCO: I have no further questions.

9 THE COURT: Anything else for this witness?

10 MR. FITZGERALD: Judge, I would just like to read
11 three entries from that same phone book.

12 THE COURT: Go ahead.

13 MR. FITZGERALD: Reading from Government's
14 Exhibit 140, an entry for Bashawar, that number being
15 011-92-521-811934. The second entry under R, there is a
16 single entry for Rashid, 941-0226. And finally under M,
17 there is an entry for Mahmud Abouhalima, 908-382-9726.

18 Thank you. Nothing further.

19 THE COURT: Anything else? No. You are excused.

20 (Witness excused)

21 MR. KHUZAMI: Your Honor, the government calls
22 Special Agent James Kyle as its next witness.

23 JAMES A. KYLE,

24 called as a witness by the government,

25 having been duly sworn, testified as follows:

1 MR. KHUZAMI: May I proceed, your Honor?

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. KHUZAMI:

5 Q. Mr. Special Agent Kyle, who do you work for?

6 A. Federal Bureau of Investigation, Newark division.

7 Q. How long have you worked for the FBI?

8 A. For the Newark division approximately six years,
9 nine years total.

10 Q. Are you currently assigned to the Newark
11 division?

12 A. Yes, I am.

13 Q. What was your assignment on March 4 of 1993?

14 A. I was assigned to squad C13, which is a violent
15 criminal squad.

16 Q. Did you have an opportunity on that date to
17 conduct a search of a residence?

18 A. Yes, I did.

19 Q. What was the address of that residence?

20 A. 34 Kensington Avenue in Jersey City, apartment 4.

21 Q. At the time of that search, did you have any
22 understanding of who lived there?

23 A. No.

24 Q. Did you since come to learn who lived there?

25 A. I believe an individual named Salameh.

1 Q. Do you know his first name?

2 A. Mohammad, I believe.

3 Q. Can you describe apartment 4 at 34 Kensington
4 Street?

5 A. Apartment 4 is a small, one-bedroom apartment.
6 You come to the door you are facing directly to the kitchen.
7 Directly to your right would be a closet door, but to get
8 that door open you would have to close the door that you
9 just came through. In other words, the entrance door blocks
10 it. If you turn to your left then, there is a common
11 hallway. Directly in front of you would be a living room.
12 Directly to the right to be a bathroom, and almost
13 diagonally from the door would be a bedroom. There is one
14 bedroom.

15 Q. In addition to yourself, how many other officers
16 or agents were involved in this search?

17 A. In the search itself, I think approximately six,
18 but there were numerous agents involved initially in the
19 entry and security around the building, etc.

20 Q. Do you recall the names or some of the names of
21 other agents who were actually involved in this search?

22 A. Yes: Special Agent Andy Bayle; Marilyn Quinn;
23 Amy Pickett; Mr. Steve Chapman; and Ko Chi Ho.

24 Q. Do you recall what time the search began?

25 A. I entered the residence somewhere around just

1 prior to 4:00. The initial entry into the building was
2 sometime around 2, 2:30, I believe.

3 Q. What was your role in the search that day?

4 A. Initially, the first thing I did that day was a
5 search outside the residence, at some garbage cans outside
6 the residence. Second, once I went inside the dwelling we
7 began to search inside. My initial responsibility was the
8 back bedroom right-hand side, and throughout the search I
9 was assisting in directing the other agents also in what we
10 were taking.

11 Q. Aside from the bedroom, did you personally search
12 other areas in the apartment?

13 A. Yes.

14 Q. What areas were those?

15 A. Two bureaus that were in the common hallway. I
16 also assisted in searching three closets that were in the
17 dwelling at that time.

18 Q. You indicated that you began by searching garbage
19 cans. Can you describe where those cans were located?

20 A. If you face the apartment building, on the
21 left-hand side of the apartment building is a concrete
22 overhang, basically to keep the rain off the residents. It
23 walks into a back courtyard. Along the side they keep their
24 trash underneath the roof to keep it from getting wet.
25 That's the area we were searching.

1 Q. Did you recover any items from those garbage
2 cans?

3 A. Yes, I did.

4 MR. KHUZAMI: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. Special Agent Kyle, let me show you what have
7 been marked as Government's Exhibits W192, W192A, W192B and
8 W192C, and ask if you recognize those items?

9 A. Yes, I do.

10 Q. What are they?

11 A. They are pieces of trash, some correspondence,
12 etc., that are ripped up that I recovered from one trash can
13 beside the building.

14 Q. How do you recognize them as ripped up pieces
15 that you removed from the garbage can?

16 A. My initials are on the evidence bag.

17 MR. KHUZAMI: Your Honor, I would move
18 Government's Exhibits W192 and 192A through C in evidence.

19 MR. PATEL: May I see them.

20 A brief voir dire, your Honor?

21 THE COURT: Yes.

22 VOIR-DIRE EXAMINATION

23 BY MR. PATEL:

24 Q. Agent, do you recall the specific -- withdrawn.
25 This area that you searched, the trash, how many trash

1 barrels were there?

2 A. I believe five or six.

3 Q. Were they designated to a specific building?

4 A. To the specific building? They were beside the
5 building and within its closure.

6 Q. Was there any writing on the barrels?

7 A. Not to the best of my recollection, no.

8 Q. Were these like plastic garbage barrels,
9 55-gallon drum type things?

10 A. Actually, no. Most of them were metal trash
11 cans, what I would call the old style.

12 Q. The old style, 30-gallon style?

13 A. Yes.

14 Q. Was there any writing on any of those barrels?

15 A. Not that I recall at this time.

16 Q. Is it fair to say that there was no way that you
17 could tell from looking at the barrels that the trash came
18 from a particular apartment?

19 A. You would have to look at the contents of the
20 trash to determine that.

21 Q. These various items, Government W192A, B and C,
22 which don't have an address, could you tell from looking at
23 them what apartment they came from?

24 A. Not those specific ones. They were with the
25 other ones that were taken -- they were just packaged

1 separately due to lab packaging. They all came from that
2 one exhibit that is in your hand now.

3 Q. They all came from Exhibit W192?

4 A. That is correct.

5 Q. These came from the same trash can?

6 A. Yes.

7 Q. You actually recovered them from the trash can?

8 A. Yes.

9 Q. Were they with other trash or was this the entire
10 contents of the particular pail?

11 A. No, it was not.

12 Q. You so selected these various items?

13 A. No, I took various items out of the trash.

14 Q. In addition to these?

15 A. That is correct.

16 Q. When you seized these, do you know which
17 apartment they came from?

18 A. Yes, by reading the contents in the one bag, you
19 can see it addressed to apartment 4, and there are two
20 individuals named on that.

21 Q. These were all sealed in one bag?

22 A. I had them all in one bag --

23 Q. No, when you found them they were all in one bag?

24 A. They were in one trash can, sir.

25 Q. And within that trash can, were they in one --

1 withdrawn. Within the trash can were they in a separate bag
2 or were they just in the can loose?

3 A. I don't recall if there was a separate bag inside
4 the can itself or not at this time.

5 Q. But as you sit here now, as far as you recall
6 they were just loose items in the can?

7 A. They were parts of the trash that was in the
8 trash can, yes.

9 MR. PATEL: No objection.

10 THE COURT: Is 192 preceded by a W or only the
11 letter exhibits?

12 MR. KHUZAMI: Yes, your Honor, I misspoke. It is
13 W192.

14 THE COURT: W192 and W192A through C are received
15 without objection.

16 (Government's Exhibits W192 and W192A through C
17 were received in evidence)

18 THE COURT: Go ahead.

19 MR. KHUZAMI: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MR. KHUZAMI:

22 Q. Special Agent Kyle, have you had an opportunity
23 to review the contents of these envelopes prior to your
24 testimony today?

25 A. Yes, I have.

1 Q. I am handing you four pieces of paper contained
2 within Government's Exhibit W192 -- and at this time, your
3 Honor, I would request that the jury be permitted to refer
4 to some loose materials that were placed on their chairs at
5 the break, specifically items W192.

6 THE COURT: The jury may look at those items,
7 only the W192 items.

8 Q. Special Agent Kyle, do those documents indicate
9 that an individual or individuals received treatment at a
10 hospital?

11 A. Yes, they do. They are actually -- put the
12 pieces together, you have two bills or two sections of bills
13 from Rahway Emergency Care Center in Elizabeth, New Jersey.

14 Q. What are the names of the two individuals who
15 received the treatment?

16 A. According to the bill, Mohammad Salameh and Ramzi
17 Yousef.

18 Q. Does it give a date on which the treatment was
19 given?

20 A. Yes. The date for both of those is 1/24/93.

21 Q. Thank you. You can put that aside.

22 Special Agent Kyle, let me now show you what has
23 been marked for identification as Government's Exhibit W189C
24 and ask if you recognize it?

25 A. Yes, I do.

1 Q. What is it?

2 A. It is a piece of paper with a hand-drawn map on
3 it and also some blue lettering on it.

4 Q. Did you seize that item on March 4, 1993?

5 A. Yes, I did.

6 Q. Where did you seize it from?

7 A. From the same trash can as the previous items we
8 just entered in.

9 Q. How do you recognize it as the item you seized
10 from the cash can?

11 A. Because the item at the top is very unique
12 because it has a rainbow and then it says "A rainbow is big,
13 a rainbow has a lot." It was very odd, almost childlike
14 writing.

15 Q. At the time that you seized it, was it in the
16 condition that it is now in your hand and marked as
17 Government's Exhibit 189C?

18 A. No. All the pieces were, as you can see here it
19 was ripped up and they were loose. I pieced them together
20 and looked at them while we were there, and that's when we
21 brought them in for evidence.

22 MR. KHUZAMI: Your Honor, at this time I move
23 Government's Exhibit 189C into evidence.

24 MR. PATEL: May I have a very brief voir dire?

25 THE COURT: Go ahead.

1 VOIR-DIRE EXAMINATION

2 BY MR. PATEL:

3 Q. Agent, the document that you have the document
4 you have is a pieced together thing, correct?

5 A. It is pieces of paper that have been put together
6 now, yes.

7 Q. Are those your initials on the various and sundry
8 pieces?

9 A. No. That is the laboratory fingerprint
10 examiner's initials.

11 MR. PATEL: Thank you, your Honor. No objection.

12 THE COURT: Government's Exhibit W189C is
13 received without objection.

14 (Government's Exhibit W189C received in evidence)

15 MR. KHUZAMI: Your Honor, at this time I would
16 ask that the jurors be referred to their copy of W189C in
17 the loose materials.

18 THE COURT: You may refer to your copy of W189C.

19 BY MR. KHUZAMI:

20 Q. Special Agent Kyle, does this map indicate
21 anywhere on it Kensington Street?

22 A. Yes, it does.

23 (Continued on next page)

24

25

1 Q. Where is that?

2 A. Kensington Street in Jersey City, New Jersey.

3 That's where we were doing the search at.

4 Q. I am sorry. Where on the map does the indicate
5 Kensington street?

6 A. I am sorry. As far as the diagram, the top
7 left-hand portion of the diagram.

8 Q. Does the map indicate by arrows a destination
9 from Kensington to some other location?

10 A. Yes. If you follow the arrows on the handwritten
11 diagram, it would lead you onto Bergen Street and then onto
12 Montgomery, which would take you down on to Baldwin Avenue.
13 The arrows stop on Baldwin Avenue at a number written on the
14 diagram of 65.

15 Q. Thank you. You can put that aside.

16 Special Agent Kyle, after you searched the
17 garbage cans, did you enter the residence?

18 A. Yes, I did.

19 Q. What did you do when you got there?

20 A. Once inside the residence, we organized into
21 search teams and then we began to search the rooms of the
22 residence.

23 Q. Did you search a particular room?

24 A. I initially started in the rear bedroom.

25 MR. KHUZAMI: Your Honor, may I approach.

1 THE COURT: Yes.

2 Q. Special Agent Kyle, let me show you what's been
3 marked for identification as Government Exhibit W-2897. I
4 ask you if you recognize it.

5 A. Yes, I do.

6 Q. What is it?

7 A. It is a document from the Immigration &
8 Naturalization Service with a photograph on the back of it.

9 Q. Did you seize that item on March 4, 1993?

10 A. Yes, I did.

11 Q. How do you know that is the item you seized?

12 A. Well, one, by the writing on it. I remember the
13 Ramzi Yousef, and it was spelled Y-O-U-S-U-F, and I didn't
14 understand the spelling of that. On the back of it I
15 thought it was odd because the picture that is on the back
16 is Scotch taped on instead of being laminated.

17 Plus, in all honesty, looking at the card, it
18 struck me that it doesn't look like a place for the picture
19 to be. It looked like somebody was trying to make an
20 identification of some kind.

21 MR. PATEL: Objection.

22 THE COURT: Sustained.

23 MR. PATEL: Move to strike.

24 THE COURT: The last part is stricken.

25 Q. Where in the bedroom did you seize that item?

1 A. I believe it was on the bureau area of the -- in
2 the bedroom.

3 MR. KHUZAMI: Your Honor, the government would
4 move Government Exhibit W-2897 into evidence.

5 THE COURT: Absent objection, and there is none,
6 W-2897 is received.

7 (Government Exhibit W-2897 for identification was
8 received in evidence)

9 MR. KHUZAMI: Your Honor, I would refer the
10 jurors to that Exhibit 2897 in their loose-leaf materials.

11 THE COURT: It is a one-page exhibit, Xeroxed on
12 two sides?

13 MR. KHUZAMI: That is correct, your Honor.

14 THE COURT: Could you come to a convenient break
15 point in the next five minutes or so.

16 MR. KHUZAMI: This would be fine, your Honor.

17 THE COURT: All right.

18 Ladies and gentlemen, we are going to break for
19 the day. I gave you a number of instructions last week and
20 a number of requests last week with regard to the news
21 stories about the Oklahoma City bombing, and those are still
22 in effect.

23 I would ask you still, to the extent you can
24 avoid it, not to hear or see any news report with regard to
25 that. However, I should tell you that I think we already

1 know enough about that matter to be able to say that that
2 bombing not only had absolutely nothing to do legally with
3 this case, but also in fact cannot possibly be connected in
4 any way with any defendant in this case.

5 There has been one arrest so far in this case,
6 that of a man named Timothy McVeigh, and all reports suggest
7 that that bombing was the work of Americans whose grievances
8 have absolutely nothing to do with any matter discussed in
9 this courtroom. Nonetheless, the instruction about not
10 watching any reports about that, to the extent you can avoid
11 them, remains in effect because people inevitably speculate
12 and discuss and compare and mention this case in the course
13 of comparisons. That, of course, is not evidence in this
14 case.

15 I should also remind you that an earlier
16 instruction that I gave you a long time ago with regard to
17 another news story is also in effect, which is that if at
18 any point any of you sees or hears anything that you think
19 actually would interfere with your ability to decide this
20 case based only on the evidence presented here, please
21 notify my deputy clerk, Ms. Schwartz, and we can discuss it.

22 With that I will wish you a good night and see
23 you tomorrow at 9:30.

24 (The jury was excused)

25 THE COURT: I would ask everyone to remain seated

1 until the jurors leave, please.

2 You may step down.

3 THE WITNESS: Thank you, sir.

4 (Witness excused)

5 THE COURT: Mr. Jacobs.

6 MR. JACOBS: Your Honor, apparently there was a
7 proceeding before Judge Duffy today concerning Ramzi Yousef
8 and a co-defendant. During the course of that proceeding, I
9 understand Judge Duffy ordered some discovery to be turned
10 over to counsel in that case concerning some statements
11 Yousef made to the FBI. In the course of making the
12 statement I was told Judge Duffy said that the lawyers in
13 this case should get it. I was wondering had your Honor had
14 any conversation with Judge Duffy. Perhaps we could find
15 out --

16 THE COURT: I have had numerous conversations
17 with Judge Duffy.

18 MR. JACOBS: Perhaps we could find out what Judge
19 Duffy meant.

20 THE COURT: What he meant? You mean, have I had
21 a conversation with him about that subject?

22 MR. JACOBS: I don't know. He made a comment
23 about this case that we should be getting some material. I
24 don't know what was meant by that.

25 THE COURT: Mr. Jacobs, put your mind at ease.

1 What I detect as the question within your question, which is
2 did I tell him to please -- no, I didn't. I had no
3 conversation with him about that subject, although I have
4 had numerous conversations with him on other subjects.

5 MR. JACOBS: I have no objection, your Honor. I
6 am not asking your Honor to do it. If your Honor feels it
7 might be appropriate to discuss it with Judge Duffy, what he
8 meant, I don't know. I don't know whether the government is
9 planning to produce anything. He seemed to have something
10 in his mind.

11 THE COURT: Judge Duffy has a great deal on his
12 mind.

13 MR. JACOBS: I am talking about statements -- he
14 obviously made a statement on the record that the lawyers in
15 this case should get some material concerning Yousef's
16 statements to the FBI.

17 THE COURT: Right.

18 MR. JACOBS: He's obviously either seen something
19 or there is something that he's taken a look at. I just
20 thought we should follow it up.

21 THE COURT: You mean, do I know what he is
22 referring to? I think I do. I have seen some of the things
23 that Yousef has said to the FBI as part of the homework
24 assignment that I received from you, which was to examine
25 all of that material, which I did examine some time ago and

1 found nothing in the way of Brady or Giglio material in it.

2 However, if Judge Duffy directed that those
3 statements be turned over to you, I assume that they will be
4 turned over in due course.

5 MR. JACOBS: As I said, rather than running
6 around getting minutes and everything, I just thought I
7 would put it on the record. I guess I can always take a
8 look.

9 THE COURT: I guess you can. I honestly do not
10 understand what you are asking me to do.

11 MR. STAVIS: Your Honor, may I cut to the chase?

12 THE COURT: Please.

13 MR. STAVIS: If a United States District Judge
14 has ordered us to receive something and directed the United
15 States Attorney's Office, we would ask that these Assistant
16 United States Attorneys, which are from the same office as
17 the Assistant United States Attorneys --

18 THE COURT: You want me to issue a perfectly
19 redundant order to these people to turn over what Judge
20 Duffy said in the other case should be turned over?

21 MR. STAVIS: Yes.

22 THE COURT: No, I won't. I assume that it is
23 going to get turned over.

24 Yes?

25 MS. STEWART: Not to be obscure, I hope, Judge,

1 today, in a stack of about four inches of papers received
2 from the U.S. Attorney's office, buried in it was a very
3 recent letter which I believe was received in your chambers
4 from a person named Anatolis Fominas, who is a guest of the
5 State of New York --

6 THE COURT: Right. And obviously wants a trip to
7 New York.

8 MS. STEWART: Well, he had one previously,
9 apparently, courtesy of the FBI in a private jet.

10 THE COURT: Yes, if you believe what he says in
11 the letter.

12 MS. STEWART: Yes.

13 THE COURT: If you believe what he says -- well,
14 go ahead.

15 MS. STEWART: In any event, I just would ask that
16 perhaps in the future if a similar letter was received, I
17 just don't -- I am not fond of the notion that it goes to
18 the government, they bury it among a stack of letters this
19 thick --

20 THE COURT: They didn't bury it. I gave it to
21 somebody who works for me and told them to distribute it to
22 the government and to you, and basically scatter around
23 copies to everybody because I thought I had an obligation to
24 turn it over to you. The fact that it might have been
25 sitting on the table with a stack of other documents is pure

1 happenstance. You are a person of great sophistication and
2 experience --

3 MS. STEWART: Not to be obscure, Judge. I'm
4 sorry.

5 THE COURT: The point of that last compliment is
6 take it easy about this document.

7 MS. STEWART: I wasn't looking past it, Judge.

8 THE COURT: Good. I think the government has an
9 obligation to investigate it. And if they find anything,
10 they have an obligation to turn that over to you, as you
11 know. I gave it to you in an excess of caution. As you
12 will see, it was addressed to the chief judge, the "New York
13 Times," and so on and so forth.

14 OK. Thank you.

15 (Proceedings adjourned to Tuesday, April 25, 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 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)

April 25, 1995
9:30 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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(Pages 8991 through 8999 sealed)

1 (In open court; jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning, your Honor.

4 MR. KHUZAMI: May I proceed, your Honor?

5 JAMES A. KYLE, resumed.

6 THE COURT: Mr. Kyle, you are still under oath.

7 THE WITNESS: Yes.

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION continued

10 BY MR. KHUZAMI:

11 Q. Special Agent Kyle, when we broke yesterday
12 afternoon, we were discussing items that you seized from 34
13 Kensington. Do you recall that?

14 A. Yes, sir.

15 MR. KHUZAMI: Your Honor, may I approach?

16 THE COURT: Yes.

17 Q. Special Agent Kyle, let me show you what has been
18 marked Government's Exhibit W2689 for identification and ask
19 you to take a look at it. Do you recognize that item?

20 A. Yes, sir, I do.

21 Q. What is it?

22 A. This is a personal phone book like you get at a
23 stationery store, put your own addresses and phone numbers
24 in.

25 MS. STEWART: I am sorry. I can't hear the

1 witness.

2 THE COURT: Speak up.

3 THE WITNESS: I will repeat it, ma'am.

4 MS. STEWART: I still didn't hear.

5 THE COURT: I just told him to speak up.

6 A. It is a personal phone book that you buy like at
7 a stationery store to put addresses and phone numbers in,
8 etc.

9 Q. Did you seize that March 4, 1993 at 34
10 Kensington?

11 A. Yes.

12 Q. Where did you take it from?

13 A. Out of the rear bedroom.

14 Q. How do you recognize it as the item you took
15 that?

16 A. One, by the initials on the outside bag and two,
17 by the pencilled directions inside the cover of the phone
18 book.

19 Q. When you say the initials on the evidence bag,
20 what initials are you referring to?

21 A. My initials, JAK.

22 MR. KHUZAMI: The government would offer
23 Government's Exhibit W2689 into evidence.

24 THE COURT: There being no objection, W2689 is
25 received without objection.

1 (Government's Exhibit W2689 received in evidence)

2 Q. Agent Kyle, contained within that item are there
3 any directions that you saw when you seized it?

4 A. Yes, sir, there are.

5 Q. Can you describe those corrections.

6 A. Yes, sir. On the second front page of the phone
7 book -- actually upside down, you have to turn the book
8 upside down, there are directions that appear to be related
9 to JFK and Beltway and various areas around it.

10 MR. BERNSTEIN: I am sorry, Judge. I didn't hear
11 the witness' answer.

12 Q. If you could please repeat your answer.

13 A. The directions on the book appear to be relevant
14 to JFK Airport and there are directions involving KLM cargo
15 and 150th Street, JFK, etc.

16 Q. You can put that aside.

17 MR. KHUZAMI: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q. Special Agent Kyle, let me show you what has been
20 marked for identification as Government's Exhibits W93A and
21 W93B, and ask if you recognize them?

22 A. Yes, sir, I do.

23 Q. Starting with 93B, what do you recognize that to
24 be?

25 A. 93B is a white plastic bag containing various

1 cassette tapes that I removed from the bedroom, specifically
2 the back of the bed. They had a sliding shelf attached to
3 the back of the bed and what you would call your backboard,
4 and these tapes were contained within that.

5 Q. You personally seized them?

6 A. Yes, sir, I did.

7 Q. When you seized them, were they contained in the
8 bag that is marked Government's Exhibit W93B?

9 A. There were a few tapes in the bag. The rest were
10 laying loose in, as I said, that shelf thing in the bed. I
11 used the bag to put the rest of the tapes in.

12 Q. How do you know that that's the same bag that you
13 used that day to collect the tapes?

14 A. My initials are on the bag, sir.

15 Q. Have you had a chance to examine the contents of
16 W93B before your testimony here today?

17 A. Yes, sir, I have.

18 Q. Did the tapes contained therein have the same
19 general physical appearance as the ones that you seized on
20 March 4, 1993?

21 A. Yes, sir.

22 Q. If you would put that aside and pick up
23 Government's Exhibit W93A, do you recognize that item?

24 A. Yes, sir, I do.

25 Q. How do you recognize it?

1 A. These again are a large amount of cassette tapes
2 that we removed from the bedroom, specifically the closet in
3 the bedroom on the top shelf. Again, we utilized the bag in
4 the bedroom to put the tapes in.

5 Q. Did you personally seize the tapes in 93A?

6 A. Yes, along with another agent, Miss Pickett.
7 Miss Pickett is not very tall, she couldn't reach the shelf.
8 So I had to help pull them down for her.

9 Q. Do you recognize the bag as the bag that you used
10 that day to collect the tapes?

11 A. Yes. Miss Pickett's initials are on the bag
12 also.

13 MR. KHUZAMI: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q. Special Agent Kyle let me now show you what has
16 been marked as Government's Exhibit W90 for identification,
17 ask you to take a look at it, open it up and look inside.
18 Do you recognize Government's Exhibit W90 and its contents?

19 A. Yes, sir, I do.

20 Q. Did you have an opportunity to seize that item on
21 March 4, 1993?

22 A. Yes, I did.

23 Q. Where did you take it from?

24 A. The closet directly in the common hallway. If
25 you remember yesterday when I described, when you walk

1 through the front door you have to close the front door and
2 there is a closet directly behind that. In this closet the
3 briefcase was there.

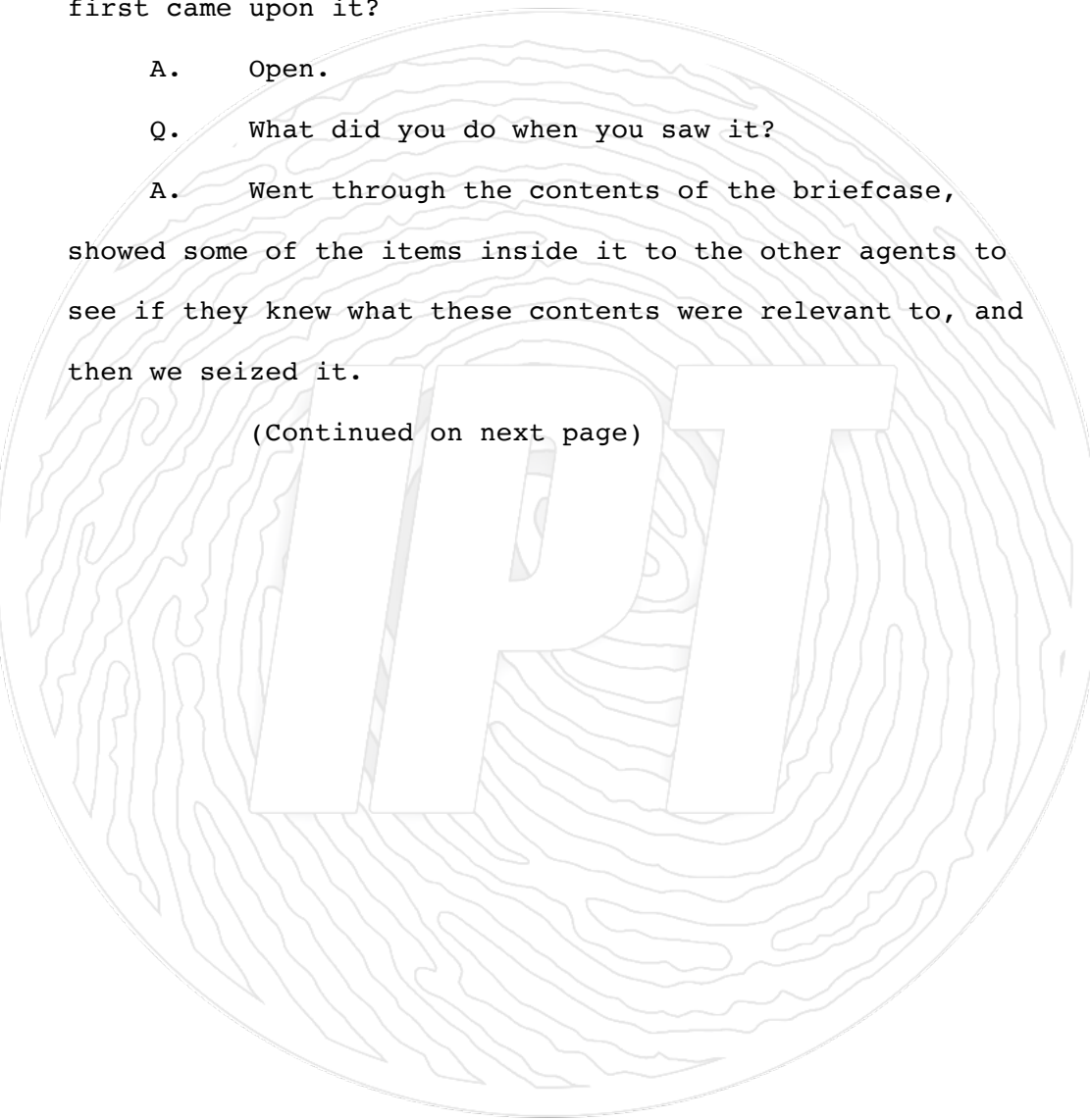
4 Q. In what condition was the briefcase when you
5 first came upon it?

6 A. Open.

7 Q. What did you do when you saw it?

8 A. Went through the contents of the briefcase,
9 showed some of the items inside it to the other agents to
10 see if they knew what these contents were relevant to, and
11 then we seized it.

12 (Continued on next page)



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1 Q. Prior to your testimony today, have you had an
2 opportunity to review the contents of Exhibit W90?

3 A. Yes, I have.

4 Q. Did you recognize particular items inside as
5 items that you saw on March 4, 1993?

6 A. Yes, sir. Specifically, I recognize various
7 immigration type papers that were in there, a couple of
8 documents that appear to be to whom it may concern, like you
9 were swearing to an affidavit of some kind or getting
10 something notarized. There were also pictures in there that
11 I recall of a gentleman in a uniform and some other various
12 items. There was a notebook in there with a lot of
13 equations on it. It looked like a student's notebook of
14 some kind.

15 MR. KHUZAMI: Your Honor, at this time I would
16 offer Government Exhibit W90 and its contents. It is a
17 limited offering, your Honor, except for items that we
18 specifically introduce or counsel for defense may wish to
19 specifically introduce. We're offering it not for the
20 substance of the items contained therein, but there may be
21 testimony about certain identifying fingerprints that were
22 found on those documents.

23 THE COURT: On the documents contained in the
24 briefcase?

25 MR. KHUZAMI: That's correct.

1 MS. STEWART: May I have a brief voir dire,
2 Judge.

3 THE COURT: Yes, you may.

4 VOIR DIRE EXAMINATION

5 BY MS. STEWART:

6 Q. Agent Kyle, could you give us the approximate
7 dimension for the record of that briefcase.

8 A. I would say the briefcase appears to be about
9 maybe 15, 16 inches in height, if it was standing on end,
10 and it's about four inches deep, and I would say maybe 20
11 inches in width.

12 Q. Was this briefcase locked when you came upon it
13 in the closet?

14 A. No, sir -- no, ma'am. Pardon me.

15 Q. I'm a ma'am. Yes, sir.

16 A. I'm sorry.

17 Q. That's OK.

18 A. I'm so used to saying "sir" to everybody.

19 Q. It's happened to me before.

20 Many of the documents in there are in Arabic I
21 think you said a moment ago.

22 A. I didn't state that, but, yes, there are what
23 appears to be Arabic. I don't know if that is what it
24 actually is.

25 Q. Were you working with an Arabic translator at the

1 time, and did you ask for an instantaneous translation of
2 what they might be about?

3 A. No, ma'am. That question did come up because
4 there was also a book that appeared to be written in a
5 language not familiar to me. But none of the agents in the
6 location recognized exactly what it is. We all assumed it
7 was Arabic, but I am not a language specialist, so I don't
8 know.

9 Q. Am I correct that in this search you were
10 basically seizing anything that you thought might be
11 pertinent to your investigation, is that right?

12 A. Anything within the parameters of the warrant or
13 anything that we believed to be pertinent, yes.

14 Q. As it sits there right now, it seems to be
15 stuffed with many, many papers. That is how it appeared to
16 you when you seized it, is that right?

17 A. Yes, ma'am.

18 MS. STEWART: I have nothing further. I would
19 like to approach, though, Judge.

20 THE COURT: Come on up.

21 (Continued on next page)

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1 (At the side bar)

2 MS. STEWART: I am not exactly understanding the
3 parameters of the offer.

4 THE COURT: You can ask Mr. Khuzami to explain
5 it, or I can explain what I understand. As I understand it,
6 the documents are not being offered for the substance of
7 what they contain, but only for fingerprints contained on
8 some of them.

9 MS. STEWART: All right.

10 MR. KHUZAMI: With the exception of some items
11 that have been taken out and I will be introducing, and
12 Mr. Ricco may be introducing some as well.

13 MS. STEWART: OK.

14 THE COURT: Also, obviously, with the exception
15 of things that defense counsel may introduce.

16 MR. PATEL: Let me just be sure that I
17 understand. If there is a chain of custody question as to a
18 document, that can be raised at the time you offer that
19 document as opposed to now are you saying?

20 MR. KHUZAMI: Sure. I mean, I don't know --
21 right. I don't know whether it would go to weight rather
22 than admissibility of the fingerprint.

23 THE COURT: You are talking about a fingerprint?

24 MR. PATEL: Not a fingerprint, your Honor. In
25 other words, there are certain documents that they pulled

1 out or say came out of this suitcase that they may introduce
2 very soon I suppose.

3 MR. KHUZAMI: Those you can raise at the time
4 that I offer them.

5 MR. PATEL: I want to make sure that I am not
6 waiving any objection as to that issue.

7 MR. BERNSTEIN: Relevance objections to specific
8 items coming out of the suitcase.

9 MR. KHUZAMI: You mean in the suitcase or stuff
10 that is independently offered?

11 MR. BERNSTEIN: Anything that comes out of there.

12 THE COURT: The only relevance, as I understand,
13 it, is the fingerprints. It is not what is on the document.
14 It is the fact that this defendant has a document with a
15 fingerprint of somebody else on it.

16 MS. STEWART: There is the book that was
17 supervised by Sheik Omar that is going to be introduced.

18 MR. KHUZAMI: Offered independently.

19 MS. STEWART: Independently.

20 THE COURT: That is a different story.

21 MS. STEWART: I don't know about fingerprints on
22 it. There are photographs from there, am I right?

23 MR. BERNSTEIN: The government may offer a
24 document for purposes of the fingerprint relevance. The
25 concern I have is if there is a document that on its face is

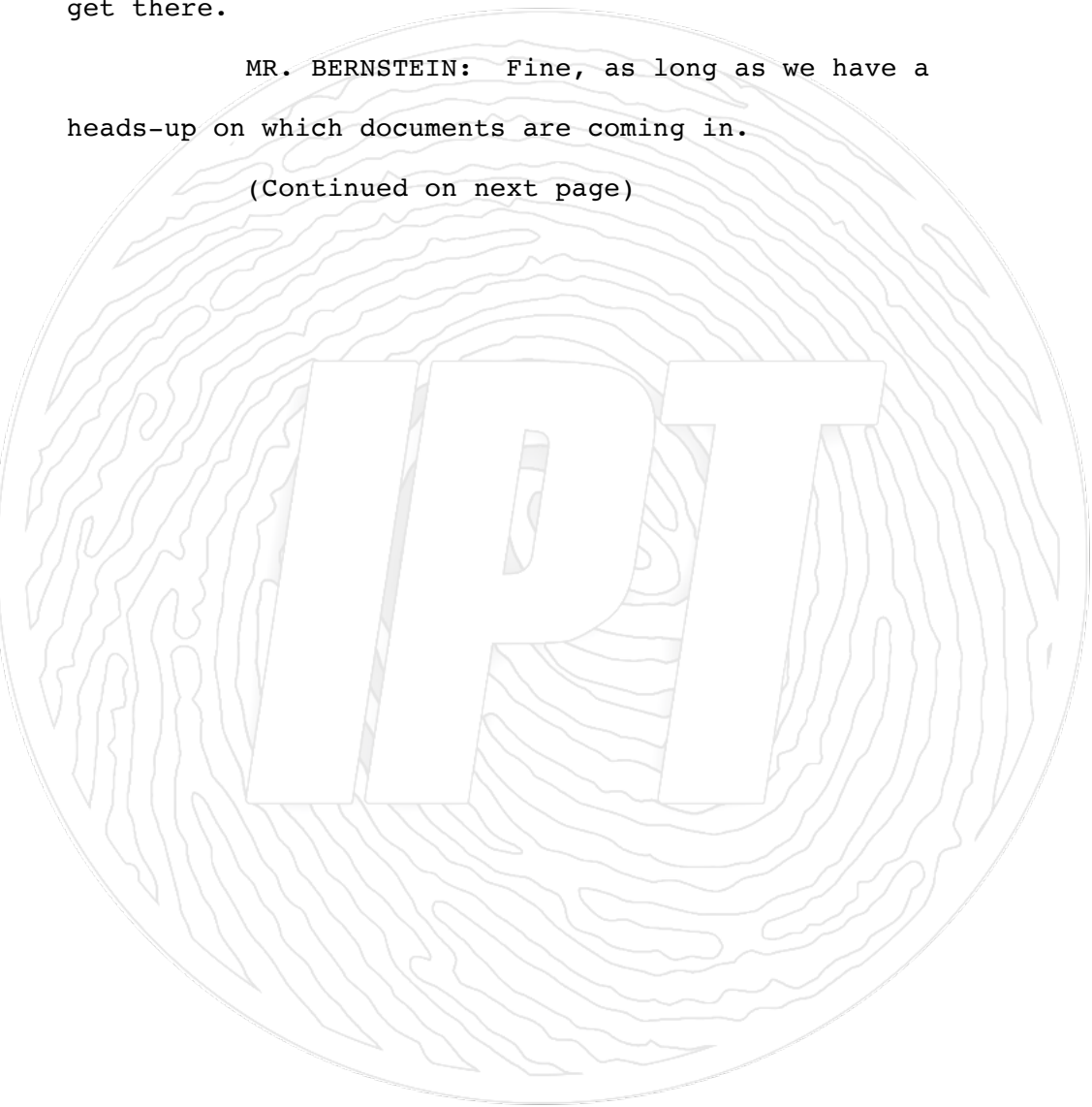
1 prejudicial and shouldn't come in for other reasons that we
2 have a mixed bag of relevance and nonrelevance, and that is
3 the --

4 THE COURT: You can jump off that bridge when we
5 get there.

6 MR. BERNSTEIN: Fine, as long as we have a
7 heads-up on which documents are coming in.

8 (Continued on next page)

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1 (In open court)

2 MR. KHUZAMI: I guess I would renew my limited
3 offer, your Honor.

4 MS. STEWART: No objection, your Honor.

5 THE COURT: There being no objection, and the
6 limited offer with regard to W90, it is received.

7 (Government's Exhibit W90 for identification was
8 received in evidence)

9 DIRECT EXAMINATION (Continued)

10 BY MR. KHUZAMI:

11 Q. Special Agent Kyle, let me show you what's been
12 marked as Government Exhibit W90A-1 through A-7. I ask you
13 to take a look at those items. Do you recognize those
14 items?

15 A. Yes, sir, I do.

16 Q. Do you recognize those as items that you obtained
17 from the suitcase you just testified about?

18 A. Yes, sir, they are.

19 Q. How do you recognize those as items you seized
20 from the suitcase?

21 A. I recall specifically looking at the pictures,
22 the outfit the one gentleman's wearing with the white cap
23 and also the sandals with the white socks that appear to be
24 like a -- by my observation and experience it looks like
25 somebody that's in a detention area or something. So that

1 struck me.

2 Q. As you sit here today, you recognize those as
3 items that you saw on March 4 in the suitcase at 34
4 Kensington?

5 A. Yes, sir.

6 MR. KHUZAMI: Your Honor, I would offer
7 Government Exhibit W90A-1 through A-7.

8 MR. PATEL: No objection.

9 THE COURT: W90A-1 through 7 are received without
10 objection.

11 (Government's Exhibits W90A-1 through A-7 for
12 identification were received in evidence)

13 MR. KHUZAMI: Your Honor, I would ask that the
14 jurors be permitted to turn to those items in their binders.

15 THE COURT: Those are in your binders under 90.

16 MR. KHUZAMI: W90 1 through 7. They were in the
17 loose materials from yesterday, but they have now been
18 placed in the binders.

19 THE COURT: They have been placed in the binders.
20 W90A-1 through 7. It is the relatively thin binder marked
21 as the W series.

22 MR. KHUZAMI: That is W90A-1 through 7.

23 May I approach, your Honor.

24 Q. Special Agent Kyle, let me place before you
25 what's been marked for identification as Government Exhibit

1 W90B, W90C-1 and 2, and W90D and ask you to take a look at
2 those. Special Agent Kyle, starting with Exhibit W90C-2, do
3 you recognize that item?

4 A. Yes, sir, I do.

5 Q. How do you recognize it?

6 A. This is one of the items I took out -- that I
7 observed in the briefcase that's since been removed, I
8 assume, for examination. It says, "To whom it may
9 concern" --

10 MR. PATEL: Objection.

11 THE COURT: Don't read it.

12 THE WITNESS: I'm sorry.

13 Q. Before you read it, do you recognize that as one
14 of the items that you took from the suitcase?

15 A. Yes, sir, I do.

16 Q. Without telling us what it says, how do you
17 recognize it as one of the those items?

18 A. Because of two things that are on the item that
19 struck me as one of the things that I have seen going
20 through the briefcase.

21 Q. Is one of those items the heading at the top?

22 A. That's correct.

23 Q. One is the notary at the bottom?

24 A. Yes. There was odd writings at the bottom which
25 struck me.

1 MR. KHUZAMI: Your Honor, at this time I would
2 offer Government Exhibit W90C-2.

3 MR. PATEL: No objection, your Honor.

4 May I just approach for one minute.

5 (Pause)

6 MR. PATEL: Thank you. No objection, your Honor.

7 THE COURT: W90C-2 is received without objection.

8 (Government's Exhibit W90C-2 for identification
9 was received in evidence)

10 MR. KHUZAMI: Your Honor, I would ask the jurors
11 be permitted to examine that item in their binders.

12 THE COURT: All right. That is under the W90C
13 tab, C-2.

14 (Pause)

15 Q. Special Agent Kyle, if you would put that aside
16 and pick up the item marked Government Exhibit W90B as in
17 boy. I ask you if you recognize that item as one of the
18 items you seized from the suitcase at 34 Kensington on March
19 4, 1993.

20 MR. PATEL: Objection. Leading.

21 THE COURT: That is sustained.

22 Q. Special Agent Kyle, do you recognize that item?

23 A. Yes, sir, I do.

24 Q. How do you recognize it?

25 A. This is one of the items I observed in the

1 briefcase.

2 Q. How do you recognize it as one of the items you
3 observed in the briefcase?

4 A. I recall that it looked like a passport photo.

5 Q. OK. You saw that item in the suitcase on March
6 4, 1993?

7 A. Yes, sir, I did.

8 MR. KHUZAMI: Your Honor, I would offer
9 Government Exhibit W90B in evidence.

10 MR. PATEL: May I have a voir dire, your Honor?

11 THE COURT: Yes, you may.

12 VOIR DIRE EXAMINATION

13 BY MR. PATEL:

14 Q. Good morning, Agent Kyle.

15 A. Good morning, sir.

16 Q. The exhibit that you hold in your hand, the
17 photograph, did you remove that from the suitcase?

18 A. No, sir. It was in the briefcase when it was put
19 into evidence.

20 Q. So you took this entire briefcase with all its
21 contents and you brought it to the FBI headquarters in
22 Newark?

23 A. Yes, sir.

24 Q. You and other agents -- someone else removed this
25 from the suitcase, is that fair to say?

1 A. It is initialed by the lab person, so I assume it
2 was removed for lab examination.

3 Q. Did you remove it from the suitcase?

4 A. No, sir.

5 Q. I assume you logged it into some kind of evidence
6 room or something like that?

7 A. The contents of the search from that residence
8 were all taken to a central command post, and there they
9 were all logged into evidence, yes, sir.

10 Q. What else did you have to do with that suitcase?

11 A. Nothing, sir.

12 Q. So you didn't see anyone remove the photograph,
13 did you?

14 A. No, sir.

15 Q. You didn't initial the photograph?

16 A. No, sir.

17 Q. When you were in the apartment, you were looking
18 through this, there were thousands of documents, is that
19 fair to say, in that suitcase?

20 A. I don't know if there were thousands, but there
21 is a large amount of paper in there.

22 Q. It was bulging, you had trouble closing it, is
23 that fair to say?

24 A. Sir, you could not close it.

25 Q. You could not close it.

1 So there were more items in it at that time then
2 there are today?

3 A. That's correct, sir.

4 Q. Your testimony is that among the -- well, how
5 many photographs were in the suitcase?

6 A. There was numerous Polaroids, color, but I
7 believe this was the only one of this kind that I saw in
8 that briefcase.

9 Q. There were other --

10 A. Correction. There was one other one, but it was
11 stapled to an immigration form and that was color. This is
12 black and white.

13 Q. There were numerous family photographs in the
14 suitcase?

15 A. Polaroid nature, yes.

16 Q. There were some photographs you said of a person
17 in uniform, is that correct?

18 A. That's correct, sir.

19 Q. There were numerous photographs of this person in
20 uniform?

21 A. I don't know the definition of "numerous," but
22 there was a couple or several.

23 Q. Several. There were photographs that were taken
24 of people outside the United States or some scene that
25 looked like it was outside the United States?

1 A. I would have no way of knowing where that
2 location was, sir.

3 Q. Let's put it this way: There were people in
4 non-Western dress, is that fair to say?

5 A. We have numerous people like that in this area,
6 sir, so that wouldn't give me a location.

7 Q. Fair enough. There were family-type photographs?

8 A. Yes, sir.

9 Q. Lots of them?

10 A. Excuse me.

11 Q. Lots of them?

12 A. As I said, there were several Polaroids inside
13 the briefcase.

14 Q. Other than Polaroids, were there -- the only
15 photographs you recall were Polaroids?

16 A. No, there were some other photos, but none of
17 this nature.

18 Q. Where were you when you first noticed this
19 particular photograph?

20 A. On my knees in the hall closet going through the
21 briefcase.

22 Q. How long were you on your knees in the hall
23 closet?

24 A. Going through the briefcase, about maybe five to
25 ten minutes. I took several items from the briefcase to

1 show to other agents and then put them back in the
2 briefcase.

3 Q. Was this photograph one of the items you showed
4 to other agents?

5 A. I believe it may have been, yes.

6 Q. Do you know if your fingerprints were found on
7 that item?

8 A. No, sir -- I'm sorry.

9 MR. KHUZAMI: Objection.

10 Q. What were the lighting conditions like in the
11 hall closet when you looked at this photograph?

12 A. Fine, sir. I was actually out of the closet.

13 MR. PATEL: Thank you.

14 No objection.

15 THE COURT: W90B is received without objection.

16 (Government's Exhibit W90B for identification was
17 received in evidence)

18 MR. KHUZAMI: Your Honor, I would ask the jurors
19 to be permitted to examine that item in their binders. 90B
20 as in boy.

21 THE COURT: W90B.

22 (Pause)

23 DIRECT EXAMINATION (Continued)

24 BY MR. KHUZAMI:

25 Q. Special Agent Kyle, I wonder if you might now

1 pick up what's been marked as Government Exhibit W90C-1.

2 Without telling us what's on that document, do
3 you recognize it?

4 A. Yes, sir, I do.

5 Q. What do you recognize it as?

6 A. One of the documents that was in the briefcase
7 when I seized it.

8 Q. Again, without telling us what it says, how do
9 you recognize it as one of the items you seized?

10 A. Due to the contents that are on the top of the
11 page and also because of the signature.

12 Q. When you refer to the contents, are you referring
13 to what's written there?

14 A. What's written on the page, sir.

15 Q. OK.

16 A. It is a handwritten document.

17 MR. KHUZAMI: Your Honor, I would offer
18 Government Exhibit W90C-1.

19 MR. PATEL: No objection.

20 THE COURT: W90C-1 is received without objection.

21 (Government's Exhibit W90C-1 for identification
22 was received in evidence)

23 MR. KHUZAMI: I would ask that the jurors be
24 permitted to examine that item.

25 THE COURT: They may.

1 MR. PATEL: Your Honor, I ask that the jurors
2 look at both C1 and C2.

3 THE COURT: They may examine C1 and C2.

4 (Pause)

5 THE COURT: Go ahead.

6 Q. Special Agent Kyle, if you would pick up what's
7 been marked as Government Exhibit W90D as in dog, I am going
8 to ask you if you recognize that item.

9 A. Yes, sir, I do.

10 Q. Without telling us what is written on there, how
11 do you recognize it?

12 A. Specifically because of a name on it and a
13 specific location.

14 Q. Is that one of the items you seized on March 4?

15 A. Yes, sir, from the briefcase.

16 MR. KHUZAMI: Your Honor, I would offer
17 Government Exhibit W90D into evidence.

18 MR. PATEL: May I just approach briefly, your
19 Honor.

20 (Pause)

21 MR. PATEL: No objection. Thank you.

22 THE COURT: W90D is received without objection.

23 (Government's Exhibit W90D for identification was
24 received in evidence)

25 MR. KHUZAMI: I ask that the jurors be permitted

1 to examine that item.

2 THE COURT: They may.

3 (Pause)

4 MR. KHUZAMI: Your Honor, may I approach.

5 THE COURT: Go ahead.

6 Q. Special Agent Kyle, let me show you what's been
7 marked as Government Exhibit W94 for identification and ask
8 you to take a look at it. Do you recognize that item?

9 A. Yes, sir, I do.

10 Q. What do you recognize it to be?

11 A. This is a book that was inside the briefcase when
12 I recovered the briefcase.

13 Q. How do you know that Exhibit 94 is the book that
14 was in the briefcase?

15 A. One, because of the frame in blue on the back of
16 the book. I recall that. Plus there is a design inside,
17 which I assume is the front or back, I can't tell, inside
18 the first page. I remember that emblem that is inside it.

19 Q. You saw that at the time of the search?

20 A. Yes, sir, I did.

21 MR. KHUZAMI: Your Honor, I would offer
22 Government Exhibit 94 into evidence.

23 MS. STEWART: No objection, Judge.

24 THE COURT: W94 is received without objection.

25 (Government's Exhibit W94 for identification was

1 received in evidence)

2 MR. KHUZAMI: Your Honor, lastly, pursuant to
3 stipulation with counsel for defendant Sheik Abdel Rahman, I
4 would like to read the title page to Government Exhibit W94.

5 THE COURT: Go ahead.

6 MR. KHUZAMI: It reads, "The Ideological and the
7 Legitimate Perspectives for the Islamic Group, Islamic Work
8 Charter, prepared by Dr. Najeh Ibrahim, Assam Abdel Majid,
9 Issam Al-Dean Barballah, supervised by Honorable Dr. Omar
10 Abdel Rahman."

11 No further questions.

12 THE COURT: Cross?

13 Ms. Stewart?

14 CROSS-EXAMINATION

15 BY MS. STEWART:

16 Q. Agent, picking up where we left off with this
17 book, you don't know what the subject matter contained
18 therein is, do you?

19 A. No, ma'am.

20 Q. As far as you know, it could just be a guide to
21 good Muslim living, is that right?

22 A. It could be anything, ma'am.

23 Q. Do you have any notion of what is meant by
24 "supervised by," what that entailed or what that meant, that
25 the authors were supervised by Dr. Abdel Rahman?

1 A. No, ma'am.

2 MS. STEWART: I have nothing further, Judge.

3 THE COURT: Mr. Patel?

4 MR. PATEL: Judge, I have a few questions.

5 THE COURT: Go ahead.

6 MR. PATEL: With your Honor's permission, it
7 might go faster if I do it up there.

8 THE COURT: That is fine. You can do it from up
9 there. Just talk into the microphone.

10 MR. PATEL: Do you have the exhibits?

11 (Counsel conferred)

12 CROSS-EXAMINATION

13 BY MR. PATEL:

14 Q. Agent Kyle, showing you what's been marked
15 Government Exhibits W90A-1 through 7, you mentioned that in
16 your experience these look like photos taken at a detention
17 area, is that correct?

18 A. If I may, sir, specifically W90A-3 because of the
19 slippers, the white socks, along with where he's sitting, in
20 kind of a blank room, yes.

21 Q. You are familiar that there are a number of --
22 well, jails and prisons where inmates can have their
23 photographs taken with family and friends, is that correct?

24 A. Personally, no, sir, I am not. But it looks like
25 a detention area to me.

1 Q. I would like to draw your attention to the
2 background of photographs W90A-4, 5 and 6.

3 A. The background, sir?

4 Q. The background.

5 I would ask you to look at what's been marked as
6 defendant Nosair's Exhibit PP as in Peter Pan, 3.

7 A. Yes, sir.

8 Q. Is it fair to say that the backgrounds are
9 similar or the same?

10 A. Yes, sir.

11 Q. Thank you.

12 These photographs, the ones I just showed you,
13 and the one that is the defense exhibit, and the Government
14 Exhibits W90A-1 through 7, those are not surveillance
15 photographs, are they?

16 A. No, sir.

17 Q. The people are facing the camera smiling?

18 A. Yes, sir.

19 Q. Turning your attention to W90C-1 and 2, these are
20 both affidavits addressed to whom it may concern, is that
21 correct?

22 A. That is correct, sir, one typed and one written.

23 Q. OK. The handwritten one, C-1, that's signed by
24 Mr. Nosair, is it not?

25 A. By an individual Nosair, yes.

1 Q. And the other one is signed by someone else?

2 A. Ayyad, sir, if I am pronouncing that correctly.

3 Q. This photograph in Government Exhibit W90B, is it
4 fair to say you don't know when this photograph was taken?

5 A. No, sir, I don't.

6 Q. You don't know how it got into that suitcase?

7 A. No, sir, I don't.

8 Q. When it got into that suitcase?

9 A. No, sir.

10 Q. Or who put it in that suitcase?

11 A. No, sir.

12 MR. PATEL: Thank you. Just a moment, your
13 Honor.

14 (Pause)

15 MR. PATEL: Your Honor, may I just either pass to
16 the jury or display to the jury the photographs of the back
17 drop that the witness just identified, or we can do it --

18 THE COURT: We are talking about Peter Pan 3?

19 MR. PATEL: Yes.

20 THE COURT: First off, are you offering it?

21 MR. PATEL: It is in.

22 THE COURT: It is in. Fine.

23 Do you want to display it?

24 MR. PATEL: If I might.

25 THE COURT: Go ahead.

1 MR. PATEL: Thank you, your Honor.

2 (Pause)

3 MR. PATEL: I have no further questions, your
4 Honor.

5 THE COURT: Anyone else?

6 Mr. Ricco?

7 CROSS-EXAMINATION

8 BY MR. RICCO:

9 Q. Good morning Agent Kyle.

10 A. Good morning, sir.

11 Q. At the time of the search of 34 Kensington, the
12 FBI also searched the vehicle that was parked nearby, isn't
13 that correct?

14 A. I am not aware of that fact, sir.

15 Q. You are not?

16 A. No, sir, I am not.

17 Q. You were part of the search team?

18 A. I was part of the search team inside the
19 residence, that's correct.

20 Q. So the only warrant that you were involved with
21 was the search of the apartment?

22 A. My only involvement in the search that day, sir,
23 was the trash cans and inside the apartment, that's correct.

24 Q. Were you at any time made aware that the Bureau
25 searched a 1978 Chevy Nova?

1 A. No, sir.

2 MR. RICCO: If I can approach the witness, your
3 Honor.

4 THE COURT: Yes.

5 Q. During the search of 34 Kensington, there were
6 several documents that were contained in the briefcase that
7 you just testified to, isn't that right?

8 A. Yes, sir.

9 THE COURT: Excuse me, Mr. Ricco. It is hard to
10 hear you. If you could --

11 MR. RICCO: I am sorry.

12 THE COURT: Thank you.

13 Q. Some of those documents were correspondences,
14 isn't that correct?

15 A. I believe so, yes.

16 Q. Could you take a look at that.

17 A. Yes, sir.

18 Q. Some of those correspondences were addressed to
19 Mr. Salameh --

20 THE COURT: Excuse me, can we get some indication
21 of what he is being shown.

22 MR. RICCO: I'm sorry, your Honor. This will be
23 marked as Defendant El-Gabrowny R.

24 THE COURT: Go ahead.

25 Q. Is this a copy of a letter that was recovered

1 from the briefcase at 34 Kensington?

2 A. I don't specifically recall it, sir.

3 MR. RICCO: Will the government stipulate?

4 MR. KHUZAMI: Stipulated.

5 MR. RICCO: We move, your Honor, Defendants' R
6 into evidence.

7 MR. KHUZAMI: No objection.

8 THE COURT: All right. R is received without
9 objection.

10 (Defendant El-Gabrownny Exhibit R for
11 identification was received in evidence)

12 Q. This would be a correspondence to Mohammed
13 Salameh postdated November 1, 1992?

14 A. That's what it says, sir.

15 Q. And it is addressed to him at 17 Park Street?

16 A. That's what the address reads, sir.

17 Q. But it was recovered at 34 Kensington Street?

18 A. As I have heard stipulated to, yes, sir.

19 Q. Also I think you indicated that there were
20 various identifications?

21 A. Yes, sir, there were.

22 Q. Was one of those identifications an examination
23 or learner's permit for a man by the name of George
24 Irisarry?

25 A. The name is vaguely familiar to me, but I don't

1 recall specifically the document.

2 Q. Do you recall recovering the birth certificate of
3 a man by the name of George Irisarry?

4 A. There were birth certificates inside the
5 briefcase, yes, sir.

6 MR. RICCO: At this point, your Honor, I would
7 like to have Defendant's S collectively as two documents.
8 One would be a birth certificate and the other is the
9 examination or learner's permit of George Irisarry.

10 THE COURT: S1 and S2. And can we get a spelling
11 on the name.

12 MR. RICCO: I am sorry. I-R-I-S-A-R-R-Y. First
13 name George.

14 THE COURT: All right.

15 Q. At this time were these documents recovered from
16 the Kensington search?

17 A. I believe so, but I don't recall specifically the
18 document.

19 MR. RICCO: Will the government stipulate?

20 MR. KHUZAMI: It is stipulated that it was
21 recovered from the search.

22 THE COURT: From the search. All right.

23 MR. RICCO: At this time we move Defendant's S
24 into evidence.

25 MR. KHUZAMI: No objection.

1 THE COURT: All right. El-Gabrowny S1 and S2 are
2 received without objection.

3 (Defendant's Exhibits El-Gabrowny S1 and S2 for
4 identification were received in evidence)

5 Q. Do you recall receiving letters addressed to
6 Mr. Salameh at 34 Kensington from the search?

7 A. Yes, I do.

8 Q. I am going to show you a document marked
9 El-Gabrowny T, and ask you if you recognize that.

10 A. I do recall communications with this same title
11 at the top, the logo, and I do recall it being to his name.

12 MR. RICCO: El-Gabrowny 2, your Honor, is a
13 letter from the Jersey City State College addressed to
14 Mr. Salameh, and at this time we would like to move
15 El-Gabrowny T into evidence.

16 MR. KHUZAMI: No objection.

17 THE COURT: T is received without objection.

18 (Defendant El-Gabrowny Exhibit T for
19 identification was received in evidence)

20 MR. RICCO: Thank you, your Honor.

21 Q. And this is a letter addressed to Mr. Maji
22 Salameh at 34 Kensington Avenue, Apartment 4?

23 A. That's correct, sir.

24 THE COURT: "This" being U?

25 MR. RICCO: I'm sorry?

1 THE COURT: Exhibit U?

2 MR. RICCO: The same exhibit, your Honor.

3 Q. It is dated September 11, 1992, isn't that
4 correct?

5 A. That's correct.

6 Q. Do you recall that several pieces of blank
7 stationery were recovered from the search at Kensington?

8 A. These two look familiar to me, sir. The first
9 one there you were holding does not, but this one because of
10 this symbol does look familiar to me.

11 MR. RICCO: At this time, your Honor, I would
12 like to have the exhibit that has been shown to Agent Kyle
13 as El-Gabrowny U1 and 2. And they are blank stationery from
14 the Abu Bakr mosque.

15 THE COURT: All right.

16 MR. RICCO: I would like to move those into
17 evidence.

18 MR. KHUZAMI: No objection.

19 THE COURT: El-Gabrowny U1 and U2 are received
20 without objection.

21 (Defendant El-Gabrowny Exhibit U1 and U2 for
22 identification were received in evidence)

23 Q. Do you recall recovering these two documents,
24 which would be collectively marked as El-Gabrowny's V1 and
25 2, and they would be notifications from the New Jersey State

1 Motor Vehicle Services?

2 A. I do recall these type of forms being in there,
3 sir, yes.

4 MR. RICCO: At this point, your Honor, I would
5 move El-Gabrownny's U1 and 2 into evidence.

6 THE COURT: V1?

7 MR. RICCO: V1 and 2 into evidence.

8 I'm sorry, your Honor.

9 MR. KHUZAMI: No objection.

10 THE COURT: V1 and V2 are received without
11 objection.

12 (Defendant El-Gabrownny Exhibits V1 and V2 for
13 identification were received in evidence)

14 Q. These appear to be notifications indicating that
15 the tester has been rejected for a driver's license in the
16 state of New Jersey?

17 A. That's what it appears to be, yes, sir.

18 Q. They are addressed to Mohammed Salameh at 17 Park
19 Street, isn't that correct?

20 A. Yes, sir.

21 Q. It is dated August 27, 1992?

22 A. There is a couple of dates on the form, sir.
23 There is also a July -- it appears to be 3rd or 23rd on
24 there. There is also an August 12, 1992 and a July 30,
25 1992. There are various stamps on it, sir.

1 Q. All rejected?

2 A. I have no way of knowing that they were all
3 rejected, but those are the dates that are on the document.

4 MR. RICCO: Thank you.

5 I move these in.

6 THE COURT: They are in.

7 (Defendant El-Gabrowny Exhibits V1 and V2 for
8 identification were received in evidence)

9 MR. RICCO: Thank you.

10 Q. You also found various --

11 MR. RICCO: One second. Excuse me, your Honor.

12 (Counsel conferred)

13 Q. Also during the search you recovered various bank
14 statements, and the bank statements were from -- Statewide
15 Savings Bank, was one of the banks?

16 A. Yes, sir, I recall those.

17 Q. And they were addressed to Mohammed Salameh at 34
18 Kensington Avenue, Apartment 8, Jersey City, New Jersey,
19 isn't that correct?

20 A. Yes. But they included a middle name now also.

21 Q. The middle name was Amin, A-M-I-N?

22 A. That's correct.

23 Q. Those statements were for dates in 1992?

24 A. That's correct. January and February of '92.

25 Q. But there were other bank statements recovered

1 from the location also?

2 A. I recall several documents like that, yes, sir.

3 Q. There were bank statements from Natwest Bank, if
4 you recall?

5 A. I can't say specifically, but I believe they
6 were.

7 MR. RICCO: Will the government stipulate to
8 that?

9 MR. KHUZAMI: So stipulated.

10 MR. RICCO: I have no further questions. Thank
11 you very much.

12 THE WITNESS: You're welcome, sir.

13 THE COURT: Ms. London, representing
14 Mr. Elhassan.

15 CROSS-EXAMINATION

16 BY MS. LONDON:

17 Q. Good morning, Special Agent Kyle.

18 A. Good morning, ma'am.

19 Q. Special Agent Kyle, when you executed the search
20 at 34 Kensington Avenue on March 4, 1993, if you know, was
21 this after the arrest of Mohammed Salameh?

22 A. I have no way of knowing that, ma'am.

23 Q. Would it be fair to say that Mr. Salameh was not
24 present during your search?

25 A. I don't know who he is, sir -- or ma'am, I'm

1 sorry -- so I don't know if he was or not. There was a
2 gentleman in the building at that time, but I don't know
3 who that person is.

4 Q. Would it be fair to say that -- were there any
5 people in the apartment when you entered?

6 A. No. There were two people removed by the entry
7 team, and I observed them in the hallway when I walked
8 through.

9 Q. That would be a man and a woman, is that correct?

10 A. That's correct.

11 Q. You did not inquire as to the identity of these
12 people?

13 A. No, ma'am. We had specific assignments that day.
14 I had no reason to know who those individuals were.

15 Q. You wrote a report on the search, did you not,
16 Agent Kyle?

17 A. There was a report drafted which we signed off
18 on, yes.

19 Q. Did you have an opportunity to read that report?

20 A. Yes, I did.

21 Q. That report contained the names of the two
22 individuals in the apartment at that time, isn't that right?

23 A. It may have. I don't recall at this time.

24 Q. When you entered that apartment, it would be fair
25 to say that there were a considerable number of people in

1 the search team, isn't that right?

2 A. In the search team itself?

3 Q. No, connected with the search who were at the
4 apartment.

5 A. There was sufficient enough agents to gain entry,
6 secure the area, and then also a separate search team.

7 Q. And there were members of the FBI SWAT team
8 present, were there not?

9 A. They were the entry team, ma'am.

10 Q. And also present were individuals from the New
11 York City Bomb Squad, isn't that correct?

12 A. There was, I believe, one or two bomb squads
13 present, yes.

14 Q. And individuals from the New York State Police
15 Bomb Squad were also present, isn't that correct?

16 A. I don't recall specifically which bomb squads
17 were there. I do recall that they had at least one or two
18 bomb squads there.

19 Q. There was also a bomb dog present, right?

20 A. That's correct.

21 Q. That bomb dog was present, and, in fact, did
22 conduct a sweep of the area, isn't that right?

23 A. All three of those teams did their functions
24 prior to our entry and search.

25 Q. So when you say "did their functions," would it

1 be fair to say that the bomb dog did a sweep of the
2 apartment with the SWAT team, isn't that right?

3 A. That is what I am aware of, yes.

4 Q. Bomb technicians also made a sweep of the
5 apartment, isn't that correct?

6 A. That's what I was told, ma'am, yes.

7 Q. Would it be fair to say that you did an extensive
8 search in that apartment?

9 A. Yes, ma'am.

10 Q. In fact, you searched outside the apartment in
11 trash cans, isn't that right?

12 A. That's correct.

13 Q. In fact, there were about six trash cans that you
14 searched outside, right?

15 A. I believe there were five or six cans there, yes.

16 (Continued on next page)

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1 Q. And inside the apartment you searched a kitchen,
2 correct?

3 A. Kitchen was searched.

4 Q. A bedroom?

5 A. That is correct.

6 Q. Living room?

7 A. Yes.

8 Q. Bathroom?

9 A. Yes.

10 Q. The furniture within those rooms?

11 A. Yes, ma'am.

12 Q. And all of the items in closets and drawers,
13 etc., isn't that right?

14 A. Yes, ma'am.

15 Q. And also present during this search there were
16 forensic chemists, isn't that right?

17 A. I don't have any knowledge whether there were or
18 not, ma'am.

19 MS. LONDON: May I approach the witness, your
20 Honor?

21 THE COURT: Yes.

22 Q. Agent Kyle, I am showing you what has been marked
23 for identification as Government's Exhibit 3587-A, and I
24 would ask you to look at page 2 of this report to see if
25 this refreshes your recollection.

1 A. Yes, ma'am. I read what it says here but I was
2 not aware of it.

3 Q. Don't read, just -- so it is your testimony that
4 you were not personally aware that there were forensic
5 chemists doing tests in the apartment?

6 A. That is correct.

7 MS. LONDON: I have no further questions.

8 THE COURT: Anyone else?

9 MS. AMSTERDAM: I just have a couple.

10 THE COURT: Ms. Amsterdam, representing
11 Mr. Khallafalla.

12 CROSS-EXAMINATION

13 BY MS. AMSTERDAM:

14 Q. Good morning, Agent.

15 A. Good morning.

16 Q. Is the apartment that you are speaking about at
17 34 Kensington avenue the only apartment that was searched in
18 that building that day?

19 A. No, I believe there was an apartment above that
20 that they want up to search, but I don't have any personal
21 knowledge of it.

22 Q. Would that have been the apartment of Mussab
23 Yasin, Y-A-S-I-N?

24 A. I have no idea.

25 Q. Are you aware of whether or not there is a

1 fugitive in the World Trade Center who has not been
2 apprehended, who was allegedly living in the apartment
3 upstairs?

4 A. I am aware of the fact that there is a fugitive
5 but I do not know that fugitive's residence prior to
6 becoming a fugitive.

7 Q. Do you know the nationality of that fugitive?

8 A. No, ma'am, I don't.

9 Q. Was he Iraqi?

10 A. Again, ma'am, I state, I don't know that person's
11 nationality.

12 MS. AMSTERDAM: Thank you, sir.

13 THE COURT: Anyone else?

14 MR. RICCO: Your Honor, may I speak to the
15 government?

16 THE COURT: Yes.

17 Anything else from this witness?

18 MR. FITZGERALD: No redirect.

19 THE COURT: You are excused.

20 THE WITNESS: Thank you, your Honor.

21 (Witness excused)

22 MR. FITZGERALD: The government calls mike
23 Feghali.

24

25 (Continued on next page)

1 MIKE FEGHALI,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 MR. FITZGERALD: May I have a moment with Mr.
5 Jacobs, your Honor?

6 (Pause)

7 MR. JACOBS: I am sorry, your Honor. It concerns
8 the previous witness.

9 MR. FITZGERALD: We will do it at the break.

10 MR. JACOBS: OK, fine.

11 DIRECT EXAMINATION

12 BY MR. FITZGERALD:

13 Q. Good morning, Mr. Feghali.

14 A. Good morning, sir.

15 Q. You have testified before that you are a
16 translator working with the federal government?

17 A. Yes, sir.

18 Q. Let me approach you, if I may, with what have
19 been premarked as Government's Exhibits 157T, 158T, and
20 159AT, BT and CT, together -- all preceded by W's, I
21 apologize -- not W's -- together with 157, 158 and 159A
22 through C, which were received in evidence. Looking at
23 W57T, do you recognize what that is?

24 THE COURT: You mean 157?

25 MR. FITZGERALD: 157T.

1 THE COURT: Do we or don't we have W's?

2 MR. FITZGERALD: No W's, sorry, Judge.

3 THE COURT: Go ahead.

4 A. This is a translation of the small blue plastic
5 book.

6 Q. By the small blue plastic book are you referring
7 to Government's Exhibit 157?

8 A. Yes, I do.

9 Q. Is that a translation you did yourself?

10 A. Yes, sir.

11 Q. Is that a fair and accurate translation of the
12 item which is marked Government's Exhibit 157?

13 A. I think so, yes, sir.

14 Q. Let me show you what has been marked as
15 Government's Exhibit 158T and ask you if you recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. This is a translation of the small telephone
19 book, white telephone book.

20 Q. By the white telephone book, are you referring to
21 Government's Exhibit 158?

22 A. Yes, I am.

23 Q. Is that a fair and accurate translation, is
24 Government's Exhibit 158T a fair and accurate translation of
25 the exhibit that is marked Government's Exhibit 158?

1 A. Yes, sir, it is.

2 Q. Finally showing you Government's Exhibits 159AT,
3 159BT and 159CT, do you recognize those exhibits?

4 A. Yes, I do.

5 Q. What are they?

6 A. These are translations of Arabic handwritten
7 texts.

8 Q. Can you tell us the exhibit numbers of the items
9 that are translated on 159AT through CT? Why don't I break
10 it down. 159AT.

11 A. Right, 159AT is a translation of 159A of Arabic
12 handwriting.

13 Q. 159BT?

14 A. Yes, sir. This is a translation of the Arabic
15 text of handwritten notes, too.

16 Q. Is the handwritten note 159B?

17 A. Yes, it is.

18 Q. Finally, Government's Exhibit 159CT. I will
19 withdraw CT for the moment.

20 Are 159AT and 159BT fair and accurate
21 translations of Government's Exhibits 159A and B?

22 A. Yes, they are.

23 MR. FITZGERALD: Your Honor, I would offer 157,
24 158, 159AT -- I am sorry -- 157T, 158T, 159AT and 159BT.

25 THE COURT: There being no objection, 157T, 158T,

1 159AT and 159BT are received without objection. Go ahead.

2 (Government's Exhibits 157T, 158T, 159AT and
3 159BT were received in evidence)

4 MR. FITZGERALD: Thank you. I have nothing
5 further.

6 THE COURT: Cross? None. You are excused, Mr.
7 Feghali. Thank you.

8 (Witness excused)

9 MR. McCARTHY: Should I proceed, your Honor? The
10 next witness will take 20, 25 minutes.

11 THE COURT: We will take a break now. Ladies and
12 gentlemen, please leave your notes and other materials
13 behind. Please do not discuss the case. We will resume in
14 a few minutes.

15 (Recess)

16 THE COURT: Mr. McCarthy.

17 MR. McCARTHY: Yes, your Honor. The government
18 calls Douglas Melvin.

19 DOUGLAS MELVIN,

20 called as a witness by the government,
21 having been duly sworn, testified as follows:

22 THE COURT: Go ahead.

23 MR. McCARTHY: Thank you, sir.

24 DIRECT EXAMINATION

25 BY MR. McCARTHY:

1 Q. Good morning, Mr. Melvin.

2 A. Good morning.

3 Q. Those are directional microphones. If you speak
4 directly into the one of them we should be able to pick up
5 what you are saying, but try to keep your voice nice and
6 loud.

7 A. OK.

8 Q. Can you tell us, please, what you do for a
9 living?

10 A. Yes, sir. I manage a Space Station Self-Store in
11 Jersey City.

12 Q. Where in Jersey City is Space Station Self-Store?

13 A. 69 Mallory Avenue.

14 Q. How long have you been the manager of the Space
15 Station?

16 A. Since September 1989.

17 Q. Were you the manager in late 1992 into early
18 1993?

19 A. Yes, I was.

20 Q. Would you explain to the ladies and gentlemen
21 what kind of business the Space Station self-storage is?

22 A. We rent out storage lockers to individual
23 customers so they can store their personal property.

24 Q. If you can, try to talk right into that
25 microphone. You can pull it a little closer to you, if you

1 wish.

2 A. OK.

3 Q. Repeat again what kind of business that is.

4 A. We rent out individual storage lockers to
5 different customers to store their personal property.

6 Q. Would you give us an idea of the physical layout
7 of your plant in Jersey City.

8 A. The facility comprises four buildings, three of
9 them connecting to make a U-shape and one down the middle in
10 between the other three.

11 Q. How high are the buildings?

12 A. Two stories.

13 Q. Is that where the different storage facilities
14 are located?

15 A. Yes, it is.

16 Q. Would you explain what kind of unit a customer
17 receives when he rents storage space at the Space Station.

18 A. It's a cubicle comprised of four walls and a
19 door, various sizes.

20 Q. You have various different sizes?

21 A. Yes, sir.

22 Q. Are you familiar with storage locker 4344?

23 A. Yes, sir.

24 Q. Can you give us an idea of the dimensions of that
25 storage locker?

1 A. That's a 10 by 10 footlocker.

2 Q. Which building is 4344 in?

3 A. That's in the central building, building number
4 4.

5 Q. Is the central building the building where the
6 office is?

7 A. Yes, it is.

8 Q. And that is where your office is?

9 A. Yes, it is.

10 Q. What floor in that building is storage locker
11 4344?

12 A. It's on the second floor.

13 Q. Mr. Melvin, would you describe for us any
14 security devices that you have and had on the premises in
15 1992 and 1993 that control both coming into the facility and
16 also that control a customer entering and leaving his
17 locker?

18 A. To get into the facility you need to use a code
19 number. There is a wooden gate at the entrance similar to a
20 gate on a toll booth. You need to punch in a locker number
21 and a code number to get through that gate. Then when you
22 go into the facility and you get to your storage space,
23 there is a lock on the actual storage space itself. You
24 need a key for that lock. And there is an alarm on the door
25 itself, which has a switch and a magnet on it.

1 Q. Let me start with the entrance and exit to the
2 facility. You say you have to punch a code in?

3 A. Yes, sir.

4 Q. What does the code consist of?

5 A. First, it is the customer's locker number and
6 then a 4-digit code number that the customer picks himself.

7 Q. That is not a code that you assign?

8 A. No, sir, it's not.

9 Q. You say there is some kind of gate that locks
10 ingress into the facility?

11 A. Yes, sir.

12 Q. Can you describe it briefly?

13 A. It's a wooden beam similar to like a toll booth
14 gate.

15 Q. Like if you were to get on a bridge and pay the
16 Tom, that kind of beam?

17 A. Yes, sir.

18 Q. That kind of beam, if you will, will obstruct a
19 car from going in and out, is that correct?

20 A. Yes, it is.

21 Q. How about a person?

22 A. It wouldn't stop a person from walking in, no.

23 Q. Generally speaking, what kind of items get stored
24 at the Space Station? That is, are they items that get
25 carried in on foot or are they driven in?

1 A. Usually people have some sort of vehicle to bring
2 them in and out.

3 Q. How do you get out of the facility?

4 A. There is an exit gate on the opposite side that
5 works in a similar fashion, and you use your code number to
6 get out as well.

7 Q. Now let's go to the doors that are on the storage
8 lockers themselves. Can you describe the fitting that is on
9 the door of the storage locker that a customer needs to deal
10 with in order to get into his storage space?

11 A. There is a switch on the frame of the door and
12 then there is like a magnet attached to the door itself and
13 they are in contact when the door is shut. But when you
14 open the door they come out of contact and that breaks a
15 circuit, telling us which door has been opened.

16 Q. Sir, what kind of recordkeeping do you have at
17 Space Station Storage in order to keep records of who comes
18 in and out of the facility and who comes in and out of the
19 different storage areas?

20 A. Both the gate and the switches on the doors are
21 hooked into an alarm computer that prints out like a
22 scrolling tape that shows the time and the date that the
23 different activities occurred.

24 Q. The scroll on the tape, where is that located?
25 Where is that kept?

1 A. That is kept in our office.

2 Q. Is it correct that each time somebody enters by
3 using a code, that is indicated in the scroll tape?

4 A. Yes, it is.

5 Q. And each time somebody enters into the locker
6 space area, that also is supposed to be entered on the
7 scroll tape?

8 A. Yes, it is.

9 Q. Are the exits from the individual locker areas
10 also entered on the scroll?

11 A. Yes, they are.

12 Q. Finally, when somebody exits the facility he has
13 to enter his code to do that?

14 A. Yes, that is on there as well.

15 Q. What happens if the device on the storage locker
16 space itself is disabled somehow?

17 A. At that point the actual opening and closing of
18 the customer storage space would stop showing up on the
19 computer system and on the printout.

20 Q. So it would only show that the person entered and
21 exited the facility but not how many times or even if he
22 went into his individual locker space?

23 A. Exactly.

24 Q. Could you give us an idea, generally speaking,
25 how could the switch on the storage locker area be disabled?

1 A. Somebody could pull the wires off or bend the
2 magnet out of position so that it wouldn't come in contact
3 with the switch.

4 Q. Mr. Melvin, let me direct your attention to
5 November 1992 and ask you whether there came a time that you
6 met a man who was introduced to you as Kamal Ibrahim?

7 A. Yes, I did.

8 Q. Do you recall when in November that was?

9 A. I believe it was at the end, like around November
10 30 or the 31st.

11 Q. Did there come a time that you learned Kamal
12 Ibrahim to be known by a different name?

13 A. Yes, I did.

14 Q. What was that name, sir?

15 A. Mohammad Salameh.

16 Q. Mr. Melvin, I am showing you Government's Exhibit
17 5E in evidence, and I ask you if you recognize the person
18 depicted in that photograph?

19 A. Yes, I do. That is Mohammad Salameh.

20 Q. Mr. Melvin, what occasioned your meeting
21 Mr. Salameh in November of 1992?

22 A. He rented a storage locker number 4344 from us.

23 Q. Mr. Melvin, I have placed before you Government's
24 Exhibit W2828 for identification, and I would ask you to
25 take a look at that document. Do you recognize it, sir?

1 A. Yes, I do.

2 Q. What do you recognize it to be?

3 A. That is one of our rental contracts made out for
4 space 4344.

5 Q. Is that the rental agreement that Mr. Salameh or
6 Kamal Ibrahim entered with you in November 1992?

7 A. Yes, it is.

8 MR. McCARTHY: Your Honor, the government offers
9 W2828.

10 MR. STAVIS: Objection. May I be heard at the
11 side bar, your Honor?

12 THE COURT: No. The objection is overruled.

13 (Government's Exhibit W2828 was received in
14 evidence)

15 Q. Mr. Melvin, I just want to read from this
16 document for a moment. The name given is Kamal Ibrahim of
17 13 Union Street, apartment 6, Jersey City, New Jersey?

18 A. Yes, it is.

19 Q. And there is listed for home telephone is
20 201-653-0125?

21 A. Yes, it is.

22 Q. Can you tell us where that information came from?

23 A. That was given to us by Mr. Ibrahim.

24 Q. And it also indicates that the transaction date
25 is November 30, 1992?

1 A. Yes, it does.

2 Q. What does that date indicate, sir?

3 A. That is the date the actual space was rented.

4 Q. I think you told us that locker 4344 is located
5 on the second floor.

6 A. Yes, it is.

7 Q. How does one gain entrance to the locker itself,
8 assuming that you are on the facility already?

9 A. You would have to have the key to the space.

10 Q. How would you get up to the second floor?

11 A. You could use the stairs or the elevator.

12 Q. I didn't mean to suggest that you needed to lean
13 all the way into the microphone. You can sit back as long
14 as you speak directly into it.

15 A. OK.

16 Q. You need to use the elevator to get up to 4344?

17 A. You can use that or use the stairs, yes.

18 Q. When you first met Mr. Salameh or Kamal Ibrahim
19 in November 1992, was there some discussion about the
20 elevator?

21 A. Yes, he did want storage space near the elevator.

22 MR. JACOBS: Did or didn't?

23 Q. You said, sir, that he did, D-I-D, want space
24 near the elevator?

25 A. Yes, sir.

1 Q. After you met Mr. Salameh, between the time of
2 December of 1992 and February of 1993, how often did you see
3 him?

4 A. Fairly frequently. He was in and out of the
5 facility, I would say as much as once a day, several times a
6 week at least.

7 Q. Was he sometimes in more than once a day?

8 A. Occasionally, yes.

9 Q. When you saw Mr. Salameh, would you generally see
10 him alone or in the company of other men?

11 A. Usually he was alone, sometimes he was with
12 someone else.

13 Q. Did you ever see him in a car?

14 A. Yes.

15 Q. How often?

16 A. The majority of the time I saw him.

17 Q. Did you ever see him in a car with another
18 individual?

19 A. Yes, I did.

20 Q. Do you recall any time specifically?

21 A. I couldn't tell you when that was, no.

22 Q. About how many other people did you see
23 Mr. Salameh with over the course of time between December
24 1992 and February 1993?

25 A. He frequently had one other person with him,

1 sometimes I saw him with as many as three or four other
2 people.

3 Q. Did you ever meet any of the other men that
4 Mr. Salameh traveled with?

5 A. Only one.

6 Q. Do you recall when that was?

7 A. It was towards the end of February 1993.

8 Q. During this period of time when you were seeing
9 Mr. Salameh, again between December 1992 and February of
10 1993, did you know what he was storing in locker 4344?

11 A. No, I did not.

12 Q. What was the nature of the conversations that you
13 had with Mr. Salameh during that period of time?

14 A. Not much of any. He primarily just came in and
15 out to get the keys for the elevator. You need to use keys
16 in order to access the elevator.

17 Q. Mr. Melvin, sir, I have placed before you what
18 have been marked for identification as Government's Exhibits
19 W724, which I think is directly in front of you at your
20 right hand, W724A1 and W724A2. Directing your attention
21 first to W724, do you recognize that item, sir?

22 A. Yes, I do.

23 Q. What do you recognize it to be?

24 A. It's a bag containing several of the tapes from
25 our security computer.

1 Q. Do you know what period of time those scrolls
2 cover?

3 A. They cover from November 1992 through the end of
4 March 1993.

5 Q. Those scrolls for November 1992 through February
6 1993 cover --

7 THE COURT: He said March '93, I believe.

8 MR. McCARTHY: I apologize, your Honor.

9 Q. -- from November 1992 through a period of time in
10 March 1993, those scrolls cover all of the activity for all
11 the different lockers at the Space Station, is that correct?

12 A. Yes, they do.

13 Q. Let me direct your attention now to W724A1 and
14 W724A2. And ask you if you recognize those items?

15 A. Yes, I do.

16 Q. What do you recognize those to be, sir?

17 A. Those are summaries of the activity on just
18 locker number 4344 from these tapes for that same time
19 period.

20 Q. Have you reviewed those items, sir?

21 A. Yes, I have.

22 Q. Do your initials appear on them?

23 A. Yes, they do.

24 MR. McCARTHY: Your Honor, at this time the
25 government offers W724 and the summaries W724A1 and W724A2.

1 MR. STAVIS: Objection, your Honor.

2 THE COURT: Overruled. W724, W724A1 and W724A2
3 are received.

4 (Government's Exhibits W724, W724A1 and W724A2
5 were received in evidence)

6 MR. McCARTHY: Your Honor, I believe W724A1 and
7 W724A2 are in the jury's books, and I would ask the court to
8 direct the jury's attention to them at this time.

9 THE COURT: They are in your book. It's a
10 relatively thin volume of the W series that you looked at
11 before.

12 MR. McCARTHY: Your Honor, I believe it is in the
13 thin binder marked W series.

14 THE COURT: Right.

15 MR. McCARTHY: Under a tab marked 724A.

16 THE COURT: W724A.

17 MR. McCARTHY: Yes, your Honor.

18 THE COURT: Go ahead.

19 MR. McCARTHY: Thank you, your Honor.

20 Q. Mr. Melvin, let me direct your attention first to
21 W724A1. Do you have that in front of you, sir?

22 A. Yes, I do.

23 Q. Let me ask you first whether this covers activity
24 at the Space Station Storage locker 4344 between December
25 15, 1992, and March 5, 1993?

1 A. Yes, it does.

2 Q. Mr. Melvin, I want to ask you about some of the
3 terms that are used on the summary. Do you see the term
4 "enter"? I am directing your attention for the beginning at
5 least to December 15, 1992, which is on page 1 of that
6 document.

7 A. Yes, I see it.

8 Q. What does the term "enter" signify?

9 A. That is when the customer punches in their code
10 and it initially opens up the gate to let them drive into
11 the facility.

12 Q. What does the term "opened" mean?

13 A. That would be the actual door to the storage
14 space opening at that point.

15 Q. And the term "closed"?

16 A. That would be when the door to the storage space
17 is closed.

18 Q. In terms of opened and closed, meaning opening
19 and closing the actual storage space, other than December
20 15, 1992, was there any indication that that storage space
21 was ever opened or closed?

22 A. No, there is not.

23 Q. So in the period of time between December 15 and
24 March 5, there is no other such indication?

25 A. No, sir, there is not.

1 Q. What does that indicate to you?

2 A. That at some point on December 15 the alarm
3 switch on that door was disabled in some way.

4 Q. Do you notice on December 15 -- let me withdraw
5 that, if your Honor please, and ask another question.

6 Do you see on December 17 at the bottom of the
7 entries for that date there is the term "exit"?

8 A. Yes, I do.

9 Q. What does the term "exit" mean?

10 A. Exit is when the customer's vehicle actually
11 pulls off the property and punched in the code. That
12 indicates that.

13 Q. Do you see on December 15 it indicates that there
14 is an entry, that is, it says enter at 10:18:49 in the
15 morning, but there is no exit?

16 A. That is correct.

17 Q. Is it unusual for there to be an entrance without
18 an exit?

19 A. It's not that unusual. Frequently the exit gate
20 is left open.

21 Q. Can you explain how that is?

22 A. We are primarily concerned with making sure that
23 the wrong people don't get into the storage facility. We
24 are not really concerned about them, once they are in,
25 leaving.

1 Q. What does the term "auto-armed" on the chart
2 mean, sir?

3 A. The way our computer system works is at even
4 10-minute intervals if someone's door has been closed it
5 automatically rearms their switch. The reason for that is
6 that in that way if for some reason they should shut the
7 door and forget to punch out their code or drive out without
8 punching out their code, the alarm system is reactivated.

9 Q. Directing your attention for a moment, sir, to
10 the last page -- withdrawn. Comparing 724A1 and 724A2 for a
11 moment, can you tell us what the difference is between those
12 two summaries?

13 A. The only difference is that they have deleted all
14 the auto-armed entries on the second item.

15 Q. So 724A2 has the same information as A1, but A1
16 has the auto-armed and A2 does not, is that correct?

17 A. That is correct.

18 Q. Let me direct your attention to the last page of
19 A1. Do you see two entries on the chart, sir, one that says
20 "flag" on March 4, 1993, at 3:29:49 in the afternoon, and
21 one that says "clear" on March 5 at 10:33:32 in the morning?

22 A. Yes, I do.

23 Q. What are flag and clear? That is, what do they
24 indicate?

25 A. That is something that we do in our office to

1 keep a customer from gaining entry to our space. That would
2 be, the flag, if for some reason they stop paying their rent
3 or something like that, we would enter that to keep them
4 from getting in. The clear is when we reverse the procedure
5 and allow them back access to their space.

6 Q. Let me direct your attention briefly to the
7 entries on page 1, that is, moving back on W724A1 to page 1.
8 Let me point your attention briefly to December 17. Do you
9 see where it indicates that there were two entrances and one
10 exit?

11 A. Yes, I do.

12 Q. What does that indicate to you, sir?

13 A. That two vehicles pulled in and only one pulled
14 out.

15 Q. Is it equally possible that the same vehicle
16 pulled in and got out without having to enter the code?

17 A. Yes.

18 MR. STAVIS: Objection as to what is possible,
19 your Honor.

20 THE COURT: Overruled. You can cross on that.

21 Go ahead.

22 (Continued on next page)

23

24

25

1 Q. I want to direct your attention to the entries
2 for February 25, 1993.

3 Perhaps we can do this one on W724A-2 so we don't
4 have to deal with the autoarmed. Am I correct that there is
5 a considerable amount of activity on February 25?

6 A. Yes.

7 Q. Let me direct your attention, sir, to the two
8 exits which are the last two entries for February 25. Do
9 you see that there is an exit at 4:32:50 in the afternoon,
10 and then another exit at 4:33:03 in the afternoon, which I
11 think is only about 13 seconds later.

12 A. Yes, I see that.

13 Q. What does that indicate to you, sir?

14 A. Two vehicles following each other out in quick
15 succession.

16 Q. But the second vehicle would have to have punched
17 the code to get out?

18 A. That's correct.

19 MR. MCCARTHY: Your Honor, I am done with the
20 chart for now.

21 THE COURT: All right. You can close your
22 binders.

23 Q. Mr. Melvin, are you aware that the World Trade
24 Center was bombed on February 26, 1993?

25 A. Yes, I am.

1 Q. Let me direct your attention to the day before
2 that happened, February 25. Did you see Mr. Salameh that
3 day?

4 A. Yes, I did.

5 Q. Where did you see him?

6 A. He was in the office of the Space Station.

7 Q. That is your office?

8 A. Yes, it is.

9 Q. Was he alone?

10 A. No, he had another gentleman with him.

11 Q. Do you recall what time of day it was that you
12 saw Mr. Salameh?

13 A. It was between 12 noon and 1 o'clock.

14 Q. For about how long a period of time did you see
15 Mr. Salameh?

16 A. For approximately an hour.

17 Q. Were you alone in the office among the employees
18 at the Space Station that day?

19 A. No, I was not.

20 Q. Who else was there, sir, if you recall?

21 A. Mr. David Robinson, and Mr. Blessing Manigiri.

22 Q. Let me direct your attention to Mr. Salameh, and
23 the person that he was with. Did you meet that person by
24 name?

25 A. No, I did not.

1 Q. Did you observe him speak to Mr. Salameh in your
2 presence?

3 A. Yes, I did.

4 Q. Were you able to understand what they were
5 saying?

6 A. I really wasn't paying much attention to what
7 they were discussing.

8 Q. Is there a pay telephone in the office?

9 A. No, there's not.

10 Q. Was there a pay telephone in the office in
11 February of 1993?

12 A. Yes, there was.

13 Q. Thank you.

14 Did you see Mr. Salameh use the pay telephone?

15 A. Yes, I did.

16 Q. Were you able to understand what he was saying?

17 A. Again, I really wasn't paying any attention.

18 Q. Let me direct your attention to the Tuesday of
19 the following week, which is March 2, 1993. I would like
20 you to answer this question "yes" or "no."

21 Did you have a conversation that day with
22 Mr. Robinson of the Space Station?

23 A. Yes, I did.

24 Q. As a result of that conversation, did you take
25 any action?

1 A. I ordered a key for storage locker No. 4344 from
2 our main office.

3 Q. Did there come a time after you ordered the key
4 that you got a key?

5 A. I received it Thursday of that same week.

6 Q. That would have been March 4?

7 A. Yes.

8 Q. Did there come a time after you got the key that
9 you entered the storage area, that is, the storage area for
10 locker 4344?

11 A. Yes, I did, that evening of March the 4th.

12 Q. On the evening of March the 4th you said, sir?

13 A. Yes, sir.

14 Q. Did you go in alone or did you bring someone with
15 you?

16 A. I brought a friend of mine with me.

17 Q. Who was the friend that you brought with you?

18 A. John Polesco.

19 Q. Why did you ask Mr. Polesco to come along with
20 you?

21 A. He's a mathematician for NJIT. He's done
22 explosives research, and I also needed a witness to what I
23 was doing.

24 Q. Can you tell us what happened when you opened up
25 storage or -- withdrawn.

1 Can you tell us what you saw when you opened the
2 storage area for locker 4344?

3 A. There were several crates marked "nitric acid,"
4 several marked "urea," a drum marked "sulfuric acid," a
5 large plastic garbage can and several unmarked boxes.

6 Q. After you made that discovery, did you call the
7 FBI?

8 A. Yes, I did.

9 Q. Did there come a time that you saw some people
10 from the FBI?

11 A. The following morning.

12 Q. What happened after that?

13 A. They waited for a search warrant, and then they
14 entered the space.

15 Q. Mr. Melvin, I want to direct your attention just
16 briefly to 724A-2 and discuss the last two entries with you.

17 According to the chart, W724A-1, on March 4, 1993
18 there is an indication of a flag at 3:30 in the afternoon.

19 A. Yes, there is.

20 Q. Did you cause that flag to be put on?

21 A. Yes, I did.

22 Q. On March 5, 1993, there is an indication of
23 clear.

24 A. Yes, there is.

25 Q. That is at 10:30 in the morning?

1 A. That's correct.

2 Q. Did you cause that to be done?

3 A. Yes, I did.

4 Q. Did you do that at the request of the FBI?

5 A. Yes, I did.

6 MR. McCARTHY: Thank you.

7 Your Honor, I have no further questions of
8 Mr. Melvin.

9 THE COURT: Cross. Mr. Stavis.

10 CROSS-EXAMINATION

11 BY MR. STAVIS:

12 Q. I don't know whether to wish you good morning or
13 good afternoon, but good something or other.

14 Mr. McCarthy showed you Government's Exhibit 5E,
15 and that is the picture of Mohammed Salameh, correct?

16 A. That's correct.

17 Q. That is a picture that you have seen before?

18 A. Perhaps. I am not sure if I have seen that exact
19 picture.

20 Q. You used to see Mr. Salameh at your place of
21 business, at the storage locker, correct?

22 A. Yes, I did.

23 Q. He is the fellow that you dealt with, right?

24 A. Yes, he is.

25 Q. Over the rental, you had dealings with him,

1 correct?

2 A. Yes, I did.

3 Q. You saw him come and go basically on a daily
4 basis?

5 A. More or less daily, yes.

6 Q. There came a time in 1994 that you testified at
7 the World Trade Center trial, do you recall that?

8 A. Yes, I do.

9 Q. When you testified at the World Trade Center
10 trial, the prosecutor in that case asked you to identify
11 Mohammed Salameh, do you recall that?

12 A. Yes, I do.

13 Q. When he asked you to do that, that's what you
14 did, right?

15 A. Yes.

16 Q. You pointed out Mohammed Salameh in the
17 courtroom?

18 A. Yes, I did.

19 Q. Mohammed Salameh was convicted of the World Trade
20 Center bombing, is that correct?

21 A. Yes, he was.

22 MR. STAVIS: I have no further questions, your
23 Honor.

24 THE COURT: Mr. Bernstein, representing Amir
25 Abdelgani. Go ahead.

1 CROSS-EXAMINATION

2 BY MR. BERNSTEIN:

3 Q. Sir, on 724 I think there is an indication the
4 first day that you provided in that documents is December
5 15, 1992, is that correct?

6 A. I'm sorry, sir. I couldn't hear you.

7 Q. The first date is December 15.

8 A. On this document here?

9 Q. On 724A-1, I guess it is -- A-1 or A-2.

10 A. Yes, December 15 is the first date.

11 Q. Is that the first date that the rental agreement
12 provided for, or was it for earlier than that?

13 A. The rental agreement was signed on November 30.

14 Q. And was to go into effect immediately?

15 A. Yes, it was.

16 Q. So that no entry came from November 30 or
17 December 1 up until the December 15, correct?

18 A. Apparently not, no.

19 Q. Based upon your computerized records?

20 A. Yes, sir.

21 Q. On December 15, Mr. McCarthy asked some questions
22 indicating that you surmised that somebody would have
23 disconnected some computer code, is that correct?

24 MR. McCARTHY: Objection.

25 MR. BERNSTEIN: Let me --

1 THE COURT: Do you want to rephrase it.

2 Q. On 724 there is an indication that there are
3 entries but no exit -- opens and closes I think it is. If
4 you could give me one moment, please.

5 I'm sorry.

6 On December 15 there is an opening as you've got
7 in the document, correct?

8 A. Yes.

9 Q. There's never an opening indicated thereafter?

10 A. No, there is not.

11 Q. There is a closing on December 15, correct?

12 A. Correct.

13 Q. A re-entry on the 17th?

14 A. Correct.

15 Q. From that point forward, from December 17 forward
16 there are entries with no closings so to speak, correct?

17 A. That's correct.

18 Q. Did you ever investigate what might have actually
19 caused there to be no closings thereafter?

20 A. No, I did not.

21 Q. Did you check the computer system or the code
22 systems to see how it was or was not disabled?

23 A. That would have to be done from inside the
24 storage locker itself. And, no, I did not go inside the
25 locker.

1 Q. You went back to the locker without the FBI I
2 think March 4?

3 A. The evening of Thursday, March 4, right.

4 Q. And you went into the locker at that time?

5 A. That's correct.

6 Q. But you made no investigation of the code being
7 changed or disabled, correct?

8 A. It was the switch that was disabled, and, no, I
9 did not.

10 Q. Do you know whether or not anybody else in your
11 organization did investigate that?

12 A. No, I don't.

13 Q. Subsequently, after I presume the early stages of
14 March, has 4344 been reactivated as a locker that's used or
15 storage space that is used?

16 A. It's been re-rented.

17 Q. Do you know whether or not there was repair work
18 done to fix or adjust the code again subsequent, or rather,
19 prior to reletting that space?

20 A. To the best of my knowledge it's still the way it
21 was.

22 Q. Meaning that there are, on present activity logs,
23 no closings on that locker?

24 A. That's correct.

25 MR. BERNSTEIN: I have no further questions.

1 THE COURT: Anything else?

2 MR. McCARTHY: No, your Honor. Thank you.

3 THE COURT: Thank you. You are excused,

4 Mr. Melvin.

5 (Witness excused)

6 MR. McCARTHY: Your Honor, the government

7 re-calls Andrew Vale.

8 ANDREW WAYNE VALE,

9 called as a witness by the Government,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. McCARTHY:

13 Q. Good afternoon, Agent.

14 A. Good afternoon.

15 MR. McCARTHY: Your Honor, if I may, I would like
16 to refer to Exhibits W90A-1 through A-7, which were received
17 in evidence this morning.

18 THE COURT: OK. Those are in the W book?

19 MR. McCARTHY: Yes, sir. It is in the thin book
20 marked "W," I think.

21 THE COURT: Right.

22 MR. McCARTHY: I think some of the jurors have
23 some question, your Honor. It is the W book that the jurors
24 were looking at this morning in connection, I believe, with
25 Agent Kyle's testimony.

1 THE COURT: Right. W90A-1 through A-7. They are
2 a series of photographs on two pages.

3 MR. McCARTHY: Your Honor, I would like to
4 approach Agent Vale with those photographs.

5 THE COURT: Go ahead.

6 Q. Agent Vale, I'm sorry, would you remind us please
7 of what FBI office you work in.

8 A. The Newark division.

9 Q. Let me direct your attention to what have been
10 received in evidence as Government's Exhibits W90A-1 through
11 90A-7 and ask you, starting with 90A-1, whether you
12 recognize the persons depicted in that photograph.

13 A. Yes, I do.

14 Q. Who do you recognize them to be, beginning left
15 and running to right?

16 A. Mohammed Salameh, El Sayyid Nosair and Nidal
17 Ayyad.

18 Q. Directing your attention now, sir, to W90A-2 in
19 evidence, do you recognize any of the three individuals
20 depicted in that photograph?

21 A. Yes, I know I recognize the individual in the
22 middle, the individual to the right.

23 Q. Who are those individuals, sir?

24 A. El Sayyid Nosair and Mohammed Salameh.

25 Q. Directing your attention to W09A-3, A-4, A-5,

1 A-6, and A-7, five photographs in evidence which each depict
2 two people, do you recognize the two people depicted in each
3 of those photographs?

4 A. Yes, I do.

5 Q. Who do you recognize them to be?

6 A. El Sayyid Nosair and Mohammed Salameh.

7 Q. Agent, as you sit here today, do you have any
8 idea when these photographs were taken?

9 A. No, I do not.

10 Q. Agent Kyle -- I'm sorry. Agent Vale, excuse me.
11 Let me direct your attention to March 5, 1993 and
12 ask you whether you had an assignment that day.

13 A. Yes, I did.

14 Q. What was your assignment?

15 A. My assignment was to go to Space Station Storage
16 in Jersey City and conduct interviews of the employees
17 there.

18 Q. I would like you to answer this question "yes" or
19 "no." Did you conduct an interview with a gentleman who
20 just testified here, Mr. Melvin?

21 A. Yes, I did.

22 Q. Following the interviews you conducted at the
23 Space Station, did you take any action?

24 A. Yes, I called our office, I notified them of the
25 results of the interviews. They then requested that I stay

1 there, and they were going to see if we can obtain a search
2 warrant for a storage locker No. 4344.

3 Q. Did there come a time that you got a search
4 warrant issued by a federal court for that storage locker?

5 A. Yes, we did.

6 Q. Did there come a time that you executed the
7 search warrant?

8 A. Yes.

9 Q. Were you alone or with other agents?

10 A. I was with other agents and other local law
11 enforcement agencies.

12 Q. I am not going to ask you the names of the people
13 that you were with, but can you tell us what types of agents
14 or agencies were represented in executing the search
15 warrant?

16 A. There was personnel from the FBI, the Bureau of
17 Alcohol, Tobacco & Firearms. There was an officer there
18 from the New York City Police Department. There was a
19 Jersey City Police Department was there, Morris County
20 Sheriff's Department was there, and the New Jersey state
21 troopers were there.

22 Q. Were there any agents there who had any technical
23 expertise with bombing?

24 A. Yes. We had several bomb technicians and there
25 was also some forensic chemists.

1 Q. Did there come a time that you gained entrance to
2 the storage locker 4344?

3 A. Yes, there was.

4 Q. Can you tell the ladies and gentlemen of the jury
5 what you saw when you opened up the storage locker?

6 A. As we opened the storage locker, when you first
7 enter, on the far wall on the floor in front of there, you
8 could see that there were several stains, they were round
9 circles that appeared that there was --

10 MR. PATEL: Objection.

11 THE COURT: He can testify to the stains.

12 Go ahead.

13 Q. Would you continue to give your description.

14 A. There was several round circles there --

15 THE WITNESS: If I may use the cup to show an
16 example?

17 THE COURT: Go ahead.

18 A. It appeared like there was a circle there, and
19 then like something had dripped that would leave a nice
20 round circle around it.

21 Q. Let me stop you for a moment.

22 Just for the record what you have done is you
23 have taken a cup that is in front of the witness stand,
24 placed it upside down in front of the witness stand, and
25 drawn a circle with your finger around it?

1 A. That is correct.

2 Q. OK.

3 A. There was also several boxes there. There were
4 round cylinders that were labeled "urea." There was also a
5 large garbage can that was there. There was also a
6 container that was marked "sulfuric acid." There was also a
7 small wooden crate that was there.

8 Q. Agent Vale, I am showing you what's been marked
9 as Government's Exhibit W793A for identification. I would
10 ask you to take a look at that and tell us if you recognize
11 the scene depicted in that photograph.

12 A. Yes, I do.

13 Q. What do you recognize it to be?

14 A. As you look at the photo on the floor, you could
15 see the round stains that I was talking about. There is
16 also the three round cylinders of urea and several boxes.
17 There is also the wooden box that's there.

18 Q. Is that the way the storage locker appeared at
19 the time that you gained entry to it?

20 A. Yes.

21 Q. Or at least that section of it that's depicted in
22 the photograph?

23 A. Yes, that's correct.

24 MR. McCARTHY: Your Honor, the government offers
25 W793A.

1 MR. PATEL: Objection.

2 THE COURT: Overruled. W793A is received.

3 (Government's Exhibit W793A for identification
4 was received in evidence)

5 Q. The circles that you were talking about before
6 appear in the bottom left-hand corner of that exhibit?

7 A. Yes, that's correct.

8 Q. Was the lock on the door of locker No. 4344 taken
9 during the search?

10 A. Yes, it was.

11 Q. Did you obtain a key from the management at the
12 Space Station?

13 A. Yes, we did.

14 Q. Agent Vale, I am showing you Government's Exhibit
15 W646 for identification, which I have removed from the
16 envelope. Do you recognize that item?

17 A. Yes, I do.

18 Q. What is it, sir?

19 A. This is the lock and the key that belongs to that
20 storage locker, No. 4344.

21 MR. McCARTHY: Your Honor, the government offers
22 W646.

23 MR. PATEL: Your Honor, I would object, 403.

24 THE COURT: Overruled. 646 is received.

25 (Government's Exhibit W646 for identification was

1 received in evidence)

2 Q. Agent Vale, let me show you a keychain and some
3 keys marked Government's Exhibit W2618 in evidence. One of
4 the keys here that has a round hole at the end, have you
5 tried to fit this key, that is, 36, that is the key that is
6 on W2618 in evidence, into the lock that has now been
7 received in evidence as W646?

8 A. Yes, I have.

9 Q. What was the result of that effort?

10 A. It was -- it opened the lock. It turned it.

11 Q. Agent Vale, I am now placing before you
12 Government Exhibit W51 for identification and Government
13 Exhibit W74 for identification.

14 I ask you, Agent, do you recognize these two
15 items?

16 A. Yes, I do.

17 Q. What do you recognize them to be?

18 A. This is Hodgdon shotgun powder that was located
19 inside the Space Station, inside the storage locker 4344.
20 There was also some tubing.

21 Q. Let me stop you for a moment. When you say
22 "this" is Hodgdon powder, that's Government's Exhibit W51?

23 A. Yes.

24 Q. OK. Now, W74.

25 A. This is some tubing and some, what was described

1 to me as a fuse.

2 MR. PATEL: Objection.

3 MR. BERNSTEIN: Objection.

4 THE COURT: Sustained and stricken.

5 Q. Don't tell us how it was described to you.

6 You see some tubing and some, what appears to be
7 green wire there?

8 A. Green wire, yes.

9 Q. Was some of the green wire in the tubing?

10 A. Yes.

11 MR. McCARTHY: All right. Your Honor, the
12 government offers W51 and W74.

13 MR. PATEL: Your Honor, could I have a standing
14 objection to these exhibits.

15 THE COURT: Based on 403?

16 MR. PATEL: Yes, your Honor.

17 THE COURT: Yes, you may, and that is overruled.
18 W51 and W74 are received.

19 (Government's Exhibits W51 and W74 for
20 identification were received in evidence)

21 Q. Agent Vale, let me show you a series of
22 photographs which are marked W794 and W794A through K for
23 identification and ask you, do you recognize these
24 photographs, that is, the scene depicted in them?

25 A. Yes, I recognize all of them.

1 Q. What do you recognize them to be, just generally,
2 and then we'll get to them?

3 A. These are items that were located in the Space
4 Station storage locker No. 4344.

5 MR. JACOBS: I can't hear the witness.

6 MR. McCARTHY: You have to speak into the
7 microphone.

8 A. These are items that were located in the Space
9 Station storage locker No. 4344.

10 Q. Were they items or do they depict items that were
11 seized during the search?

12 A. Yes, they do.

13 MR. McCARTHY: Your Honor, the government offers
14 W794 and W794A through K.

15 MR. PATEL: May I have a brief voir dire, your
16 Honor.

17 THE COURT: Yes, you may.

18 VOIR DIRE EXAMINATION

19 BY MR. PATEL:

20 Q. Agent Vale, did you take these photographs?

21 A. No, I did not.

22 Q. Were these photographs -- well, let's get
23 specific here. Are the items depicted in the photographs in
24 the position that they were in when you first entered the
25 locker?

1 A. No, they are not.

2 Q. So it would be fair to say that these photographs
3 do not accurately reflect the way the locker looked when you
4 entered?

5 A. Some of them, I believe, are the way they were.

6 MR. PATEL: May I approach, your Honor. We can
7 perhaps figure this out a little faster.

8 May I have a minute with my colleagues, your
9 Honor?

10 Thank you.

11 (Counsel conferred)

12 MR. SERRA: Your Honor, may we have the court's
13 indulgence for a moment?

14 THE COURT: Yes.

15 (Counsel conferred)

16 MR. PATEL: Your Honor, I am going to withdraw
17 that last question.

18 Q. Agent Vale, is everything that was in the locker
19 depicted in one of these photographs?

20 A. No.

21 THE COURT: Wait a second. Do you mean, is there
22 a photograph depicting everything in the locker, or does
23 everything in the locker appear in one or another of the
24 photographs?

25 MR. PATEL: Exactly, your Honor.

1 THE COURT: Did you understand the question.

2 THE WITNESS: Yes, I understood the question.

3 Q. What you are telling us is that there were things
4 that were removed from the locker that are not depicted in
5 the photographs?

6 A. I would like to take a look at the pictures
7 again, if I can.

8 If look at all the pictures, you can see all the
9 boxes and the garbage cans, the bottles, the container of
10 sulfuric acid that I spoke about --

11 MR. JACOBS: I am sorry, your Honor. He is
12 trailing off again.

13 Q. Just to clarify it, would it be fair to say,
14 Agent, that if one goes through all the photographs, one can
15 see everything that was in the locker at the time you
16 entered it?

17 A. No, no. That's incorrect. If you look at the
18 photographs you can see everything, all the containers that
19 were located inside of Space Station storage, not all the
20 contents of the containers.

21 MR. PATEL: Understood. Thank you.

22 MR. McCARTHY: I think there is no objection.

23 MR. PATEL: No additional objection.

24 THE COURT: All right. That objection is
25 overruled, and 794 through 794A are received.

1 (Government's Exhibits 794 and 794A for
2 identification were received in evidence)

3 MR. McCARTHY: Your Honor, I don't believe these
4 photographs made it into the jury's books, so I would ask if
5 I could have Agent Vale step down for a moment and just ask
6 him some questions in front of the jury.

7 THE COURT: About particular photographs?

8 MR. McCARTHY: Yes, your Honor.

9 THE COURT: All right. Go ahead.

10 DIRECT EXAMINATION (Continued)

11 BY MR. McCARTHY:

12 Q. Agent Vale, would you step down for a moment,
13 please.

14 (The witness left the stand)

15 Q. Just over here, if you would. Try, if you would,
16 to speak directly into the microphone. I am holding up now
17 Government's Exhibit W794 in evidence.

18 Can you please describe what is depicted in that
19 photograph.

20 A. That is the doorway entrance to the Space Station
21 storage locker No. 4344.

22 Q. I am now directing your attention to W794A in
23 evidence, can you tell us what is depicted in that
24 photograph.

25 A. Yes, these are the cylinders of urea that I spoke

1 about, the three round cylinders. There is also a cardboard
2 box here. "Nitric acid" is written on the side there.

3 Q. W794B in evidence.

4 A. This is a closeup shot of the three canisters of
5 urea.

6 Q. All right. W794C in evidence?

7 A. Yes. This is the garbage can that I spoke about,
8 as well as the container of sulfuric acid. If you look, you
9 can see "sulfuric acid" written on the corner there.

10 Q. Do you see at the bottom middle of that
11 photograph, that is W794C in evidence, there is some
12 plastic?

13 A. Yes, we put that there.

14 Q. That is not plastic that was there when you
15 entered the storage locker?

16 A. No, it wasn't. We placed it there.

17 Q. What is the reason for placing that down there?

18 A. We didn't want to contaminate the floor.

19 Q. I am directing your attention now to W794D in
20 evidence.

21 A. Yes, this is a photograph, closeup photograph of
22 the sulfuric acid, the container, and in the background you
23 can also see the large trash can and once again the plastic
24 that was on the floor.

25 Q. W794E, in evidence.

1 A. These are some of the containers that were
2 located inside of the boxes. Once again, there are some
3 more boxes here and there was a small wooden crate that was
4 here as well.

5 Q. W794F, in evidence.

6 A. Yes, this is a closeup shot of the nitric acid.
7 If you look closely you can see the writing on there. Each
8 bottle says "nitric acid" on it.

9 Q. Do the bottles also say at the bottom "City
10 Chemical Corporation"?

11 A. Yes, they do.

12 Q. I next direct your attention to W794G in
13 evidence.

14 A. Yes. That is a picture of the wooden crate that
15 I spoke about, also one of the canisters of the urea is
16 here, a couple of the boxes and, once again, the nitric
17 acid.

18 Q. W794H in evidence.

19 A. Down here are two of the canisters of the urea.
20 We placed this bottle on top of it, and, if you look
21 closely, you can see what the bottle is. It is sodium
22 cyanide we took that for purposes of the photo.

23 Q. Let me just try to clarify in my own mind anyhow.

24 This bottle was not on top of this canister at
25 the time that you entered?

1 A. That is correct.

2 Q. And you simply you found it inside the storage
3 locker and placed it on top of the canister for purposes of
4 taking this photograph?

5 A. That is correct.

6 Q. W794I in evidence.

7 A. This is, again, a canister of urea, and two more
8 bottles there, methenamine is one, and the other one is
9 sodium azide.

10 Q. Once again, the bottles, the methenamine and the
11 sodium azide, you, the agents, placed that on top of the
12 canister for taking the photograph?

13 A. Yes, we did.

14 Q. W794J in evidence.

15 A. This is, once again, a bottle of methenamine that
16 we placed on top of the canister of urea for the purposes of
17 taking the photo.

18 Q. Finally, W794K in evidence.

19 A. This is one of the bottles that was located
20 inside of one of the boxes that was there. It's aniline and
21 it has a chemical formula written underneath it. Once
22 again, we placed it on top of the canister of urea for the
23 purposes of the photo.

24 Q. Thank you, Agent Vale. You can resume your seat,
25 if you would.

1 (The witness resumed the stand)

2 MR. McCARTHY: I am just about done, your Honor.

3 I just have a couple more questions.

4 Q. Agent Vale, about how long did it take to
5 accomplish the search and seizure at storage locker 4344?

6 A. We started on the 5th, and in the early morning
7 hours of the 6th, approximately 1:00 a.m., the search was --
8 a break was taken in the search, we had agents come in, they
9 guarded the locker overnight. We then returned the next
10 morning with the latent fingerprint section of FBI HQ, and
11 we then returned and finished that day. I don't recall the
12 exact time that we finished.

13 Q. So the fingerprint people came the next day?

14 A. That's correct.

15 Q. The chemicals that were seized during the search,
16 were they submitted to the FBI laboratory for analysis?

17 A. Yes, they were.

18 MR. McCARTHY: Thank you, your Honor.

19 THE COURT: Ladies and gentlemen, we are going to
20 break for lunch. Please leave your notes and other
21 materials behind. Please do not discuss the case, and we
22 will resume this afternoon at about 2 o'clock.

23 (Luncheon recess)

24

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AFTERNOON SESSION

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2:10 p.m.

(In open court; jury not present)

ANDREW VALE, resumed.

MR. McCARTHY: Your Honor, if I may, there are two very brief areas that I neglected to cover with Agent Vale, and I ask the court's indulgence to open brief direct for that.

MS. AMSTERDAM: I am sorry. I didn't hear that.

THE COURT: He forgot something and he wants to ask some more questions.

MS. AMSTERDAM: Got it, your Honor.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Agent Vale, you are still under oath. Mr. McCarthy, you had some additional questions?

MR. McCARTHY: Yes, your Honor.

DIRECT EXAMINATION continued

BY MR. McCARTHY:

Q. Agent Vale, just a few more questions about the search of the Space Station.

A. Yes.

Q. Did you recover any ammonium nitrate?

A. Yes, we did.

1 Q. Do you recall what you recovered it in, what kind
2 of container?

3 A. It was in like a paper bag that said ammonium
4 nitrate on the label. It wasn't full, it was maybe 10
5 pounds in there.

6 Q. Ten pounds of how many?

7 A. The bag was 50 pounds.

8 Q. How about potassium nitrate? Did you recover any
9 potassium nitrate?

10 A. Yes, we did. That was located inside a wooden
11 crate that are in some of the pictures that we took.

12 Q. Was there a container inside the wooden crate?

13 A. Yes, there was a container of potassium nitrate,
14 the label was. It was about a quarter full.

15 Q. What was the capacity of the container, if you
16 recall?

17 A. I don't recall.

18 MR. McCARTHY: Your Honor, if I may, I would like
19 to approach the agent with 3552B.

20 THE COURT: Go ahead.

21 Q. Agent Vale, I would like to direct your attention
22 to the second page of 3552B, under item number 7, and I
23 would ask you to just read that to yourself and let us know
24 when you are done.

25 A. I am done.

1 Q. Does reading your report refresh your
2 recollection about the container of potassium nitrate?

3 A. Yes, it does.

4 Q. Can you tell us, how much was the capacity of the
5 container?

6 A. Five pounds.

7 Q. And about how full was it?

8 A. About a quarter full.

9 MR. McCARTHY: Thank you, your Honor. I have
10 nothing further.

11 THE COURT: Any cross?

12 MR. SERRA: Yes, your Honor.

13 THE COURT: Mr. Serra, representing Mr. Alvarez.
14 Go ahead.

15 CROSS-EXAMINATION

16 BY MR. SERRA:

17 Q. Good afternoon, Agent.

18 A. Good afternoon.

19 Q. Agent, you mentioned in answer to questions of
20 Mr. McCarthy this morning various personnel from different
21 law enforcement agencies that were there. Do you recall
22 those questions?

23 A. Yes, I do.

24 Q. By "there" I mean at the Space Station, correct?

25 A. Yes.

1 Q. 69 Mallory Avenue?

2 A. Yes.

3 Q. There were including yourself, sir, seven FBI
4 agents, is that correct?

5 A. I don't know exactly. I would have to look at
6 the 302 again.

7 MR. SERRA: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, you may.

10 MR. SERRA: Your Honor, with the court's
11 permission it would be easier if I use the microphone at the
12 witness stand.

13 THE COURT: Yes, sure.

14 Q. Agent, I am showing you what has been marked
15 Government's Exhibit 3552C. Is this what you were referring
16 to -- ignoring the highlighted portions, is that what you
17 were referring to, sir?

18 A. Yes.

19 Q. Including yourself, I asked you, is it true that
20 there were seven FBI agents present at the Space Station?

21 A. I know there are six. I only know Steve
22 Bermeister is from the laboratory. I am not sure if he is
23 an agent.

24 Q. Steven Bermeister, you mean a forensic chemist,
25 is that correct?

1 A. Yes.

2 Q. Who may or may not be an FBI agent, correct?

3 A. Yes.

4 Q. But six you know and a forensic chemist from the
5 lab by the name of Steven Burmeister?

6 A. Is that correct.

7 Q. And from Alcohol Tobacco and Firearms there were
8 two more forensic chemists, is that correct?

9 A. Yes.

10 Q. And from New York Police Department there was one
11 bomb technician?

12 A. Yes.

13 Q. And the Morris County Police Department there
14 were two more bomb technicians, is that correct?

15 A. Yes.

16 Q. From the Jersey City Police Department there were
17 two more bomb technicians, is that correct?

18 A. That is correct.

19 Q. So in total there were five bomb technicians from
20 three different law enforcement agencies there, is that
21 right?

22 A. Actually there were seven if you include the two
23 FBI agents.

24 Q. We will get to the forensic chemists in a moment.

25 A. No, there are two bomb technicians who were FBI

1 agents.

2 Q. Who were not labeled as bomb technicians. Thank
3 you very much. So there were seven bomb technicians from
4 four different law enforcement agencies, is that correct?

5 A. I believe it is five -- I am sorry, it is four.

6 Q. Seven bomb technicians from four law enforcement
7 agencies, is that correct?

8 A. Yes, that is correct.

9 Q. And three forensic chemists from two different
10 law enforcement agencies, is that correct?

11 A. Yes, that is correct.

12 Q. By the way, Agent Vale, by forensic chemists, is
13 it your understanding that a forensic chemist was with you
14 during this search to have knowledge of the chemicals and at
15 least in part to know if any of them were dangerous? Is
16 that right?

17 A. Yes, that is correct.

18 Q. You identified several photographs during your
19 direct examination as photographs of the scene at the Space
20 Station, is that right?

21 A. Yes.

22 Q. There were various items, I believe you
23 testified, that were not visible in those photographs but
24 were in fact there, is that correct?

25 A. Yes, that is correct.

1 Q. Mainly, Agent Vale, isn't it true that those
2 items were in the nature of laboratory equipment? Is that
3 right?

4 A. Yes, some of it was laboratory equipment.

5 Q. There was, for example, laboratory glassware of
6 several different types present at the Space Station, is
7 that right?

8 A. That is correct.

9 Q. Including what are known as graduated cylinders,
10 is that right?

11 A. That is correct.

12 Q. By a graduated cylinder we mean a piece of
13 laboratory glassware that has markings on the side showing
14 the quantity of a liquid or, for that matter, of a solid
15 that would be inside, is that right?

16 A. To my knowledge, that is what a graduated
17 cylinder is, yes.

18 Q. And there were some of those there, is that
19 right?

20 A. Yes.

21 Q. There was a pump there, is that correct?

22 A. Yes.

23 Q. A laboratory type pump for moving fluids around
24 from various other glassware, is that right?

25 A. I don't know if it was a laboratory type pump. I

1 know there was a pump there.

2 Q. And there were several items there, isn't it
3 true, Agent Vale -- withdrawn.

4 The FBI forensic chemist present on the scene at
5 Space Station was someone by the name of Steven Bermeister,
6 isn't that correct?

7 A. Yes, that is correct.

8 Q. And Mr. or Agent Bermeister did in fact look at
9 various items there and decide that they were dangerous,
10 isn't that right?

11 A. That is correct.

12 Q. At one point during the search you and the people
13 who were not bomb technicians were evacuated from the Space
14 Station, isn't that right?

15 A. That is correct.

16 Q. And then those items which Agent Bermeister
17 determined were dangerous were in fact removed from the
18 Space Station, correct?

19 A. I know items were removed. I am not sure if
20 Bermeister made that decision. I was not in the storage
21 locker at that time to have that knowledge.

22 Q. Do you know Liberty State Park?

23 A. Yes, I do.

24 Q. Is it close to the Space Station, correct?

25 A. That is correct.

1 Q. Weren't several containers that Bermeister
2 determined dangerous removed from the Space Station to
3 liberty state park?

4 A. I am not sure if Bermeister made that
5 determination. I know that certain items deemed dangerous
6 were removed.

7 Q. Whoever it was, Agent Vale, made the decision,
8 there were certain items removed from the Space Station and
9 taken to Liberty State Park, is that right?

10 A. That is correct.

11 Q. And that is because Liberty State Park is an open
12 area and if something blew up, it wouldn't blow up a
13 building, is that right?

14 A. I have no idea why they took it. It wasn't my
15 decision.

16 Q. In fact what was used to take the items there was
17 a bomb containment vessel, is that correct?

18 A. To my knowledge, it is a bomb pot.

19 Q. A bomb pot it is commonly known, is that correct?

20 A. That is what I know. I don't know the other word
21 for it.

22 Q. It is a very heavy walled container meant to
23 transport materials which might be dangerous, is that
24 correct?

25 A. I have no idea. I didn't get that close to see

1 how thick or heavy it was.

2 Q. Is that by design? You didn't want to get that
3 close to it.

4 A. I was thinking of my safety, sure.

5 MR. SERRA: Withdrawn. I have nothing further.
6 Thank you, Agent.

7 THE COURT: Mr. Jacobs?

8 CROSS-EXAMINATION

9 BY MR. JACOBS:

10 Q. Agent Vale, am I correct that you and the FBI
11 agents believed you had located the bomb factory for the
12 World Trade Center bomb, is that correct?

13 A. I don't know if we considered it the bomb
14 factory, but we had chemicals that were there that could be
15 utilized to make a bomb.

16 Q. And you had probable cause or reasonable cause to
17 believe that the World Trade Center bomb may have been built
18 in that Space Station, is that fair to say?

19 A. I don't know, but chemicals that we believe were
20 used to make the bomb were in that building, were in that
21 storage locker.

22 Q. You prepared a report, I think Mr. McCarthy
23 showed it to you, 3552B for identification, which listed all
24 the items seized, is that correct? Did you want to see it
25 again?

1 A. Yes, please.

2 Yes, this is a list of all the items that were
3 seized. The second part were the items that were taken out
4 and taken to Liberty State Park. Those items were described
5 to me by Agent Allison.

6 Q. Am I correct that in your review and seizing of
7 materials, you found nothing labeled as fertilizer, isn't
8 that correct, sir?

9 A. I don't believe so.

10 Q. Am I correct that you found nothing that you
11 determined or you put down as fuel oil, either gasoline or
12 diesel fuel; isn't that correct, sir?

13 A. That is correct.

14 MR. JACOBS: I have nothing further.

15 THE COURT: Anyone else? Any redirect?

16 MR. McCARTHY: No, your Honor. Thank you.

17 THE COURT: You are excused. Thank you.

18 (Witness excused)

19 MR. FITZGERALD: The government calls Michael
20 Felton, F-E-L-T-O-N.

21 MICHAEL TYRONE FELTON,

22 called as a witness by the government,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. FITZGERALD:

1 Q. Mr. Felton, if you could just keep your voice up,
2 or it is a little easier if you lean forward into one of the
3 microphones.

4 A. OK.

5 Q. Tell the jury what you did for a living in
6 January 1993.

7 A. Where I was living?

8 Q. Where were you living in January 1993?

9 A. I was living on Pamrapo.

10 Q. What number on Pamrapo were you living?

11 A. 42.

12 Q. Would that be 42 Pamrapo in Jersey City?

13 A. Yes.

14 Q. Who took care of the building at 42 Pamrapo?

15 A. I was the super.

16 Q. What about the building next door, 40 Pamrapo?

17 A. Yes.

18 Q. Could you tell the jury what kind of building 40
19 Pamrapo is.

20 THE COURT: It's all right. Those come apart all
21 the time and they have come apart before.

22 A. Can you repeat the question.

23 Q. What kind of building is 40 Pamrapo? How many
24 apartments?

25 A. It's a two-family house.

1 Q. Let me approach you with two photographs which
2 have been received in evidence. Mr. Felton, looking at the
3 photograph in your hand, Government's Exhibit 5E, can you
4 tell us whether or not you recognize the person whose
5 picture that is?

6 A. Yes.

7 Q. Where did you ever see that person?

8 A. He lived at 40 Pamrapo.

9 Q. If you could take the picture to your left, the
10 big blow-up, the cardboard, which is Government's Exhibit
11 610, take a look at that photograph and tell us if you ever
12 saw that person?

13 A. Yes.

14 Q. Where did you see that person?

15 A. That was his roommate.

16 Q. The two people in 5E and 610, can you tell the
17 jury where they lived in 40 Pamrapo, which apartment?

18 A. The first floor.

19 Q. Can you just tell us roughly when it was that
20 those two men moved into the apartment on the first floor of
21 40 Pamrapo?

22 A. Was it in January or the first of February, but I
23 know it was like in the beginning of the year.

24 Q. Would that be 1993?

25 A. Yes.

1 Q. Can you tell us the condition, can you tell the
2 jury the condition of the apartment before those two men
3 moved in?

4 A. It was clean, because me and the landlord had
5 painted the whole apartment.

6 Q. When you and the landlord painted the whole
7 apartment, what color did you paint the walls and the
8 ceiling?

9 A. White.

10 Q. After the two men moved in, did you ever have
11 occasion to go inside the apartment or look in the apartment
12 while they were living there?

13 A. I looked in one time because the plumber had to
14 come do some work, but, you know, I didn't pay no mind.

15 Q. Did you ever try to enter the apartment during
16 the time that they were the tenants there?

17 A. Yes, one time, but they had changed the locks.

18 Q. So could you get in with the key that you had?

19 A. No.

20 Q. Did there come a time when the two men in the
21 photographs before you moved out of the apartment?

22 A. When did they move out?

23 Q. Yes.

24 A. The end of February.

25 Q. When they moved out, did you have occasion to go

1 into the apartment and see what it looked like after they
2 had left?

3 A. Yes.

4 Q. What did it look like inside?

5 A. There was some blue stuff on the walls.

6 Q. Did you see the type of cars that the two men in
7 the pictures before you drove or used during the time in
8 January and February 1993 when they lived there?

9 A. OK, when they first moved in, they had an old
10 green Nova, and when they moved out, they moved out in a
11 stationwagon.

12 Q. Do you recall the color of the stationwagon they
13 moved out in?

14 A. Brown.

15 Q. Besides the old green Nova they moved in with and
16 the brown stationwagon they moved out with, did you see any
17 other cars during the time they were there?

18 A. Yes. I seen a burgundy Corsica and a black
19 Lincoln.

20 Q. When they moved out, did they leave any items
21 behind in the apartment?

22 A. They left a pot, a dresser, and like a plant
23 stand.

24 Q. Did you notice anything about the pot that they
25 left behind?

1 A. A little like a crock pot but it had stains in
2 the bottom of the pot.

3 MR. FITZGERALD: Thank you. I have nothing
4 further.

5 THE COURT: Cross? Mr. Ricco?

6 MR. RICCO: Yes.

7 CROSS-EXAMINATION

8 BY MR. RICCO:

9 Q. Good afternoon, Mr. Felton.

10 A. How you doing?

11 Q. OK. The Nova that you were just referring to on
12 your direct examination?

13 A. Yes.

14 Q. Was that a Chevy Nova? When you say Nova, you
15 mean a Chevrolet Nova?

16 A. That's who make the Nova, Chevrolet, yes.

17 MR. RICCO: No further questions.

18 MR. FITZGERALD: No redirect.

19 THE COURT: Thank you very much. You are
20 excused.

21 (Witness excused)

22 MR. FITZGERALD: The government calls Monira
23 Roshdy.

24 (Continued on next page)

25

1 MONIRA ROSHDY,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Good afternoon.

7 MR. FITZGERALD: Judge, if I could make one
8 correction for the record, the exhibit I showed the last
9 witness was W610. I apologize.

10 THE COURT: All right.

11 Q. Ms. Roshdy, can you tell the jury what you do for
12 a living?

13 A. I work for a doctor. I am a receptionist.

14 Q. If you just keep your voice up or lean closer to
15 the microphone and if you could see just repeat that again.

16 A. I work for a doctor. I am a receptionist.

17 Q. What is the name of the doctor that you work as a
18 receptionist for?

19 A. Dr. Al Salihi.

20 Q. Would that be Dr. A-L space S-A-L-I-H-I?

21 A. Yes.

22 Q. Can you tell the jury where Dr. Al Salihi's
23 offices are?

24 A. It's at 1810 Kennedy Boulevard in Jersey City.

25 Q. Did you work for Dr. Al Salihi during the period

1 March 1993?

2 A. Yes.

3 Q. Prior to coming to court today, did you bring an
4 exhibit with you?

5 A. Yes.

6 Q. Is that the exhibit in the envelope before you?

7 A. Yes.

8 Q. Let me approach you with what we will mark as
9 Government's Exhibit W1,000 and ask you to take a look at it
10 and see if you recognize it. Can you tell us what that is?

11 A. It's a chart, a medical chart.

12 Q. Is that from the records of Dr. Al Salihi's
13 office?

14 A. Yes, it is.

15 Q. Is it the ordinary practice of Dr. Al Salihi to
16 keep such records in his office?

17 A. Yes, it is.

18 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, I would offer
2 Government's Exhibit W1000.

3 MR. STAVIS: I have an objection to this exhibit,
4 if I may be heard at the side bar.

5 THE COURT: Come on up.

6 (At the side bar)

7 MR. STAVIS: Your Honor, over the course of the
8 last past week the government has introduced circumstantial
9 evidence proving that Mohammad Salameh bombed the World
10 Trade Center, something that the defense attorneys had
11 conceded. We are now headed into Mahmud Abouhalima
12 territory. This witness is going to testify that Mahmud
13 Abouhalima received a vaccination. If there is any
14 relevance to that, such as his flight or something else, I
15 would move under Rule 403 to preclude that testimony and
16 preclude this exhibit. It is of very marginal benefit, it
17 is cumulative, and we have already spent a week retying
18 together the circumstantial strands from the first World
19 Trade Center trial.

20 MR. FITZGERALD: I would just offer that in the
21 two minutes it will take to elicit her testimony she will
22 corroborate what Mr. Siddig Ali says on the tape, which is
23 that following the bombing of the World Trade Center, Mahmud
24 Abouhalima admitted that he bombed the World Trade Center
25 and Mr. Siddig Ali traveled with him, he went to a doctor

1 and got a shot to go to Egypt and then left shortly
2 thereafter, and she will establish the date of that shot as
3 March 1.

4 THE COURT: I think we have spent more time
5 talking at the side bar about it. I will allow it. I don't
6 see the prejudice particularly.

7 MR. STAVIS: My objection was not based on
8 prejudice, it was based on needlessness in contrast with the
9 other evidence and the cumulative nature of it.

10 THE COURT: I understand. Thank you.

11 (In open court)

12 THE COURT: The objection is overruled. Go
13 ahead.

14 (Government's Exhibit W1000 was received in
15 evidence)

16 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q. Looking at what has been received as Government's
3 Exhibit W1000 in evidence, can you tell us the name of the
4 patient?

5 A. Mahmud Abouhalima.

6 Q. Can you tell us the date on which Mr. Mahmud
7 Abouhalima appeared in Dr. Al Salihi's office?

8 A. March 1, 1993.

9 Q. Can you tell us what services the office of
10 Dr. Al Salihi performed for Mahmud Abouhalima?

11 A. It looks like a hajj shot.

12 Q. Is that a hajj shot?

13 A. Hajj shot, right.

14 Q. Can you briefly explain what you know about a
15 hajj shot?

16 A. It's a shot that they get when they are going
17 over to the Holyland. It's either a hajj shot or -- I
18 forget the word.

19 Q. Do people, if they are making a pilgrimage for to
20 Mecca got a shot for hajj or for omra?

21 A. Yes.

22 Q. When people receive a for for hajj or omra,
23 besides keeping a record in the office, what do you give the
24 patient?

25 MS. STEWART: Objection.

1 THE COURT: Overruled.

2 A. Usually it's like a little chart that states the
3 date, and the doctor stamps it with the date on it and what
4 kind of shot he gave him.

5 Q. Can you tell us the color of the document you
6 give to someone who gets a shot to go to hajj?

7 A. It's either yellow or white.

8 MR. FITZGERALD: Thank you. I have nothing
9 further.

10 THE COURT: Cross?

11 MR. STAVIS: No cross-examination, your Honor.

12 THE COURT: Thank you very much. You are
13 excused.

14 (Witness excused)

15 MR. FITZGERALD: The government calls Joseph
16 Bettano, B-E-T-T-A-N-O.

17 JOSEPH BETTANO,

18 called as a witness by the government,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FITZGERALD:

22 Q. Mr. Bettano, can you tell the jury who you work
23 for?

24 A. I currently work for Allied Signal in Morristown,
25 New Jersey.

1 Q. Can you tell the jury what you do for Allied
2 Signal?

3 A. I am a research engineer at the facility.

4 Q. For how long have you worked at Allied Signal as
5 a research engineer?

6 A. Almost three years.

7 Q. Let me direct your attention to the fall of 1992
8 and the early few months of 1993. Were you working then for
9 Allied Signal as a research engineer?

10 A. Yes.

11 Q. Did you have your own office or did you share an
12 office?

13 A. We shared an office. I shared an office.

14 Q. Who did you share an office with?

15 A. I shared an office with Mr. Nidal Ayyad.

16 Q. When Mr. Nidal Ayyad shared the office with you,
17 did there come a time when he left the country during that
18 time?

19 A. Yes.

20 Q. Did he tell you for what reason?

21 A. He left the country to say he was getting
22 married, he was going back to his homeland.

23 Q. Where was that?

24 A. He told me Jordan.

25 Q. Did he come back from Jordan after he got

1 married?

2 A. Yes, he did.

3 Q. Did there come a time that Mr. Nidal Ayyad asked
4 you to receive a package for him at work?

5 A. Yes.

6 Q. Can you tell the jury approximately when that
7 was?

8 A. Approximately end of January, early February,
9 somewhere in that vicinity.

10 Q. Why don't you just tell the jury what happened.

11 A. What happened was, Mr. Ayyad had called out sick
12 that day, and he called me at work, saying a package would
13 be coming to his attention, and he asked me if I could take
14 care of it for him, and I did that for him.

15 Q. What happened? Did a package come?

16 A. I was out of the office and when I came back
17 there was a package in front of my doorway. I took the
18 package at my desk. It was a box. I opened the box, and
19 there was some gold colored dust around it and a cylinder --
20 some type of can with some type of chemical in it. I saw
21 that, I said OK, it's here -- the reason why I opened it
22 was, in case it broke in transportation I didn't want it to
23 leak in our office or anything like that. Closed the
24 package back up, put it on his desk and that was it.

25 Q. Did you know what chemical it was that was in the

1 cannister within the box?

2 A. No, I did not.

3 Q. Working in the chemical field, have you seen that
4 gold powder in boxes before?

5 A. Yes.

6 Q. Do you know the purpose of the gold powder?

7 A. That gold dust had some treatment in it where in
8 case the chemical leaks out it will absorb the chemical so
9 it doesn't become a hazard.

10 Q. Just so we are clear, is that real gold or is it
11 just gold colored?

12 A. No, it's just gold colored.

13 Q. Can you tell us the hours you worked during that
14 time?

15 A. Usually 7:30 to 4:30, somewhere in that range.

16 Q. What hours did Mr. Nidal Ayyad work?

17 A. He worked anywhere from 8:30 to 5, 5:30. He was
18 usually there when I left. I obviously left before him.

19 Q. Let me direct your attention to February 26,
20 1993, the day the World Trade Center was bombed, and go back
21 one day. The day before the World Trade Center bombing,
22 February 25, 1993, do you recall what hours Mr. Nidal Ayyad
23 worked on that day?

24 A. He was in approximately 8:30 or so, somewhere in
25 that range. I don't remember the exact time. He left a

1 little bit early that day, left 3, 3:30, somewhere in that
2 range.

3 Q. Let me move forward to the following day,
4 February 26. Do you recall what time Mr. Nidal Ayyad
5 arrived at work?

6 A. He arrived somewhere in the vicinity of 9:30,
7 10-ish, somewhere in that range.

8 Q. Was that the usual time for him to arrive?

9 A. No, he was about an hour or so late.

10 Q. During the day of February 26, 1993, do you
11 recall Mr. Nidal Ayyad doing anything out of the ordinary?

12 A. The only thing that was out of the ordinary was,
13 I keep a portable radio on my desk, and he had asked to
14 borrow it that day, which, you know, I obviously lent it to
15 him.

16 Q. Was that the first time he had ever asked you to
17 borrow the radio?

18 A. Yes.

19 Q. Just so we are clear on the times, when you say
20 that you generally worked till 4 or 4:30, you are talking
21 about 4, 4:30 in the afternoon?

22 A. Yes, that is correct.

23 Q. And when you say that Mr. Ayyad left on the 25th
24 around 3 or 3:30, you are talking about the afternoon?

25 A. Yes.

1 Q. And when he arrived in the morning of the 26th at
2 9:30 or so, that was the morning?

3 A. Yes.

4 Q. When Mr. Nidal Ayyad asked to borrow the radio on
5 February 26, did he tell you why he wanted the radio?

6 A. There was inclement weather that day, and he said
7 he wanted to listen to the weather report.

8 Q. When Mr. Ayyad asked you to borrow the radio, was
9 that before or after the explosion at the World Trade
10 Center?

11 A. It was before.

12 Q. Let me direct your attention into the days and
13 the couple of weeks following the bombing of the World Trade
14 Center. Did you ever have occasion to discuss that incident
15 with Mr. Ayyad?

16 A. Yes.

17 Q. Can you tell us what you discussed?

18 A. Very briefly, it was a worldwide event, so in our
19 office we were discussing things and I said something like,
20 gee, I wouldn't know how to make a bomb in this, something
21 like what happened in that World Trade Center. And then,
22 our chairs are on wheels. We came to each other or met each
23 other, and we had a brief discussion about how to make the
24 bomb or the formula that would be involved in doing this.

25 Q. Why don't you physically tell us what happened.

1 You said you made a comment that you wouldn't know how to
2 build a bomb. What happened then?

3 A. I said I wouldn't know how to go about doing
4 this, and in the exchange he wrote down a formula, and, you
5 know, we had an oral discussion about it and he wrote down a
6 formula and discussed it briefly, and then we threw out the
7 paper and that was it, basically.

8 Q. When you say he wrote down a formula, who are you
9 referring to?

10 A. Mr. Nidal Ayyad.

11 Q. Do you recall what he wrote down in the formula?

12 A. Sulfuric acid and it was nitric acid and things,
13 some type of reactants with an arrow of the products and
14 leads to an explosion. I don't remember the exact chemicals
15 involved.

16 Q. What happened to that piece of paper that he
17 wrote the formula down upon?

18 A. That was put in the rubbish. It was thrown out.

19 Q. Did you ever see it again?

20 A. No.

21 MR. FITZGERALD: I have nothing further.

22 THE COURT: Mr. Stavis.

23 CROSS-EXAMINATION

24 BY MR. STAVIS:

25 Q. Good afternoon. The things that you are telling

1 us about, you testified about previously at the World Trade
2 Center, correct?

3 A. Correct.

4 Q. You testified about the formula that was written
5 out, is that right?

6 A. Correct.

7 Q. And you testified about receiving the chemicals
8 from Mr. Ayyad, is that correct?

9 A. Correct.

10 Q. At the very beginning of your testimony at the
11 World Trade Center trial, the prosecutor asked you to look
12 around the room and see if you recognized Mr. Ayyad, is that
13 correct?

14 A. That is correct.

15 Q. And you did that and you pointed out Nidal Ayyad,
16 is that correct?

17 A. That is correct.

18 Q. And Nidal Ayyad was convicted of bombing the
19 World Trade Center, is that correct?

20 A. Yes.

21 Q. That was at the World Trade Center trial, is that
22 correct?

23 A. Yes.

24 MR. STAVIS: No further questions, your Honor.

25 THE COURT: Anyone else? Any redirect?

1 MR. FITZGERALD: No, Judge.

2 THE COURT: Thank you very much. You are
3 excused.

4 (Witness excused)

5 MR. FITZGERALD: The government calls Martin
6 Stolz, S-T-O-L-Z.

7 MS. AMSTERDAM: Your Honor, may we approach?

8 THE COURT: Yes.

9 (At the side bar)

10 MS. AMSTERDAM: I apologize, your Honor. I
11 didn't realize that this witness was going to be called
12 next. This witness is from the New York Times, I believe,
13 who received the letter that is attributed to Mr. Ayyad. I
14 have an objection to the letter being admitted for the truth
15 of the matter. I don't object to the letter being admitted
16 to have a connection between Ayyad and the bombing, but the
17 letter contains some language to the effect that there are
18 150 suicide soldiers available to me who will continue to do
19 acts, and I object to that language being admitted for the
20 truth of the matter.

21 THE COURT: I don't know that it is being offered
22 for the truth but why don't I hear from you.

23 MR. FITZGERALD: This is sort of a conundrum. I
24 would say it is not being argued for the truth but I think
25 we argued already in the opening that he claimed it. I

1 think that communiques are coconspirator statements.

2 THE COURT: I think it is fair to say that
3 although it is not the conventional statement in furtherance
4 it is a statement in furtherance, which is to say if you
5 have a conspiracy that aims to terrorize, then part of the
6 goal is terror, and that is why it is admissible.

7 MS. AMSTERDAM: Actually, I believe that in fact
8 the letter was sent for that purpose. However, it doesn't
9 mean the underlying facts are true. If you wanted to
10 terrorize someone you might claim 150 suicidal soldiers at
11 your behest, but not that you have them.

12 THE COURT: That's right. If I have a banana in
13 the robing room, I could put it under my robe and say it's a
14 gun, I could terrorize someone. It's overruled. You can
15 argue that it's a banana and he can argue that it's a gun.

16 MS. AMSTERDAM: But would your statement that the
17 banana was a gun come in for the truth of the matter?

18 THE COURT: No, it would come in to show that I
19 said it.

20 MS. AMSTERDAM: So that's what it is coming in
21 for, the fact that it was said?

22 THE COURT: Yes.

23 MS. AMSTERDAM: Thank you. Your Honor, I would
24 then request an instruction to the jury at this point that
25 it is being received for the fact that he said it, not for

1 the fact of the truth of the contents.

2 MR. FITZGERALD: I think, Judge, she has her
3 argument that there is no proof that there were 150 soldiers
4 based on the record. We have proof that there is. It
5 doesn't mean it is a limited purpose. It means she can
6 argue that it is weak or not weak, but it is a claim.

7 THE COURT: It's a claim and you can argue that
8 parts of it are true and parts are not. You can argue that
9 it is true, the parts that aren't, that there is nobody here
10 who wants to commit suicide or come to it. You can argue
11 that it is mere puffing.

12 (Continued on next page)

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1 (In open court)

2 MARTIN STOLZ,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FITZGERALD:

7 Q. Mr. Stolz, as I think you figured out, the
8 microphones are pretty sensitive, so if you speak directly
9 at it, everyone will hear you.

10 Can you tell the jury what you do for a living.

11 A. I work for the "New York Times."

12 Q. What is your current position with the "New York
13 Times"?

14 A. I am a news assistant, and I work in the news
15 department.

16 Q. Let me direct your attention to the early days of
17 March of 1993. Did you work for the "New York Times" then?

18 A. Yes, I did.

19 Q. What was your position and assignment at that
20 time?

21 A. I was a news assistant, and I was working on the
22 metropolitan desk.

23 Q. Could you just describe to the jury what you
24 basically did as a news assistant for the metropolitan
25 desk in March of 1993.

1 A. I was filling in for a person who was on
2 vacation, and that job entailed sorting mail, sorting faxes,
3 answering the phone and screening calls for editors and
4 such.

5 Q. Let me approach you with what's been premarked as
6 Government Exhibits W195 and W196.

7 Looking first at Government Exhibit W195, I would
8 ask you to take a look at that item and tell us whether or
9 not you recognize it.

10 A. Yes, I do.

11 Q. How do you recognize it?

12 A. 195 is the envelope that I opened on March 1 or
13 March 2. That was a Monday or Tuesday. I recognize this --
14 the address it's typed, and it was taped on the front of the
15 envelope. There is a writing, very distinctive writing on
16 the upper left-hand corner, and there are these bold black
17 lines rather than the typical postage cancellation mark that
18 you would find that have a city and a date. So those were
19 the main things that I recognized from this.

20 Q. You said that you recall receiving that on a
21 Monday or Tuesday, March 1 or 2?

22 A. Yes.

23 Q. Would that be 1993?

24 A. Yes, 1993.

25 Q. Taking a look at the exhibit to your left,

1 Government Exhibit W196, I ask you to take a look at that
2 and tell us whether or not you recognize that item.

3 A. Yes, I do. This is the letter that was contained
4 in that envelope.

5 Q. The paper that is in your hand right now, was the
6 paper the same color when you first saw it?

7 A. No, it was -- to the best of my memory, the
8 letter was white. Now it is discolored.

9 Q. So whatever has been done to it has discolored
10 the paper, but do you recognize the text of the letter?

11 A. Yes, I do.

12 Q. And that letter, W196, is the item that was
13 contained in the envelope W195?

14 A. Yes.

15 MR. FITZGERALD: Your Honor, the government
16 offers W195 and W196.

17 MR. JACOBS: 401.

18 THE COURT: Overruled.

19 195 and 196 are received.

20 (Government's Exhibits 195 and 196 for
21 identification were received in evidence)

22 Q. I will return to the letter in a moment. What
23 did you do once you opened the letter and read that item?

24 A. I initially gave it to an editor named Dave
25 Smith, and he instructed me --

1 MR. STAVIS: Objection, your Honor.

2 THE COURT: That is sustained. Don't tell us
3 what he told you to do. Just tell us what you did.

4 THE WITNESS: OK.

5 Q. Let me rephrase the question.

6 A. Please.

7 Q. Did there come a time when you gave that envelope
8 and that letter to anyone connected with law enforcement?

9 A. Yes, I did.

10 Q. Can you tell us approximately when that was.

11 A. On Thursday, March 4, 1993.

12 Q. A final question before I return to the letter:
13 Did there come a time when the "New York Times" wrote an
14 article about that letter?

15 A. Yes.

16 Q. Do you recall when it was that the "New York
17 Times" first published an article discussing the letter?

18 A. I did some research about it, and I believe it
19 was the 28th of March, a month after or so.

20 Q. So prior to March 28 there was no reference in
21 the "New York Times" to that letter?

22 A. None to my knowledge. I did a computer search,
23 and I didn't find any references to it.

24 Q. Let me approach you with what's been premarked as
25 Government Exhibit W196A. I ask you to look at this item

1 and tell me whether or not it is a fair and accurate
2 enlargement of the letter marked as Government Exhibit 196
3 prior to the discoloration.

4 A. It looks pretty good to me.

5 THE COURT: Other than looking "pretty good,"
6 does it look like the letter?

7 THE WITNESS: Yes. It's an exact reproduction,
8 as far as I can tell.

9 THE COURT: Thank you.

10 MR. FITZGERALD: Your Honor, on that basis I will
11 offer Government Exhibit W196A.

12 MR. STAVIS: Objection, Rule 403.

13 THE COURT: That is overruled. 196A is received.
14 (Government's Exhibit 196A for identification was
15 received in evidence)

16 MR. FITZGERALD: I would like to display it to
17 the jury and then read its contents.

18 THE COURT: Go ahead.

19 (Government Exhibit 196A was displayed and read
20 to the jury)

21 MR. FITZGERALD: I have nothing further of this
22 witness, Judge.

23 THE COURT: Cross. Mr. Jacobs, representing
24 Mr. Mohammed Saleh. Go ahead.

25 CROSS-EXAMINATION

1 BY MR. JACOBS:

2 Q. Mr. Stolz, let me show you this, 78E for
3 identification. Take a look at that. Would you know if the
4 "New York Times" ever got something similar to this document
5 that I am showing you the enlargement of?

6 Would you know that, sir?

7 A. No, I don't.

8 Q. The document that you received from the
9 Liberation Army Fifth Battalion you got in early March 1993,
10 is that correct?

11 A. Yes.

12 Q. Do you know if the "New York Times" received any
13 other documents from this Liberation Army Fifth Battalion in
14 1994 or 1995? Would you know that?

15 A. I don't know. They may have.

16 Q. They may have?

17 A. They may have. I have no idea.

18 MR. JACOBS: I have nothing further.

19 THE COURT: Anyone else?

20 Anything else?

21 MR. FITZGERALD: No, Judge. No redirect.

22 THE COURT: Thank you very much. You are
23 excused.

24 (Witness excused)

25 MR. McCARTHY: Your Honor, the government calls

1 Peggy Casey Cash.

2 PEGGY CASEY CASH,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 MR. McCARTHY: May I, your Honor.

6 THE COURT: Please.

7 DIRECT EXAMINATION

8 BY MR. McCARTHY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Would you tell the ladies and gentlemen of the
12 jury what you do for a living.

13 A. I am a special agent with the FBI.

14 Q. How long have you been an FBI agent?

15 A. Seven and a half years.

16 Q. In what office are you currently assigned?

17 A. I am assigned to the Newark, New Jersey office.

18 Q. Let me direct your attention to March 10, 1993.

19 Agent Cash, did you have an assignment that day?

20 A. Yes, I did.

21 Q. Can you tell us what that was.

22 A. I was to execute a search warrant at the premises
23 of Allied Signal.

24 Q. Was that a search warrant that was issued by a
25 federal court in New Jersey?

1 A. Yes, in -- out of the Southern District of New
2 York.

3 Q. Southern District of New York?

4 A. Yes.

5 Q. I'm sorry. Did you go there alone or with other
6 agents?

7 A. I was accompanied with other agents.

8 Q. Was one of those agents Thomas Cash?

9 A. Yes.

10 Q. When you got to Allied Signal, did you receive
11 any assistance from the security personnel at Allied Signal
12 to locate the office you were looking for?

13 A. Yes, we did.

14 Q. Would you describe, please, where the office was
15 at Allied Signal.

16 A. The office was in one of the office buildings.
17 We entered the premises accompanied by security personnel,
18 and the office was located on the left-hand side of the
19 hallway immediately in the door.

20 Q. Would you describe briefly the area inside --
21 withdrawn.

22 Would you describe briefly the area outside and
23 then inside the office.

24 A. The outside of the office was a hallway with
25 various doors going down the corridor. Upon entering the

1 office was a desk, immediately in front, and then to the
2 left was another desk, bookcase, filing cabinet and
3 credenza.

4 Q. Was there any sign or indication outside the door
5 of the office?

6 A. Yes, there was.

7 Q. Did it indicate whose office it was?

8 A. Yes. It had Mr. Ayyad's name on there, and it
9 was labeled 1-138.

10 THE COURT: Try to keep your voice up as much as
11 you can.

12 THE WITNESS: Sorry.

13 THE COURT: Thank you.

14 Q. In a little bit more detail, would you just
15 describe the office as you walked into it.

16 A. Upon entering the office, there was a desk in
17 front and then to the left was -- there was a window, the
18 bookcase, there was a bookcase on the opposite side of the
19 room. Immediately to the left was another desk, a credenza
20 and a filing cabinet.

21 Q. Did anyone come in or out of the office while you
22 were conducting the search?

23 A. Yes.

24 Q. Who was that, ma'am?

25 A. The other person who shared the office with

1 Mr. Ayyad.

2 Q. Do you recall his name?

3 A. Yes.

4 Q. What was his name?

5 A. Joe Bettano.

6 Q. That's Mr. Bettano who testified here a few
7 minutes ago?

8 A. Yes.

9 Q. Did you have any conversation with Mr. Bettano?

10 A. Yes.

11 Q. I am not asking you what was said, but after you
12 spoke to him, did you focus your search in a particular area
13 of the office?

14 A. Yes, we did.

15 Q. Can you tell us what area of the office you
16 searched.

17 A. Mr. Bettano specifically advised us --

18 MR. STAVIS: Objection, your Honor.

19 Q. Let me stop you there. I don't mean to be rude.

20 I am not asking you to tell us what it is that
21 Mr. Bettano told you. I am asking you to tell us what you
22 did after you said whatever you said to Mr. Bettano and he
23 said whatever he said to you.

24 A. OK. We searched the desk of Nidal Ayyad, the
25 credenza, the filing cabinet and the bookcase.

1 Q. Can you tell us, what, if anything, you
2 recovered?

3 A. We recovered various items, manuals, books,
4 computer disks.

5 Q. Did you recover any PH strips?

6 A. And PH indicator strips, yes.

7 Q. Agent Cash, I am placing before you what has been
8 marked as Government's Exhibit W78 for identification. I
9 would ask you to take a look at this item and tell us if you
10 recognize it.

11 A. Yes, I do.

12 Q. What do you recognize it to be?

13 A. I recognize it by the initials and date as one of
14 the items seized from the computer area.

15 Q. All right. To be clear, whose initials do you
16 recognize? Are those your own?

17 A. The agent you advised previously, Thomas Cash.

18 Q. You mean the agent who was with you that day?

19 A. Yes.

20 Q. The date is March 10, 1993?

21 A. That's correct.

22 Q. Did you seize this item from Mr. Ayyad's office?

23 A. Yes, we did.

24 Q. Did you seize other disks on that day as well?

25 A. Yes.

1 MR. McCARTHY: Your Honor, the government offers
2 W78.

3 MR. STAVIS: No objection, your Honor.

4 THE COURT: W78 is received without objection.

5 (Government's Exhibit W78 for identification was
6 received in evidence)

7 MR. McCARTHY: Thank you, your Honor. I have no
8 further questions.

9 THE COURT: Cross? Ms. Amsterdam.

10 CROSS-EXAMINATION

11 BY MS. AMSTERDAM:

12 Q. Good afternoon, Agent.

13 Could you tell us what kind of business Allied
14 Signal is.

15 A. It is a various chemical business. They do
16 various things at Allied Signal.

17 Q. Did you learn in the course of your investigation
18 what Nidal Ayyad's position was in the company?

19 A. I did not, no.

20 MS. AMSTERDAM: Thank you.

21 THE COURT: Mr. Serra?

22 MR. SERRA: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. SERRA:

25 Q. Good afternoon, Agent Cash.

1 A. Good afternoon.

2 Q. How many floppies did you seize from Mr. Ayyad's
3 office?

4 A. Approximately 18 in one area and approximately
5 ten in another area. So 28 total, approximately.

6 MR. SERRA: Thank you.

7 THE COURT: Mr. Jacobs?

8 CROSS-EXAMINATION

9 BY MR. JACOBS:

10 Q. Agent, with respect to the disks that you
11 recovered, where exactly were they?

12 A. The disk in general or the one entered into
13 exhibit?

14 Q. I am sorry. The floppy disks that you have been
15 referring to. How many did you recover?

16 A. I'm sorry?

17 Q. How many floppy disks did you recover?

18 A. I said approximately 28.

19 Q. What did you do with them?

20 A. We placed them into evidence envelopes and sealed
21 them.

22 Q. When was the last time you saw them?

23 A. Right in preparation.

24 Q. Pardon me?

25 A. In preparation.

1 Q. Preparation for what, ma'am?

2 A. For trial.

3 Q. This time? The World Trade Center trial? When
4 was the last time you saw the 28 floppy disks?

5 A. In preparation for this trial. They were in
6 evidence.

7 Q. Who showed them to you?

8 A. Mr. McCarthy.

9 Q. Had you seen them in the previous trial, the
10 World Trade Center trial?

11 A. Yes.

12 Q. You were shown them by the Assistant U.S.
13 Attorneys in that trial?

14 A. Yes.

15 Q. Did you ever take the disks and put them into a
16 computer and work with them?

17 A. No.

18 Q. Other than just putting them into evidence
19 envelopes, you didn't use them at all?

20 A. No.

21 MR. JACOBS: I have nothing further.

22 THE COURT: Anyone else? Any redirect?

23 MR. McCARTHY: No, thank you.

24 THE COURT: Thank you, you are excused.

25 THE WITNESS: Thank you.

1 (Witness excused)

2 MR. McCARTHY: Your Honor, the government calls
3 Elizabeth James.

4 ELIZABETH JAMES,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 THE COURT: Go ahead.

8 MR. McCARTHY: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. McCARTHY:

11 Q. Good afternoon, Ms. James.

12 A. Good afternoon.

13 Q. Can you tell us what you do for a living, please.

14 A. Yes, I am a document analyst with the Federal
15 Bureau of Investigation in training to be a document
16 examiner.

17 Q. You are training now to be a document examiner?

18 A. Yes, I am.

19 Q. Can you tell us how long you have been with the
20 FBI.

21 A. Twenty-seven years.

22 Q. Before you were training to be a document
23 analyst, let me direct your attention to the period from
24 1984 to 1994, to the beginning of 1994 and ask you what you
25 did with the FBI during that period of time.

1 A. I was a computer specialist assigned as a
2 computer evidence examiner in the FBI laboratory.

3 Q. All right. Can you explain to us, please, what a
4 computer specialist at the FBI does.

5 A. As a computer examiner I performed various
6 examinations on all types of magnetic media, such as floppy
7 disks, hard disk drives, tapes, and optical disks in order
8 to retrieve the data that is stored on them.

9 Q. What is your educational background?

10 A. I have a bachelor of arts degree from Radford
11 College, Radford, Virginia.

12 Q. Do you have any particular special training in
13 computers?

14 A. Yes, I have taken a number of structured courses,
15 at Integrated Computer Systems, the Shaffstall Corporation,
16 American Institute, the Department of Justice, and the FBI.

17 These courses have dealt with the hardware and
18 software mechanics of disk conversion systems, the repair
19 and recovery of damaged disks, troubleshooting and repair of
20 personal computer systems, and the creation and retrieval of
21 databases, spreadsheets, and word processing programs.

22 Q. Thank you.

23 Have you been involved in teaching and training
24 others in working with computers?

25 A. Yes, I have. I have administered training within

1 the FBI laboratory. I have also provided training in the
2 proper search, handling and examination of computer evidence
3 at internal FBI training seminars, the Federal Computer
4 Investigation Committee seminars, and to the federal, state
5 and local law enforcement community.

6 Q. Have you ever testified in court about analyzing
7 or developing computer evidence?

8 A. Yes, I have.

9 Q. About how many times?

10 A. Six or seven.

11 Q. What kind of courts?

12 A. Federal and state.

13 Q. Let me ask you a few basic questions about
14 computers. Are you familiar with the term "operating
15 system"?

16 A. Yes, I am.

17 Q. Can you explain to the ladies and gentlemen of
18 the jury what a computer operating system is.

19 A. Well, the operating system really is the master
20 control program of the computer system. It acts as a
21 schedule or traffic cop telling the computer, letting it
22 know what's going on and controlling all the activity.

23 Q. What's a software program?

24 A. A software program could be an operating system
25 program; it can be like an application program, which would

1 be a database, a spreadsheet or a word processing program.
2 It could also be a utility program, utilities such as Norton
3 Utilities, PC Tools.

4 Q. Are you familiar with the software programs that
5 are commonly commercially available today that deal with
6 word processing?

7 A. Yes, I am.

8 Q. Can you tell us what some of those are.

9 A. Probably the most popular one is WordPerfect,
10 which is put out by the WordPerfect Corporation. There are
11 a number of other lesser known ones.

12 Q. Would you explain to us, please, what a hard
13 drive is.

14 A. A hard drive -- it's a rigid disk. It is metal.
15 Usually it's rectangular shaped. It has a magnetic coating
16 on the surface for writing to the disk.

17 Q. Is the hard drive, or what's commonly known as a
18 hard drive, is that the memory of a computer?

19 A. Yes, it is.

20 Q. Where is the hard drive usually contained within
21 the computer?

22 A. The hard drive is usually installed within the
23 computer. It's bolted down so it doesn't move around. It
24 stays stable.

25 Q. If you pick up and move the computer, the hard

1 drive, is that part of the system that goes along with it?

2 A. Yes, it would.

3 Q. What's a floppy disk?

4 A. A floppy disk is referred to as removable media.

5 With the floppy disk, you could move that from one computer
6 system to another.

7 Q. Is it also a means of storing memory?

8 A. Yes, it is.

9 Q. Can you compare the floppy disk and the hard
10 drive in terms of memory capacity?

11 A. Yes. Probably -- well, it may be a little higher
12 now, but about the average size today of a hard drive would
13 be maybe 270 megabytes. They come a lot larger. A
14 270-megabyte hard drive would probably contain approximately
15 176 pages. A small, like three-and-a-half-inch floppy disk
16 that's formatted for 1.2 megabytes would contain about 800
17 pages. So the hard drive has a lot larger storage.

18 Q. I am going to show you this in a few minutes more
19 closely, but I am holding up W78 in evidence.

20 Do you see that item?

21 A. Yes.

22 Q. That is a floppy disk?

23 A. A disk, yes.

24 Q. It's not an eye test. It's OK.

25 A. Well, I wouldn't pass.

1 Q. Can you tell us, please, what a file is in
2 computer parlance.

3 A. Well, a data file would be a file that was
4 created by a user. It could be a database, a data file,
5 which could contain like an entry of your household items or
6 it could be a word processing data file which could be a
7 letter, a memo, maybe your to-do list.

8 Q. Let's stick with word processing.

9 A. Word processing.

10 Q. What is a directory?

11 A. Well, a directory, the user could create a
12 directory on their hard drive, or it's the main directory,
13 the directory is where your files are going to be contained
14 when they are program files or data files.

15 Q. You used the example a few minutes ago or a few
16 seconds ago of a letter. If I were to sit down at a
17 computer and type a letter and save it, that would be a
18 file?

19 A. That's correct.

20 Q. If I were to, say, write ten letters and save all
21 of them in the system, would they all show up on my
22 directory if I gave that command?

23 A. Yes. Each individual letter would show up.

24 Q. Let's stick with letters for a moment. How would
25 you go about, if you were dealing with the WordPerfect

1 system, saving a letter that you wrote?

2 A. Well, within the WordPerfect program it has an
3 option in order to save what you have just created, which in
4 this case would be the letter. And so you would save the
5 letter within WordPerfect.

6 Q. You could save it either on your hard-drive
7 memory or a floppy disk, is that right?

8 A. That's correct.

9 Q. Let's say I wanted to delete a letter. What
10 would I do?

11 A. Well, within WordPerfect there's also an option
12 to delete a letter or whatever you've typed. So you would
13 hit whatever key it is, and it would delete that letter.

14 Q. How does this system go about deleting a letter
15 using the delete command?

16 A. When an active file has been deleted, the first
17 character in the file name is deleted. It's replaced by the
18 lower case Greek sigma character. The reason they use
19 that -- this only pertains to the MS-DOS, PC-DOS operating
20 system which --

21 Q. Let me stop you there for a moment because I've
22 lost you.

23 What do you mean by the MS-DOS, PC-DOS system, in
24 lay man's terms as close as you can?

25 A. The IBM and IBM-compatible computer systems use

1 operating systems called MS-DOS or PC-DOS. "MS-DOS" stands
2 for Microsoft. "DOS" is the disk operating system, which is
3 generic to any computer system.

4 Q. I think you were explaining how you delete --

5 A. Yes.

6 Q. -- a letter?

7 A. So when the first character in the file name has
8 been deleted, it's replaced by this Greek sigma E, and they
9 use this character because it's not recognized by the
10 operating system as being a legitimate character in a file
11 name. It is not recognized by the file-naming convention.

12 So consequently when you try to do a directory
13 listing to show what files are in that directory on that
14 disk, it's not going to show up. It is not there for the
15 viewer to see. It looks like it's just been wiped off of
16 the disk.

17 Q. Ms. James, let me try an example. Suppose I
18 write a letter and save it as a letter and I call it
19 "Letter," L-E-T-T-E-R. Now I delete that job or that file.
20 Can you explain to us with that example what you mean by the
21 Greek sigma character and how that works once you have
22 deleted the letter.

23 A. Well, in the file "Letter," the "L" in the
24 beginning of "Letter," the first character in "Letter" would
25 be deleted, and it would be replaced by the Greek sigma

1 character.

2 Q. Does that mean that it would no on longer show up
3 on my directory if I wanted to look at all the documents I'd
4 saved?

5 A. That is right.

6 Q. Does that mean that the information or the data
7 that was in my letter, the actual substance of what I typed,
8 would that have disappeared?

9 A. No, it would not have.

10 Q. Why not?

11 A. The data is always still on the disk until it's
12 been overwritten.

13 Q. Now, can you explain, please, what you mean by
14 the term "overwrite" or when information is overwritten?

15 A. Like I said, when a file is deleted, it's
16 initially -- the information is still there. As a disk
17 becomes filled up, the operating system is the one who
18 determines where your newly created file is going to reside,
19 and it takes the first open space available on the disk. So
20 let's say, if you had like seven -- you said you had ten
21 letters. There's ten letters on your disk, you delete one
22 letter --

23 Q. Let me just to try to make it a little more
24 concrete. Suppose you decide to delete the third of the ten
25 letters. How would that work?

1 A. The third?

2 Q. The third letter out of the ten.

3 A. OK. All right. If you deleted the third letter,
4 you are going to have space for one new letter. If it's the
5 same size or less, when you create this new letter, this new
6 memo that you are writing and you save it, it will go and
7 occupy the space where the third letter was, provided it is
8 the same size or less than the size of the third letter that
9 you had previously deleted.

10 Q. Let me just interrupt you for a second. Say the
11 third letter that I deleted, say that was 100,000 bytes.

12 A. Yes.

13 Q. Now I sit down to write letter No. 11, which only
14 has 50,000 bytes, OK?

15 A. Yes.

16 Q. When I save letter No. 11, where does letter No.
17 11 go?

18 A. Letter No. 11 would go into the space where
19 letter No. 3 was and it would fill up 50,000 bytes. There
20 would be 50,000 byte leftover of data from letter No. 3.

21 Q. All right. Let's just say now, for example, that
22 letter No. 11 is bigger than 100,000 bytes.

23 A. Then it would come back with a message "Disk
24 Full," and you wouldn't be able to save your letter. There
25 would be no room on the disk for it.

1 Q. That is if I had no more capacity on the disk?

2 A. That's right.

3 Q. Let's say for argument's sake that the ten
4 letters I originally had didn't take up all the space on the
5 disk.

6 A. As long as there was enough space left on the
7 disk to hold the newly created letter, it would save it on
8 the disk. It would become a fragmented disk, and it would
9 just split it up, but the operating system has pointers and
10 it tells it where to go look for the rest of your letter so
11 you would still be able to bring it up.

12 Q. So would some of the letter occupy the space that
13 used to be letter No. 3 and then the rest of it another
14 space on the disk?

15 A. That's right.

16 Q. Once the space that used to be letter No. 3 is
17 replaced with letter No. 11, has letter No. 11 in some sense
18 overwritten letter No. 3?

19 A. Yes, it would have.

20 Q. When you are trying to retrieve -- withdrawn.

21 Part of your job as a computer specialist was to
22 retrieve data, is that correct?

23 A. Yes.

24 Q. Can you tell us how you go about trying to
25 retrieve data from a floppy disk.

1 A. Our procedures when we first get it in?

2 Q. Please.

3 A. When we first receive a piece of evidence,
4 whether it's a floppy disk or a hard disk drive, we are
5 going to write-protect it. On the three-and-a-half-inch
6 floppy, that's a rigid disk, we would write-protect that by
7 pushing up this little lever, and it opens up a space where
8 you can actually look through and see a hole.

9 That disk is now write-protected, so you cannot
10 alter it, you can't add anything to it, you can't delete
11 anything to it. After we've done that, we would then look
12 at the disk and produce a directory listing of the specific
13 disk.

14 Q. Can I interrupt you for just a second.

15 A. Sure.

16 Q. I have placed before you W78 in evidence. Can
17 you show us, using that floppy disk, what you do or where
18 you would write-protect the disk?

19 A. Yes. Right over here on the left-hand side is
20 the lever. It goes up and down. Right now it's in the open
21 position where you can look through it. All right. This
22 disk is write-protected; you can't alter it in any way.

23 If you wanted to write to it, you would close the
24 lever, and now you are able to add information to this
25 floppy disk. As soon as we receive disks in like this, we

1 immediately write-protect them.

2 Q. OK. You can hold on to that. Thank you.

3 What do you do once the disk is write-protected?

4 A. Well, then we go through and do the directory
5 listing to get all the information that is on this disk,
6 find out what all the files are that are listed there. Our
7 next step would be to look for any deleted files on the
8 disk.

9 Q. How would you go about trying to find any deleted
10 files?

11 A. We usually use a custom program in order to
12 quickly look through the floppies and see if there are any
13 deleted files on there.

14 Q. Directing your attention to W78 in evidence, is
15 that a disk that you analyzed?

16 A. Yes, it is.

17 Q. How are you able to tell that?

18 A. Well it has the Q number the lab number and my
19 symbols on it.

20 Q. Did you examine W78 to see if there were deleted
21 files?

22 A. Yes.

23 Q. Ms. James, I have handed you W78A-1 for
24 identification. Do you recognize that item?

25 A. Yes, I do.

1 Q. What do you recognize it to be?

2 A. This is the results from the F Erase program. It
3 shows that there are four deleted files, four recoverable
4 deleted files were found on Government's Exhibit W78A-1.

5 Q. W78A-1 I believe is the document I have handed
6 you. W78 is the floppy disk.

7 A. That's correct.

8 Q. So you're saying that four deleted files were
9 found from W78?

10 A. Right.

11 Q. The floppy disk?

12 A. Yes.

13 MR. McCARTHY: Your Honor, the government offers
14 W78A-1.

15 THE COURT: W78A-1 is received without objection.
16 (Government's Exhibit W78A-1 for identification
17 was received in evidence)

18 THE COURT: Could you come to a convenient break
19 point in the next five minutes or so, Mr. McCarthy.

20 MR. McCARTHY: Your Honor, this would be fine
21 since I can't find my next prop.

22 THE COURT: OK. Ladies and gentlemen, we are
23 going to take a short break. Please leave your notes and
24 other materials behind. Please don't discuss the case and
25 we will resume in a few minutes.

1 (Recess)

2 THE COURT: Mr. McCarthy.

3 MR. McCARTHY: Thank you, your Honor.

4 Q. Ms. James, before we broke, I asked you to
5 compare the memory capacity -- this is earlier in your
6 testimony. I asked you to compare the memory capacity of a
7 floppy disk with a hard drive, and I think you gave us a
8 comparison in page numbers. Can you tell us what your
9 understanding is, using page numbers, of the difference.

10 A. The 200-megabyte hard drive has approximately
11 176,000 pages, it would hold approximately 176,000 pages.
12 The three-and-a-half-inch floppy disk that is formatted for
13 1.2 megabytes would hold about 800 pages.

14 Q. When you say "megabytes" and "bytes," is that a
15 unit for measuring bits of information on a computer?

16 A. Yes.

17 MR. McCARTHY: Your Honor, if I may, I would like
18 to direct the court and the jurors' and counsel's attention
19 to Government Exhibit W78A-1, which was received in evidence
20 a few minutes ago. It is the second page at the very
21 beginning of the binder for the W series. There is a tab,
22 and then we skip a page and go to the second page.

23 THE COURT: OK.

24 (Continued on next page)

25

1 Q. It would be the second page after the tab marked
2 GXW78.

3 Q. Ms. James, do you have that document in front of
4 you?

5 A. Yes, I do.

6 Q. Can you explain to us what this document is?

7 A. This is a result of the program that we ran
8 called FERASE, and it reads a whole disk from start to
9 finish, looking for any erase files.

10 Q. That is what you called deleted files before?

11 A. Yes, erased or deleted files.

12 Q. OK.

13 A. On this particular disk, which is Government's
14 Exhibit W78 --

15 Q. That is correct, the one in front of you, that
16 you testified about earlier.

17 A. There were four deleted files on Government's
18 Exhibit W78.

19 Q. Could you just clarify for us, there is some
20 handwritten information in the top right and also next to
21 some of the typewritten information. Where does the
22 typewritten information come from and where does the
23 handwritten information come from?

24 A. The handwritten information is put on by the
25 person that was doing the exam, as the lab number identifies

1 it, with the lab number, the symbols and the Q number, and
2 then it is marked whether or not it was printed.

3 Q. Let me direct your attention to the -- withdrawn.
4 When you say it's marked whether or not it is printed, what
5 did you mean by that?

6 A. I mean the four files. Beside each of the four
7 files it is marked printed which means that we printed out
8 those four deleted files.

9 Q. We will get to that in a moment. Let me direct
10 your attention to the typewritten information, and
11 specifically the bottom line, the fourth line that starts
12 with an A and reads across, March 2, '93?

13 A. Yes.

14 Q. And then goes across from there.

15 A. OK.

16 Q. The dates that are on each of these four lines,
17 and specifically I am now directing your attention to the
18 fourth line, can you tell us where those dates come from?

19 A. The date is the time that the file was created or
20 it was last updated or modified.

21 Q. Last updated or modified by the FBI in the lab or
22 by the user?

23 A. By the user, because we write-protected the disk
24 before we even put it into the computer system.

25 Q. So on the fourth line the March 2, 1993 at 8:58

1 a.m.

2 A. Right.

3 Q. That indicates that that document was either last
4 saved or pulled up somehow on that date?

5 A. Yes. That would coincide with the date that is
6 running on the computer system.

7 Q. Let me ask you about the number after the time.
8 Do you see where it says on that fourth line 8:58 a.m.?

9 A. Yes, 00446, that's the cluster number, where the
10 file resides.

11 Q. Can you briefly explain to us what a cluster
12 number is?

13 A. When a floppy -- well, any type of media, any
14 type of disk is formatted, the operating system controls the
15 formatting of the floppy so that it will be able to -- or a
16 hard drive, so it will be able to recognize it when it is
17 put into that particular computer system. What it does is,
18 it formats it for a certain number of tracks, a certain
19 number of sectors and clusters. This is all determined by
20 the operating system. In this case there are at least 446
21 clusters. Within a cluster there are so many sectors, and
22 this is also determined by the operating system, and this is
23 how the operating system determines where it is going to
24 place the saved files or the loaded program files that you
25 have loaded onto your media.

1 Q. Does that cluster number tell you where
2 physically on the disk this deleted file would be?

3 A. Yes, it would be the 446th cluster.

4 Q. Moving across from there, there is a number 1385.

5 A. 1385 is the size of that particular file.

6 Q. 1385 what?

7 A. Kilobytes.

8 Q. That is a thousand bites?

9 A. Yes. It is 1,385.

10 Q. And finally, there is a small letter e followed
11 by the letters, capital letters TC. Do you see that?

12 A. Yes.

13 Q. What does that indicate?

14 A. The small letter e is what the computer is
15 representing as the lower case Greek sigma character. That
16 shows that it is a deleted file. It's not going to be
17 recognized, as you recall I said by the operating system, it
18 is not going to show up in a directory listing. Capital T,
19 capital C, those are what is remaining of the original file
20 name for that particular file.

21 Q. So whatever this file was called before it was
22 deleted, it is three letters and the last two are TC?

23 A. That is correct.

24 Q. And the Greek sigma character replaced the first
25 letter?

1 A. Whatever the first character was, it was
2 replaced.

3 Q. Did you cause the deleted file on that fourth
4 line to be printed?

5 A. Yes. In order to print the file in a more or
6 less readable fashion, the file has to be recovered. So it
7 was recovered and then printed.

8 Q. When you say it was recovered, what do you mean
9 by that?

10 A. We went in with, in this case we used Norton 6.0
11 and retrieved the file and replaced it. Obviously you can't
12 write in your evidence, in this case W68, so what we did was
13 we transferred it to another disk. When a file is recovered
14 it is now in a recognizable form where it could be brought
15 into, hopefully if it is not damaged in any way, into the
16 software package that was used to create it.

17 Q. Just briefly, what is Norton 6.0?

18 A. Norton 6.0 is a commercial software package.

19 Q. Ms. James, I am placing before you what are
20 marked for identification as Government's Exhibits W78D and
21 W78E, and I would ask you to take a look at those documents
22 and tell us if you recognize them?

23 A. Yes, I do recognize Government's Exhibit W78D.

24 Q. What do you recognize that to be?

25 A. Government's Exhibit W78D is the recovered file,

1 recovered deleted file. When we recover a file that has
2 been deleted, remember, the first character is missing. So
3 what we have to do is replace that character with a
4 character that would be recognized by the operating system.

5 Q. Let me stop you for a moment because the document
6 is not in evidence yet, or it is not in evidence at this
7 time.

8 A. Sorry.

9 Q. Let me ask you next if you recognize W78E?

10 A. Yes, I do recognize W78E.

11 Q. What is W78E?

12 A. This is also another copy of the recovered
13 deleted file.

14 MR. McCARTHY: Your Honor, the government offers
15 W78D and W78E.

16 MR. JACOBS: Objection, 401.

17 THE COURT: Overruled. W78D and W78E are
18 received.

19 (Government's Exhibits W78D and W78E were
20 received in evidence)

21 MR. McCARTHY: Your Honor, those documents are in
22 the jury's books, and I would ask if we could turn to them
23 now.

24 THE COURT: Go ahead.

25 Q. Do you have W78D in front of you?

1 A. Yes, I do.

2 Q. Again there is handwriting at the top of that
3 document, and then typewriting?

4 A. Correct.

5 Q. Tell us briefly what the handwriting is.

6 A. The handwriting here again identifies this
7 particular printout. It has the K number, the lab number,
8 it has the file number, and in parentheses that it is a
9 recovered deleted file.

10 Q. Let's start with the printed information. Do you
11 see at the top where it says file and then in quotation
12 marks XTC?

13 A. Yes. XTC is the name that we gave to the file.
14 We had to replace the first character that was deleted with
15 a character that would be recognized by the operating
16 system. Our convention that we have decided to use in
17 naming recovered deleted files so they would be easily
18 recognizable to us would be to start with X and then go to Y
19 and then go to Z. If we had had three deleted files that
20 had the last two characters TC, we would have had to use X,
21 Y and Z in order to identify those three specific files,
22 because you cannot have more than one file with the same
23 name on a disk. So in this case there was only one and it
24 was called XTC. So we have named it XTC.

25 Q. You chose the X and TC was already there?

1 A. The TC was part of the deleted file name.

2 Q. Let me ask you if you are familiar with the
3 American standard code for information interchange? Have
4 you heard that term before?

5 A. Yes, I have.

6 Q. Do you know it by some other word?

7 A. We refer to it as ASCII.

8 Q. What is ASCII?

9 A. We have a program that we use that is called
10 ASCII. What it does is it goes in and strips all the
11 unprintable characters, it just prints out the clear text
12 characters, which would be the English alphabet, which you
13 and I can read, like A, B, C. The unprintable characters
14 are characters that are recognized by the computer system.

15 Q. What kind of things are covered in the category
16 of unprintable characters?

17 A. They could be formatting commands from within
18 software packages. They could be, like in WordPerfect, if
19 you wanted to create bold characters within, let's say, a
20 letter that you are writing or if you wanted to add
21 underlying, those are commands that would not print out.

22 Q. How about if you wanted to send it to a
23 particular printer?

24 A. The printer information is placed in the header
25 of a file and this is so that the software program knows

1 which printer it is going to be printed -- the particular
2 letter or whatever it is, file is going to be printed out
3 on. It will normally -- what is going to be placed up there
4 is the default printer that was set up when the software
5 package was loaded. You do have the option to change that
6 if you have the printer files loaded into your WordPerfect.

7 Q. Just for simplicity's sake, if it is simple, the
8 default printer is the printer that a document will go to
9 unless you change your mind and decide to send it to a
10 different one?

11 A. That's right.

12 Q. Could you look at the lines underneath on W78D,
13 the line that says file XTC. There is an indication of WPC
14 and then there is about four lines of information.

15 A. The WPC is what WordPerfect would place at the
16 beginning of a file that was created within the WordPerfect
17 software package. It does that so that when you are asking
18 it to retrieve this particular file at a later date it
19 recognizes the fact that it is a WordPerfect file and will
20 pull it up within WordPerfect. The other three lines
21 contain some of the formatting information. 10CPI is 10
22 characters per inch. That tells it the size of the type.
23 Courier is a type style. So is italic courier. Then it
24 also has in here the printer information for the default
25 printer.

1 Q. So those are the commands that you don't see on a
2 normal letter that you referred to before as in the header
3 of the file?

4 A. That's right. Yes, if you had just used the MS
5 DOS which comes with the operating system type command,
6 T-Y-P-E, and typed out this file, it would not have that
7 information up there -- should not.

8 Q. Moving down on the document to the text, can you
9 tell us what the text is, that is, how it was generated?

10 A. The text of the letter is what the user created.

11 Q. That is the rest of the document?

12 A. That is correct.

13 MR. McCARTHY: Your Honor, may I read the text
14 into the record?

15 THE COURT: Yes.

16 MR. McCARTHY: We are the Liberation Army Fifth
17 Battalion, again. Unfortunately, our calculations were not
18 very accurate this time. However, we promise you that next
19 time it will be very precise and -- it skips a line -- WTC
20 will continue to be one our targets in the U.S. unless our
21 demands have been met. As you know, our demands were mailed
22 to NY Times, Post, and Daily News.

23 At the bottom it's Liberation Army, Fifth
24 Battalion, Al Fareek Al Rokn, Abu Bakr Al Makkee.

25 Q. Let me direct your attention finally to W78E in

1 evidence. Can you tell us what that is?

2 A. This is the same file. It is the recovered file
3 that we called XTC. This particular printout represents a
4 printout where we printed it from within WordPerfect -- I
5 mean retrieved it from within WordPerfect and printed it on
6 a Hewlett Packard IIIP, as in Paul, printer. Here it is
7 coming out with -- you can see the different type styles.

8 Q. That is the type styles that are consistent with
9 the commands that are on the previous document W78D?

10 A. That is right.

11 Q. Do you see on W78E at the very top it says "dear"
12 with some periods?

13 A. Yes.

14 Q. Redirecting your attention to W78D, does that
15 word "dear" with some periods appear in the fourth line of
16 the commands at the top?

17 A. Yes, it does.

18 Q. Thank you. The commands on W78D, just to be
19 clear, are they commands that you gave to the document or
20 are they commands that the user had given to the document?

21 A. You mean the first three lines?

22 Q. W78D.

23 A. I mean the first three lines where it has the
24 courier and the --

25 Q. That is correct.

1 A. No, I did not. As I said before, we do not write
2 to the evidence, and no, this was placed on when the file
3 was originally created.

4 MR. McCARTHY: Thank you. May I have a moment,
5 your Honor?

6 Thank you, your Honor. Nothing further.

7 THE COURT: Cross? Mr. Serra representing Mr.
8 Alvarez.

9 CROSS-EXAMINATION

10 BY MR. SERRA:

11 Q. Good afternoon, Ms. James.

12 A. Good afternoon.

13 Q. Do you have copies of the exhibits up there that
14 Mr. McCarthy just introduced through you?

15 A. Yes, I do.

16 Q. Referring you to 78A, which was what you called
17 the FERASE printout from Q78, Mr. McCarthy asked you a
18 question about the date and time that it was printed out.

19 Do you recall that question?

20 A. Yes, I do.

21 Q. And you answered something to the effect that was
22 the date and time returned by the operating system, is that
23 correct?

24 A. That's the date and time that is on the computer
25 system that is running at that time. It might not be the

1 exact time, Greenwich time.

2 Q. In other words, that is not necessarily the date
3 and time when this file was last created or modified, is
4 that right?

5 A. Well --

6 Q. Withdrawn. It is very easy, particularly on a
7 DOS-based computer, to reset the date and time, is that
8 right?

9 A. That is right.

10 Q. And today being April 25, if I reset the date and
11 time on my laptop to September 16 and saved a file, this
12 would read out September 16, is that correct?

13 A. That is right. I just meant that that
14 represented what the computer was showing at that time.

15 Q. Right, what the computer thinks the time is, not
16 what the time really is, right?

17 A. Well --

18 Q. Is that correct?

19 A. Yes.

20 Q. And you can tell the computer what date and time
21 to think it is, correct?

22 A. That's right, yes.

23 Q. Ms. James, you analyzed in connection with the
24 Nidal Ayyad floppies a large number of floppy disks, is that
25 correct?

1 A. That is right.

2 Q. You were working with one other person in the FBI
3 computer lab, is that correct?

4 A. On the evidence that was submitted previously?

5 Q. Yes, ma'am.

6 A. There were four of us working on it.

7 Q. How long did it take the four of you to complete
8 the examinations of these floppies?

9 A. The 300 and some -- you see, we received these at
10 different times.

11 Q. Ms. James, if you could give us an estimate, just
12 totaling the time of the --

13 A. The total examination, we started examining on
14 March 12, and the last report went out June 17, but
15 obviously we were not working continuously on those.

16 Q. But it is fair to say, isn't it, ma'am, that
17 particularly since there were four of you, this examination
18 took a long time, is that right?

19 A. Yes, it did.

20 Q. You testified that the first thing you do when
21 you receive a questioned floppy is to write-protect it, is
22 that correct?

23 A. That's right.

24 Q. That is so you won't contaminate original
25 evidence by accidentally writing over something, is that

1 correct?

2 A. That is correct.

3 Q. The write-protect tab is the little space which
4 you indicated to the jury on the floppy, is that right?

5 A. Yes.

6 Q. Then any tests which you perform you perform on a
7 copy that you make after you write-protect the original, is
8 that correct?

9 A. Yes. Sometimes we make copies, sometimes we
10 don't. As long as it is write-protected, we can't do
11 anything to too to it anyway. It's already -- it's
12 write-protected. We can't change it.

13 Q. For example, when you undelete a file, a process
14 you described to Mr. McCarthy, you are not going to undelete
15 it onto the original floppy, is that correct?

16 A. Definitely not.

17 Q. So you will either undelete it onto a work floppy
18 or you will make a copy of the work floppy and undelete it
19 onto the copy, is that right?

20 A. Our normal practice is to undelete it from the
21 original straight onto another floppy.

22 Q. You testified that you used a program, I believe
23 you called it a custom program called FERASE to detect
24 deleted files, is that right?

25 A. That's right.

1 Q. Is that spelled the way it is on Government's
2 Exhibit 78A, that being FERASE?

3 A. Um-hum.

4 Q. Is that correct, ma'am?

5 A. Yes.

6 Q. In point of fact, Ms. James, are you familiar
7 with a program called SafeErase?

8 A. No, I am not.

9 Q. It's spelling for the record being
10 S-A-F-E-R-A-S-E, one word, you are not familiar with that
11 program?

12 A. No, I am not.

13 Q. So you don't know whether or not FERASE is the
14 recovery half of a larger program?

15 A. I know for a fact it is not. It was custom
16 designed specifically for the FBI.

17 Q. You used and described for the jury the term
18 deleting a file from a hard or floppy disk, is that right?

19 A. Deleting, yes.

20 Q. At another time during your direct testimony you
21 also used the word erase. Are they synonymous?

22 A. Yes, they are.

23 Q. There is another word called wipe. Are you
24 familiar with that term?

25 A. Yes.

1 Q. That means something different, doesn't it?

2 A. Yes.

3 Q. To wipe a file means to obliterate the data that
4 is actually on the disk, isn't that right?

5 A. Yes, that's how the programs are supposed to
6 work.

7 Q. And in point of fact there are a number of
8 programs widely available which do wipe files, isn't that
9 correct?

10 A. Right.

11 Q. Including part of Norton utilities which you
12 mentioned on your direct examination, isn't that right?

13 A. Yes.

14 Q. That was not used on Q78, GX78 infirmities, it
15 was not.

16 Q. If it had been, you wouldn't have been able to
17 recover the deleted files, is that correct?

18 A. That is probably true.

19 Q. You did another series of tests on these
20 floppies, didn't you, something called a text string search?

21 A. Yes, we did.

22 Q. I am sorry, ma'am, I couldn't hear you.

23 A. Yes, we did.

24 Q. A text string search being you used another
25 program to search the entire surface of the floppies for

1 particular words or phrases, is that right?

2 A. Yes.

3 Q. For example, you could search the entire surface
4 of Government's Exhibit 78 for the word dog, is that right?

5 A. Dog, yes.

6 Q. Using this program. And the text string search
7 program ignores the files on the disk, doesn't it?

8 A. Yes, it is not looking at the files, it starts at
9 the beginning of the disk, goes to the end. It is looking
10 for the letter combinations that you have placed in your
11 file that you have created, containing your string search.

12 Q. It will start at sector zero and go through the
13 last sector being a hard or floppy, looking for the word or
14 phrase you tell it to look for, is that right?

15 A. That's right.

16 Q. On each of these floppies you did text string
17 searches, didn't you?

18 A. Yes, we did. It is routine.

19 Q. You did text string searches for more than 25
20 different words or phrases, didn't you?

21 A. Yes.

22 Q. Those were words or phrases such as various
23 names, is that right?

24 A. Yes.

25 Q. Salameh, Ayyad, Abouhalima, is that right?

1 A. I am sorry, I am not familiar with exactly all
2 the names, but yes, we used names.

3 Q. As you say, you are not familiar with the names,
4 is that right?

5 A. Yes, I can't remember. I think our file at the
6 end was probably close to 70, so you could throw a name in
7 there and I wouldn't know whether or not it was there, is my
8 point.

9 Q. I understand. You got the names in fact from
10 agents who were working on the factual aspect of the case,
11 is that right?

12 A. That is right, yes.

13 Q. Do you recall that you also ran text strings for
14 chemical names?

15 A. Yes, we did do that.

16 Q. And you would have gotten those names from the
17 forensic chemists who were working on the case, is that
18 right?

19 A. Yes.

20 Q. When you would do a text string search, you would
21 have -- withdrawn.

22 Is one of the results which you would get
23 something that you would note as negative?

24 A. Yes, negative.

25 Q. Negative means that the particular strings you

1 were searching for did not appear on the particular disk, is
2 that right?

3 A. Yes, that's right.

4 Q. You would also get a result that you would note
5 as NS, is that correct?

6 A. Yes.

7 Q. Standing for not significant, is that right?

8 A. That's right.

9 Q. And that means that the text string search, for
10 example, for the word dog, the word would appear on the disk
11 but when you look at the context that it appears it's not
12 what you are looking for, right?

13 A. That's right.

14 Q. And then of course, for example, in this Q78, you
15 would get results which you did believe were significant and
16 those were printed out, is that right?

17 A. That's right.

18 Q. One of those text strings that you -- withdrawn.
19 The program which does the text string searches,
20 searching for a particular word or a particular phrase, it's
21 what you call case insensitive, is that right?

22 A. Right.

23 Q. In other words, you can have any combination of
24 capital letters and small letters in that text string and it
25 will still find the words you are looking for, right?

1 A. Yes.

2 Q. So in other words, if you tell the program to
3 search for the word dog, it will find capital D-O-G, small D
4 capital O-G, small D small O capital G and so on, all
5 possible combinations, is that right?

6 A. Right.

7 Q. One of the things that you search -- withdrawn.
8 Do you recall what date you began working on
9 these floppies?

10 A. On the first submission that we received or Q --
11 Government's Exhibit W78?

12 Q. The batch which included Q78, which I believe
13 would be Q69 through Q103.

14 A. Those were received on March 24 and so the
15 examination was started then, March 24, 1993.

16 Q. One of the words on which you performed text
17 string searches was the word Salem, S-A-L-E-M, is that
18 correct?

19 A. Yes, I believe so.

20 Q. Are you sure?

21 A. Not off the top of my head.

22 MR. SERRA: May I approach, your Honor?

23 THE COURT: Yes.

24 Q. Ms. James, showing you what has been marked
25 Government's Exhibit 3593B, I ask you to review the last

1 paragraph on the second page with a view towards answering
2 the question as to whether one of the text string searches
3 that you performed on these floppies was the word Salem,
4 S-A-L-E-M?

5 A. Yes, it was.

6 Q. What that means, Ms. James, is that you ran a
7 program which among other things would search all of these
8 floppies for the word Salem, is that right?

9 A. That is right.

10 Q. And if that word appeared in any particular
11 floppy, you would have noted that and investigated, is that
12 right?

13 A. That's right.

14 Q. Let me direct your attention, please, to a
15 particular floppy, and I am likely to have to approach
16 again, your Honor.

17 MR. SERRA: Your Honor, with the court's
18 indulgence, we are looking for a particular floppy.

19 May I approach, your Honor?

20 THE COURT: Go ahead.

21 Q. Ms. James, I am showing you -- your Honor, I
22 didn't put an exhibit sticker on it. Perhaps we could deem
23 it Alvarez A. The marking on it is Q86.

24 Do you recognize that floppy, Ms. James?

25 A. Yes, I do.

1 Q. That is one of the floppies from Nidal Ayyad's
2 workplace which you tested, is that correct?

3 A. That is right.

4 (Continued on next page)

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1 Q. Directing your attention -- withdrawn.

2 Did you find on that floppy any hits, any
3 positive results on the text string search which you did?

4 MR. McCARTHY: Objection, scope.

5 MR. SERRA: Your Honor, I won't argue, but if we
6 could approach at side bar.

7 THE COURT: Come on up.

8 (At the side bar)

9 MR. SERRA: Your Honor, as an offer of proof, my
10 laptop is sitting at the witness stand for a reason. I
11 think that we should be able to recreate in short order, as
12 in five minutes, that the FBI software, which this witness
13 appears to take considerable pride in, blew it, and although
14 it is not the same exhibit which the government introduced,
15 it goes to whether or not the FBI computer lab is quite as
16 capable as Ms. James believes it is.

17 MR. McCARTHY: I will withdraw the objection.

18 THE COURT: Fine.

19 (In open court)

20 MR. McCARTHY: I withdraw the objection, your
21 Honor.

22 (Continued on next page)

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1 Q. Ms. James, I believe the question before you was,
2 I am going to ask you, and if you need to see your notes to
3 refresh your recollection that is fine, whether or not on
4 Q86, the exhibit in your hand, there were any hits from the
5 text string program which you ran? Do you recall the answer
6 to that, ma'am?

7 A. No, I do not.

8 Q. Showing you Government's Exhibit 3593C,
9 Ms. James, you will see some markings on it which were not
10 there when you wrote it. Ignore my markings.

11 A. No, the result of the search was negative.

12 Q. Meaning that the words for which you searched
13 that floppy, your determination was they weren't there, is
14 that right?

15 A. Yes, that is right.

16 Q. Including the word which I mentioned before,
17 S-A-L-E-M, Salem, is that right?

18 A. I guess so, because it says negative.

19 Q. You were not the only person in the FBI lab who
20 ran this text string search on this particular floppy, isn't
21 that right?

22 A. Yes, that is correct. Did I run --

23 Q. Showing you again 3593C.

24 MR. McCARTHY: 83 or 93?

25 MR. SERRA: 93.

1 MR. McCARTHY: Sorry.

2 A. This search I did not do. That is not my
3 handwriting.

4 Q. That was another technician in your laboratory,
5 is that right?

6 A. Yes.

7 Q. In the course of your duties, do you review the
8 results that other technicians in your laboratory do?

9 A. Yes, I do. I am supervising the three other
10 people that were helping me and their results were reviewed.

11 Q. Do you know who it was who conducted the test
12 which I showed you in 3593C?

13 A. Yes, I do.

14 Q. Who was that, ma'am?

15 A. It was a technician, computer specialist that
16 worked for me.

17 Q. Who is that?

18 A. Kenneth Hart.

19 Q. That was one of the people that you testified you
20 supervised, is that correct?

21 A. That is correct.

22 Q. And whose results you reviewed?

23 A. Yes.

24 Q. When Mr. Hart tested Q86, the floppy before you,
25 did his results include any hits on that text string search

1 program?

2 A. Could you repeat that, please.

3 Q. Sure. When Mr. Hart tested, used the text string
4 search program, did his results on Q86 show any hits?

5 A. No, it says no hits. Of course we did break -- I
6 mean, I don't have a listing of -- no, that is in the
7 report, so never mind. We did the searches in pieces.

8 Q. But whether in pieces or all at once, Ms. James,
9 as far as you can now tell, the results of your testing were
10 that there were no hits on this floppy, is that correct?

11 A. That's what it looks like, yes.

12 Q. Ms. James, there is a laptop computer sitting
13 there in front of you. As you may note, it is a 386, but I
14 think it will do. I would ask you first of all, would you
15 copy Q86, please. I have, I happen to have a double density
16 floppy in my pocket.

17 A. You want me to make a disk copy?

18 Q. Please. You would not want to run any experiment
19 on the original, is that correct?

20 A. No. Exactly can you tell me what you are going
21 to have me do?

22 Q. The contrast on that screen, Ms. James, may not
23 be the best, if you want to adjust it on the side. For that
24 matter, Ms. James, I can't see from this angle. You are
25 running a disk copy on this disk?

1 A. Yes. I put in the command disk copy A colon
2 space A colon.

3 Q. What that will do, for the record, is make an
4 exact copy of that floppy, is that correct?

5 A. Yes, it will.

6 Q. It doesn't matter what is on the floppy you just
7 put into the floppy drive on that laptop, does it, because
8 whatever is there is going to be written over.

9 A. You are right, I should have checked it over
10 before I did that.

11 Q. Thank you. It's OK.

12 By the way, the original floppy --

13 A. Wait a minute. I can't believe, you know this --
14 gee --

15 Q. It's not going to stop in the middle of the
16 command.

17 A. Yes, it does.

18 Q. With a control C?

19 A. I forgot it was a 386. It was slow and I thought
20 it had already read what was on the disk it had in there and
21 it hadn't. Now I put in the command disk copy, space A
22 colon, space A colon.

23 Q. Again, what that will do is to make an exact
24 copy, deleted files and all, of what is on that floppy, is
25 that correct?

1 A. That's right.

2 Q. Again, for the record, what had happened before
3 is that it had not finished reading from the source disk, is
4 that correct?

5 A. That's right.

6 Q. It does do it in one pass. Even though it is
7 slow, it does do it in one pass.

8 A. That's a savings.

9 Now I am going to place the target disk into
10 drive A, and we should have a copy of Q86.

11 Q. While we are waiting for the copy to be made,
12 Ms. James, what I am going to ask you to do after the copy
13 is made is to run the DOS undelete command. Are you
14 familiar with the DOS undelete command?

15 A. No, I am not. I have never used it before.

16 Q. You not only have never used it, you don't know
17 what it does?

18 A. Well, yes. It would undelete the whole disk, I
19 guess -- no, undelete, it should recover the files.

20 Q. I believe you will find it will recover the
21 deleted files.

22 A. That's what I meant, but I don't know the command
23 sequence. If you put in undelete does it tell you?

24 Q. It is undelete space A colon.

25 For the record, the copying process has stopped,

1 is that right?

2 A. That's right. It asks me if I want to make
3 another duplicate copy of this disk and I will say no.

4 Q. And it will ask you if you want to copy another
5 disk.

6 A. No. So.

7 Q. UN -- ma'am, leave the floppy --

8 A. I know, I'm just --

9 Q. I am sorry, I am sorry.

10 A. So I put in undelete space --

11 Q. Space colon. By the way, the A colon that we
12 have been referring to with the commands refers to the
13 floppy drive, is that right Ms. James?

14 A. Yes, it is.

15 Q. That being the A drive. May I look over your
16 shoulder?

17 A. Certainly.

18 Q. What is now on the screen, it is prompting you
19 whether you wish to recover certain files, is that correct?

20 A. Yes.

21 Q. The one that I would ask you to recover,
22 Ms. James, is question mark SAMA2.

23 A. OK.

24 Q. I think it is like the sixth one.

25 A. SAMA3?

1 Q. 2. Next one. No, next one. There it is.

2 A. This one, OK.

3 Q. Again it will prompt you for the first letter --

4 A. Well, would you like me to --

5 Q. The convention, is it not, is to put an X letter
6 for a deleted file, is that right?

7 A. That is our convention. I have placed an X so
8 the file name is going to be XSAMA2.

9 Q. I think there is one more deleted file, which we
10 don't need, is that right?

11 A. Yes.

12 Q. Are we now back at the DOS prompt, Ms. James?

13 A. Yes.

14 Q. Would you run WordPerfect, please. It is in the
15 path, so just WP. I think you will find you have to adjust
16 the contrast in order to read it, on the side. There are
17 two -- on the top.

18 A. That is fine.

19 Q. Would you now retrieve that file which we just
20 recovered into WordPerfect.

21 A. All right, I am retrieving the file. It is on
22 drive A. The file name is XSAMA2.

23 Q. And again, WordPerfect is the word processing
24 WordPerfect, is that right?

25 A. Yes, it is. And the file starts --

1 Q. Please, the file starts.

2 A. File starts out Robert Frost, Elements of Style,
3 and then goes on.

4 Q. Would you skip to the end of the file, please.
5 The laptop keyboard has a function key but you can just do
6 page down a few times, however.

7 A. It didn't move.

8 Q. You need to hold the function key and the page
9 down.

10 A. The little one?

11 Q. All the way to the end of the file, please.

12 Do you see the last thing in that file appears to
13 be a name of the person who wrote that whatever it is? Do
14 you see that?

15 A. Yes, I do.

16 Q. Do you see what the last name of that person is?

17 A. Yes.

18 Q. What is it?

19 A. It is S-A-L-E-M.

20 Q. Salem, S-A-L-E-M, is that correct?

21 A. That's correct, yes.

22 Q. Which was one of the words that both you and Mr.
23 Hart searched for when you were examining this floppy, is
24 that correct?

25 A. Yes, I guess so.

1 Q. You also, you searched for such phrases as Fifth
2 Battalion, is that right?

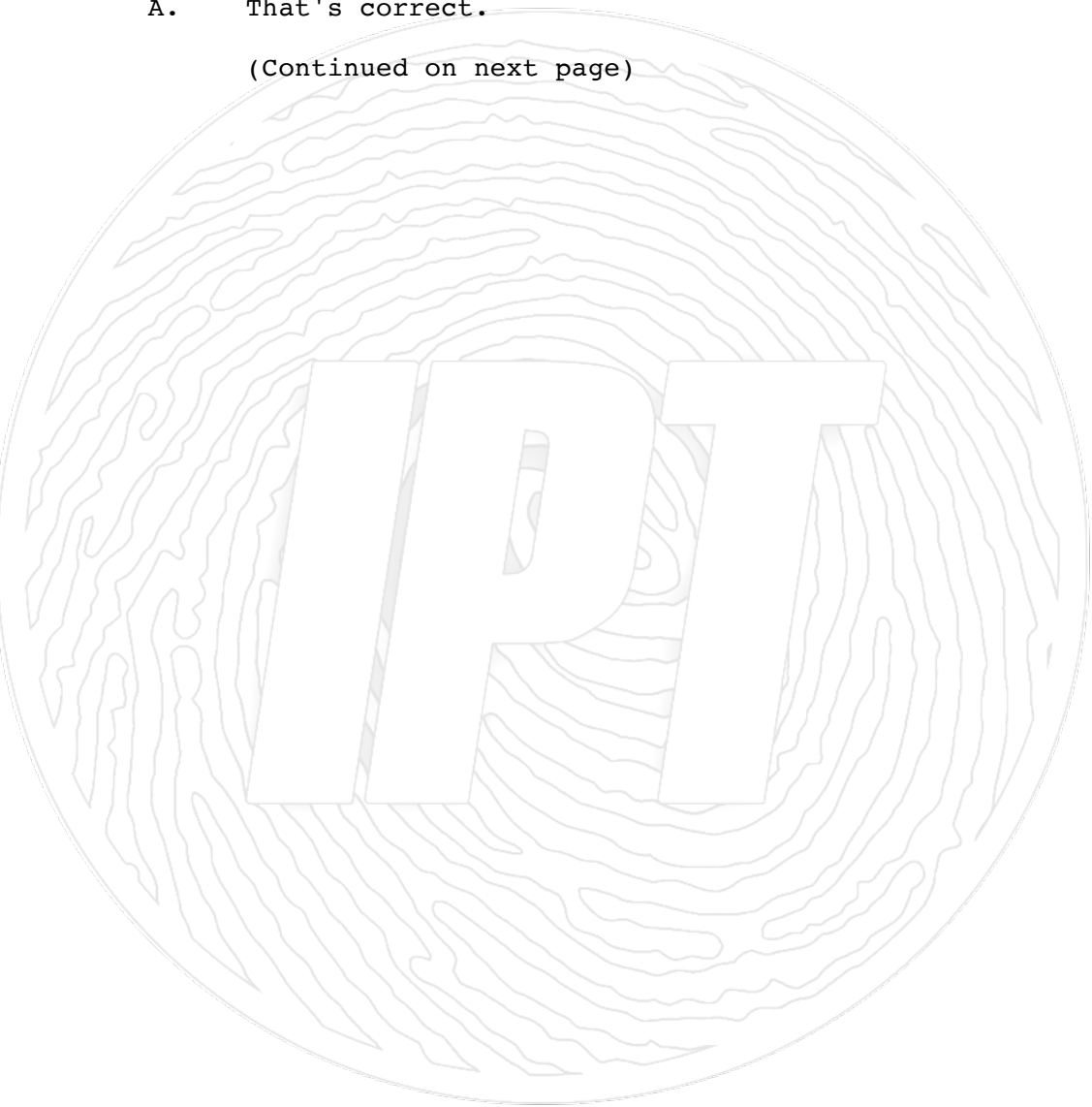
3 A. Yes.

4 Q. And Liberation Army, is that correct?

5 A. That's correct.

6 (Continued on next page)

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1 MR. SERRA: I have nothing further. Thank you,
2 your Honor.

3 THE COURT: We are going to break for the day.
4 May I see counsel at the side briefly.

5 (At the side bar)

6 THE COURT: Do you have something you can do
7 quickly?

8 MR. McCARTHY: I would like to find out, your
9 Honor, if I may, if there is any more cross of this witness,
10 who has a problem tomorrow.

11 THE COURT: Does anybody else have any more
12 cross?

13 MR. JACOBS: I have one or two questions.

14 THE COURT: One or two?

15 MR. JACOBS: One or two questions.

16 THE COURT: Fine, ask them now.

17 (In open court)

18 THE COURT: Mr. Jacob, you had something?

19 (Continued on next page)

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1 CROSS-EXAMINATION

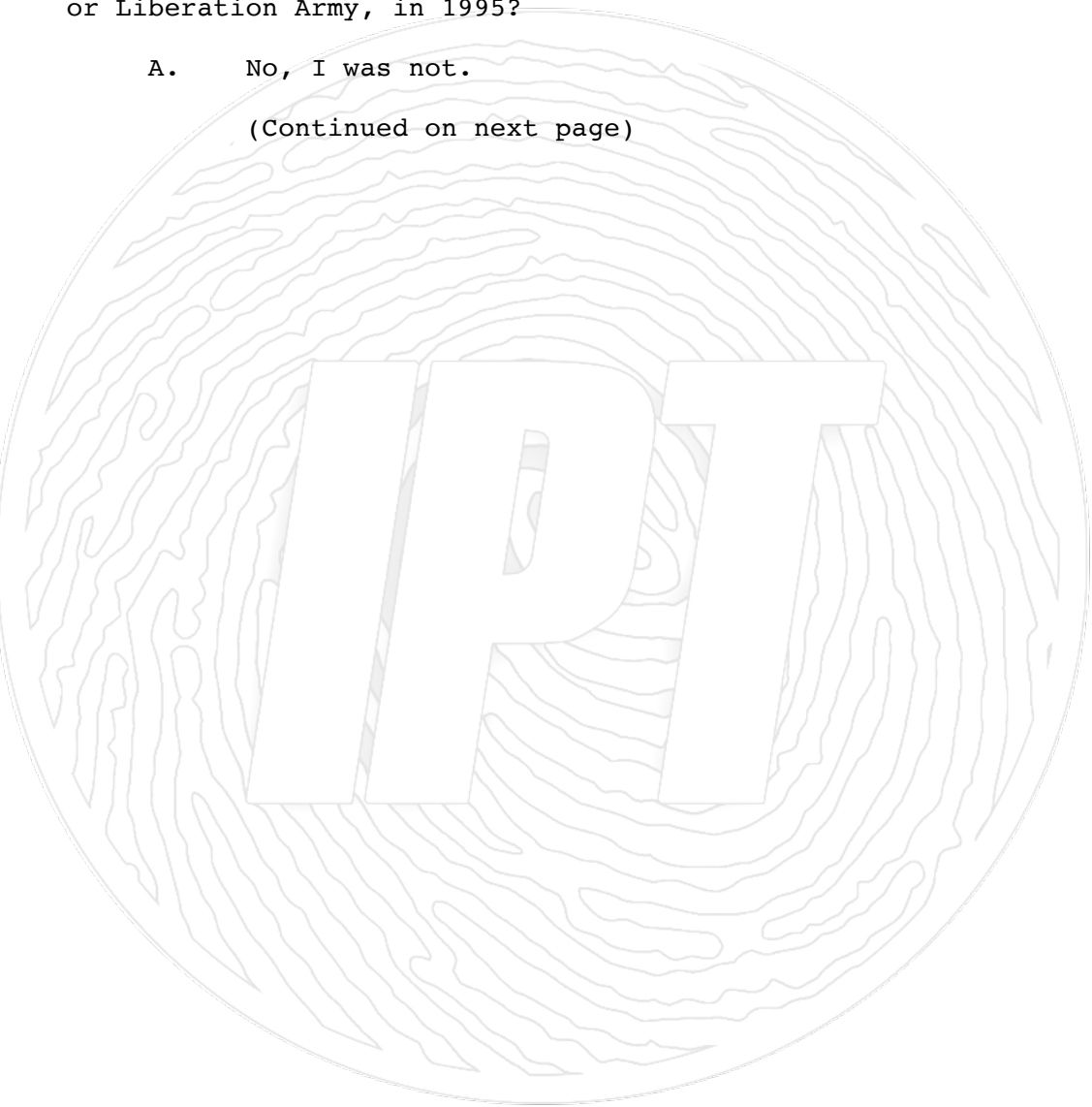
2 BY MR. JACOBS:

3 Q. Ma'am, in 1995, were you given any additional
4 disks to take a look at to locate the words Fifth Battalion
5 or Liberation Army, in 1995?

6 A. No, I was not.

7 (Continued on next page)

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1 MR. JACOBS: I have nothing further.

2 THE COURT: Now we really are going to break.

3 Ladies and gentlemen, all of the instructions
4 that I have given you since last week with regard to this
5 case and the events in Oklahoma City obviously continue in
6 effect. Please don't discuss this case, read, see or hear
7 anything about it, and don't read anything about the other
8 case, notwithstanding that it is not related to this case,
9 because of the speculation that goes on with respect to it.

10 Have a pleasant evening and we will see you
11 tomorrow morning. Good night.

12 (Jury excused)

13 THE WITNESS: Your Honor, am I excused?

14 THE COURT: You are excused.

15 THE WITNESS: Thank you.

16 (Witness excused)

17 THE COURT: Mr. Jacobs?

18 MR. JACOBS: Yes, your Honor. In light of the
19 introduction of Government's Exhibit 196 and 78D and E, I
20 renew my application for the computer disks seized in the
21 Philippines and referred to in the Yousef indictment before
22 Judge Duffy. At page 19, paragraph D of the conspiracy
23 count of that indictment, it is alleged that in or about
24 January 1995, Yousef possessed in an apartment a computer
25 that contained among other things a letter threatening to

1 attack American targets signed by the, quote, Fifth
2 Battalion of the Liberation Army Abu Bakr Al Makkee. This
3 is the same computer disk that I have been requesting since
4 February. In light of the government introducing these
5 other exhibits, I think that I have made arguments on Rule
6 16 on this matter, I think the government is in violation of
7 Rule 16, and I again renew my request that anything
8 pertaining to the Fifth Battalion, especially that computer
9 disk, be turned over and made made available to defense
10 counsel.

11 MR. McCARTHY: I don't think we are at all in
12 violation of Rule 16. I don't know what he means by that.

13 MR. JACOBS: I will be happy to amplify it.

14 THE COURT: No, Mr. Jacobs. What is needed is
15 not amplification, what is needed is explanation, and not on
16 your feet, please.

17 MR. JACOBS: Your Honor, what I would ask your
18 Honor to do today in light of the introduction of the
19 documents --

20 THE COURT: Mr. Jacobs, there is no light passed
21 on the subject of those documents by the introduction of
22 these documents.

23 MR. JACOBS: I think it is very significant in
24 light of the fact that the government has offered the Fifth
25 Battalion documents in this case. I objected under 401,

1 your Honor overruled it. If the government is going to
2 offer the Fifth Battalion documents in this case, I think we
3 are entitled to see under Rule 16 the Fifth Battalion
4 documents that the government called in in the Yousef case.
5 I don't understand why the government is continuing to
6 withhold those documents that obviously the grand jury had
7 access to in the Yousef case --

8 THE COURT: Grand juries, Mr. Jacobs, have access
9 to an awful lot of stuff that is never going to pass in
10 front of your eyes.

11 MR. JACOBS: It is an indictment filed in this
12 building before Judge Duffy.

13 THE COURT: With whom I speak frequently. You
14 left that part out. Go ahead.

15 MR. JACOBS: I again call for the production of
16 this document. I think that this document, at least in my
17 opinion, contains Brady material.

18 THE COURT: Mr. Jacobs, that statement is totally
19 without basis and you know it. Speaking of things that you
20 know, yesterday you got up on your feet and represented to
21 me that Judge Duffy had ordered the turnover of certain
22 material in the other case. What was the basis for that
23 representation?

24 MR. JACOBS: I had spoken to people who were
25 present in the courtroom.

1 THE COURT: Really?

2 MR. JACOBS: That is correct. I said what my
3 basis was.

4 THE COURT: I will look at the record to see what
5 you said your basis was.

6 MR. JACOBS: I think I reported the basis of what
7 I said.

8 THE COURT: You then asked me for an order,
9 right?

10 MR. JACOBS: Then I said that I would ask your
11 Honor to inquire of Judge Duffy what he did.

12 In any event, it is our position, my position,
13 that we are not members of the Fifth Battalion. It is Brady
14 material. The fact that the government is in possession of
15 documents like that, I disagree with your Honor.

16 THE COURT: Mr. Jacobs, do you want to put it in
17 writing?

18 MR. JACOBS: I have already put it in writing
19 since February, your Honor.

20 THE COURT: Then you have your record.

21 MR. JACOBS: It has been subpoenaed from the FBI
22 and the CIA. I continue to make the record.

23 THE COURT: Is there anything else, anything you
24 want to say?

25 MR. McCARTHY: At this point we decline to turn

1 over everything that is not discoverable under the rules of
2 discovery that control criminal cases in the United States,
3 as opposed to Mr. Jacobs' rules of discovery.

4 MS. STEWART: Judge, I am rising to support Mr.
5 Jacobs.

6 THE COURT: I will not hear from you. I will
7 hear from you in writing. I will not hear from you. Take
8 your seat.

9 MS. STEWART: I am asking you for relief, Judge.
10 I am asking you to order them to turn it over --

11 THE COURT: I am not going to order them to turn
12 it over.

13 MS. STEWART: Can there be two masterminds here,
14 as according to the New York Times?

15 THE COURT: The New York Times, why didn't you
16 tell me that earlier? I read that article.

17 MS. STEWART: You did not find it persuasive?

18 THE COURT: Perceptive.
19 You wanted to see me about something else?

20 MS. STEWART: Yes.

21 THE COURT: See you tomorrow.

22 (Pages 9192 through 9199 sealed)

23 (Adjourned until 9:30 a.m., Wednesday, April 26,
24 1995)

25

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 April 26, 1995
21 9:40 p.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

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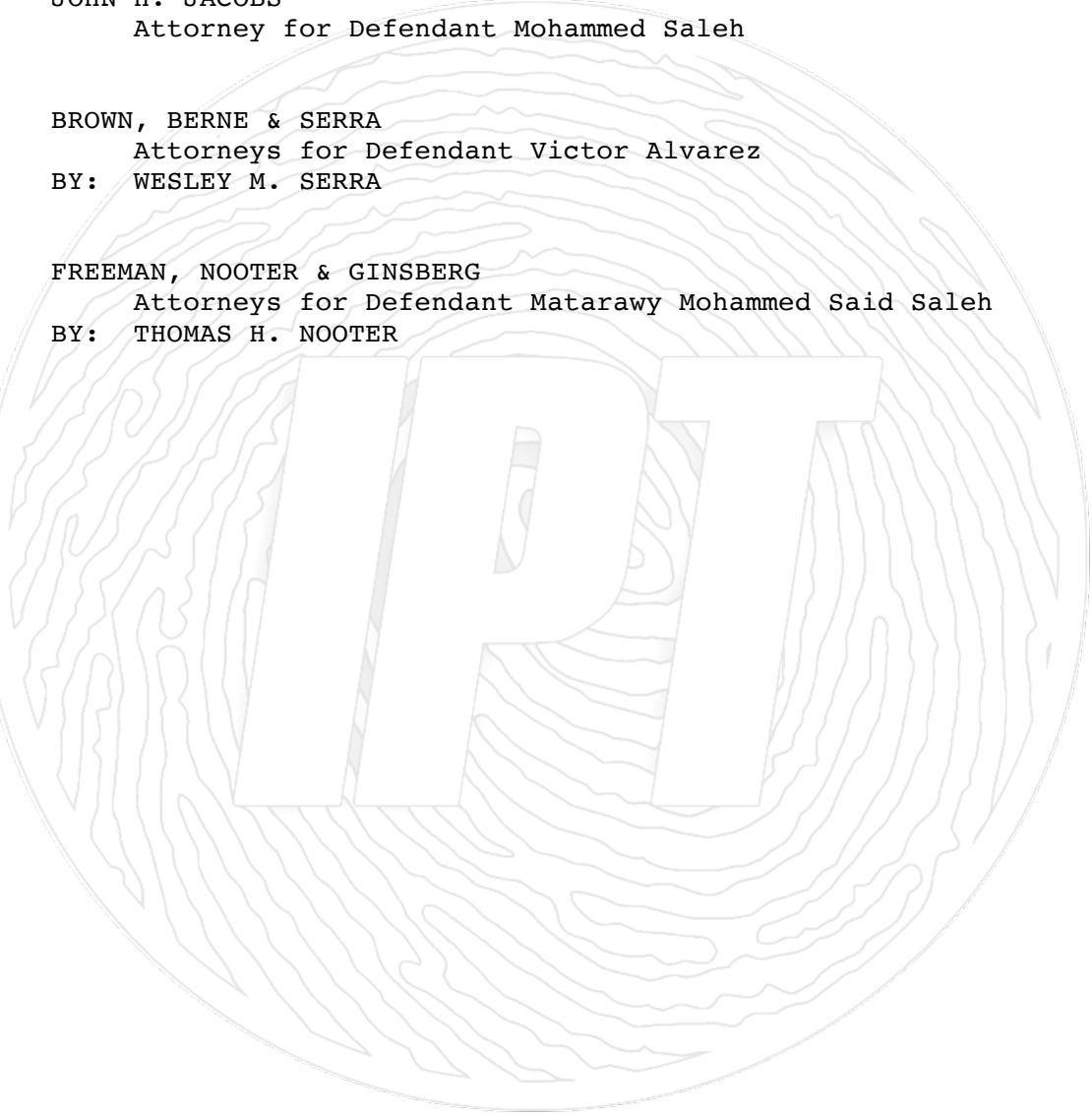
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BY: THOMAS H. NOOTER



1 (Trial resumed; jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 JURORS: Good morning.

4 THE COURT: Mr. Khuzami.

5 MR. KHUZAMI: The government calls Alan Herdzik,

6 H-E-R-D-Z-I-K.

7 ALAN HERDZIK,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MR. KHUZAMI:

13 Q Mr. Herdzik, how are you employed?

14 A I am employed by the New York State Department of
15 Correctional Services.

16 Q If you could, just lean a little over and make
17 sure you are speaking into either microphone so everyone can
18 hear you. Thank you.

19 A All right.

20 Q I am sorry. Could you repeat the answer.

21 A I am employed by the New York State Department of
22 Correctional Services.

23 Q You are a prison guard?

24 A I am a corrections sergeant, sir.

25 Q How long have you been a corrections sergeant?

1 A Since December of 1988.

2 Q Are you currently assigned to a particular
3 prison?

4 A Yes, I am.

5 Q Which prison is that?

6 A It is the Attica Correctional Facility.

7 Q Where is that located?

8 A In the Village of Attica, New York.

9 Q What is your current assignment at Attica?

10 A My current assignment is the chart sergeant.

11 Q Can you describe what the chart sergeant does.

12 A The chart sergeant basically insures that the
13 officer staffing is taken care of. I answer phones in an
14 office, I man radios, and the primary duty is staffing of
15 the prison on a daily basis.

16 Q Do your duties and responsibilities pertain to a
17 particular area of the Attica Prison?

18 A Yes, now my duties are carried out in what's
19 called the administration building.

20 Q Administration building?

21 A Yes.

22 Q Did you have a prior assignment at Attica?

23 A Yes, I did.

24 Q What was that?

25 A I was a relief sergeant, which means I relieved

1 other sergeants on their days off and that was also in the
2 administration building as the chart sergeant, and in the
3 reception building.

4 Q Have you worked at other prisons other than
5 Attica?

6 A Yes, I have.

7 Q Do any of your duties and responsibilities
8 concern an area at Attica known as the Special Housing Unit?

9 A Yes, that is in the reception building.

10 Q What is the Special Housing Unit?

11 A It is a secure area of the prison where inmates
12 are housed that are behavior problems or need -- special
13 protection needs, that kind of stuff.

14 Q Directing your attention to March of 1993, where
15 were you assigned at that time?

16 A I was assigned in the job I described two days in
17 the reception building, Special Housing Area, and two days
18 in the chart office.

19 Q Can you describe physically what the Special
20 Housing Unit looks like?

21 A The reception building itself is a three-story
22 building. The first floor consists of some visiting rooms,
23 an ID office. At that time it used to contain the parole
24 department. The second two floors of that building is the
25 true SHU unit, and they are both housing units for inmates.

1 Q When you say "housing units for inmates," there
2 are cells on the second and third floors?

3 A That's correct.

4 Q In March of 1993, was one of your duties as a
5 sergeant to make rounds throughout the Special Housing Unit?

6 A Yes.

7 Q What was the purpose of making those rounds?

8 A To address any inmate complaints, to give
9 information to inmates to make sure that the minimum
10 standards we have to abide by were being met in the unit.

11 Q When you say "minimum standards," what do you
12 mean?

13 A Inmates are entitled to minimum standards of, you
14 know, lighting, hot breakfast, correspondence, access to
15 legal materials, and we made the rounds to see if the inmate
16 would tell you if one or more of those conditions weren't
17 being met in his particular case.

18 Q Directing your attention particularly to March 5,
19 1993, did you make rounds in the Special Housing Unit on
20 that day?

21 A Yes, I did.

22 Q During those rounds, did any inmate ask you why
23 they were being housed in the Special Housing Unit?

24 MR. STAVIS: Objection as to form, your Honor.

25 THE COURT: Sustained as to form.

1 Q During March 5, 1993 while you were making
2 rounds, did you have a conversation with any inmate?

3 A Yes, I did.

4 Q Did you have a conversation with an inmate by the
5 name of El Sayyid Nosair?

6 A Yes, I did.

7 Q Do you recall where you were when you had this
8 conversation?

9 A I was on the gallery, which is the walkway in
10 front of the row of cells, and I believe it was the third
11 floor west gallery in front of his cell.

12 Q Where was Mr. Nosair during this conversation?

13 A Inside the cell.

14 Q How did the conversation start?

15 A Mr. Nosair stopped me and asked me, "Why am I
16 being placed in this SHU unit?"

17 Q By "SHU," you mean Special Housing Unit?

18 A That is correct.

19 Q OK. Did you respond to him?

20 A I told him -- yes, I did respond.

21 Q What did you say?

22 A I told him he had been placed in the Special
23 Housing Unit under administrative segregation status.

24 Q Did you tell him anything else?

25 A Yes, I told him that it was, while he was in that

1 status, he was going to be interviewed by a lieutenant or
2 higher ranking officer in the department who would explain
3 to him why he had been placed in that status.

4 Q Did Mr. Nosair respond when you told him that?

5 A Yes, he did.

6 Q What did he say?

7 A He said, "If the devil leaders of New York State
8 think placing me in SHU will end the war, they are wrong.
9 The war will not end until I am released. This is only the
10 beginning."

11 Q You mentioned "the devil leaders," is that
12 correct?

13 A Yes.

14 Q Did you respond to Mr. Nosair when he made that
15 statement?

16 A When he originally made the statement, I was
17 stunned. Eventually, I did respond, yes. I asked him what
18 he said. "What are you saying?"

19 Q What happened next?

20 A He repeated the same statement again.

21 Q After he repeated that statement a second time,
22 what did you do?

23 A We continued on with our conversation about
24 Special Housing Unit procedures.

25 Q Do you recall anything about the conversation

1 about Special Housing Unit procedures?

2 A No, the exact -- I don't recall the exact
3 conversation at that point, no.

4 Q Did you have any further discussions with
5 Mr. Nosair after you spoke about Special Housing Unit
6 procedures during that conversation?

7 A Yes, I did.

8 Q What was that?

9 A Prior to me leaving the area he was, he asked me
10 to give a message to the leaders of New York State. The
11 message was that they were the ones keeping the battle on.

12 Q When you had this conversation, did Mr. Nosair
13 specify who the devil leaders were that he was referring to?

14 A I don't recall him specifying, no.

15 Q You indicated that he said that those leaders
16 were wrong in thinking that placing him in the Special
17 Housing Unit would end the war, is that correct?

18 MR. PATEL: Objection to form, your Honor.

19 THE COURT: That simply recapitulates what he
20 said before.

21 MR. KHUZAMI: I was --

22 THE COURT: Go ahead.

23 Q When Mr. Nosair made a reference to the war, did
24 he indicate what war he was referring to?

25 MR. PATEL: Objection.

1 THE COURT: Overruled.

2 A I didn't hear the whole question.

3 Q I'm sorry.

4 When Mr. Nosair made a reference to the war in
5 that conversation, did he indicate what war he was referring
6 to?

7 A No, he did not.

8 Q Did he describe for you that war in any way?

9 A No, he did not.

10 Q Were you aware as of March 5, 1993 that the World
11 Trade Center had been bombed prior to that date?

12 A Yes, I --

13 MR. STAVIS: Objection, your Honor.

14 THE COURT: Sustained.

15 Q When Mr. Nosair made a reference to "this," as in
16 "this is only the beginning," did he describe for you at all
17 what the "this" referred to?

18 A No, he did not.

19 Q When Mr. Nosair indicated that he had a message
20 to give to the leaders of New York State, did he describe
21 for you who those leaders were?

22 MR. STAVIS: Asked and answered, your Honor.

23 THE COURT: I believe it was asked and answered.

24 MR. KHUZAMI: I believe there were two different
25 references to the leaders, your Honor, so I am asking as to

1 two different parts of the conversation.

2 THE COURT: All right.

3 Q During the second time when he referred to the
4 leaders of New York State, did he specify who the leaders
5 were?

6 A No, I don't believe he did.

7 Q When he referred to the "battle," did he describe
8 for you at all what this battle was?

9 A No, he did not.

10 Q Sergeant Herdzik, do you think you could
11 recognize Mr. Nosair if you saw him again?

12 A It's possible, yes.

13 Q Do you see him in the courtroom today?

14 A Yes, I do.

15 Q Could you please point him out and describe what
16 he is wearing.

17 A He's seated there, in a gray suit, white shirt
18 and red striped tie.

19 THE COURT: Indicating Mr. Nosair. Go ahead.

20 Q At the time of this conversation, what did you
21 do -- withdrawn.

22 What did you do after you had this conversation
23 with Mr. Nosair?

24 A My immediate response was after leaving the
25 gallery, I called Captain Hennenberg.

1 Q Who is Captain Hennenberg?

2 A He is -- well, of course, a corrections official.
3 He is the second in command in the uniformed force at the
4 facility.

5 Q Did Captain Hennenberg instruct you to do
6 anything?

7 A Yes, he asked me to --

8 MR. STAVIS: Objection, your Honor, as to what
9 Captain Hennenberg said to this witness.

10 MR. KHUZAMI: I will rephrase it, your Honor.

11 THE COURT: All right.

12 Q Without telling us what he did, what he told you,
13 did he instruct you to do anything?

14 A I was instructed to --

15 MR. STAVIS: Objection, your Honor.

16 THE COURT: Just answer "yes" or "no" as to
17 whether you were instructed to do anything.

18 Were you?

19 THE WITNESS: Yes.

20 THE COURT: All right.

21 MR. KHUZAMI: No further questions.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. STAVIS:

25 Q You are an employee of the Department of

1 Correctional Services, is that correct?

2 A Yes, sir.

3 Q That is the New York State Department of
4 Correctional Services?

5 A Yes.

6 Q So you are an employee of New York State?

7 A That's correct.

8 Q You are not a federal employee, are you?

9 A No, I am not.

10 Q You indicated in your testimony that Mr. Nosair
11 told you something about the devil leaders of New York
12 State.

13 A Yes, I did.

14 Q Did you say to him that you knew any of the
15 leaders of New York State?

16 A No.

17 Q Did you give him any reason to believe that you
18 might have known any leaders of New York State?

19 A No.

20 Q Did you have any discussion with Mr. Nosair
21 concerning the federal government at all?

22 A The federal government? No.

23 Q Just the state government, correct?

24 A Yes.

25 Q You are an employee of the state government?

1 A That's correct.

2 Q You testified on direct examination that the
3 Special Housing Unit is a secure area of the prison. Do you
4 recall that testimony?

5 A Yes, I do.

6 Q Attica Correctional Facility is a
7 maximum-security prison, is that correct?

8 A Yes, sir.

9 Q So the whole prison is a secure area, is that
10 correct?

11 A That's correct.

12 Q The Special Housing Unit is the most secure of
13 the secure areas, is that correct?

14 A Yes.

15 Q What kind of security measures are in place in
16 the Special Housing Unit that aren't in place in the other
17 areas of the maximum-security prison?

18 A There are several differences. Do you wish me to
19 recite a list?

20 Q Please.

21 A The most notable is inmate-to-officer contact is
22 limited. In general, inmate-to-inmate contact is completely
23 eliminated. The most notable in my mind is that when an
24 inmate is escorted or released from his cell for any
25 purpose, two officers normally escort that inmate to and

1 from wherever he goes and that's normally to another secure
2 location, as opposed to the regular portion of the Attica
3 facility in which inmates are out in groups as many as
4 hundreds at a time, you know, together. Recreation is
5 limited in that unit. There are other privileges that are
6 limited in the unit also.

7 Q When you are in a Special Housing Unit, you eat
8 your meals inside your cell, is that correct?

9 A That's correct.

10 Q You are locked inside your cell for most of the
11 day, is that correct?

12 A That's correct.

13 Q You get a recreation period?

14 A Yes.

15 Q You are allowed two showers per week, is that
16 correct?

17 A It may be three, but --

18 Q You are allowed one visit per week from an
19 outside visitor?

20 A I believe that to be true, yes.

21 Q In the general population at Attica, you are
22 allowed out of your cell during the day for the most part,
23 is that correct?

24 A For a specific purpose, yes.

25 Q For recreation, correct?

1 A Yes.

2 Q For meals?

3 A Yes.

4 Q So a prisoner assigned to the Special Housing
5 Unit spends most of the day locked inside the individual
6 cell, is that correct?

7 A That's correct.

8 Q That is a security precaution, correct?

9 A It may be, yes.

10 Q When they have to leave, they have guards go with
11 them where they have to go?

12 A That's correct.

13 Q As an escort, two guards, is that correct?

14 A That's correct.

15 Q These are measures that you don't have in the
16 other parts of this maximum-security prison, is that
17 correct?

18 A That's correct.

19 Q When a person is placed in the Special Housing
20 Unit from the general population, their property remains
21 where they were for a period of time, is that correct?

22 A For a period of time, yes.

23 Q So their legal materials would be back in the
24 cell, correct?

25 A Yes.

1 Q Their clothing, extra clothing that they might
2 have would be back in the cell, correct?

3 A Yes.

4 Q Any personal hygiene kind of things that they
5 kept in the cell would remain in the cell back in the
6 general population, correct?

7 A Correct.

8 Q Until that stuff could be transferred into the
9 secure Special Housing Unit, correct?

10 A Correct.

11 Q Mr. Nosair was in this secure, or placed in this
12 secure Special Housing Unit on March 5 of -- withdrawn.

13 On March 4, 1993, Mr. Nosair was placed in this
14 Special Housing Unit in this secure area at Attica Prison,
15 correct?

16 A I don't know that to be correct.

17 Q You have no information about when he went there?

18 A It was all -- it was prior to March 5.

19 Q Do you know how long prior to March 5?

20 A No, I don't.

21 Q When you were making the rounds on March 5 of
22 1993, you said he stopped you, that is what you testified to
23 this morning?

24 A Yes.

25 Q How did he stop you?

1 A I don't have a specific recollection. Verbally.

2 Q What did he say?

3 A I don't have a specific recollection. I mean, I
4 assume it to be, "Sarge, can I talk to you?" Or, "Sergeant,
5 can I speak to you?"

6 Q I am not asking you to assume. I am asking you
7 to recall. If you can't recall, you can't recall.

8 A I can't recall.

9 Q At the time that Mr. Nosair stopped you, did you
10 know who he was?

11 A Yes.

12 Q You had heard of him?

13 A That's correct.

14 Q Would it be fair to say he was one of your
15 high-profile prisoners there at Attica Prison?

16 A Yes.

17 Q So you knew about him, correct?

18 A Yes.

19 Q The other corrections officers knew about
20 Mr. Nosair as well, is that correct?

21 MR. KHUZAMI: Objection.

22 THE COURT: Sustained.

23 Q Did you ever discuss Mr. Nosair with the other
24 corrections officers?

25 A I don't know if I can answer the question

1 properly. I mean there are 500 officers there. Was there
2 ever a discussion about Nosair with other people, yes.

3 Q Did you have conversations with the other
4 corrections officers concerning Mr. Nosair around the time
5 that you testified he stopped you on March 5 that morning?

6 MR. KHUZAMI: Objection.

7 THE COURT: Sustained as to form.

8 Do you want to focus it a little.

9 Q Did you speak to any corrections officers
10 concerning Mr. Nosair on March 4 of 1993?

11 A I don't believe so.

12 Q Did you speak to any other corrections officers
13 on March 5 of 1993 prior to 8:00 a.m. when you were making
14 your rounds on the Special Housing Unit?

15 A Yes, I believe I did.

16 Q What did that conversation consist of?

17 A We have a sergeant's roll call prior to starting
18 the shift. I believe I was told by a Captain Hennenberg
19 that Mr. Nosair was -- had been moved to the unit.

20 Q Had been moved to the unit the previous day, is
21 that correct?

22 A It may be so.

23 Q You were given information, were you not, about
24 why he was moved to that unit?

25 A No.

1 Q Captain Hennenberg tell you anything about the
2 Federal Bureau of Investigation?

3 A No.

4 Q Do you know an inmate by the name of Joseph Reed?

5 A No, I don't have a specific recollection.

6 Q Did you ever run into anyone named Joseph Reed
7 when you were doing your rounds at the Special Housing Unit
8 at the Attica Prison?

9 A I don't have a recollection of it.

10 Q Do you know whether Joseph Reed was in the cell
11 directly next to Mr. Nosair on March 5, 1993 when you made
12 your rounds?

13 A No, I don't know that.

14 Q Do you know if there was an inmate in the cell
15 directly next to Mr. Nosair on March 5 of 1993 when you made
16 your rounds?

17 A I believe there was.

18 Q Do you know whether that inmate participated in
19 the conversation that you had with Mr. Nosair on March 5,
20 1993 when you made your rounds?

21 A No, I don't believe he did.

22 Q You testified this morning that Mr. Nosair asked
23 you why he had been placed in the Special Housing Unit, do
24 you recall that testimony?

25 A Yes.

1 Q You testified this morning that you told him that
2 he was in administrative segregation?

3 A Yes, I did.

4 Q That is not all you told him about why he was in
5 the Special Housing Unit, is it?

6 A I believe --

7 Q What else did you tell him?

8 A To what I testified to, that he'd be seen by a
9 lieutenant, and the whole matter of his placement in SHU
10 status would be reviewed with him by a lieutenant.

11 Q Isn't it a fact, sir, that you told him that he
12 had been placed in the Special Housing Unit because of an
13 FBI investigation?

14 A No, I don't recall that to be true.

15 Q You don't recall it, or it's not true?

16 A I don't recall making that statement to him.

17 MR. STAVIS: May I approach the witness, your
18 Honor.

19 THE COURT: Yes.

20 Q I ask you to take a look at this transcript,
21 starting at line 19.

22 THE COURT: Indicating which exhibit?

23 MR. STAVIS: I haven't had it marked, but I will
24 mark it Nosair Defense QQ for purposes of identification.

25 MR. KHUZAMI: May I see it prior to showing it to

1 the witness?

2 THE COURT: Would you show it to him.

3 Q Having read that, does that refresh your
4 recollection as to whether you told Mr. Nosair that he was
5 being placed in a Special Housing Unit because of an FBI
6 investigation?

7 A Sir, I didn't have time to read it.

8 Q OK.

9 (Pause)

10 Q There is no question before you.
11 Having read that, does that refresh your
12 recollection as to whether you told Mr. Nosair that he was
13 being placed in the Special Housing Unit because of an FBI
14 investigation?

15 A No, sir, it doesn't.

16 (Continued on next page)

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1 Q At the time that you spoke to Mr. Nosair, did you
2 also tell him that the FBI had locked up his cell?

3 A I don't believe I did.

4 Q You knew at the time that you spoke to Mr. Nosair
5 that the FBI had been investigating him, is that correct?

6 A I don't believe I had direct knowledge of that,
7 no.

8 Q You had indirect knowledge of it, sir.

9 A Yes.

10 Q And you also had indirect knowledge that the FBI
11 had searched his cell, is that correct?

12 A No, that is not correct.

13 Q Department of Corrections people had also
14 searched his cell, is that correct?

15 A Not to my knowledge.

16 Q You had no knowledge of that?

17 A No.

18 Q Did you have knowledge of the search of Mr.
19 Nosair's cell on December 25 of 1992?

20 A No, I have no recollection of that.

21 Q Did you have knowledge of the search of Mr.
22 Nosair's cell on January 10, 1993?

23 A No.

24 Q Did you have knowledge of a search of Mr.
25 Nosair's cell on January 20 of 1993?

1 A I don't have any recollection of that.

2 Q Do you have knowledge of a search of Mr. Nosair's
3 cell on January 26, 1993?

4 A No, I have no recollection of that.

5 Q Did you have knowledge of a search of Mr.
6 Nosair's cell by the Federal Bureau of Investigation on the
7 same day that you saw him on your rounds, March 5, 1993?

8 A No, I didn't have knowledge of that.

9 Q When Mr. Nosair was talking to you -- by the way,
10 would it be fair to say that Mr. Nosair had a discussion
11 with you?

12 A Yes, sir.

13 Q How long did that discussion last?

14 A I would say -- I am not sure I can give you a
15 good estimate.

16 Q Did it last longer than your direct testimony
17 this morning?

18 A No, it did not.

19 Q Were there things in the discussion that you
20 didn't tell us about in your direct testimony this morning?

21 A Yes.

22 Q Mr. Nosair requested his legal materials from
23 you, isn't that correct?

24 A He may have.

25 Q Mr. Nosair requested a change of clothing from

1 you, isn't that correct?

2 A He may have.

3 Q Mr. Nosair requested his personal items from his
4 cell in the general population from you, isn't that correct?

5 A He may have.

6 Q Mr. Khuzami asked you some questions during your
7 direct examination about whether or not Mr. Nosair described
8 the war or the battle that he was talking about. Do you
9 recall your testimony on direct examination?

10 A Yes, I do.

11 Q You said he didn't describe the war to you?

12 A No.

13 Q You testified that he didn't describe the battle
14 to you?

15 A Yes.

16 Q He did describe the battle?

17 A No. I testified that he did not.

18 Q Didn't Mr. Nosair say to you at that time, on
19 March 5, 1993, at 8:00 in the morning, that the devil
20 leaders are the unjust court system that has wrongly
21 convicted me when I am innocent?

22 A He may have.

23 Q Didn't Mr. Nosair say to you at that time on
24 March 5, 1995, I am at war with the courts of New York
25 State, and my being in SHU hampers my access to the law

1 library?

2 A I don't recall him making that statement.

3 Q Didn't he say to you when you were making the
4 rounds on March 5, 1993, SHU is not going to stop me and I
5 have just begun to fight the injustice of my incarceration?

6 A He may have.

7 Q Didn't he say to you when you were making your
8 rounds on March 5, 1993, I will not stop fighting until I am
9 released, it is a war of right against wrong?

10 A He may have.

11 Q After this happened, you testified that you were
12 stunned.

13 A Yes.

14 Q After you got over being stunned, you wrote a
15 letter to the superintendent of the facility, is that
16 correct?

17 A Yes.

18 Q And he is not a guy that you have all that much
19 contact with, is that correct?

20 A No.

21 Q Corrections sergeants don't go in every day and
22 talk to the superintendent or write to the superintendent,
23 is that fair to say?

24 A I can't speak for all corrections sergeants.

25 Q Let's speak for you.

1 A No, I didn't have daily contact with the
2 superintendent.

3 Q And it is not your regular practice to write --
4 the superintendent's name is Walter Kelley, is that correct?

5 A That is correct.

6 Q It is not your regular practice to write
7 Superintendent Walter Kelly letters, is it?

8 A No.

9 Q Did capital Hannenberg order you to write
10 Superintendent Walter Kelley about Mr. Nosair?

11 A I believe he did.

12 Q And he asked you to do that because this is a
13 high-profile case, isn't that correct, sir?

14 A Yes.

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained and stricken.

17 Q And you wrote to Superintendent Kelly on March 5,
18 is that correct?

19 A Yes.

20 Q Six days later, you prepared an inmate
21 misbehavior report. Do you recall that?

22 A I believe that to be true.

23 Q That is six days later that you filed a formal
24 charge against Mr. Nosair, is that correct?

25 A Yes, sir.

1 Q And an inmate misbehavior report under Section
2 251-3.1 is supposed to be filed as soon as practicable, is
3 that correct?

4 A Yes.

5 Q And as soon as practicable for you was six days
6 later, is that correct, Sergeant?

7 A Yes.

8 Q Were you stunned during that six days before you
9 waited to file the inmate misbehavior report?

10 MR. KHUZAMI: Objection.

11 THE COURT: Sustained.

12 Q Who ordered you to file that inmate misbehavior
13 report, Sergeant Herdzik?

14 MR. KHUZAMI: Objection.

15 THE COURT: Sustained.

16 Q Were you ordered to file that inmate misbehavior
17 report, Sergeant Herdzik?

18 A Yes, I was.

19 Q Who ordered you to do that?

20 A I believe it was a Lieutenant George.

21 Q And you told Mr. Nosair that the lieutenant would
22 be here to see him regarding his placement in SHU status,
23 correct?

24 A Yes.

25 Q And Lieutenant George was that lieutenant, is

1 that correct?

2 A Yes.

3 Q And you discussed Mr. Nosair's statement with
4 Lieutenant George, is that correct?

5 A I believe so.

6 Q And when you were on vacation on July 8, 1993,
7 Lieutenant George testified at an inmate hearing for you, is
8 that correct?

9 MR. KHUZAMI: Objection.

10 THE COURT: Sustained.

11 Q How many conversations did you have with
12 Lieutenant George after March 5, 1993, concerning Mr.
13 Nosair?

14 A I don't know.

15 Q You don't know how many?

16 A No, I don't.

17 Q More than one?

18 A I believe so, yes.

19 Q More than two?

20 A It is possible.

21 Q Less than five?

22 A I can't give you an accurate estimate, sir.

23 Q When you spoke to Lieutenant George, you told him
24 that Mr. Nosair hadn't threatened you, is that correct?

25 A I didn't hear had or hadn't -- I didn't hear your

1 question, sir.

2 MR. STAVIS: Can I have the question read back to
3 the witness?

4 THE COURT: The question was simply, did you tell
5 Lieutenant George that Mr. Nosair had not threatened you
6 during your conversation.

7 A I don't believe the threatening was part of the
8 conversation, whether I had been personally threatened or
9 not.

10 MR. STAVIS: I have no further questions of this
11 witness, your Honor.

12 THE COURT: Anyone else on cross? No. Any
13 redirect?

14 MR. KHUZAMI: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. KHUZAMI:

17 Q Sergeant Herdzik, you testified that you didn't
18 believe that the statement Mr. Nosair made was, I think you
19 said, that there was a threat as part of that conversation,
20 is that correct?

21 A I think I testified I didn't think it was a
22 personal threat or --

23 Q That was my question. When you said you didn't
24 think it was a threat, what do you mean by threat?

25 A I mean a threat to me, that he was -- for

1 example, that he was going to do personal harm to me or
2 fellow officers or employees.

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1 Q Did you think that the statements that he made
2 were threatening in any other respect?

3 MR. STAVIS: Objection, relevance, your Honor,
4 and outside the scope of the cross-examination.

5 THE COURT: No, that part is wrong. May I see
6 counsel at the side.

7 (At the side bar)

8 MR. STAVIS: I will just give you a little
9 background.

10 THE COURT: You got into this, I assume for
11 reasons --

12 MR. STAVIS: The inmate misbehavior report
13 charged Mr. Nosair with threatening this officer.

14 THE COURT: With threatening this officer?

15 MR. KHUZAMI: No, with making a threat.

16 THE COURT: Then I am going to allow it. Let's
17 go.

18 (In open court)

19 THE COURT: The objection is overruled. Let's
20 go.

21 (Continued on next page)

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1 BY MR. KHUZAMI:

2 Q Sergeant Herdzik, what sort of threat did you
3 perceive Mr. Nosair's statement to be at that time?

4 MR. STAVIS: Objection, your Honor.

5 THE COURT: If any. Overruled.

6 Q If any?

7 A I thought it was related to outside incidents.

8 Q What outside incidents?

9 MR. STAVIS: Objection to that, your Honor.

10 THE COURT: Overruled.

11 A I thought it was related to the bombing of the
12 World Trade Center.

13 MR. KHUZAMI: No further questions.

14 THE COURT: Recross?

15 MR. STAVIS: Yes.

16 RE-CROSS-EXAMINATION

17 BY MR. STAVIS:

18 Q Sergeant Herdzik, when you filed your inmate
19 misbehavior report against Mr. Nosair, you charged him with
20 a violation of 120.10 -- that is making threats -- is that
21 correct?

22 A Yes.

23 Q And he was found not guilty on those charges at a
24 tier 3 superintendent's hearing, isn't that correct, sir?

25 MR. KHUZAMI: Objection.

1 THE COURT: Sustained.

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

3 MR. KHUZAMI: No redirect, your Honor.

4 THE COURT: You are excused.

5 (Witness excused)

6 MR. KHUZAMI: Your Honor, the government calls

7 Dr. Craig Nunn as its next witness.

8 CRAIG ROBERT NUNN,

9 called as a witness by the government,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KHUZAMI:

13 Q Mr. Nunn, how are you employed?

14 A I am a physician.

15 Q Where do you currently practice?

16 A I am sorry.

17 Q Where do you currently practice?

18 A I work at NYU Medical Center and the various

19 hospitals associated with that medical center.

20 Q What is your position there?

21 A I am a resident surgeon.

22 Q How long have you been a resident surgeon there?

23 A This is my fifth year.

24 Q When did you start your residency?

25 A It was in the summer of 1990, July of 1990.

1 Q Can you describe for the ladies and gentlemen of
2 the jury what the nature is of a residency as part of your
3 medical training?

4 A After I graduated from medical school, we decide
5 which specialty we are going to pursue and based on that
6 select a residency, geographic and training parameters and
7 what we are interested in going into. I selected mine in
8 general surgery because I was interested in surgery.
9 General surgery is a five-year training program devoted to
10 learning the various aspects of surgical disease and the
11 treatment of surgical patients.

12 Q Your residency started in July of 1990, is that
13 correct?

14 A That is correct.

15 Q Is there another name for a first year resident
16 that first year residents are commonly referred to as?

17 A Yes. They are called interns, in general.

18 Q How long were you a first year resident?

19 A For one year, until July of 1991.

20 Q I deserved that. Let me try again. For what
21 period of time were you a first year resident --

22 THE COURT: During what years or dates.

23 Q What dates?

24 A July 1990 through July of 1991.

25 Q Where did you serve that residency?

1 A Under the auspices of NYU Medical Center, which
2 include NYU Medical Center itself, Bellevue Hospital Center,
3 Manhattan VA Medical Center, and some other associated
4 hospitals such as Beekman Downtown and Booth Memorial.
5 Generally those three hospitals.

6 Q While you were a first year resident, did you do
7 something referred to as rotations?

8 A Yes. The years of residency are broken down into
9 rotations based upon the different surgical specialties,
10 including vascular surgery, general surgery, trauma surgery,
11 orthopedic surgery, many others.

12 Q Did you engage in all those rotations while you
13 were a first year resident?

14 A Yes, I went through what would be considered a
15 typical internship, taking one or two months at a time
16 through each of those categories of surgical specialties.

17 Q How long were the rotations that you served as a
18 first year resident?

19 A Generally from one to two months.

20 Q You mentioned a trauma rotation. Can you
21 describe what a trauma rotation is?

22 A Bellevue Hospital is one of the level one trauma
23 centers in New York, and being designated as a trauma
24 center, a lot of trauma patients, patients who suffer
25 gunshots wounds, stab wounds, blunt trauma such as car

1 accidents, are brought to that hospital. So that there is a
2 surgical service, a trauma service which takes care of those
3 patients, because many of them do need to go to the
4 operating room. Most interns in the surgical department
5 serve one or two months on the trauma service at Bellevue
6 Hospital.

7 Q Doctor, if I could ask you to speak a little
8 slower so the translators can get it all down.

9 A Sure.

10 Q Do you recall what period of time, what dates you
11 served a trauma rotation while you were a first year
12 residents?

13 A It was from the end of November towards the end
14 of December of 1990.

15 Q Do you recall at what hospital you served that
16 rotation at?

17 A Yes. All the trauma is done at Bellevue
18 Hospital, so that's where I served.

19 Q During the time that you were serving a trauma
20 rotation at Bellevue, what different types of patients did
21 you treat?

22 A As I said, the trauma service treats all patients
23 who are brought into the emergency room requiring admission
24 for an accident or a wound of some sort. So we treated
25 patients, a lot of them after suffering from vehicular

1 accidents, patients who are shot, patients who have been
2 stabbed, patients who have been crushed for one reason or
3 another, elevator accidents. A large array of different
4 traumas.

5 Q Did you treat patients other than those who were
6 brought into the emergency room?

7 A Occasionally a trauma patient, a patient will be
8 admitted to the trauma service either through a clinic, if
9 they had an accident prior to that time, or if the patient
10 had been in the trauma service before and needed to be
11 readmitted for evaluation, they might also be readmitted
12 through the trauma service, without suffering an additional
13 accident, that is.

14 Q Did you also treat any prisoner patients while
15 you were at Bellevue?

16 A Yes. Prisoners were treated basically the same
17 as the general population, in that if they were involved in
18 an accident, either in prison or prior to being
19 incarcerated, they will see also be brought to Bellevue and
20 treated in the trauma service.

21 Q Were the prisoner patients kept in any particular
22 area at Bellevue?

23 A Once a prisoner is declared stable and able to be
24 moved to what would normally be a ward room, they are
25 transferred either from the intensive care unit or the

1 operating room to the prison ward.

2 Q Can you describe what the prison ward is?

3 A The prison ward is in many ways like a normal
4 hospital ward except that it is obviously isolated, and in
5 Bellevue it is on the 19th floor and you have to enter a
6 series of gates and metal doors and prison guards in order
7 to enter the area. Patients are free generally to walk
8 around the prison ward like they would on another ward, but
9 it is entirely locked.

10 Q Did you have any patient responsibilities for
11 prisoners while you were serving your trauma rotation at
12 Bellevue in November and December of 1990?

13 A Yes. As an intern, because the prison ward is so
14 far out of the way, both its location and the fact that many
15 gates have to be passed and it is a tremendous undertaking
16 to get in and out, the intern on the service is generally
17 the one who will do the day-to-day daily activities on the
18 prison ward. So in that I was the intern on the service at
19 that time, I was the person who spent most of the time going
20 back and forth to the prison ward, and I would take care of
21 the prison trauma patients the same way as the ward
22 patients.

23 Q While you were serving your trauma rotation, did
24 you treat a prisoner by the name of El Sayyid Nosair?

25 A Yes, I did.

1 Q Prior to your testimony today have you reviewed
2 his medical records?

3 A Yes, I have.

4 Q Do you recall when he was admitted?

5 A He was admitted twice, actually. He was admitted
6 the first time after sustaining a gunshot wound to the right
7 side of his neck. That was prior to the time that I was on
8 the trauma service and I did not see him. He was readmitted
9 at the end of November when I came onto the service. He had
10 been in the hospital at that point to be reevaluated for
11 some of the injuries that he had suffered at the initial
12 trauma.

13 Q How often did you see him -- withdrawn. How
14 often did you treat him or visit him while you were an
15 intern at Bellevue?

16 A I saw him while I was in the trauma service at
17 Bellevue on a daily basis, at least once a day, unless I
18 wasn't in the hospital that day, it was a day off.

19 Q Do you recall why Mr. Nosair was admitted to
20 Bellevue the second time that you referred to?

21 A He was admitted by court order in order to be
22 evaluated for injuries that I believe were still bothering
23 him, some neck pain, I think, and just to be reevaluated to
24 see if he was able to, I guess, be discharged from the
25 hospital to stand trial. That was my understanding.

1 Q For how long a period of time did you treat him
2 during his second admission?

3 A It was a number of weeks. He was discharged
4 towards the end of December, middle to the end of December,
5 and I treated him until the time of his discharge. By
6 treatment, I evaluated him and examined his wounds on a
7 daily basis.

8 Q What was your evaluation of his condition?

9 A My conclusion was that while he suffered a
10 significant injury at the time, his wounds were healing and
11 there was no requirement for hospitalization. It was my
12 recommendation as it was written in the chart that he could
13 be discharged and be treated on an out-patient basis.

14 Q Do you recall specifically what kind of
15 treatment, if any, you gave him?

16 A We gave him some pain medications in order for
17 him to tolerate the stiffness that he had in his neck and we
18 basically had a lot of consulting services evaluate him in
19 order to determine if there was some underlying problem that
20 we had not recognized, but for the most part on the trauma
21 service, we continued dressing changes to the neck incision,
22 and just made sure that the healing was going on well,
23 without signs of infection.

24 Q During the time that you were treating him, were
25 you speaking to him about his condition?

1 A Yes, I was.

2 Q During any of those discussions, did he ever
3 complain about any problems with his hands?

4 A No.

5 Q Did he ever complain about any numbness in his
6 hands?

7 A No.

8 Q Did he ever complain about any lack of strength
9 in his hands?

10 MR. PATEL: Objection.

11 A No.

12 THE COURT: Overruled. Go ahead.

13 Q Did you see him using his hands during the course
14 of the time that you observed him while you were treating
15 him?

16 A Yes, I did.

17 Q Did he appear to be having any difficulty using
18 his hands?

19 A Not that I noticed.

20 Q Dr. Nunn, do you think you could recognize Mr.
21 Nosair if you saw him again today?

22 A Yes, I think I could.

23 Q Do you see him in the courtroom?

24 A Yes.

25 Q Could you please point out where he is sitting

1 and describe what he is wearing.

2 A He is sitting next to Mr. Patel, with the beard
3 and the tie.

4 THE COURT: Indicating Mr. Nosair. Go ahead.

5 Q While you were treating Mr. Nosair, did you know
6 why he was a prisoner?

7 A Yes, I was aware why he was a prisoner.

8 Q What was your awareness?

9 A It was my understanding that he was somehow being
10 charged with the shooting of Meir Kahane.

11 Q Did you ever ask Mr. Nosair any questions about
12 the murder of Meir Kahane?

13 A Yes, I did.

14 Q What question did you ask him?

15 A During the time that I had seen him, he seemed to
16 be very polite and cooperative with me, and I asked him, I
17 didn't understand how such an apparently nice man could have
18 killed somebody, so I said I don't understand how you could
19 have killed somebody. It wasn't really a question, it was
20 more of a statement.

21 Q When was it that you asked him that question?

22 A It was shortly before his discharge. I don't
23 believe it was on the day of his discharge. I knew he was
24 going to be leaving and we weren't allowed to tell the
25 patients on the prison ward of their impending discharge,

1 but I was aware that he was cleared for discharge. I guess
2 it was on the 10th of December, thereabouts. I don't
3 remember the exact date, though.

4 Q Where were you when you asked him the question?

5 A It was in Mr. Nosair's room at that time, on the
6 prison ward.

7 Q Where were you coming from that?

8 A I had come to the prison ward to see if
9 everything was all right and ask him about his neck wound.

10 Q Did you perform an examination on him that day?

11 A Yes, I examined him that day. I looked at the
12 wound in his neck and asked him if he was having any
13 trouble.

14 Q What were the results of your examination that
15 day?

16 A The results of my exams were always the same
17 during his second admission, and that was that the wound was
18 fine and that he was healing. He had a stiff neck.

19 Q When you asked him the question, how could you
20 kill someone, where were you specifically in the room?

21 A I was on my way out of the room, actually. I had
22 turned and began to leave.

23 Q Where was Mr. Nosair when you asked him that
24 question?

25 A He was actually where he had been when I came

1 into the room, which was seated on the side of his bed, sort
2 of with a bedside table, hospital table next to the bed,
3 with a book in front of him, looking in the direction away
4 from the nursing station.

5 Q What was Mr. Nosair's response when you asked him
6 how he could kill someone?

7 MR. PATEL: Objection.

8 THE COURT: Overruled?

9 A He said, I had no choice, it was my duty.

10 Q I am sorry, it was my?

11 A Duty.

12 MR. KHUZAMI: No further questions.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. PATEL:

16 Q Dr. Nunn, we haven't met before, have we?

17 A No, we haven't, not to my knowledge.

18 Q Dr. Nunn, when you are working as a doctor in a
19 major medical hospital, it is fair to say that it is very
20 important for you to review and maintain medical records, is
21 that fair to say?

22 A It is important for me to maintain medical
23 records, yes, sir.

24 Q Right. In other words, you write down your
25 observations in medical records?

1 A Yes, sir.

2 Q And you read what other people have observed?

3 A Yes.

4 Q Part of the reason that is so important is, you
5 are part of a medical treatment team, is that correct?

6 A That is correct.

7 Q I believe you referred to some other services on
8 your direct testimony, is that correct?

9 A What is the question?

10 Q You referred to other services that Mr. Nosair
11 was seen by.

12 A Yes, he was seen by other services.

13 Q When you say medical services, you are talking
14 about doctors who have specialties other than trauma
15 surgery, is that right?

16 A That is right.

17 Q So it is important that those doctors know what
18 your evaluation was and it is important that you know what
19 their evaluations were, correct?

20 A Yes, that is correct.

21 Q And your means of communicating, since you are
22 busy, they are busy, is Mr. Nosair's medical record, is that
23 fair to say?

24 A That is one of the means of our communicating,
25 yes.

1 Q Mr. Nosair's records -- and you knew that he had
2 been admitted initially on November 5 with a gunshot wound
3 to the neck, is that correct?

4 A Yes. I wasn't aware of the exact date but I knew
5 there was an initial admission.

6 Q Did you know that this bullet wound had damaged
7 his jugular vein and that he had also had a concussion at
8 that time?

9 A Yes, I knew that.

10 Q He received emergency surgery for the neck wound,
11 is that correct?

12 A He under surgical exploration in the neck, yes.

13 Q The trauma unit follows emergency room
14 admissions, right?

15 A I am not sure I understand the question.

16 Q There is a trauma -- there are doctors like
17 yourself who are part of a trauma unit, you know, a service,
18 trauma service.

19 A Yes. Maybe I should make a distinction. There
20 are no admissions to the emergency department, so no one
21 would be admitted to the emergency room per se. When a
22 patient is admitted, as Mr. Nosair was, having suffered a
23 gunshot wound, the trauma service is contacted immediately.
24 So he is really directly admitted to the trauma service.

25 Q So the medical team that covers the emergency

1 room is the trauma service?

2 A It is one of the teams, yes.

3 Q Thank you. You knew from Mr. Nosair's medical
4 records and from talking to the other members of the staff
5 that treated him that as soon as Mr. Nosair regained
6 consciousness he told people he was innocent, didn't he?

7 A Was that -- no, I wasn't aware of that.

8 Q You weren't aware of it?

9 A No, I wasn't.

10 Q Had you spoken to any of the nurses who were
11 present when Mr. Nosair regained consciousness?

12 A I speak to those nurses all the time.

13 Q Did any of those nurses tell you that Mr.
14 Nosair --

15 MR. KHUZAMI: Objection.

16 THE COURT: Sustained.

17 Q Was there any marking in the record that Mr.
18 Nosair had given a written statement as soon as he regained
19 consciousness?

20 A Not to my knowledge.

21 Q You said that Bellevue is a level one trauma
22 center, is that correct?

23 A Yes, that is what I said.

24 Q I believe in Manhattan Bellevue is the level one
25 trauma center for the east side and Roosevelt St. Luke's is

1 the level one trauma center for the west side, is that
2 correct?

3 A There are certainly more than two level one
4 trauma centers in Manhattan.

5 Q Presbyterian?

6 A I don't know all of them. I know Cornell is one.
7 I don't know them all by detail.

8 Q But Bellevue handles an enormous number of trauma
9 cases.

10 A Bellevue gets a lot of trauma cases.

11 Q In fact, when you are on the emergency room
12 service there is talks about the Friday and Saturday
13 meetings of the New York knife and gun club.

14 A Its not just Friday and Saturday.

15 Q You see a lot of wounds, gunshot wounds?

16 A Yes.

17 Q Knife wounds?

18 A They are not uncommon.

19 Q You see a tremendous number of people who are in
20 extreme medical need.

21 A Certainly.

22 Q And you have to perform what is called triage, is
23 that fair to say?

24 A No, I don't perform triage.

25 Q Triage is performed at the hospital. In fact

1 there is a triage station as soon as you walk into the
2 emergency room, right?

3 A Patients who come to the trauma service usually
4 don't walk to the emergency room. They are usually triaged
5 automatically. Somebody who needs to go to the operating
6 room, I really wouldn't call triage.

7 Q Let's step back so the ladies and gentlemen of
8 the jury understand what triage is. Triage is who goes
9 first, is that correct?

10 A And who goes where, more appropriately for a
11 hospital the size of Bellevue.

12 Q And it is a decision of he who is in the worst
13 shape goes first, correct?

14 A Depending on how limited your resources are. I
15 hesitate to say correct because two people in very bad shape
16 may be treated simultaneously so neither one may go first.

17 Q If you have enough resources you can treat
18 people --

19 A Correct. Our triage is more directed to where
20 the patient is going to be best served, on which service,
21 for instance.

22 Q As a trauma intern, you would follow up on these
23 people after they were admitted to the hospital, is that
24 correct?

25 A As a trauma intern, we would have a lot of

1 responsibilities, including responding to traumas in the
2 emergency department in addition to following up --

3 Q One of the --

4 MR. KHUZAMI: Objection to cutting off the
5 witness.

6 A I was going to say in addition to our
7 responsibilities on the floor post-operatively and after the
8 trauma had been taken care of initially.

9 Q Let's talk about post-operative. You would
10 follow trauma admissions on the wards?

11 A Yes.

12 Q Part of your responsibilities was talking to
13 these patients, is that fair to say?

14 A Yes.

15 Q To evaluate their status, how they were feeling.

16 A Correct.

17 Q How many patients would you say that you would
18 see on an average day?

19 A I would say probably on an average day 20, 25.

20 Q Did any other of your other patients while you
21 were a trauma intern confess to crimes to you?

22 A No, I don't believe so.

23 Q So this is the first confession that you have
24 testified about?

25 A Yes.

1 Q You didn't make any notations in any medical
2 records about any other confessions, did you?

3 A I didn't make any medical record notations about
4 any confession.

5 Q Including Mr. Nosair.

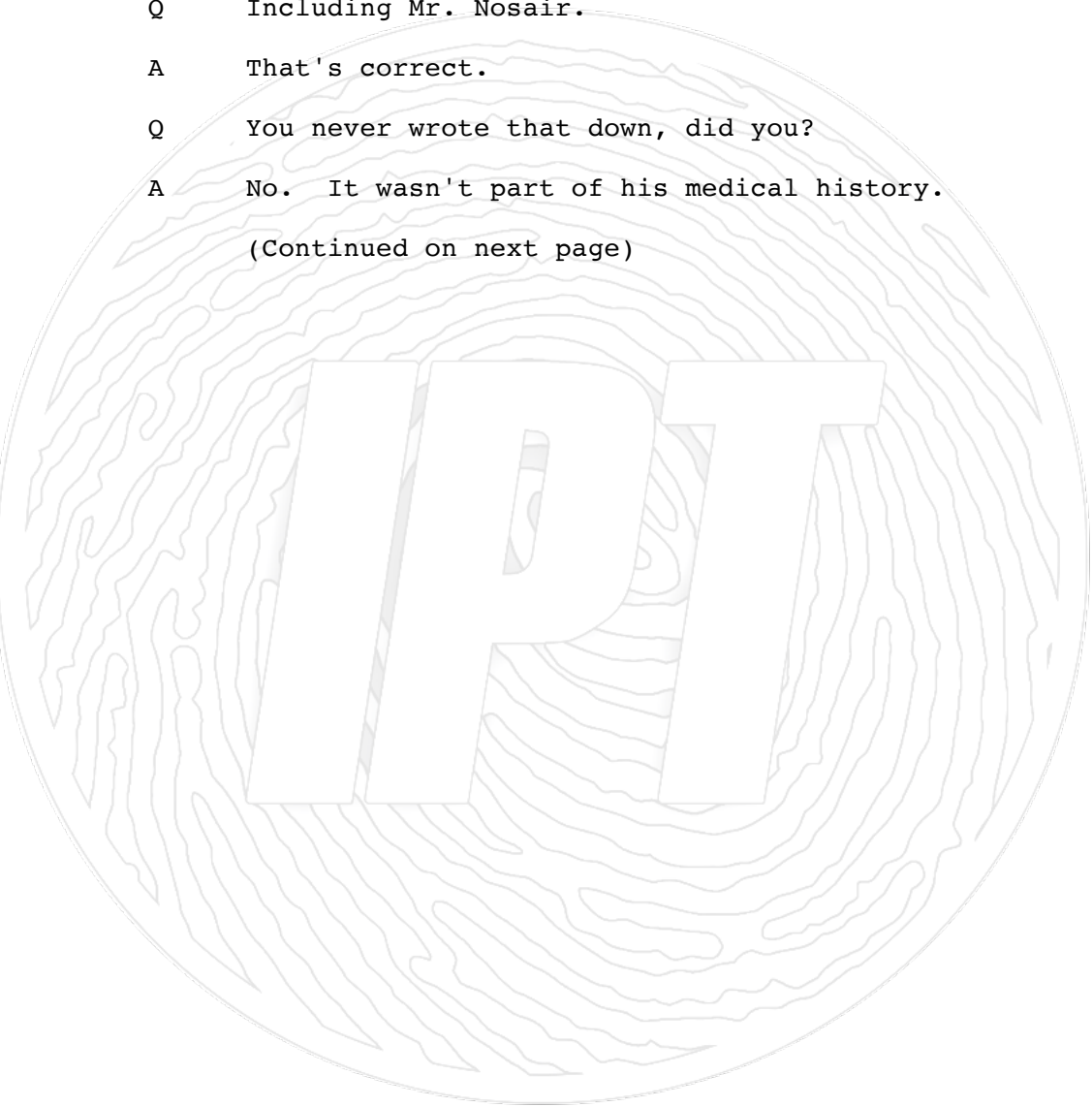
6 A That's correct.

7 Q You never wrote that down, did you?

8 A No. It wasn't part of his medical history.

9 (Continued on next page)

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1 Q You knew, though, from reading his chart that
2 other members of the treating team had asked him questions
3 about the incident.

4 MR. KHUZAMI: Objection.

5 THE COURT: May I see counsel briefly at the
6 side.

7 (At the side bar)

8 MR. KHUZAMI: I don't think my objection would be
9 to anything as long as he answered yes or no.

10 THE COURT: I know, but the question was where is
11 this going.

12 MR. PATEL: The medical records which are in
13 evidence indicate that on at least one occasion on the
14 readmission Mr. Nosair had refused to discuss the incident
15 that he is discussing with this doctor. Lays a foundation
16 for getting into why Mr. Nosair talked to him, and I think
17 that is perfectly --

18 MR. KHUZAMI: I don't think it is relevant to the
19 question of what he told this witness.

20 THE COURT: Neither do I. What is it relevant
21 to? Is this a legal issue for me or what?

22 MR. PATEL: I don't think -- this is a foundation
23 question.

24 MR. KHUZAMI: It is not a foundation to this
25 witness, if on a different occasion he refused to a

1 different person. There are probably 500 people that he
2 refused to talk to.

3 MR. STAVIS: It is our contention that the
4 statement was never made.

5 THE COURT: If he refused to talk to A through N
6 then he didn't talk to O, because why talk to O?

7 MR. STAVIS: Why pick this person out of all the
8 people he would pick to speak to.

9 MR. KHUZAMI: The only thing I would add is that
10 you should be careful to ask what is on the medical records,
11 because at the request of counsel for Mr. Nosair, certain
12 things are redacted out.

13 MR. PATEL: I will only ask him about the one
14 occasion.

15 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is overruled.

3 Do you want to just pose the question again?

4 MR. PATEL: Your Honor, let me come back to that.

5 THE COURT: Pose another question.

6 MR. PATEL: Thank you.

7 BY MR. PATEL:

8 Q Dr. Nunn, when you were, five years ago, an
9 intern, surgical intern, you were the low man on a sizable
10 totem pole, is that fair to say?

11 A In terms of the people that were actually MD's,
12 yes.

13 Q You worked phenomenally long hours, is that fair
14 to say?

15 A Relative to -- for a physician in training in
16 surgery?

17 Q No, relative to someone who works 9 to 5.

18 A Yes, they were very long hours.

19 Q There were occasions that you would clock in at 9
20 o'clock on Monday and clock out at 5 o'clock on Wednesday?

21 A I never clocked in at 9 o'clock.

22 Q Never got to sleep that late.

23 But the 36-hour working day was not unusual when
24 you were an intern?

25 A No, it wasn't unusual.

1 Q OK. The most valuable asset you had was your
2 time, you were treating people in extreme need at times, is
3 that fair to say?

4 A My most valuable asset for the patients?

5 Q Yes.

6 A Yes.

7 Q It would be fair to say that anything that you
8 thought of as wasting your time was something that was
9 taking away from people who needed your time?

10 A I tried not to waste my time, that's true.

11 Q You would obviously, if someone ordered you to do
12 something that you thought was a waste of time, you would
13 resent that?

14 A Yes.

15 Q Mr. Nosair was readmitted on November 23 by court
16 order, is that correct?

17 A That's correct.

18 Q He had a pain in his arm, pain in his neck,
19 correct?

20 A As I recall, he had pain in his neck.

21 Q I believe that he was seen by, what we discussed,
22 a number of other services, but one of the services that saw
23 him was ENT, that's ear, nose and throat, is that correct?

24 A Yes.

25 Q He was having trouble with his ear, his right

1 ear, is that correct?

2 A That's right. He had some blood inside his ear.

3 Q And that's blood on the inside of the eardrum, is
4 that correct?

5 A Yes, that's what they wrote in their report.

6 Q That would be painful, to say the least, and an
7 uncomfortable condition to have?

8 A Yes, I understand it can be very irritating.

9 Q On November 26, you wrote in the medical records
10 that there was no medical reason for Mr. Nosair to be in the
11 hospital, is that correct?

12 A That's correct.

13 Q Basically, Mr. Nosair was wasting your time, is
14 that fair to say?

15 A Mr. Nosair wasn't wasting my time.

16 Q Mr. Nosair's presence in the hospital was making
17 it impossible for you to do other things?

18 A No, I don't think so.

19 Q If Mr. Nosair hadn't been there, you would have
20 been doing other things, is that correct?

21 A Yes, that's true.

22 Q It was your opinion that Mr. Nosair did not need
23 to be there, is that correct?

24 A That's correct.

25 Q Seeing 25 patients a day and sometimes working 36

1 hours a day, you still had time to chat with Mr. Nosair in
2 late December prior to his discharge, is that your
3 testimony?

4 A I don't think we chatted.

5 Q The conversation that you described on your
6 direct testimony, that wasn't part of your medical attention
7 to Mr. Nosair, was it?

8 A No, it wasn't.

9 Q That was just idle curiosity?

10 A That's correct, it was curiosity.

11 Q At the time you had this conversation, you knew
12 who Mr. Nosair was?

13 A Yes.

14 Q You were aware of the publicity of the case,
15 right?

16 A Yes.

17 Q You had read the "New York Times"?

18 A Rarely.

19 Q Do you read the "Post"?

20 A Rarely.

21 Q "Daily News"?

22 A I don't get to read many newspapers, sir.

23 Q Listened to the radio?

24 A I knew about his notoriety.

25 Q You saw it on TV?

1 A Occasionally.

2 Q This case was, Mr. Nosair's case was being well
3 reported in November/December 1990, is that fair to say?

4 A I think during the second hospital admission
5 there wasn't that much that I had read about it, but
6 certainly I knew who he was.

7 Q You had essentially heard statements from police
8 officers that they had given to reporters, is that fair to
9 say?

10 A No.

11 Q The reporting at the time was things like "police
12 sources say"?

13 A The question?

14 Q "Mr. Nosair shot Rabbi Kahane," sort of the
15 general trend in the --

16 A I was aware that he was being charged with the
17 assassination of Meir Kahane, yes.

18 Q OK. The question that you asked him, "How could
19 you have killed somebody"?

20 A I said, "I do not understand how you could have
21 killed somebody."

22 Q The very question that you asked him assumes that
23 he had in fact done it, doesn't it?

24 A Yes.

25 Q But you hadn't heard his side of the story

1 before?

2 A No.

3 Q This statement, you never wrote that down?

4 A No.

5 Q You knew from the medical records that he had
6 refused to talk to other doctors or other people in the
7 hospital?

8 A I didn't know he had refused to talk to other
9 physicians actually. I didn't recall that.

10 MR. PATEL: May I just approach the witness, your
11 Honor.

12 THE COURT: Yes.

13 MR. PATEL: I think this is Government Exhibit
14 22.

15 Q I would like to just show you this for a minute.

16 A Sure.

17 Q Have you seen these before?

18 A Yes, I have.

19 Q These are Mr. Nosair's --

20 THE COURT: Excuse me, Mr. Patel. The
21 interpreters can't hear you.

22 MR. PATEL: I am sorry, your Honor. We will have
23 to share a microphone.

24 THE WITNESS: Use this one.

25 A Yes, I reviewed these.

1 Q Do you see the tabbed page there?

2 A Sure.

3 Q Would you take a look at that.

4 A This page?

5 Q Yes. About three-quarters of the way -- or
6 two-thirds of the way down on that page, there is an
7 indication that Mr. Nosair had refused to talk to someone
8 about his condition, is that correct?

9 A Yes, he refused to talk to someone. This is not
10 a physician from what I understand. I believe this
11 paperwork, at least when I looked at it initially, and I
12 still believe this is a person in the hospital who sort of
13 arranges for disposition of the patients and discharges. I
14 don't believe this is a physician's report.

15 Q As far as you know, Mr. Nosair never told this
16 story to anyone but you?

17 A As far as I know.

18 Q Was there anyone with you when you had this
19 conversation?

20 A No.

21 Q You had been seeing Mr. Nosair off and on for
22 several weeks at that point, is that correct?

23 A Yes, I think that's right.

24 Q These visits with Mr. Nosair were fairly quick?

25 A Yes.

1 Q You'd come in, check his wound, and you would be
2 gone?

3 A Generally.

4 Q So you would probably spend less than two or
5 three minutes with him?

6 A Less than five I would say.

7 Q Less than five minutes, OK.

8 After you had this conversation with him, is it
9 fair to say that you didn't call hospital security and tell
10 them about it?

11 A No, I didn't call hospital security.

12 Q You didn't tell any of the prison guards that
13 were right outside the door, did you?

14 A No.

15 Q You certainly didn't call the police?

16 A No.

17 Q You didn't call the New York County District
18 Attorney's office, did you?

19 A No.

20 Q You didn't testify in the state trial of
21 Mr. Nosair?

22 A No, I didn't.

23 Q You knew that Mr. Nosair's state trial received a
24 tremendous amount of publicity?

25 A Yes, I knew about the trial.

1 Q You knew that he was acquitted in that trial of
2 the charge of murdering Meir Kahane, is that true?

3 A I knew he was acquitted.

4 Q After you found out that he had been acquitted,
5 you had a conversation with Mr. Khuzami, is that fair to
6 say?

7 A No, I didn't have a conversation with Mr. Khuzami
8 until I think a while after he was acquitted. My first
9 conversation with Mr. Khuzami was this year.

10 Q This year? In 1995?

11 A Yes.

12 Q And Mr. Khuzami contacted you?

13 A I believe, yes, he did.

14 Q And you agreed to speak with him, is that fair to
15 say?

16 A Yes.

17 Q You came voluntarily to his office to speak to
18 him?

19 A I got a subpoena.

20 Q You got a subpoena to come to his office?

21 A I don't know what the -- it's fair to say that I
22 was willing with speak with Mr. Khuzami, yes.

23 Q So, with or without the subpoena, you would have
24 spoken to him?

25 A I contacted the attorney at Bellevue prior to

1 speaking to Mr. Khuzami.

2 Q If Mr. Khuzami had not given you the subpoena --
3 a subpoena is a court order to come and talk to the grand
4 jury, right?

5 A I don't know. I don't know.

6 Q You don't know?

7 A I don't know. A subpoena means under penalty --

8 Q You don't have a copy of that subpoena with you?

9 A I don't have it with me. I'm sorry.

10 Q You went and you spoke to Mr. Khuzami?

11 A After speaking with Mr. Moy.

12 Q OK. Mr. Moy is who?

13 A He is an attorney that I believe represents
14 Bellevue. I got in contact with Risk Management at Bellevue
15 Hospital after Mr. Khuzami had contacted me.

16 Q Risk Management at Bellevue Hospital. Risk
17 Management handles lawsuits when Bellevue Hospital is sued,
18 is that correct?

19 A That is one of their functions yes.

20 Q Malpractice suits and things like that?

21 A If there's been a problem in the hospital or an
22 occurrence that's worrisome, they usually get involved to
23 manage those problems.

24 Q You weren't being sued by the U.S. Attorney's
25 Office, were you?

1 A No, but I was contacted by an attorney.

2 Q He just wanted to ask you some questions?

3 A I didn't know what he wanted to ask me. I
4 contacted Mr. Moy when he contacted me.

5 Q You went in and you spoke with Mr. Khuzami?

6 A Yes. With Mr. Moy.

7 Q With Mr. Moy.

8 You voluntarily answered whatever questions he
9 had to ask, is that fair to say?

10 A Yes.

11 Q You never testified in the grand jury, did you?

12 A The grand jury for Mr. Nosair?

13 Q Yes.

14 A No, I did not testify.

15 Q You came down pursuant to a subpoena and you
16 spoke to Mr. Khuzami?

17 A Yes.

18 Q Is it fair to say that you were contacted by my
19 investigator? That is correct?

20 A What's the name of your investigator?

21 Q Frank Gonzalez.

22 A Yes, my mother was contacted by your
23 investigator.

24 Q Your mother informed Mr. Gonzalez that he should
25 speak to Mr. Moy, is that correct?

1 A Yes.

2 Q But she wouldn't give him Mr. Moy's phone number,
3 is that correct?

4 A My mother didn't have -- I don't live with my
5 mother, and I don't know why you called her house, to tell
6 you the truth.

7 Q Did your mother give us, give Mr. Gonzalez your
8 phone number?

9 A No, I don't think so.

10 Q In fact, you had instructed your mother to tell
11 Mr. Gonzalez to contact Mr. Moy.

12 A To stop calling her, yes.

13 Q Did you tell her your mother to give Mr. Gonzalez
14 your phone number?

15 A I told my mother she didn't have to speak to
16 Mr. Gonzalez, period.

17 Q Were you unwilling to speak to Mr. Gonzalez?

18 A Mr. Gonzalez never contacted me directly.

19 Q And you were unwilling to give Mr. Gonzalez any
20 way to contact you, is that fair to say? You told your
21 mother, "You don't have to talk to him"?

22 A I didn't go out of my way to find Mr. Gonzalez,
23 that's correct.

24 Q In fact, you did everything you could to make
25 sure Mr. Gonzalez couldn't find you?

- 1 A I did nothing to make sure he couldn't find me.
- 2 Q You told your mother to tell him to talk to a
- 3 lawyer?
- 4 A My attorney, Mr. Moy.
- 5 Q Right. And you didn't give him a phone number?
- 6 A I didn't give him Mr. Moy's known number, no.
- 7 Q And you didn't give him your phone number?
- 8 A Correct.
- 9 Q You didn't ask for Mr. Gonzalez's phone number?
- 10 A How did Mr. Gonzalez identify himself to my
- 11 mother?
- 12 Q Excuse me?
- 13 A How did Mr. Gonzalez identify himself to my
- 14 mother?
- 15 THE COURT: Doctor, we have a procedure where he
- 16 asks the questions and you give the answers.
- 17 THE WITNESS: I am sorry, your Honor.
- 18 A I had no way of knowing that Mr. Gonzalez
- 19 represented you or Mr. Nosair or whoever.
- 20 THE COURT: That wasn't the question. The
- 21 question was whether -- what was the question, Mr. Patel?
- 22 THE WITNESS: Again, I'm sorry.
- 23 Q You never spoke to Mr. Gonzalez, did you?
- 24 A Correct.
- 25 Q On direct examination, Mr. Khuzami asked you some

1 questions about Mr. Nosair's hand, do you remember those
2 questions?

3 A Yes.

4 Q You've seen Mr. Nosair's hand when you saw him in
5 the hospital, right?

6 A Yes.

7 Q You saw that over one of his hands there is a
8 large area of scarring, is that fair to say?

9 A I honestly don't recall how much scarring he had
10 or where.

11 Q You don't recall?

12 A Not specifically, no.

13 Q Did you ever see Mr. Nosair use his hand?

14 A I have.

15 Q You never saw him fire a .357 Magnum, though, did
16 you?

17 A Excuse me?

18 Q Did you ever see Mr. Nosair fire a weapon?

19 A No, I haven't.

20 MR. PATEL: May I have a moment, your Honor.

21 (Pause)

22 MR. PATEL: Your Honor, could I have the doctor
23 come down off the stand for a minute and just look at
24 Mr. Nosair's left hand?

25 THE COURT: Sure.

1 THE INTERPRETER: I am sorry, the interpreter
2 couldn't hear you.

3 THE COURT: He wants the doctor to step off the
4 stand and look at Mr. Nosair's left hand.

5 Go ahead.

6 MR. PATEL: Doctor, could you come down here,
7 please.

8 (The witness left the stand)

9 MR. PATEL: Mr. Nosair, could you stand up,
10 please. Could you extend your left hand, please.

11 Q Doctor, there is scarring over --

12 THE COURT: Mr. Patel, please use a microphone.

13 MR. PATEL: Mr. McCarthy, can we borrow that
14 microphone. Does it reach back here?

15 MR. MCCARTHY: Sure.

16 Q Would you take a look at Mr. Nosair's left hand.

17 A Yes. I looked at the hand.

18 Q Do you see scarring over the -- well, medically
19 how would you describe the scarring, that of his hand?

20 A I would assume that a skin graft has been placed
21 over a previous injury.

22 Q Over what part of his hand can you see the skin
23 graft?

24 A Over the dorsal aspect of his metacarpal region,
25 and first, second, and part of his third digit.

1 Q Can you put that in English. That is over the
2 top part?

3 A The back of his hand, the first few fingers.

4 Q It is covering his knuckles almost to the thumb,
5 and the first three fingers show the scarring?

6 A Yes.

7 Q That is on his left hand?

8 A Yes.

9 MR. PATEL: Thank you very much, Doctor.
10 Thank you, your Honor. Nothing further.

11 THE COURT: Anything else.

12 MR. MCCARTHY: No redirect, your Honor.

13 THE COURT: Thank you, you are excused.

14 (Witness excused)

15 THE COURT: Ladies and gentlemen, we are going to
16 take a short break. Please leave your notes and other
17 materials behind. Please do not discuss the case, and we
18 will resume in a few minutes.

19 (The jury was excused)

20 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Ms. Stewart, if I could see you for
3 just a moment.

4 MR. McCARTHY: Your Honor, we are filing a letter
5 this morning responsive to Ms. London's, which I am having
6 distributed to counsel now.

7 MR. SERRA: I'm sorry, your Honor.

8 MR. McCARTHY: I apologize. We are filing a
9 letter now in response to Ms. London's memorandum of law. I
10 just want to note that I just realized that I erroneously
11 referred to her, that is, Ms. London, as counsel for
12 Mr. Khallafalla rather than Mr. Elhassan.

13 I'm sorry about that.

14 THE COURT: OK.

15 (Pages 9273 to 9277 were sealed by order of the
16 court)

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1 (In open court; jury present)

2 THE COURT: Mr. Fitzgerald.

3 MR. FITZGERALD: Yes, Judge. The government
4 calls John Haines, H-A-I-N-E-S.

5 JOHN M. HAINES,

6 called as a witness by the government,

7 having been duly sworn, testified as follows:

8 THE COURT: Go ahead.

9 MR. FITZGERALD: Judge, yesterday during Mr.
10 Felton's testimony concerning 40 Pamrapo, he identified two
11 photographs which I forgot to display to the jury. Can I do
12 that now, just to clear it up?

13 THE COURT: Connected with the testimony of this
14 witness?

15 MR. FITZGERALD: Yes. It was 5E and 610 in
16 evidence.

17 THE COURT: I understand. Go ahead.

18 MR. FITZGERALD: For the record, it was
19 Government's Exhibit 5E and Government's Exhibit 610.

20 THE COURT: 5E is Mr. Salameh?

21 MR. FITZGERALD: Yes, Judge, and I believe W610
22 was identified as Mr. Yousef.

23 THE COURT: All right, go ahead.

24 DIRECT EXAMINATION

25 BY MR. FITZGERALD:

1 Q Agent Haines, can you tell the jury what you do
2 for a living?

3 A I am a special agent of the FBI.

4 Q For how long have you been an FBI agent?

5 A Seven years.

6 Q Where are you currently assigned?

7 A The Newark office.

8 Q Were you assigned to Newark in the period of
9 March 1993?

10 A Yes.

11 Q Let me direct your attention to a particular day,
12 March 5 of 1993. Did you have occasion to go to the
13 residence located at 40 Pamrapo Avenue in Jersey City?

14 A Yes.

15 Q Can you tell the jury what the nature of the
16 reason you went to that location was?

17 A I executed a search warrant.

18 Q Was that a court-authorized federal search
19 warrant?

20 A Yes.

21 Q Let me approach you with what what have been
22 premarked as Government's Exhibits W694, W695, W696, W798,
23 and W798A. Showing you first what has been marked as
24 Government's Exhibit W694, do you recognize that?

25 A Yes.

1 Q If you could speak into that microphone while I
2 borrow this one.

3 What is it?

4 A That is a photo of the inside of 40 Pamrapo.

5 Q Is that a fair and accurate picture of what the
6 interior of 40 Pamrapo looked like on March 5, 1993?

7 A Yes.

8 Q Showing you what has been marked as Government's
9 Exhibit W695, do you recognize what is in that picture?

10 A Yes.

11 Q What is it?

12 A That is the rear bedroom of the apartment.

13 Q Is that a fair and accurate picture of what that
14 bedroom looked like on March 5, 1993?

15 A Yes.

16 Q Showing you what has been marked as Government's
17 Exhibit W696 for identification, do you recognize what this
18 is a picture of?

19 A Yes.

20 Q What is it?

21 A It is again the rear bedroom of the wall and the
22 apartment.

23 Q Is it a fair and accurate depiction of what the
24 rear bedroom wall and carpet looked like on March 5, 1993?

25 A Yes.

1 Q Showing you what has been marked as Government's
2 Exhibit W798 for identification, do you recognize what this
3 exhibit is?

4 A Yes.

5 Q What is it?

6 A That is the deadbolt lock in the rear bedroom.

7 Q Is that a picture of the deadbolt lock in the
8 rear bedroom?

9 A Yes.

10 Q Is that a fair and accurate depiction of what the
11 deadbolt lock in the rear bedroom of 40 Pamrapo looked like
12 on March 5, 1993?

13 A Yes.

14 Q Finally looking at Government's Exhibit W798A,
15 can you tell us what that is a picture of?

16 A That is the photograph of the lock from the
17 kitchen, from the entrance to the bedroom.

18 Q Is that a fair and accurate depiction of the lock
19 as it was on March 5, 1993?

20 A Yes.

21 MR. FITZGERALD: Your Honor, I would offer
22 Government's Exhibits 694, 695, 696 -- all with W's -- W798
23 and W798A.

24 MR. STAVIS: Your Honor, I object to the
25 introduction of the 40 Pamrapo photographs under Rule 403.

1 THE COURT: That objection is overruled. W694,
2 W695, W696, W798 and W798A are received.

3 (Government's Exhibits W694, W695, W696, W798 and
4 W798A were received in evidence)

5 Q Before I ask you to display that to the jury, can
6 you just give the layout of the 40 Pamrapo apartment as you
7 recall it?

8 A When you enter the apartment you enter into the
9 living room, and off to your right there is a bedroom that
10 you enter through the living room. In the rear right side
11 of the apartment is a small kitchen, and through the kitchen
12 on the right side is the entry to the rear bedroom area.

13 Q Let me ask you to step down. I am going to hand
14 you a microphone and we will go through those exhibits just
15 received in evidence. If you could, speaking into the
16 microphone, describe for the jury what the photograph W694
17 is a picture of.

18 A This photograph, in this area here is the
19 kitchen, and the items we found on the floor. This is the
20 rear bedroom area here, with the wall, the discolored walls.
21 Here is the front bedroom, which you enter through the
22 living room area.

23 Q For the record, when you pointed to the kitchen
24 area you were pointing to the lower left corner of the
25 photograph?

1 A Yes.

2 Q When you pointed to the bedroom with the
3 discolored walls, you were pointing through the door
4 basically right in the middle of the photograph?

5 A Yes.

6 Q And the front bedroom was on the right side of
7 the photograph?

8 A Yes.

9 Q Can you tell us what the color was of the walls
10 on the right side, the front bedroom?

11 A White.

12 Q And the other bedroom that you said was
13 discolored?

14 A Blue and white.

15 Q Was there much furniture in the apartment when
16 you entered on March 5?

17 A No.

18 Q The items seen on the floor, were they seized by
19 the government?

20 A Yes.

21 Q If you could describe to the jury what is
22 depicted in Government's Exhibit W695.

23 A This is a photograph of the discolored wall. We
24 noticed -- you notice that the wall is white but then there
25 is a blue color to it also.

1 Q Which room is this?

2 A This is the rear bedroom.

3 Q Is that the bedroom that you could see in the
4 middle of the photograph in the prior exhibit?

5 A Yes.

6 Q Looking at Government's Exhibit W696, what does
7 that depict?

8 A This is a photograph again of the wall and then
9 of the carpet.

10 Q Was the carpet in that condition when you
11 entered?

12 A Yes.

13 Q Looking now at Government's Exhibit W798, can you
14 tell us what that is a picture of?

15 A It's a photograph of the deadbolt lock of the
16 rear bedroom.

17 Q What did you notice about the deadbolt lock on
18 March 5, 1993?

19 A We noticed that the metal was corroded.

20 Q And the final enlargement is Government's Exhibit
21 W798A. Can you tell us what that is a picture of?

22 A It is a photograph of the deadbolt lock on the
23 entryway into the rear bedroom.

24 Q So this would be the part of the lock that faces
25 outside of the bedroom?

1 A Yes.

2 Q What was the condition of that side of the lock?

3 A There was no corrosion on that side.

4 Q If I could ask you to resume your seat once I
5 move the exhibits.

6 If you look in the black binder placed in front
7 of you at Government's Exhibit W797, do you recognize that
8 picture?

9 A Yes.

10 Q What is that a picture of?

11 A It is a photo of the door of the rear bedroom
12 with the deadbolt lock.

13 Q Is the door closed in that picture?

14 A It is closed, yes.

15 Q Is that a picture from the inside or the outside
16 of the bedroom?

17 A Inside.

18 Q Is that a fair and accurate picture of what the
19 door looked like once it was closed?

20 A Yes.

21 Q Turning to the next item, Government's Exhibit
22 W799, just one tab beyond that, do you recognize that
23 photograph?

24 A Yes, I do.

25 Q What is that a photograph of?

1 A It is a photograph of the bathroom.

2 Q Is that the bathroom at 40 Pamrapo?

3 A Yes.

4 Q Is that a fair and accurate picture of what the
5 bathroom in the apartment located at 40 Pamrapo looked like
6 on March 5, 1993?

7 A Yes.

8 MR. FITZGERALD: The government would offer
9 Government's Exhibits W797 and W799.

10 MR. STAVIS: Objection to both exhibits on Rule
11 403 grounds, your Honor.

12 THE COURT: That is overruled. W797 and W798 are
13 received.

14 (Government's Exhibits W797 and W798 were
15 received in evidence)

16 MR. FITZGERALD: Your Honor, I believe those two
17 exhibits are in the court's and the jury's books and I would
18 ask them to make reference to them.

19 THE COURT: The W books with the thin binder and
20 the W on the tab.

21 MR. FITZGERALD: Yes, W797 and W799.

22 Q Just one question, Agent Haines, with regard to
23 W797. The blow-up photograph W798 showed a corroded
24 doorknob. Is that the same doorknob depicted in W797?

25 A Yes.

1 Q And a question with regard to W799. If you
2 notice in that photograph, there is a red arrow, which I
3 take it was not in the actual bathroom.

4 A Yes.

5 Q What is the red arrow pointing to?

6 A It is pointing towards a tire for an automobile.

7 Q Was that tire in the apartment when you arrived
8 that day?

9 A Yes.

10 Q Let me approach you with what has been premarked
11 as Government's Exhibit W101. I won't hand it to you, I
12 will just show it to you. Showing you what has been marked
13 as Government's Exhibit W101, does this appear to be the
14 same tire that was in 40 Pamrapo on March 5, 1993?

15 A Yes.

16 Q I will review with you the following items which
17 have been placed before you. W2484A -- I will do them one
18 at a time. If you could look at W2484A and tell me if you
19 recognize that item?

20 A Yes, I do.

21 Q What is the item?

22 A It is a pen broken in half.

23 Q Where did you first see that pen broken in half?

24 A I found it in the kitchen area.

25 Q At 40 Pamrapo?

1 A Yes.

2 Q Is that an item you seized?

3 A Yes.

4 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, I would offer
2 Government's Exhibit W101, the tire, and W2484A, the broken
3 pen.

4 MR. STAVIS: Objection to Government's Exhibit
5 W101 on foundation grounds and Rule 403 grounds, and
6 objection on Government's Exhibit 2484A on Rule 403 grounds.

7 THE COURT: May I see counsel briefly at the
8 side.

9 (At the side bar)

10 THE COURT: I am assuming, I guess on faith, that
11 these are being offered as something other than mementos.

12 MR. FITZGERALD: Yes, Judge.

13 THE COURT: Good.

14 MR. FITZGERALD: The pen refers to the Space
15 Station. The tire was tested at the lab and found traces of
16 urea nitrate on it. There were other traces of urea nitrate
17 in the apartment.

18 THE COURT: I don't understand the significance
19 of the fact that there is urea nitrate on the tire.

20 MR. FITZGERALD: The evidence will show that 40
21 Pamrapo is where the chemicals for the bomb were mixed and
22 urea nitrate is believed one of the chemicals. The --

23 THE COURT: I am still concentrating on the tire.

24 MR. FITZGERALD: Urea nitrate is one of the
25 rarest molecules on the planet.

1 THE COURT: His objection to the tire was on the
2 basis of foundation.

3 MR. STAVIS: And Rule 403.

4 THE COURT: Let's stick to foundation for the
5 moment. What I take that to be is that a tire is a tire is
6 a tire.

7 MR. FITZGERALD: He did not initial the tire. It
8 appears to be a tire. I don't know that I need to put it in
9 evidence.

10 THE COURT: There is no foundation if nobody can
11 identify it as having come out of 40 Pamrapo.

12 MR. FITZGERALD: I can bring a witness in to do
13 that.

14 THE COURT: If you can't work it out with
15 Mr. Stavis, you will have to.

16 MR. STAVIS: Your Honor is aware of my general
17 objection that this all goes to the World Trade Center
18 bombing which has been conceded by defense counsel.

19 THE COURT: That is the nature of your 403?

20 MR. STAVIS: That is the 403.

21 (In open court)

22 THE COURT: The foundation objection to the tire
23 is sustained. The 403 objection to the pen is overruled.

24 MR. FITZGERALD: I believe Mr. Stavis agreed to
25 withdraw the foundation objection, if that is correct.

1 THE COURT: In that event the 403 objection to
2 the tire is overruled.

3 MR. STAVIS: Actually, I agreed to stipulate.

4 THE COURT: To foundation.

5 MR. FITZGERALD: Even better, you stipulate.

6 THE COURT: Thank you.

7 (Government's Exhibits W101 and W2484A were
8 received in evidence)

9 Q Looking at Government's Exhibit W2484A, can you
10 tell us what happens when you put the two halves of the pen
11 together? Can you read something?

12 A Yes.

13 Q What does the pen say?

14 A "A Space Station." Yes, "A Space Station," yes.

15 Q Let me now show you what have been premarked as
16 Government's Exhibits 2514A, 2514B and 2514C, all of the W
17 series. Showing you a package containing W2514A and W2514B,
18 I ask you to look at those items and tell me whether or not
19 you recognize them?

20 A Yes, I do.

21 Q Where did you first see them?

22 A I found these in the kitchen area of 40 Pamrapo.

23 MR. FITZGERALD: Your Honor --

24 Q Let me show you W 2514C, and I ask you if you
25 recognize that item?

1 A Yes, I do.

2 Q Was that an item seized from 40 Pamrapo on March
3 5, 1993?

4 A Yes.

5 (Continued on next page)

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1 MR. FITZGERALD: The government would offer
2 W2514A, W2514B and W2514C.

3 MR. STAVIS: Objection, your Honor.

4 MR. BERNSTEIN: May we see C?

5 THE COURT: Show C to Mr. Bernstein.

6 MR. BERNSTEIN: Judge, may we approach?

7 THE COURT: Yes.

8 (At the side bar)

9 MR. STAVIS: My objection was under Rule 403 to
10 the admission of the offered Exhibits 2514A through C.

11 THE COURT: That objection will be overruled.
12 That is the objection?

13 MR. STAVIS: Yes, your Honor.

14 MR. FITZGERALD: To save time, Judge, I will be
15 offering a similar document, W2516, if you want to put an
16 objection on the record or not.

17 THE COURT: I assume it is 403.

18 MR. STAVIS: Yes, I have a 403 objection.

19 MR. FITZGERALD: I only care about the addresses,
20 Ramzi Yousef's at 34 Kensington, but the papers were found
21 at 40 Pamrapo. I do not care one way or the other whether
22 the contents of the letters are received in evidence and I
23 have left that to defense counsel.

24 MR. JACOBS: We would request that the contents
25 of the letters be introduced, as well as the envelopes.

1 That is our position.

2 THE COURT: I have just heard two different
3 positions.

4 MR. BERNSTEIN: Other than the 403 as to the
5 World Trade Center, we don't care.

6 MR. STAVIS: In view of your Honor overruling the
7 objection, Mr. Jacobs has stated the defense position.

8 THE COURT: Thank you. Let's not prolong this.

9 MR. JACOBS: We may need your Honor to give some
10 precautionary instruction about the legal -- it's an
11 immigration thing. Before we publish it, can we discuss
12 this with you?

13 THE COURT: Fine.

14 (In open court)

15 THE COURT: Why don't you go ahead with the next
16 exhibit and I will rule on all of them.

17 MR. FITZGERALD: Very well, Judge.

18 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q Agent Haines, let me show you what has been
3 marked as Government's Exhibit W2516 and ask you to take a
4 look at that and tell us whether or not you recognize it?

5 A Yes, I do.

6 Q Is that an item you seized from 40 Pamrapo on
7 March 5, 1993?

8 A Yes.

9 MR. FITZGERALD: Your Honor, the government would
10 offer W2514A, B and C, and Government's Exhibit W2516,
11 exclusive of any markings or stickers placed on it by the
12 lab or by the FBI.

13 THE COURT: The Rule 403 objections to those
14 exhibits were overruled and those are received.

15 (Government's Exhibits W2524A, B and C and W2516
16 were received in evidence)

17 Q Agent Haines, looking at what has been received
18 in evidence as Government's Exhibit W2514A, can you just
19 tell us the name printed on the top and then a handwritten
20 name.

21 A Jersey City Medical Center Community Mental
22 Health Center, adult outpatient department, and the name is
23 Ramzi Yousef.

24 Q That was W2514A. Looking at Government's Exhibit
25 W2514C, can you can you tell us whose address is written on

1 the envelope, just reading it into the record?

2 A Ramzi Ahmed Yousef, 34 Kensington Avenue,
3 apartment 4, Jersey City, New Jersey.

4 Q Finally with regard to Government's Exhibit
5 W2516, can you tell us who that item was addressed to?

6 A Rams Ahmed Yousef.

7 Q If you could read the address into the record and
8 just be a little closer to the microphone?

9 A 34 Kensington Avenue, apartment 4, Jersey City,
10 New Jersey.

11 Q Can you tell us the date of that letter?

12 A December 17, 1992.

13 Q These items addressed to 34 Kensington were found
14 in 40 Pamrapo?

15 A Yes.

16 MR. STAVIS: Objection as to form, your Honor.

17 THE COURT: I will allow it.

18 Q You can answer the question.

19 A Yes, 40 Pamrapo.

20 THE COURT: Did you get a description of 2514B?

21 MR. FITZGERALD: No, Judge.

22 Q Agent Haines, if you could just describe what
23 W2514B is, generally.

24 A It is a notebook paper with the Jersey City
25 Medical Center phone number and medical clinic address on

1 it, and also the adult psychiatric clinic at New Jersey.

2 Q Thank you. Let me next show you what has been
3 marked as Government's Exhibit W2499 and ask you to take a
4 look at that item and tell me whether or not you recognize
5 it?

6 A Yes, I do.

7 Q What is it?

8 A It's a packaging for a 5 -- it's a relay, on
9 electrical component.

10 Q Where did you recover that item?

11 A At 40 Pamrapo.

12 MR. FITZGERALD: Your Honor, I would offer
13 Government's Exhibit W2499.

14 MR. STAVIS: Objection, your Honor.

15 THE COURT: Overruled. Government's Exhibit
16 W2499 is received.

17 (Government's Exhibit W2499 was received in
18 evidence)

19 Q Let me next show you what has been marked as
20 Government's Exhibit W2533, and if you could look at that
21 item and tell us whether or not you recognize it?

22 A Yes, I do.

23 Q What is it?

24 A It is a piece of carpet that was cut from the
25 floor of 40 Pamrapo.

1 Q Who cut the piece of carpet from the floor?

2 A I did.

3 MR. FITZGERALD: Your Honor, the government would
4 offer Government's Exhibit W2533.

5 MR. STAVIS: Same objection, your Honor.

6 THE COURT: Same ruling. 2533 is received.

7 (Government's Exhibit 2533 was received in
8 evidence)

9 Q Can you tell the jury what room you cut this
10 piece of carpet from? If you need to refer to the blow-ups,
11 let me know.

12 A If I could.

13 Q Let me show you what has been received in
14 evidence as Government's Exhibit W694.

15 A I cut this piece of carpet out from the front
16 bedroom at 40 Pamrapo.

17 Q That is the bedroom on the far right of
18 Government's Exhibit W694?

19 A Yes.

20 Q Let me show you what has been marked as
21 Government's Exhibit W2539 and ask you to look at that and
22 tell us if you recognize it?

23 A Yes, I do.

24 Q What is that?

25 A It is a letter addressed to Kamel Amer, A-M-E-R,

1 40 Pamrapo Avenue.

2 Q Is that an item that you recovered from 40
3 Pamrapo on March 5, 1993?

4 A Yes, it is.

5 Q I would offer Government's Exhibit W2539.

6 MR. STAVIS: Objection under Rule 401, your
7 Honor.

8 THE COURT: Is that subject to connection or not?

9 MR. FITZGERALD: If I could ask one more
10 question.

11 Q You described this as a letter. Who is it from?

12 A Bell Atlantic.

13 Q Is that from a phone company?

14 A Yes.

15 (Continued on next page)

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1 MR. FITZGERALD: Your Honor, I would renew the
2 offer.

3 THE COURT: May I see counsel at the side.

4 (At the side bar)

5 THE COURT: There is a relevance objection. What
6 is the relevance of this and how is it connected through
7 this witness?

8 MR. FITZGERALD: The telephone bills from 40
9 Pamrapo have already been received, I believe, and will be
10 referred to in later testimony. The name Kamel has come up
11 in testimony. This is a link --

12 THE COURT: Where did it come up before?

13 MR. FITZGERALD: We marked in a number of
14 government exhibits, phone bills about last week, and we
15 will be getting to them next week and hope to prepare some
16 form of charts showing phone calls between phone calls from
17 40 Pamrapo to other people.

18 MR. STAVIS: It is not being offered subject to
19 connection?

20 MR. FITZGERALD: I think the connection is
21 already there and this ties them to the phone bills in
22 evidence.

23 THE COURT: If there is a phone bill in evidence
24 with that name on it --

25 MR. FITZGERALD: Yes, with that address, Kamel

1 Amer.

2 THE COURT: That I will allow.

3 (In open court)

4 THE COURT: W2539 is received.

5 (Government's Exhibit W2539 received in evidence)

6 Q I now show you what has been marked Government's
7 Exhibit W2536. I ask you to take a look at it and tell me
8 if you recognize it?

9 A Yes, I do.

10 Q What is that?

11 A It is a phone book for Jersey City.

12 Q Where did you recover that from?

13 A 40 Pamrapo.

14 MR. FITZGERALD: Your Honor, the government would
15 offer Government's Exhibit W2536.

16 MR. JACOBS: Objection.

17 MR. STAVIS: Objection under Rule 401, your
18 Honor.

19 MR. FITZGERALD: Your Honor, may I have a moment
20 with Mr. Stavis?

21 THE COURT: Yes.

22 (Pause)

23 MR. STAVIS: Your Honor, I would withdraw my Rule
24 401 objection and state a Rule 403 objection, which I have
25 previously stated.

1 THE COURT: 2536 is received. Go ahead.

2 (Government's Exhibit W2536 received in evidence)

3 MR. FITZGERALD: Your Honor, I will make clear
4 for the record that I have offered it for the limited
5 purpose of what items may have been removed from the
6 telephone book and what fingerprints may be on the phone
7 book, but if there is any other writing in there added, it
8 is not being offered at this time.

9 Q Agent Haines, did you look through and examine
10 the phone book which has been received in evidence as W2536?

11 A Yes, I have.

12 Q Did you compare it with another roughly identical
13 phone book for that same time period and same place?

14 A Yes.

15 Q Did you find any items that had been removed from
16 what is marked as Government's Exhibit W2536?

17 A Yes.

18 Q What had been removed?

19 A It was a coupon for a Triple A Truck Rental.

20 Q Now let me show you what have been premarked as
21 Government's Exhibits W2583 and W2584. First showing you
22 W2583, do you recognize that item?

23 A Yes, I do.

24 Q What is it?

25 A It is the cover to a plastic bucket.

1 Q Was that item recovered at 40 Pamrapo on March 5,
2 1993?

3 A Yes.

4 Q Showing you Government's Exhibit W2584, if you
5 could take a look at that and tell us if you recognize that
6 item?

7 A Yes, I do.

8 Q What is it?

9 A It's a bucket.

10 Q Where did you first see that bucket?

11 A 40 Pamrapo.

12 MR. FITZGERALD: Your Honor, the government would
13 offer Government's Exhibits W2583 and W2584.

14 MR. STAVIS: Objection, your Honor.

15 THE COURT: Overruled.

16 THE COURT: 2583 and 2584 are received.

17 (Government's Exhibits W2583 and W2584 were
18 received in evidence)

19 Q Is it fair to say, Agent Haines, that I haven't
20 shown you all the items recovered from 40 Pamrapo on that
21 day?

22 A Yes.

23 Q Can you just tell us the general nature of the
24 other items you seized that day?

25 MR. JACOBS: Objection to general nature.

1 Objection.

2 MR. FITZGERALD: I will rephrase it, Judge.

3 THE COURT: Thank you.

4 Q Can you tell us what else you seized from 40
5 Pamrapo that day?

6 A I seized clothing, other electrical components,
7 surgical masks, we took scrapings from the floor and other
8 trash articles.

9 Q Do you have an understanding what happened to the
10 various items that were seized?

11 A Yes. They were put into evidence and then
12 transferred to our lab for examination.

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1 MR. FITZGERALD: Your Honor, I have no further
2 questions for this witness.

3 THE COURT: May I see counsel briefly up at the
4 side.

5 (At the side bar)

6 THE COURT: You seem to have gotten up. If you
7 have five minutes, fine. If you have more, we can break for
8 lunch.

9 MS. LONDON: Your Honor, my cross would be brief.
10 I don't expect it to be more than five minutes.

11 THE COURT: Is there anybody else?

12 MR. SERRA: I do, your Honor, but it might
13 duplicate Ms. London.

14 MR. JACOBS: I have a little.

15 THE COURT: Could we do it now -- let's do it
16 now.

17 (In open court)

18 MS. LONDON: Your Honor, Mr. Serra will start.

19 THE COURT: Mr. Serra representing Mr. Alvarez.

20 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MR. SERRA:

3 Q Agent, you were a member of the search team for
4 40 Pamrapo, is that right?

5 A Yes.

6 Q You were not the first team to enter the
7 premises, is that right?

8 A Correct.

9 Q The first team who entered the premises was an
10 FBI SWAT team, is that correct?

11 A Yes.

12 Q There were eight members of the SWAT team that
13 entered 40 Pamrapo, is that right?

14 A I am not sure of the exact number.

15 Q Agent, if I could share your microphone so I
16 could stay here.

17 Agent Haines, showing you what has been marked
18 Government's Exhibit 3582-A, I ask you to take a look at the
19 highlighted portion. The question before you is whether
20 there were eight members to the FBI SWAT team who originally
21 entered 40 Pamrapo?

22 A Yes.

23 Q In addition -- so the SWAT team entered first and
24 they entered with bomb technicians, is that correct?

25 A That is correct.

1 Q Bomb technicians from, I believe, two different
2 law enforcement agencies, correct? Again drawing your
3 attention to 3582A.

4 A Yes, that is correct.

5 Q And there were three bomb technicians with the
6 two different law enforcement agencies, is that right?

7 A Yes.

8 Q Did they have a bomb dog?

9 A I don't recall.

10 Q But the bomb techs entered with the SWAT team in
11 order to make sure there were no bombs on the premises, is
12 that right?

13 A Yes, that is correct.

14 Q After the bomb techs and the SWAT team left, that
15 was when you conducted your search, correct?

16 A Yes.

17 Q So there were the three bomb techs, eight SWAT
18 team members and seven -- withdrawn. There were seven
19 agents on the search team, is that correct, again, 3582A?

20 A Yes, that is correct.

21 Q So with three bomb techs, eight SWAT team members
22 and seven agents on the search team, we are talking about a
23 total of 18 agents, is that correct?

24 A Yes.

25 MR. SERRA: Thank you, Agent. I have nothing

1 further, your Honor.

2 THE COURT: Ms. London, representing

3 Mr. Elhassan.

4 CROSS-EXAMINATION

5 BY MS. LONDON:

6 Q Good afternoon, Agent. You were aware, were you
7 not, when you were performing your search at 40 Pamrapo
8 Avenue that many of the items seized would be sent for
9 chemical testing, isn't that correct?

10 A Yes.

11 Q And it would be fair to say that when you entered
12 this apartment there was very little if no furniture at all
13 in that apartment, correct?

14 A Yes.

15 Q And you have testified here as to some of the
16 items seized there. It would be also fair to say that there
17 were bunches of plastic bags, black, brown, yellow plastic
18 bags there?

19 A There were plastic bags, yes.

20 Q And they were sent for testing, if you know?

21 A I don't know if everything was sent.

22 Q It would also be fair to say that in the search
23 of the apartment you recovered some items called pH
24 indicator strips?

25 A That is correct.

1 Q Do you recall where those were recovered?

2 A Yes, I do.

3 Q Where was that?

4 A In the kitchen.

5 Q If you know, do you know what pH indicator strips
6 are used for?

7 A Yes.

8 Q What are they used for?

9 A To test tour acidity.

10 Q Would it also be fair to say that you recovered
11 plastic tubing from this apartment, isn't that right?

12 A Yes, that is correct.

13 Q Could you tell us, was there one piece or several
14 pieces of plastic tubing?

15 A I don't recall. If I remember, there was plastic
16 tubing, yes.

17 (Continued on next page)

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1 Q If you recall, approximately what diameter is
2 this tubing?

3 A Maybe a half inch.

4 Q Do you recall approximately what length we are
5 talking about, two or three inches? Six inches? A foot? A
6 yard?

7 A I would say maybe several feet, at least.

8 Q If you recall, was there more than one piece of
9 plastic tubing?

10 A I don't recall.

11 Q It would be also fair to say that you recovered
12 rolls of tape, correct?

13 A I don't remember rolls of tape.

14 Q I believe you testified about numerous articles
15 of clothing, like shirts, pants, correct?

16 A Yes.

17 Q And you recovered rags, washcloths and towels,
18 correct?

19 A Yes.

20 Q Would it be also fair to say that you recovered a
21 number of documents and booklets, correct?

22 A Yes.

23 Q In fact, you recovered a booklet entitled
24 "Surveillance Transmitters and Receivers," is that correct?

25 A Yes.

1 Q You recovered a booklet from the Spy Emporium,
2 correct?

3 A Yes.

4 Q You recovered instructions or guides for some
5 electronic type device from Sperry Instruments?

6 A I don't recall that.

7 Q You have testified previously on this search,
8 isn't that correct?

9 A Yes.

10 Q Your testimony was given at the World Trade
11 Center trial, isn't that correct?

12 A Yes.

13 Q At that time you were shown an exhibit,
14 Government Exhibit W-2505, one of many exhibits you were
15 shown, isn't that correct, and asked what it was?

16 A Do you recall answering that it was a set of
17 instructions or a guide from an electronic device from
18 Sperry Instruments.

19 A I don't recall that specific item. I don't
20 recall that.

21 Q Do you recall recovering Ray-O-Vac heavy-duty
22 lantern bulbs?

23 A Yes.

24 Q And alligator clips with a wire?

25 A Yes.

1 MS. LONDON: I have no further questions, your
2 Honor.

3 THE COURT: Mr. Jacobs, did you have anything?
4 Mr. Jacobs, representing Mr. Mohammed Saleh.

5 CROSS-EXAMINATION

6 BY MR. JACOBS:

7 Q Agent Haines, am I correct that you and the other
8 agents were there that day to investigate the bombing of the
9 World Trade Center? Is that fair to say?

10 A Yes.

11 Q Would I be correct that, based upon your
12 examination, would it be fair to say that you believed you
13 may have come across a bomb factory in that location? Is
14 that fair to say?

15 A Yes.

16 Q Would you agree with me that each and every item
17 that you and your fellow agents found were examined, as best
18 you could, for fingerprints to see who had been in that
19 apartment? Is that fair to say?

20 A I don't know what type of examination was taken
21 of them.

22 Q Was there a fingerprint team that responded, to
23 your knowledge, to examine various items?

24 A At 40 Pamrapo?

25 Q Yes, sir.

1 A Not while I was there.

2 Q Were items preserved so that the fingerprint
3 technicians of the FBI could look at items?

4 A Yes.

5 Q You and your fellow agents were wearing gloves
6 that day so that you wouldn't touch anything?

7 A I was wearing gloves, yes.

8 Q Would I be correct in stating that you and your
9 fellow agents made every effort to take every piece of
10 paper, preserve it so that it could be examined to see whose
11 names were on the various pieces of paper, is that fair to
12 say?

13 A Yes.

14 Q You weren't leaving pieces of paper there, you
15 were just taking everything so it later could be reviewed by
16 other agents and prosecutors, is that fair to say?

17 A We seized any item that would appear to be
18 relevant to the search warrant.

19 Q In so doing, you took some letters addressed to a
20 Ramzi Yousef, is that correct?

21 A Yes.

22 Q Did that apartment have any particular odor, if
23 you can recall?

24 A I don't recall.

25 Q When you said it had little furniture, what do

1 you best recall that it had, if you can remember?

2 A I don't think there was -- there might have been
3 like a night table. That is all I can remember.

4 Q No chairs?

5 A I don't remember.

6 Q OK. No beds?

7 A There were no beds.

8 Q No couches?

9 A No couches.

10 (Continued on next page)

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

2 I would like to publish W2516, or I could do it
3 after lunch, whatever your Honor prefers.

4 THE COURT: Fine. Let's do it after lunch.

5 MR. JACOBS: Fine.

6 THE COURT: Anything else?

7 MR. FITZGERALD: No, judge.

8 THE COURT: Anyone else?

9 We are going to break for lunch, ladies and
10 gentlemen. Please leave your notes and other materials
11 behind. Please do not discuss this case or any other case.
12 Have a pleasant lunch, and we will see you at about 2
13 o'clock.

14 (The jury was excused)

15 THE COURT: You are excused.

16 (Witness excused)

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, 2:05

MR. JACOBS: Your Honor, I am up to reading this document, 2516. I think I made the application right before lunch.

THE COURT: All right.

MR. JACOBS: That's it.

MS. AMSTERDAM: Just a very brief housekeeping matter: I have to leave slightly after 4 o'clock today on a personal matter. Mr. Lavine has agreed to cover for me, with the consent of Mr. Khallafalla, and my associate Mr. O'Brien will be seated at counsel table.

THE COURT: Mr. Serra, if you could just step to your left a second.

Is that satisfactory to you, Mr. Khallafalla?

DEFENDANT KHALLAFALLA: Yes.

THE COURT: Thank you.

(Pause)

THE COURT: Is there anything further that I have to deal with before the jury comes out?

MR. JACOBS: No. We are trying to move it along.

MR. STAVIS: We were shown some exhibits during the lunch break, Judge.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

1 JURORS: Good afternoon.

2 THE COURT: Mr. Jacobs, you were going to read an
3 exhibit that had been received into evidence before lunch?

4 MR. JACOBS: Correct.

5 THE COURT: This is which exhibit?

6 MR. JACOBS: It is Government Exhibit W2516.

7 THE COURT: Go ahead.

8 MR. JACOBS: This is a letter written on the
9 stationery of the law firm of Willkie Farr & Gallagher with
10 addresses which I will leave out, dated December 17, 1992,
11 addressed to Mr. Ramzi Ahmed Yousef, 34 Kensington Avenue,
12 Apartment 4, Jersey City, New Jersey.

13 (Government Exhibit W2516 was read to the jury)

14 MR. JACOBS: Thank you, your Honor.

15 THE COURT: Thank you, Mr. Jacobs.

16 Mr. McCarthy?

17 MR. McCARTHY: Yes, your Honor. The government
18 calls John Desouza.

19 JOHN DESOUZA,

20 called as a witness by the Government,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McCARTHY:

24 Q Good afternoon, Agent Desouza.

25 A Good afternoon.

1 Q Can you tell us how long you have been an FBI
2 agent.

3 A Seven years.

4 Q Where are you currently assigned?

5 A Newark Division in New Jersey.

6 Q Let me direct your attention to March 19, 1993.

7 Do you recall that day?

8 A Yes, I do.

9 Q Did you have a particular assignment on that day?

10 A Yes. I was in charge of a search that we
11 conducted at 1811 Colonial Gardens Drive in Avenel, New
12 Jersey.

13 Q What type of a dwelling was that?

14 A It was a two-story colonial townhouse dwelling
15 with a couple of floors to it.

16 Q More than one apartment on the premises?

17 A There were two separate floors, two apartments.

18 Q What was the focus of your search that day?

19 A We had a search warrant to search 1811, which is
20 one of the units, and we were given consent to search the
21 rest of the unit, because there was two floors.

22 Q Whose residence were you there to search?

23 A The residence of Mahmud Abouhalima.

24 Q When you got to the premises at 1811 Colonial
25 Gardens Drive, did you see Mr. Mohammed Abouhalima?

1 A Yes, we did.

2 Q Did you conduct a search?

3 A Yes, we did.

4 He gave us consent to search the rest of the unit
5 as well.

6 Q The "he" that you referred to is Mr. Mohammed
7 Abouhalima?

8 A That's correct, yes.

9 Q I have placed before you a stack of documents.
10 Do you recognize those?

11 A Yes. These were items that we seized that day.

12 Q Have you reviewed them at my request prior to
13 testifying?

14 A Yes, I did.

15 MR. McCARTHY: Your Honor, I would like to read
16 these into the record. I am just identifying them. They
17 are not going to be offered into evidence at this time.
18 W753 -- all of these are preceded by a W. 753, 756, 759,
19 760, 761, 762, 763 through 766, 768 through 774, 777, and
20 778.

21 THE COURT: Go ahead.

22 Q Agent Desouza, am I correct that those items are
23 all Arabic writings and literature?

24 A Yes, they are.

25 Q Do you read Arabic yourself, sir?

1 A No, I do not.

2 Q Did you and the other agents who conducted the
3 search have the assistance of an Arabic translator that day?

4 A Yes, we did.

5 Q Agent Desouza, let me ask you to use that
6 microphone and I will use this one. I want to show you a
7 number of items. Placing before you Government's Exhibits
8 W755, W754, W776, and W767, and I ask you, sir, if you
9 recognize those items.

10 A Yes, these are items that we seized that day.

11 MR. McCARTHY: Your Honor, the government offers
12 W767, 776, 755 -- I'm sorry, W755 and W754.

13 THE COURT: May I have the numbers again.

14 MR. McCARTHY: W767, W776, W755, and W754.

15 MR. STAVIS: Your Honor, I would have a Rule 403
16 objection, as previously stated, to the offered exhibits.

17 THE COURT: Right. That is overruled.

18 W767, 776, 755 and 754 are received.

19 (Government's Exhibits W767, W776, W755 and W754
20 for identification were received in evidence)

21 Q Agent Desouza, I am also showing you Government's
22 Exhibit W1001 for identification. I ask you if you
23 recognize that item.

24 A This is a stun gun that we seized that day also.

25 MR. McCARTHY: Your Honor, the government offers

1 W1001.

2 MR. STAVIS: Objection, Rule 403.

3 THE COURT: Overruled. W1001 is received.

4 MR. RICCO: May I have voir dire?

5 THE COURT: Mr. Ricco would like a voir dire. Go
6 ahead.

7 MR. RICCO: Thank you very much.

8 VOIR DIRE EXAMINATION

9 BY MR. RICCO:

10 Q This stun gun was recovered from the apartment?

11 A That's correct.

12 Q It had a battery in it, and it had to be
13 disarmed, isn't that correct?

14 A I don't recall that.

15 Q Hold on one second.

16 MR. RICCO: Your Honor, I am showing the witness
17 Government's Exhibit 3583.

18 THE COURT: OK.

19 Q Does reading that document help refresh your
20 recollection as to whether or not the stun gun was armed?

21 A Well, what it says here is --

22 THE COURT: Don't tell us what it says. He wants
23 to know --

24 THE WITNESS: This document indicates --

25 THE COURT: Don't tell us what it indicates. He

1 just wants to know whether looking at that document makes
2 you recall now -- if it does or doesn't -- makes you recall
3 now whether the stun gun was armed at the time it was
4 seized.

5 A No, it does not. It doesn't really.

6 MR. RICCO: Thank you. No further questions.

7 THE COURT: All right. 1001 is received. Go
8 ahead.

9 (Government's Exhibit 1001 for identification was
10 received in evidence)

11 MR. McCARTHY: Your Honor, may I exhibit that
12 item briefly to the jury?

13 THE COURT: You may.

14 (Government Exhibit 1001 in evidence was
15 displayed before the jury)

16 DIRECT EXAMINATION (Continued)

17 BY MR. McCARTHY:

18 Q Agent Desouza, you searched the entire premises
19 at 1811 Colonial Gardens Drive?

20 A Yes, we did.

21 Q Both apartments?

22 A Yes.

23 Q Did you recover or see any smokeless powder?

24 A No, we did not.

25 Q Any gunpowder?

1 A No.

2 Q Any rifles?

3 A No.

4 Q Any empty shells?

5 A No.

6 Q Any reloading equipment?

7 A No.

8 MR. McCARTHY: Thank you. Nothing further.

9 THE COURT: Cross, anyone?

10 Mr. Serra?

11 MR. SERRA: Thank you, Judge.

12 THE COURT: Representing Mr. Alvarez. Go ahead.

13 CROSS-EXAMINATION

14 BY MR. SERRA:

15 Q Good afternoon, agent.

16 A Good afternoon.

17 Q You were a member of the search team, is that
18 right?

19 A Yes, that's correct.

20 Q For March 19, 1993, 18 Colonial Gardens Drive,
21 correct?

22 A Yes.

23 Q The search team were not the first team of agents
24 to enter the premises, were they?

25 A They were not you are saying?

1 Q They were not, is that right?

2 A We had a SWAT team do the initial entry.

3 Q A SWAT team meaning a special weapons FBI team,
4 is that correct?

5 A That's correct, to search for booby traps and
6 things of that sort.

7 Q To search for bombs also, correct?

8 A Correct.

9 Q The SWAT team was accompanied by a bomb dog, is
10 that correct?

11 A The bomb dog was there also, yes.

12 Q Well, the bomb dog went into the apartment and
13 searched for bombs along with the SWAT team?

14 A A SWAT team makes the initial entry, and then
15 someone with the bomb dog makes the entry after that.

16 Q And there were several bomb technicians there as
17 well, isn't that right?

18 A I believe so, yes.

19 Q There were bomb technicians from the FBI,
20 correct?

21 A I believe so, yes.

22 Q As a matter of fact, there was a supervising
23 special agent from the New York office who was also a bomb
24 technician a man by the name of John Crouthamel,
25 C-R-O-U-T-H-A-M-E-L, is that correct?

1 A If you are going to ask me that specific
2 question, I would have to see the document.

3 Q Fine.

4 MR. SERRA: May I approach, your Honor.

5 THE COURT: You may.

6 Q Agent Desouza, showing you 3583A, the question
7 before you is: Was there a supervising special agent from
8 the New York office by the name of John Crouthamel who was
9 also a bomb technician there?

10 A He is a supervisory special agent of the FBI. I
11 am not certain whether he himself is a bomb technician,
12 however.

13 Q Referring you to this part of the document,
14 3583A, does not refresh your recollection?

15 A There were bomb technicians there.

16 Q OK. Was there another New York agent by the name
17 of Stephen Veyera, V-E-Y-E-R-A there?

18 A I recall that, yes.

19 Q And another New York agent by the name of John
20 Anticev, A-N-T-I-C-E-V?

21 A Yes, I recall that also.

22 Q In point of fact, Detective Desouza, there were
23 bomb technicians from other law enforcement agencies other
24 than the FBI present?

25 A Agent Desouza.

1 Q What did I say?

2 A "Detective."

3 Q I'm sorry, Agent.

4 There were bomb technicians from law enforcement
5 agencies other than the FBI present, is that right?

6 A I would have to see the document.

7 Yes, that's correct.

8 Q There was a forensic chemist present from the FBI
9 by the name of Stephen Burmeister, is that correct?

10 A Yes, he's a chemist.

11 Q And he was present at 18 Colonial Gardens Drive
12 for this search, is that correct?

13 A Yes, he was, yes.

14 MR. SERRA: May I have the court's indulgence for
15 a moment, your Honor?

16 THE COURT: Yes.

17 (Counsel conferred)

18 MR. SERRA: Nothing further, thank you, Agent.

19 THE COURT: Anyone else. Ms. London?

20 MS. LONDON: Your Honor, I would like to speak to
21 Mr. Serra.

22 (Counsel conferred)

23 MS. LONDON: No questions, your Honor.

24 THE COURT: Anything else?

25 MR. McCARTHY: No redirect, your Honor.

1 THE COURT: All right. Thank you. You are
2 excused.

3 (Witness excused)

4 MR. McCARTHY: Your Honor, at this time the
5 government would offer Government's Exhibit W767T, which is
6 an English translation of portions of W767 that was received
7 in evidence.

8 THE COURT: Hearing no objection, that is
9 received.

10 (Government's Exhibit W767T for identification
11 was received in evidence)

12 MR. McCARTHY: I would also ask to read from some
13 of the exhibits that were just received during Agent
14 Desouza's testimony.

15 THE COURT: Before you do, specify which exhibits
16 it is you are reading from.

17 MR. McCARTHY: Yes, your Honor.

18 The first one, your Honor, that I would read from
19 is W776. That item is an invoice which says at the top,
20 "United Paging Service, 2117 Williamsbridge Road, Bronx, New
21 York." In the description section for description it says,
22 Monthly air time. Price \$10. Total for a quantity of 12,
23 \$120."

24 In the bottom right-hand corner, a green box,
25 "Mahmud Abouhalima, 1811 Colonial Gardens Drive, Avenel, New

1 Jersey."

2 Next, your Honor, I would read from Government's
3 Exhibit W754 in evidence. W754 is a form, the top left-hand
4 corner, "United States Department of Justice, Immigration &
5 Naturalization Service." In the top section, which is
6 labeled "Information About You: Family Name: Abouhalima.
7 Given name: Mahmud. Middle initial: M." At the address
8 1811 Colonial Gardens Drive, Avenel, New Jersey. "Date of
9 Birth: November 17, 1959. Country of Birth: Egypt." With
10 a Social Security number that I will skip for the moment.

11 Part two of the form, "Application Type," the box
12 marked "A" is checked, which says, "I am a permanent
13 resident or conditional resident of the United States, and I
14 am applying for a re-entry permit."

15 Underneath that there is a box for family name.
16 Again it says, "Abouhalima, Mahmud, middle initial M," With
17 the same date of birth. Country of birth, Egypt. Then in
18 the address marked "Foreign Address" a street address in
19 Alexandria, Egypt.

20 Part three of the form deals with processing
21 information. It says, "Date of intended departure, month,
22 day, and year," and that is marked, "March 6, 1993."

23 "Expected length of trip, 20 days."

24 On the back page of the form at the bottom, "Part
25 8, Signature," it is signed "Abouhalima," and dated February

1 24, 1993. "Daytime telephone number, 201-318-4831."

2 Finally, Government's Exhibit 755. This is a
3 collection of documents pertaining to a refrigerator
4 purchased at Trader Horn Appliance Store of 14th Street,
5 Incorporated. At the top underneath the invoice number it
6 indicates, "Sold to Mahmud, 450 North Fifth Street,
7 Apartment No. 201, Newark, New Jersey."

8 The description is, "Quantity: One. Make: GE
9 Model TB9SMWH. Item: Refrigerator." With an amount \$277
10 with a variety of other charges and a final cash on delivery
11 cost of -- I should say a number of other adjustments, and a
12 final cash on delivery cost of \$274.39. It is signed at the
13 bottom "Mahmud."

14 The next document is a consumer product ownership
15 registration for the same product, and it says that the
16 serial number is GD073186.

17 Your Honor, at this time the government calls
18 Russell Dalrymple.

19 (Continued on next page)

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1 RUSSELL S. DALRYMPLE,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 THE COURT: Go ahead.

5 MR. McCARTHY: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. McCARTHY:

8 Q Good afternoon, Agent Dalrymple.

9 A Good afternoon.

10 Q Can you tell us how you are employed?

11 A Yes. I am a special agent with the FBI.

12 Q How long have you been an FBI agent?

13 A I have been an agent approximately 11 and a half
14 years.

15 Q To what office are you assigned?

16 A I am assigned to the New York office.

17 Q Let me direct your attention to August 20, 1993.

18 Do you recall that day?

19 A Yes, I do.

20 Q What was your assignment?

21 A I was assigned to execute a search warrant at
22 1811 Colonial Gardens, Avenel, New Jersey.

23 Q What did you understand to be located there?

24 A Articles of clothing belonging to Mahmud
25 Abouhalima.

1 Q What did the search warrant call for, if you
2 recall?

3 A Suits, pants, various articles of clothing.

4 Q I am showing you, Agent, what has been marked as
5 Government's Exhibit W3032 for identification, and I ask if
6 you recognize that item?

7 A Yes, I do.

8 Q What do you recognize it as?

9 A This is one of the shoes that we seized at that
10 address on that day.

11 Q Do you notice that there is what appear to be
12 some stains at the toe part of the shoe?

13 A Yes, I do.

14 Q Was that the condition the shoe was in when you
15 recovered it?

16 A Yes, it is.

17 MR. McCARTHY: Your Honor, the government offers
18 government W3032.

19 MR. STAVIS: Objection under Rule 403 grounds.

20 THE COURT: That is overruled. W3032 is
21 received.

22 (Government's Exhibit W3032 was received in
23 evidence)

24 MR. McCARTHY: Your Honor, I would just like to
25 display that briefly to the jury.

1 THE COURT: Go ahead.

2 Q Agent, did you seize other items of clothes that
3 day?

4 A Yes, we did.

5 MR. McCARTHY: Thank you. I have no further
6 questions, your Honor.

7 THE COURT: Mr. Ricco, representing Mr.
8 El-Gabrownny.

9 CROSS-EXAMINATION

10 BY MR. RICCO:

11 Q Agent Dalrymple, isn't it a fact that you seized
12 five boxes of clothing altogether?

13 A I don't recall the exact number of boxes but it
14 could be five boxes.

15 MR. RICCO: May I approach the witness, your
16 Honor?

17 THE COURT: Yes.

18 Q I am showing the witness Government's Exhibit
19 3586B.

20 A Right.

21 Q Does reading that exhibit help refresh your
22 recollection? Yes or no.

23 A Yes, it does.

24 Q Did you take five boxes of clothing?

25 A Yes, we did.

1 MR. RICCO: Thank you. No further questions,
2 your Honor.

3 THE COURT: Any other cross? Any redirect?

4 MR. McCARTHY: No, thank you.

5 THE COURT: Thank you. You are excused.

6 (Witness excused)

7 MR. McCARTHY: The government calls brine Dunbar.

8 BRIAN DUNBAR,

9 called as a witness by the government,
10 having been duly sworn, testified as follows:

11 MR. McCARTHY: May I proceed, your Honor?

12 THE COURT: Please.

13 DIRECT EXAMINATION

14 BY MR. McCARTHY:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q Can you tell us what you do for a living.

18 A I am a detective sergeant with the New Jersey
19 State Police.

20 Q Could you try to keep your voice up. At least I
21 can't hear you that well back here.

22 A I am a detective sergeant with the New Jersey
23 State Police.

24 Q How long have you been a detective sergeant with
25 the New Jersey police?

1 A Eighteen years.

2 Q Let me direct your attention to April 7, 1993.

3 Do you recall that day?

4 A Yes, sir.

5 Q What was your assignment that day?

6 A I was assigned to execute a search warrant at 65
7 Baldwin Avenue, Jersey City, New Jersey.

8 Q Do you recall what the focus of your search was?

9 A Yes. It was to conduct examination of the
10 interior and exterior of a refrigerator that was at that
11 location.

12 Q Do you recall whether the refrigerator was
13 actually seized?

14 A At that time, no, sir, the refrigerator wasn't.
15 I don't believe it was seized at all.

16 Q Do you recall whether it was photographed?

17 A Yes, sir, it was.

18 Q Who were you with on the day of the search?

19 A Special Agent Bill Atkinson, Special Agent Bill
20 Fleming, there was an evidence technician from the FBI
21 headquarters whose name I don't recall, and one civilian
22 from the building.

23 Q Do you recall fingerprints being taken?

24 A Yes, sir.

25 Q What did you do while the fingerprints were being

1 taken?

2 A Special Agent William Fleming was taking the
3 fingerprints, I was standing alongside him while he was
4 doing it.

5 Q Did you observe him lift fingerprints off the
6 refrigerator?

7 A Yes, sir.

8 Q Detective, let me ask you to use that microphone
9 while I show you these exhibits. I am showing you
10 Government's Exhibits W837C and D for identification and I
11 ask if you recognize the item depicted?

12 A Yes, sir, I do.

13 Q What do you recognize it to be?

14 A That was the refrigerator that was at 65 Baldwin.

15 Q I also ask you if you recognize 837B?

16 A Yes, I do.

17 Q What do you recognize that to be?

18 A That is a plate, an identification plate that was
19 located on the refrigerator at the same address.

20 MR. McCARTHY: Your Honor, the government offers
21 those blow-ups, W837B, C and D.

22 MR. STAVIS: I have an objection, your Honor.

23 THE COURT: Overruled. Same one?

24 MR. STAVIS: Under Rule 403.

25 THE COURT: Overruled. W837B, C and D are

1 received.

2 (Government's Exhibits W837B, C and D were
3 received in evidence)

4 Q Detective Dunbar, let me also show you
5 Government's Exhibits W2894 and W2895 for identification,
6 and ask if you recognize those items?

7 A Yes, sir, I do.

8 Q What do you recognize them to be, sir?

9 A 2894 is a piece of tape that was taken off of the
10 door handle by Special Agent William Fleming.

11 Q Let me just stop you for a moment. That is the
12 door handle of the refrigerator?

13 A Yes, sir.

14 Q The other exhibit is W2895?

15 A Yes, sir. 2895 is a fingerprint that was removed
16 by Special Agent Fleming from the refrigerator.

17 Q Is there writing on 2895 that indicates where the
18 fingerprint was lifted from?

19 MR. STAVIS: Objection.

20 THE COURT: Sustained.

21 Q Directing your attention to the back of 2895,
22 looking at that exhibit on the far right, what if anything
23 do you see? Please don't read it to us, just describe to us
24 what it is.

25 A There is a number, which is a case number, the

1 agent's initials, the date --

2 MR. PATEL: Objection.

3 THE COURT: Overruled.

4 A -- and a description from where it was taken.

5 Q Do you recall as you sit here today where the
6 print was lifted from?

7 A It was from, I believe, the door handle. I am
8 not really sure.

9 Q You have to keep your voice up so they can hear
10 you.

11 A I am not really sure. I believe it was from the
12 door handle.

13 (Continued on next page)

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1 MR. McCARTHY: Your Honor, the government offers
2 W2895 and W2894, the physical items, not the writing.

3 MR. JACOBS: Objection.

4 THE COURT: May I see counsel at the side.

5 (At the side bar)

6 MR. JACOBS: We are withdrawing the objection.

7 THE COURT: To the print?

8 MR. JACOBS: Correct.

9 THE COURT: I assume there were two objections.
10 One was 403.

11 MR. STAVIS: Yes, your Honor.

12 THE COURT: The other is a foundation objection.

13 MR. JACOBS: Which we have withdrawn.

14 THE COURT: Does somebody want me to explain the
15 jelly beans?

16 MR. JACOBS: I don't need one.

17 THE COURT: Mr. Patel expressed a desire to,
18 quote, cater the side bars, close quote, and provided them.
19 I said I would agree to keep them here for anybody who
20 wanted them at the side bars, however, if they tended to
21 encourage side bars I would have them removed.

22 MR. STAVIS: Do we have to seek your Honor's
23 permission in order to avail ourselves of the side bar jelly
24 beans?

25 THE COURT: Absolutely not.

1 MR. BERNSTEIN: Beware of lawyers bringing gifts.

2 (In open court)

3 THE COURT: The Rule 403 objection is overruled,
4 the other one is withdrawn, and 2894 and 2895 are received.

5 (Government's Exhibits W2894 and W2895 were
6 received in evidence)

7 MR. McCARTHY: Your Honor, I have no further
8 questions.

9 THE COURT: Ms. London, representing
10 Mr. Elhassan.

11 MR. McCARTHY: Your Honor, just to be clear, 2894
12 and 2895?

13 THE COURT: I said are received.

14 MR. McCARTHY: Somebody thinks they heard 2893.

15 THE COURT: If they did, I misspoke. I meant
16 W2894 and W2895.

17 MS. LONDON: May I proceed, your Honor?

18 THE COURT: Please.

19 (Continued on next page)

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1 CROSS-EXAMINATION

2 BY MS. LONDON:

3 Q Good afternoon, Agent Dunbar. You testified that
4 when you went to execute the search at 65 Baldwin Avenue,
5 there was a forensic chemist present?

6 A Yes, ma'am, from the FBI headquarters.

7 Q That forensic chemist was Mr. Stephen Bermeister
8 of the FBI?

9 A I don't really remember the name but it could
10 have been Bermeister, yes, ma'am.

11 Q He was taking swabbings, was he not, from the
12 inside of the refrigerator?

13 A If it's Bermeister, whoever it was took swabbings
14 and samples and air samples of the inside of the
15 refrigerator and freezer.

16 Q And he also took ice scrapings from the freezer
17 also, is that correct?

18 A That is correct.

19 MS. LONDON: No further questions.

20 THE COURT: Mr. Jacobs, representing Mr. Mohammed
21 Saleh.

22 CROSS-EXAMINATION

23 BY MR. JACOBS:

24 Q Detective Dunbar, what date was this search?

25 A I believe it was April 7.

1 Q Were you working with the Joint Terrorist Task
2 Force at the time or were you just lending your search
3 abilities?

4 A No, sir, I was assigned to the joint state police
5 FBI Joint Terrorist Task Force.

6 Q How long had you been working there, about?

7 A That day?

8 Q That task force. How many months, years?

9 A Eight years.

10 Q You knew when you were executing that search
11 warrant that one of the things that you were going to try to
12 do was to take fingerprints, correct?

13 A Yes.

14 Q You knew that ahead of time, is that correct?

15 A That is correct.

16 Q You and the other agents for the task force made
17 every effort to get as many fingerprints as you could find,
18 is that fair to say?

19 A Not myself, no, sir. I took no part in dusting
20 the refrigerator or lifting the prints.

21 Q I understand you didn't personally do it, but
22 that was part of the assignments that you and your fellow
23 agents had that day at 65 Baldwin, correct, was to try to
24 get as many fingerprints as you could find, correct?

25 A It was to recover as many fingerprints as were on

1 the refrigerator, yes, sir.

2 Q Was it just the refrigerator or were there other
3 items that you were targeting that day?

4 A No, sir, the search warrant was specific for the
5 refrigerator.

6 Q So there was some information that law
7 enforcement that was targeting this refrigerator, correct?

8 A I don't know. I was there to recover the
9 fingerprints that were on or weren't on the refrigerator.

10 Q You had one fingerprint, to your knowledge, that
11 were recovered by the agents that were there that day?

12 A There were one or two there that day.

13 (Continued on next page)

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1 MR. JACOBS: I have nothing further.

2 THE COURT: Anyone else? Any redirect?

3 MR. McCARTHY: No, thank you.

4 THE COURT: Thank you very much. You are
5 excused.

6 (Witness excused)

7 MR. FITZGERALD: The government calls Jackie
8 Bell, B-E-L-L.

9 MR. JACOBS: Your Honor, could we approach with
10 some counsel with respect to this witness?

11 THE COURT: Yes.

12 (At the side bar)

13 MR. JACOBS: Your Honor, we have gotten up
14 indicated 3500 from Agent bell, and there is one item that
15 is, I think, an important one, that is not in evidence, that
16 we had made a previous objection to, 2782, your Honor, bar
17 manual from the judge at the airport. There was a
18 foundation objection which your Honor sustained.

19 MR. STAVIS: During the testimony of Mr. Cozine,
20 COZINE.

21 MR. JACOBS: If your Honor recalls --

22 THE COURT: I don't.

23 MR. FITZGERALD: There was. I can help your
24 Honor out. Those were a number of sheets of xerox paper --

25 THE COURT: That was the time when he said this

1 looks like the kind of thing that he had?

2 MR. JACOBS: Correct, correct.

3 There are 35 prints of the Yousef, we didn't
4 realize that would be coming on. I think we need to discuss
5 with counsel -- maybe we can move along Bell and hold off
6 while we have a few minutes to discuss it. I don't want to
7 do it at the side bar. That's what I meant.

8 MR. FITZGERALD: I can tell you two things. I
9 can offer that document, if I offer it, after the witness is
10 off the stand. Part of what authenticates it is the fact
11 that the fingerprints are on it.

12 THE COURT: That is true. Is he the guy who
13 actually identifies these prints as being on that document?

14 MR. FITZGERALD: Yes.

15 THE COURT: It seems to me that the only
16 prejudice that could result from testimony without the
17 exhibit coming in showing that Ajaj and Yousef's prints are
18 on the same document is to show an association between
19 Yousef and Ajaj. That is redundant to other evidence in the
20 case which has already been proved. My suggestion is that
21 he be allowed to testify to prints on the document but that
22 there be no discussion about what the document is until we
23 have a chance to deal with it.

24 MR. JACOBS: Excellent.

25 (In open court)

1 JACKIE E. BELL,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q Mr. Bell, if you could keep your voice up and it
7 would help if you speak directly into the microphone in
8 front of you so that everyone can hear.

9 Can you tell the jury what you do for a living.

10 A I am employed by the Federal Bureau of
11 Investigation in Washington as a fingerprint specialist.

12 Q For how long have you worked as a fingerprint
13 specialist?

14 A A little over 29 years.

15 Q Why don't you briefly tell the jury your
16 educational background.

17 A I graduated from St. Augustine Texas High School
18 in 1964, attended Stephen F. Austin University in
19 Nacogdoches, Texas, for a year, and then accepted employment
20 with the FBI in 1966.

21 Q What with training or on-the-job training have
22 you received in the area of fingerprint classification,
23 examination and analysis?

24 A Upon entering on duty with the FBI in 1966, I
25 received three months of classroom training and

1 classification searching and filing of fingerprints. I
2 continued in this capacity for approximately five years and
3 then took a test to advance to the latent fingerprint
4 section. I received six months of classroom training in the
5 development and comparison of latent prints, and then for
6 the six months examined evidence submitted to the FBI for
7 latent print examination under the direct supervision of a
8 senior fingerprint specialist. Since that time, I have
9 attended various in-service classes in the last 23 years.

10 Q During the last 23 years, have you had occasion
11 to testify in federal and state courts concerning
12 fingerprints?

13 A I have.

14 Q Roughly how many times?

15 A Approximately 80 times.

16 Q I took the liberty of placing before you a number
17 of exhibits to your left, which if you check should include
18 Government's Exhibits W612 and 612A, which should be the
19 prints of Ramzi Yousef; 61A and 61B, the prints of Salameh;
20 Government's Exhibit 62; and Government's Exhibits W704 and
21 W705 and 705A. If I could just ask you if you had a chance
22 to see all those exhibits prior to today?

23 A Excuse me. I have.

24 Q Have you used those exhibits or identical
25 fingerprints to compare them to a number of different items

1 and documents?

2 A Yes, sir.

3 Q Let me ask you if you ever had occasion
4 personally to go to the location known as 40 Pamrapo Avenue
5 in Jersey City, in New Jersey?

6 A I have not.

7 Q Did you have occasion to have items collected
8 there sent down to the lab in Washington, D.C. for you to
9 examine?

10 A Yes, sir.

11 Q Did you examine those items and develop some
12 latent fingerprints upon them?

13 A That is correct.

14 Q Taking those latent fingerprints, did you compare
15 them to known fingerprints to see if you could effect an
16 identification?

17 A Yes, specifically the fingerprints that were just
18 referred to in this packet.

19 Q Did you identify any fingerprints to any of the
20 people whose fingerprints are in that package before you?

21 A Yes, sir.

22 Q Whose fingerprints did you identify on those
23 items?

24 A From the 40 Pamrapo location items, Mohammad
25 Salameh and Ramzi Yousef.

1 Q Let me approach you with two particular items,
2 Government's Exhibit W45 and W51.

3 THE WITNESS: Excuse me, your Honor. I may have
4 misunderstood one of Mr. Fitzgerald's questions.

5 Q I am sorry. I approached you with the wrong
6 exhibits. You understood me perfectly. I approached you
7 with the wrong item. Let me approach you with Government's
8 Exhibit W2499, W2516 and W2536. I apologize to both of you.

9 If you could look at Government's Exhibit W2499,
10 have you had occasion to examine that exhibit and compare
11 the latent prints with the prints in the Redweld before you?

12 A Yes, sir.

13 Q Did you have occasion to compare the latent
14 fingerprints developed with W2499?

15 A Yes. One latent fingerprint developed was
16 identified with the fingerprints of Mohammad Salameh and one
17 fingerprint was identified with the fingerprints of Ramzi
18 Yousef.

19 Q If you look at that exhibit within the package,
20 there are two yellow Post-Its, or stickers on that exhibit,
21 with names written on them, Yousef and Salameh. Do they
22 fairly and accurately depict where on the exhibit the print of
23 Yousef and the print of Salameh are located?

24 A Yes, they do.

25 Q Turning your attention to Government's Exhibit

1 W2516, which should be below it, which is a letter written
2 on the letterhead of Willkie Farr and Gallagher to Ramzi
3 Yousef, did you analyze that item to determine whether or
4 not you could identify any of the latent fingerprints
5 contained on it?

6 A Yes, sir.

7 Q Did you identify any of the prints?

8 A Yes, five latent fingerprints were developed on
9 Government's Exhibit W2516, and all five of those prints
10 were identified as fingerprints of Ramzi Yousef.

11 Q Again, do yellow stickers placed upon the exhibit
12 indicate where the fingerprints of Ramzi Yousef are located?

13 A Yes, sir.

14 Q And the final exhibit that I put before you from
15 this group is Government's Exhibit W2536, which is a yellow
16 page phone book. Did you have occasion to search that item
17 to determine whether or not you could compare any of the
18 latent fingerprints developed on the item with the
19 fingerprints of the individuals contained in that Redweld
20 before you?

21 A Yes, sir.

22 Q Did you effect any of those identifications
23 concerning those people whose prints were in the Redweld?

24 A Yes, the latent fingerprints were identified,
25 four each, with the fingerprints of Ramzi Yousef and

1 Mohammad Salameh.

2 Q Let's speak about Mr. Salameh's fingerprints
3 first. Can you tell the jury with regard to those yellow
4 pages where the fingerprints of Mr. Salameh were located?

5 A Yes. Three of the latent fingerprints were on
6 the back cover of Government's Exhibit 2536, and one was on
7 page 470 of the yellow pages.

8 Q And I will come back to page 470 in a moment.
9 Can you tell the jury where the fingerprints of Ramzi Yousef
10 were located on that item?

11 A Yes. There is a section with maps in this
12 particular telephone directory. One fingerprint was on page
13 26 of the map section. There is also a green coupon section
14 in the directory. One fingerprint of Mr. Yousef appeared on
15 page 8 of the green coupon section and two of the
16 fingerprints on page 9 of the green coupon section.

17 Q When you talk about the coupon section you are
18 saying green, is that correct?

19 A That is correct.

20 Q If you could open the yellow pages to the page of
21 the coupon section where you noticed Mr. Yousef's
22 fingerprints and tell us whether or not all the coupons are
23 intact.

24 A No, sir. There is a portion missing on what
25 would be pages 9 and 10.

1 Q If I could return your attention to page 470, the
2 page on which you indicated that Mr. Salameh's print was
3 identified, and if you could open to that page, if I could
4 first approach you with what has been premarked as
5 Government's Exhibit W2536P, as in Peter. Have you had
6 occasion to review that exhibit, Government's Exhibit W2536P
7 as in Peter prior to coming to court today?

8 A I have.

9 Q Is that a fair and accurate depiction on one side
10 of the fingerprint that is identified on page 470 of
11 Government's Exhibit W2536P?

12 A Yes. It is an approximate 12 times enlargement
13 of that fingerprint.

14 Q On the other half of the exhibit, is that a fair
15 and accurate enlargement of the fingerprint of Mohammad
16 Salameh to which the identity was made?

17 A That is correct.

18 MR. FITZGERALD: Your Honor, I would offer
19 Government's Exhibit W2536P.

20 MR. STAVIS: Object under Rule 403, your Honor.

21 THE COURT: That objection is overruled.

22 Government's Exhibit W2536P is received.

23 (Government's Exhibit 2536P was received in
24 evidence)

25 Q Mr. Bell, this is the only print that I would ask

1 you to explain for the jury. If you could step down and
2 explain to the jury how you made that fingerprint
3 identification.

4 THE COURT: If you would step down and speak into
5 a microphone.

6 A The portion of the fingerprint chart on your left
7 marked latent fingerprint is, as I said, an approximate 12
8 times enlargement of the latent fingerprint that was
9 developed on page 470 of Government's Exhibit 2536. The
10 portion on your right of inked fingerprint is an approximate
11 four times enlargement of the left thumb print on the
12 fingerprint card of Mohammad Salameh. In order for these
13 prints to have been made by the same person, a number of
14 points of identity have to appear in the same relative
15 position in the two prints.

16 If I may direct your attention to the portion of
17 the chart marked inked fingerprint, in the lower right-hand
18 corner is what I have marked as point number 1 and is an
19 ending ridge. Point number 2 is where two ridges come
20 together to form a single ridge, and it is to the left and
21 slightly above point number 1, and there is one ridge
22 intervening between points 1 and 2. Point number 3 is the
23 end of that ridge that was formed by the joining of 2, and
24 it ends a short distance from point number 2. If you look
25 at the latent fingerprint chart, again in the lower

1 right-hand portion, point number 1 is an ending ridge.
2 Point number 2 is the bifurcation of where two ridges join
3 together. And there is one ridge in between it and point
4 number 1, and it is above and slightly to the left. That
5 ridge then ends a short distance away, point number 3. Once
6 again, to the inked fingerprint chart, looking at point
7 number 4, which is also where two ridges join together,
8 there are two intervening ridges between point number 4 and
9 point number 3. Points 5 and 6 are ending ridges above and
10 to the left of point number 4. They also appear in the same
11 relative position in the inked fingerprint -- excuse me --
12 in the latent fingerprint chart. It is on the basis of
13 these points as well as other points charted and still other
14 points not charted that I based my opinion that these two
15 fingerprints were made by the same person.

16 Q Mr. Bell, you have testified that the left thumb
17 print, I believe, of Mr. Salameh was identified on that
18 page?

19 A Yes, sir.

20 Q If you could just hold up the phone book and just
21 show the jury where on the page Mr. Salameh's thumb print
22 was identified. I will allow you to put your gloves on.

23 A The latent fingerprint that has been identified
24 with Mr. Salameh is in the upper left-hand side of page 470
25 and is covered with a piece of plastic surrounded by

1 evidence tape. There is an arrow drawn to the print.

2 Q And if you could read the title of the page, sort
3 of the index title for page 470.

4 A Storage dash stucco.

5 Q And if you could read the second entry on the
6 page under storage.

7 A The subtitle under that is storage dash
8 self-storage.

9 Q Would you read the second entry, the second
10 business listed under storage.

11 A A Space Station.

12 Q We are done with that exhibit now. You can just
13 leave it down.

14 Speaking of A Space Station, did you ever have
15 occasion yourself to travel to the Space Station facility
16 located at 69 Mallory Avenue?

17 A No, sir.

18 (Continued on next page)

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1 Q Was there an occasion when items from that
2 location were shipped to you in the FBI laboratory for
3 examination?

4 A That is correct.

5 Q After that examination, did you make
6 identifications of some of the latent prints developed on
7 the items from 69 Mallory Avenue in comparison with the
8 known fingerprints we have identified earlier on the record?

9 A Yes.

10 Q Whose prints did you identify on those exhibits?

11 A Mohammed Salameh and Ramzi Yousef.

12 Q Let me approach you for the second time with
13 Government Exhibits W45 and W51. Looking first at
14 Government Exhibit W45, can you tell us whose prints you
15 identified on that item.

16 A Yes. On Government Exhibit 45, which is a sodium
17 azide bottle, two fingerprints of Ramzi Yousef were
18 identified.

19 Q Are there yellow stickers indicating the relative
20 location of the fingerprints of Ramzi Yousef?

21 A Yes.

22 Q With regard to Government Exhibit W51, can you
23 tell us whose fingerprints you identified.

24 A Two fingerprints of Mohammad Salameh were
25 identified on Exhibit W51.

1 Q Do yellow stickers again indicate the relative
2 position of those two fingerprints?

3 A Yes, sir.

4 Q Did you ever have occasion to go to an apartment
5 located at 34 Kensington Avenue, Jersey City?

6 A No, sir.

7 Q Let me approach you with what's been received in
8 evidence as Government Exhibit W90, a suitcase, and ask you
9 to look at it for a moment.

10 Mr. Bell, have you had occasion to see that
11 suitcase before?

12 A Yes, I have.

13 Q Have you examined the exterior of the suitcase as
14 well as the -- briefcase, suitcase -- as well as the
15 contents for fingerprints?

16 A Yes, the suitcase and contents were examined for
17 fingerprints.

18 Q Did you find any fingerprints on the actual
19 suitcase itself, the exterior?

20 A No, sir.

21 Q What about on the contents contained within the
22 suitcase, Government Exhibit W90?

23 A Yes. There were 299 latent prints of value
24 developed on 37 items within the suitcase.

25 Q Can you tell us with regard to the fingerprints

1 in front of you today that were already identified if you
2 made any identifications between those persons' fingerprints
3 and the various latent fingerprints identified on items
4 contained within the suitcase?

5 A Yes. Three persons' fingerprints were identified
6 on the contents of the suitcase.

7 Q Who were the three persons?

8 A Mohammed Salameh, Ramzi Yousef and Nidal Ayyad.

9 Q How many of Salameh's fingerprints were
10 identified on the contents within the suitcase?

11 A 100 fingerprints.

12 Q How many of Mr. Nidal Ayyad?

13 A Seven.

14 Q How many of Mr. Ramzi Yousef?

15 A Three.

16 Q Let me approach you with three particular items,
17 subsets of the Government Exhibit W90 series, the contents
18 of the briefcase. That would be W90-2, W90-3 and what has
19 been marked as W90-4.

20 Looking first at W90-2, have you had occasion to
21 examine that item and determine whether or not any of the
22 known fingerprints in the Redweld placed before you are
23 identical to the latent fingerprints contained in that item?

24 A I have.

25 Q What was the result of your analysis?

1 A Five latent fingerprints developed on Government
2 Exhibit W90-2, which is a Jordanian passport, were
3 identified as fingerprints of Mohammed Salameh, and one
4 fingerprint was identified as a fingerprint of Ramzi Yousef.

5 Q With regard to the five Salameh prints and one
6 Yousef print contained within that item, have yellow
7 stickers been affixed to the locations of those
8 fingerprints?

9 A They have.

10 Q Can you just read the name of the passport. You
11 said it was a Jordanian passport?

12 A The name of the bearer is Mohammed Amin
13 Abdel-Rahim Salameh.

14 Q If you could put that down and pick up Government
15 Exhibit W90-3. I will ask the same question, which is
16 whether or not you had a chance to analyze the fingerprints
17 on that exhibit to determine whether they are identical to
18 any of the known fingerprints contained in the Redweld.

19 A Yes. Seven fingerprints developed on Government
20 Exhibit W90-3, which is a National Westminster bankbook,
21 were identified as fingerprints of Nidal Ayyad, and two
22 fingerprints were identified as fingerprints of Mohammed
23 Salameh.

24 Q Finally, if you could pick up Government Exhibit
25 W-90-4, without telling us what the item is, can you tell us

1 if you identified anyone's fingerprints on it from that
2 Redweld?

3 A Yes.

4 Q Whose fingerprints did you identify?

5 A Mohammed Salameh and Ramzi Yousef.

6 Q With regard to Exhibits W90-3 and W90-4, are
7 there yellow stickers or indications of where the particular
8 fingerprints are located?

9 A On Government Exhibit W90-3 there are stickers
10 indicating where all of the identified prints are located.
11 There are stickers on the back of 90-4 that indicate where
12 some of the identifications are, but not all of them, and
13 there are also some identifications on the front, which are
14 not marked.

15 Q There are a number of them on the back?

16 A That is correct.

17 Q Let me ask you this question: On September 1,
18 1992, were you present when Ahmed Ajaj tried to enter the
19 country at Kennedy Airport?

20 A No, sir.

21 Q Let me approach you with a number of exhibits and
22 ask you whether or not you have had a chance to analyze
23 these items. I will read the numbers into the record:
24 Government Exhibit W2782, W2795, W2797, W2800-B, W2800-B-6.
25 W2800-B-10, W2800-C-1, and finally W2800-E-11-A.

1 THE COURT: OK.

2 Q Why don't we start with these. Let me show you
3 what's been marked as Government Exhibit 2782. I will
4 simply ask you if you had occasion to examine that exhibit
5 and the latent fingerprints developed on it to determine
6 whether or not you could identify any of the known prints in
7 the Redweld with the latent fingerprints contained on W2782.

8 A I have.

9 Q Can you tell us the results of that analysis.

10 A 35 fingerprints developed were identified as
11 fingerprints of Ahmad Ajaj, and two fingerprints were
12 identified as fingerprints of Ramzi Yousef.

13 Q You could put the item down and pick up the two
14 items in front of you, W2795 and W2797. First, with regard
15 to the passport that is Government Exhibit W2795, have you
16 had occasion to do the same analysis with respect to that
17 exhibit?

18 A Yes.

19 Q The results of your analysis?

20 A One fingerprint on Exhibit 2795 was identified as
21 a fingerprint of Ramzi Yousef. That fingerprint is actually
22 on a piece of paper that bears the same passport number
23 within the passport.

24 Q Is the piece of paper contained within the
25 passport but not part of the printed material itself?

1 A That is correct.

2 Q If you could just read the name of the person
3 listed inside the passport.

4 A If I may, I will just spell these names: It is
5 A-Y-E-D-H, middle initial S, last name spelled
6 A-L-Q-A-H-T-A-N-I.

7 Q OK. Thank you.

8 If you could next pick up Government Exhibit
9 W2797, the other passport. Tell us whether or not you
10 performed the same analysis on that exhibit as you did on
11 the prior exhibits you have testified about.

12 A I did.

13 Q And the results of your analysis?

14 THE COURT: This is which exhibit?

15 MR. FITZGERALD: W2797.

16 THE COURT: Go ahead.

17 A One fingerprint on this exhibit was identified as
18 the fingerprint of Ramzi Yousef.

19 Q OK. Now if you could turn to the set of papers
20 in your far left, wrapped in a brown paper envelope which
21 has been marked as Government Exhibit W2800B.

22 I am going to ask you whether you have had a
23 chance to examine that set of papers in particular.

24 A Yes.

25 Q I would like to ask you questions about three

1 particular pages from that exhibit, W2800B, an envelope,
2 W2800B-6 and W2800B-10.

3 THE COURT: Could you come to a convenient break
4 point say in the next five minutes or so.

5 MR. FITZGERALD: Yes, Judge.

6 THE COURT: All right.

7 Q Have you had occasion to examine those three
8 particular items within W2800B?

9 A Yes.

10 Q Did you make any identifications of persons whose
11 known prints are in the Redweld?

12 A Yes, I did.

13 Q Whose prints did you identify?

14 A Two fingerprints -- Ahmad Ajaj fingerprints were
15 identified on these three items.

16 Q On each of the three items?

17 A That's correct.

18 MR. FITZGERALD: This would be a convenient place
19 to break, Judge.

20 THE COURT: All right. Ladies and gentlemen, we
21 are going to take a short break. Please leave your notes
22 and other materials behind. Please don't discuss the case,
23 and we will resume in a few minutes.

24 (Recess)

25 Q Mr. Bell, I took the liberty of placing the last

1 four exhibits before you. If you start with the exhibit on
2 your left, next to the Redweld with the known prints, that
3 would be W2800C. Referring to the whole exhibit, it is a
4 sheaf of different papers. Have you had occasion to check
5 those items for fingerprints?

6 A I have.

7 Q If I could draw your attention to the one
8 particular page which I just flagged for you for convenience
9 that has the yellow sticker on it, pull out that page,
10 remove the sticker, and if you could confirm whether that is
11 the exhibit designated W2800-C-1.

12 A I don't see a sticker on here indicating that.
13 As far as the exhibit number --

14 Q I meant --

15 A The Government Exhibit?

16 Q The lab number.

17 A Yes. The laboratory designation is Q2800C-1.

18 Q Looking at that piece of paper, did you compare
19 that and analyze it for fingerprints and determine whether
20 or not identifications could be made on that piece of paper
21 with the known fingerprints whose exemplars are before you?

22 A Yes.

23 Q Whose fingerprints did you identify on that
24 particular page?

25 A I identified the fingerprints of Ahmad Ajaj and

1 Ramzi Yousef.

2 Q If you could return that exhibit and move forward
3 to the sheaf of papers to the right of that exhibit with the
4 brown paper which has been marked as W2800-E. Have you had
5 occasion to examine that sheaf of papers which we are
6 designating Government Exhibit W2800-E?

7 A Yes.

8 Q Drawing your attention to the particular page
9 which I tagged for you with the Post-It which we will call
10 W2800-E-11-A, have you examined that particular page?

11 A Yes.

12 Q Have you determined whether or not there are any
13 prints that can be identified with the known exemplars in
14 the Redwelds before you?

15 A I have.

16 Q What identifications did you make?

17 A A fingerprint of Ahmad Ajaj and also a
18 fingerprint of Ramzi Yousef were identified on this exhibit.

19 Q Before we proceed to the last two exhibits, let
20 me ask you some general questions.

21 Is it fair to say there are a fair number of
22 other items that you have examined with regard to Mr. Ajaj',
23 Mr. Yousef's and Mr. Salameh's prints?

24 A That is correct.

25 Q Is it also fair to say that with regard to those

1 items as well as the exhibits in this courtroom that you've
2 checked a large number of those items for the fingerprints
3 of Mr. Ibrahim El-Gabrowny, is that correct?

4 A That is correct.

5 Q Did you make any identifications of Ibrahim
6 El-Gabrowny's prints on those items?

7 A No.

8 Q Let me direct your attention to what is before
9 you as Government Exhibit W2895.

10 A Excuse me, Mr. Fitzgerald, if I may add something
11 to that answer?

12 Q OK.

13 A Mr. El-Gabrowny's prints were not compared with
14 the latent prints on the Ahmad Ajaj material, but on the
15 other items that I have testified to today.

16 Q Whatever prints you compared to Mr. El-Gabrowny's
17 prints, whatever latent prints you compared to
18 Mr. El-Gabrowny's known prints, no identifications were
19 made, is that fair?

20 A That is correct.

21 Q The next exhibit is in the manila folder before
22 you, Government Exhibit W2895. A couple of preliminary
23 questions: You were not present in 65 Baldwin Avenue when
24 fingerprints were taken from a refrigerator, were you?

25 A No.

1 MR. FITZGERALD: Your Honor, I would just like to
2 read the serial numbers from two exhibits at this point that
3 were just received in evidence from the last two witnesses.
4 Those exhibits would be Government Exhibit W755, and
5 Government Exhibit W837, the blowup. I would like to
6 display the blowup to the jury at the same time.

7 THE COURT: Go ahead.

8 MR. FITZGERALD: The serial number appearing on
9 the receipt, W755, the piece of it called the Consumer
10 Product Ownership Registration is Serial No. GD073186.

11 The serial number on Government Exhibit W837
12 should read the same, underneath General Electric Company,
13 Serial No. GD073186.

14 Thank you.

15 (Continued on next page)

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1 Q Mr. Bell, looking at the fingerprints before you
2 marked Government's Exhibit W2895, did you examine those
3 prints to determine whether or not you could make an
4 identification with the known prints we have discussed
5 before?

6 A Yes.

7 Q Can you tell the jury whose print you identified
8 that to be?

9 A One fingerprint on one of the lifts contained in
10 Government's Exhibit 2895 was identified as a fingerprint of
11 Ramzi Yousef.

12 Q And finally, if you could pick up the last
13 exhibit, which is the pink book in front of you,
14 Government's Exhibit W767, and I ask you if you examined
15 that item for latent fingerprints?

16 A Yes.

17 Q Have you made an identification of any of the
18 latent fingerprints in that item with the known fingerprints
19 we have been discussing?

20 A Yes. One latent fingerprint was identified.

21 Q Can you tell us whose print was identified and on
22 which page?

23 A A fingerprint of Mahmud Abouhalima was identified
24 on page 30 of Government's Exhibit W767.

25 MR. FITZGERALD: Your Honor, I have no further

1 questions of this witness but I would like to read from page
2 30 of the translation of that Exhibit W767.

3 THE COURT: Go ahead.

4 MR. FITZGERALD: Reading beginning on that page,
5 page 30 from Government's Exhibit W767, titled -- if I may
6 have one moment.

7 Your Honor, to make the record clear, I am
8 reading from the transcript W767T. The page of the
9 transcript is page 11. That makes reference to page 30 --

10 THE COURT: You are talking about the exhibit?

11 MR. FITZGERALD: Of the exhibit.

12 THE COURT: Go ahead.

13 MR. FITZGERALD: Title, demolition and
14 destruction of buildings. A. Blasting in its place by
15 demolition of the supporting middle beams or the supporting
16 walls if beams aren't found. It is carried out according to
17 the weight of the charge, as before. Formula, H equals T
18 times B times RQ . H equals K times EQ . B. By cutting the
19 supporting beams and walls on one level. C. By a
20 concentrated charge to cut the supporting beams in
21 accordance with the blasting rule from a distance. H equals
22 10 times T times C times R square. Placing this chart at
23 the center of the damaged beams where H charge weight and
24 kilograms. T . From table 2 fastener attached to the
25 building material. C. The thickness of the wall with a

1 diameter of the beam in meter. R. The distance between the
2 furthest beam and the chosen location for the central
3 charge. C. Through the placement of quick impact charges
4 point 35 times C squared kilograms for each one meter cubic
5 of volume, where C is thickness of the wall in meters and
6 upon calculation of the volume we take a height equal to 4
7 meters as a maximum and consider the thickness to be less
8 than point 5 meters. If the building consists of reinforced
9 concrete then we would multiply the result by 3. Towers,
10 domes and hollow beams. 1. Destroyed by using impact
11 charges, five kilograms for each one square meter of the
12 space of the building. Multiply the charges by 4 if the
13 facility is of reinforced concrete. 2. By concentrated
14 charges between every two charges, at a distance of $1.5R$ or
15 extended charges or piercing charges. But if the
16 destruction is sought for one side only, then charges should
17 cover half the circumference from the drop direction, R
18 equals $1.5C$.

19 THE COURT: Cross? Miss Stewart.

20 CROSS-EXAMINATION

21 BY MS. STEWART:

22 Q Good afternoon, Agent Bell.

23 A Good afternoon.

24 Q With regard to all the fingerprint comparison
25 work about which you have testified this afternoon, did you

1 ever identify any fingerprints as having been those of
2 Dr. Omar Ali Ahmed Abdel Rahman?

3 A No. To the best of my recollection his
4 fingerprints have never been compared with any of the
5 unidentified prints.

6 Q Are you saying then that the government did not
7 ask you to compare his prints to the prints that you have
8 testified to today?

9 A That is correct.

10 MS. STEWART: Thank you.

11 THE COURT: Mr. Patel.

12 CROSS-EXAMINATION

13 BY MR. PATEL:

14 Q Mr. Bell, a latent fingerprint that is deposited
15 or placed on an item is actually the remains of body oils,
16 is that correct?

17 A That is usually the case.

18 Q If that is placed on a surface, either paper or
19 glass or metal, if it is undisturbed it can remain there
20 almost indefinitely, is that correct?

21 A That is basically correct, especially on paper
22 items, because the body fluids or perspiration will be
23 absorbed by the paper. On items that you mention such as
24 glass, metal, those types of surfaces, they do not last as
25 long because it is on top of the item rather than being

1 absorbed.

2 Q When you examine a latent print, there is no way
3 to tell how long ago that print was deposited on the
4 surface, is that correct?

5 A Not without knowing some other factors.

6 Q When you lift a print, that is, when you take a
7 piece of tape and lift that print off, is it your
8 understanding that the correct procedure is to photograph
9 that latent print in place prior to it being lifted?

10 A If possible.

11 Q You have discussed an enormous number of exhibits
12 here today, this afternoon. At any time did you identify
13 the latent fingerprint of Mr. El Sayyid Nosair on any of
14 these items?

15 A No. Once again, I don't believe that his prints
16 have ever been compared with any prints that I testified to
17 today.

18 Q So it is your testimony that the government never
19 asked you to examine any of these items with regard to Mr.
20 Nosair's fingerprints?

21 A That is correct.

22 MR. PATEL: Thank you, sir. No further
23 questions.

24 THE COURT: Mr. Ricco.

25 MR. RICCO: May I approach the witness, your

1 Honor?

2 THE COURT: Yes, you may.

3 CROSS-EXAMINATION

4 BY MR. RICCO:

5 Q I am showing the witness Government's Exhibit
6 35118-E. You recovered over 600 fingerprints of value from
7 the various items that were seized, isn't that correct?

8 A I haven't totaled them, but I believe that would
9 be very close to being correct on this government exhibit
10 that you are showing me.

11 Q And you were able to discover, for example, on
12 items that were recovered from 34 Kensington, that some of
13 those items have both Mr. Salameh's prints and Mr. Yousef's
14 prints.

15 A That is correct.

16 Q And on some of the items that were alleged to
17 have been taken from Mr. Ajaj, you also found the prints of
18 Mr. Yousef and Mr. Ajaj.

19 A On the same item?

20 Q No, not on the same item but on the items that
21 were recovered from him.

22 A That is correct.

23 Q And you were also able to find Mr. Yousef's
24 prints at 40 Pamrapo.

25 A Yes, sir.

1 Q You were also able to find Mr. Salameh's prints
2 there, isn't that correct?

3 A Yes.

4 Q You also found Mr. Ayyad's and Mr. Salameh's
5 prints on a bank book at 34 Kensington.

6 A Yes, sir.

7 Q In fact, on a road test form found at 34
8 Kensington, you were able to find Mr. Yousef's prints, isn't
9 that correct?

10 A Yes, sir.

11 Q At the time you conducted your print analysis, do
12 you know whether or not Mr. El-Gabrownny was in custody?

13 A I am not sure.

14 Q Would you know where the source of the prints
15 that you used for the comparison came from?

16 A Not without looking at the prints. I have an
17 idea but I am not positive.

18 Q All right. From the prints that you had at the
19 time you conducted this analysis, which was sometime in
20 April of 1993 -- isn't that right?

21 A It extended over a long period of time, from
22 March of 1993 to the end of June '93.

23 Q And it was a lot of material, isn't that correct?

24 A That is correct.

25 Q Thousands of pages of documents?

1 A Yes, sir.

2 Q And other items?

3 A Yes, sir.

4 Q And you in fact ran Mr. El-Gabrowny's prints, or
5 compared his prints to these items, isn't that right?

6 A Not all of the items.

7 Q Everything except for the personal items that
8 were taken from Mr. Ajaj.

9 A No. There is another item on this list that you
10 are showing me that his prints were not compared against the
11 unidentified prints.

12 Q Which would that be?

13 A That would be Exhibit W767.

14 Q What would that be, sir?

15 A That is the book that Mr. Fitzgerald just read a
16 translation from.

17 Q From all the pages and documents that you did
18 review Mr. El-Gabrowny's prints for, his prints were not
19 found on any of those documents, isn't that correct?

20 A That is correct.

21 MR. RICCO: I have no further questions. Thank
22 you, your Honor.

23 THE COURT: Mr. Wasserman, representing

24 Mr. Hampton-El.

25

1 CROSS-EXAMINATION

2 BY MR. WASSERMAN:

3 Q Good afternoon, sir.

4 A Good afternoon.

5 Q Did you find in all the material that you
6 examined the fingerprints of Clement Hampton-El?

7 A I am sorry.

8 Q In the material that you examined did you find at
9 any time the latent prints of Clement Hampton-El?

10 A No, sir.

11 Q The prints that you have testified to that are
12 identified as belonging to Ramzi Yousef, how did you
13 determine -- what did you compare those prints with to
14 determine that they belonged to a man named Ramzi Yousef?

15 A They were compared with the fingerprint cards
16 that are contained in one of the exhibits that I testified
17 to today.

18 Q Did there come a time that you ever compared
19 those cards with the cards of any other individual,
20 specifically an individual named Abdul Basit?

21 A Are you speaking of the inked fingerprint cards
22 that are known to me as the fingerprints of Ramzi Yousef?

23 Q Yes, sir.

24 A No.

25 Q Did you compare anything to the fingerprint cards

1 of Abdul Basit?

2 MR. FITZGERALD: Objection, scope, 401.

3 THE COURT: Sustained.

4 Q Did you compare the prints that you have
5 testified to as belonging to Ramzi Yousef, did you compare
6 them to any other fingerprint card besides the card that you
7 have?

8 A Once I identified the prints of Ramzi Yousef, it
9 was obviously who they belonged to, so it was not necessary
10 to compare them any further.

11 Q Did there come a time that you came to learn that
12 those prints that you are testifying as belonging to Ramzi
13 Yousef belonged to a man named Abdul Basit?

14 MR. FITZGERALD: Objection to form.

15 THE COURT: Sustained.

16 Q The prints that you have testified to as
17 belonging to Ramzi Yousef, have you subsequently learned
18 that they match the fingerprints of a man named Abdul Basit?

19 MR. FITZGERALD: Objection to form.

20 THE COURT: Sustained.

21 MR. FITZGERALD: May I speak to Mr. Wasserman for
22 a second? I may save time.

23 MR. WASSERMAN: My understanding is that the
24 government will stipulate that Ramzi Yousef's true name is
25 Abdul Basit.

1 MR. FITZGERALD: Yes, Judge.

2 THE COURT: Anything else? I take it Mr.
3 Wasserman has no further questions. Mr. Bernstein.

4 MR. BERNSTEIN: Thank you, Judge.

5 THE COURT: Representing --

6 CROSS-EXAMINATION

7 BY MR. BERNSTEIN:

8 Q Sir, I represent Amir Abdelgani. Let me ask you,
9 regarding the questioned documents that you were given, you
10 took over 600 valuable prints from them, correct?

11 A Yes.

12 Q In the 600 did you find any that matched the
13 fingerprints of Amir Abdelgani?

14 A No.

15 Q Were you asked to compare any of those items with
16 the known fingerprints of Amir Abdelgani?

17 A No, sir.

18 Q Do you know when you gave these exhibits or sent
19 these exhibits back to the Southern District after you
20 completed your work?

21 A Most if not all of these exhibits would have been
22 returned during calendar year '93. I don't recall the
23 specific dates.

24 Q At no time in '93 were you asked to compare Mr.
25 Abdelgani's prints to any of those questioned documents,

1 correct?

2 A No, sir.

3 Q What about in '94, '95?

4 A No.

5 Q Do you know based upon your experience at the FBI
6 whether or not documents are ever sent back to your lab
7 laboratory for testing or retesting against other people
8 whose fingerprints weren't tested originally?

9 A That would happen very rarely. It has possibly
10 happened, but photographs of unidentified fingerprints are
11 maintained, so therefore it is not necessary to resubmit the
12 items.

13 Q No, sir. Maybe I am not saying it clearly. Are
14 there times when someone whose fingerprints come into the
15 FBI's possession subsequent to an item having been tested
16 against other known sets of fingerprints, are there times
17 that the questioned documents go back with the fingerprints
18 of someone whose fingerprints they now have to check those
19 fingerprints against the items that they weren't checked --
20 I am sorry.

21 MS. STEWART: Judge, may I have a word with Mr.
22 Bernstein.

23 MR. BERNSTEIN: I have no further questions.

24 THE COURT: Do you mind if I ask one question
25 that might save some time?

1 MS. AMSTERDAM: Yes.

2 THE COURT: Do you recall your answers with
3 regard to comparisons of fingerprints for Mr. Amir
4 Abdelgani, that is, as to whether you found them and whether
5 you were asked to find them, and it was no to both?

6 THE WITNESS: That is correct.

7 THE COURT: Would your answer be the same as to
8 Mr. Fares Khallafalla?

9 THE WITNESS: Yes.

10 THE COURT: Would it be the same as to Mr. Fadil
11 Abdelgani?

12 THE WITNESS: Yes.

13 THE COURT: Would it be the same as to Mr. Tarig
14 Elhassan?

15 THE WITNESS: Yes.

16 THE COURT: Would it be the same as to Mohammed
17 Saleh?

18 THE WITNESS: Yes.

19 MS. AMSTERDAM: Thank you, your Honor.

20 THE COURT: Would it be the same as to Mr. Wahid
21 Saleh?

22 THE WITNESS: Yes.

23 THE COURT: Would it be the same as to Mr. Victor
24 Alvarez?

25 THE WITNESS: Yes.

1 THE COURT: Any other questions?

2 MR. NOOTER: I do have one or two other
3 questions.

4 THE COURT: Go on ahead.

5 CROSS-EXAMINATION

6 BY MR. NOOTER:

7 Q Sir, in order to do the kind of comparison that
8 you have described in your testimony, you need a set of
9 known fingerprints, is that correct?

10 A That is correct.

11 Q The FBI laboratory maintains a collection of
12 known fingerprints, is that right?

13 A Yes.

14 Q That collection is a very large collection. It
15 includes millions of people, is that right?

16 A Yes, sir.

17 Q People alive, people dead, is that correct?

18 A Yes.

19 Q Those prints come from many sources, is that
20 right?

21 A That is correct.

22 Q One of those sources is other federal agencies
23 who make an arrest, is that correct?

24 A Yes.

25 Q If an individual is arrested by a federal

1 official from, let's say, the FBI, the DEA or Secret
2 Service, the prints are sent to the FBI laboratory and they
3 are maintained there on a permanent basis, is that correct?

4 A Not in all instances. That is the normal
5 procedure.

6 MR. NOOTER: No further questions.

7 THE COURT: Ms. London, representing
8 Mr. Elhassan. Go ahead.

9 CROSS-EXAMINATION

10 BY MS. LONDON:

11 Q Mr. Bell, back in 1993, one of the specimens that
12 was sent to you for examination was a specimen labeled Q2681
13 consisting of a cardboard tube wrapped in duct tape and a
14 piece of plastic. Do you recall that specimen?

15 A I don't recall it specifically.

16 MS. LONDON: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 Q Sir, I am going to show you Government Exhibit
20 35118-D for identification and ask you to take a look at
21 this document to see if it refreshes your recollection.

22 A Yes.

23 Q You had a communication regarding this Q2681 on
24 April 1, 1993, isn't that correct?

25 A That is correct.

1 Q And you subsequently conducted an analysis of
2 this specimen, isn't that correct?

3 A Yes.

4 Q And the specimen is the cardboard tube and duct
5 tape, is that correct?

6 A That is correct, and a piece of plastic.

7 Q And you subsequently communicated with the New
8 York office of the FBI regarding your analysis in August of
9 1993, August 13, 1993, is that correct?

10 A Yes.

11 Q And it would be fair to say that there were no
12 latent prints of value found on that specimen?

13 A That is correct.

14 MS. LONDON: Thank you. I have no further
15 questions.

16 THE COURT: Anyone else? Mr. Jacobs,
17 representing Mr. Mohammed Saleh. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. JACOBS:

20 Q Agent Bell, Mr. Ricco showed you 35118-E for
21 identification. Is this a document that you prepared?

22 A It is.

23 Q Would I be correct that it is a summary of
24 basically what you have testified here this afternoon? Is
25 that fair to say?

1 A Yes.

2 MR. JACOBS: I would offer it into evidence, your
3 Honor.

4 MR. FITZGERALD: No objection. Stipulated.

5 THE COURT: 35118-E is received without
6 objection.

7 MR. JACOBS: Your Honor, I have made a copy for
8 each member of the jury. With your permission I would hand
9 it out.

10 THE COURT: Go ahead.

11 (Government's Exhibit 35118-E was received in
12 evidence)

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

14 THE COURT: Please.

15 Q Agent Bell, let's take a look at this document
16 that is in evidence now that you have prepared. If you look
17 at the left-hand column, that Q number is a designation of
18 the FBI which I believe basically conforms to our exhibit
19 numbers here in the case, is that correct?

20 A That is basically true, with two exceptions.

21 Q Two exceptions. And the next column over is the
22 various descriptions of the actual items that you examined,
23 listing the addresses where they were recovered from and a
24 brief description of the various items, either by address
25 or, I think in Mr. Ajaj's case, items that were recovered

1 from him, is that fair to say?

2 A Yes, sir.

3 (Continued on next page)

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1 Q So if we read down the column, there are some
2 items from 69 Mallory, items from 34 Kensington, items from
3 1811 Colonial Garden, 40 Pamrapo, Ajaj, and 65 Baldwin,
4 correct?

5 A Yes, sir.

6 Q I am not going to take you through each item, but
7 a number of these things contain numerous pieces of paper
8 that you attempted to lift prints from, is that fair to say?

9 For example, I think the briefcase and contents
10 obviously had numerous documents in them, is that fair to
11 say?

12 A Yes. I believe that there would be three items
13 listed here. That would be fair to say.

14 THE COURT: Excuse me. Could you turn the
15 microphone toward you.

16 Q One would be the brown briefcase and contents,
17 correct?

18 A Yes, sir.

19 Q The other would be the book under Ajaj, which had
20 a lot of pages that you tried to examine for prints,
21 correct, 2782? I may have skipped 2691 where it says
22 "various documents." Is that another one where there are a
23 number of pages?

24 A Yes. I would say the briefcase, the various
25 documents, 2691 --

1 Q Right.

2 A -- and the book, 2782.

3 Q If we look in the third column, that is the day
4 that the FBI up here in the tri-state area sent these items
5 down to you in the lab, is that correct? When you say
6 "Rec'd," those are the dates that you received the items
7 down in Washington?

8 A That is the date that they were actually received
9 for examination in the Latent Fingerprint Section.

10 Q You may have gotten it sometime a week later,
11 whatever it is, but Washington got those documents on that
12 date?

13 A No.

14 Q Why don't you tell us what it is.

15 A I am saying exactly what I just answered, that
16 that is the date that they were received in the Latent
17 Fingerprint Section for latent print examination.

18 Q The next column over, "PRTS OF VAL," that is
19 prints of value, is that correct?

20 A That is correct.

21 Q So, in other words, looking down this column, on
22 the sodium azide bottle from 69 Mallory, you were able to
23 lift three prints, and if you look at the next column over,
24 you got Yousef's prints, matched Yousef's prints on two of
25 the items, and in parentheses you have a one, meaning one is

1 unknown at the present time, is that correct?

2 A If I may --

3 Q Sure, tell us.

4 A If I may correct one of the things that you said
5 there.

6 Q OK.

7 A The indication was that I had identified
8 Mr. Yousef on two of the items, but that's not correct.
9 We're only speaking of the one item.

10 Q I'm sorry, OK.

11 A 45. Two of his fingerprints were identified on
12 the one item.

13 Q Thank you for correcting me.

14 A And you are correct that it does leave one
15 unidentified print.

16 Q You sent a report of that finding on April 15 of
17 1993, is that correct?

18 A Yes, sir.

19 Q OK. As we read down the columns, we can get your
20 various conclusions with the names, the number of prints
21 that you've identified, so we can basically use this
22 document to see what you found and the various conclusions
23 that you made, is that correct?

24 A Yes, sir.

25 Q OK. Mr. Ricco asked you about the numbers. I

1 tried to add them up. I came up with 649 prints of value.
2 You were able to identify 431, leaving, by my calculations,
3 about 218 unknown. Would that sound about right to you?

4 A No, sir.

5 Q OK. Please --

6 A Because the 600 figure, I haven't added these --

7 Q OK.

8 A -- either way. The 649 figure, is that what you
9 said?

10 Q Yes.

11 A That may be correct.

12 Q OK.

13 A But if you will notice, on 90 there are 189
14 unidentified on that alone.

15 Q Right.

16 A And 141 on 2782. So that comes to 330 --

17 Q OK.

18 A -- on those two items alone. So that many, the
19 number of identifications that you mentioned --

20 Q Not correct?

21 A Would not be correct.

22 Q OK. So you have a couple of hundred for sure
23 unidentified prints, is that correct?

24 A There are at least 330.

25 Q Fine.

1 A Just adding those two items.

2 Q You're given certain known prints to make the
3 comparisons with, is that correct?

4 A Yes.

5 Q OK. Am I correct, it is not a decision that you
6 make down in Washington, it's based upon information
7 supplied by agents or prosecutors up here in the New York
8 area? Is that fair to say?

9 A It wouldn't necessarily be limited to the New
10 York area.

11 Q OK.

12 A But in this case, that would probably be correct.

13 Q Now, in connection with that, did your office
14 down in Washington prepare a list of the people's prints
15 that you used in the comparison?

16 Did you do that?

17 A Yes. There were several lists made as a matter
18 of fact.

19 Q Let me show you this and ask you is this one of
20 the lists.

21 MR. JACOBS: Pat, this is part of the 3500.

22 I have another copy. Take this one.

23 THE COURT: "This" being exhibit what, Mr.

24 Jacobs?

25 MR. JACOBS: I will have to mark it, your Honor.

1 Can we mark this, Ms. Schwartz --

2 THE COURT: No, you have to give it a designation
3 yourself, please.

4 MR. JACOBS: It is defense Saleh --

5 MR. FITZGERALD: Q.

6 MR. JACOBS: I will make it Q.

7 THE COURT: Q. Thank you.

8 Q Agent Bell, do you see that document in front of
9 you?

10 A Yes, I have it.

11 Q Am I correct that that is a comparison list that
12 you use to make the comparisons that you have been
13 testifying to here today?

14 A In some cases.

15 Q OK. Well, is there some other updated -- this is
16 an updated list dated May 18, 1993?

17 MR. FITZGERALD: Your Honor, I just have an
18 objection under 401.

19 THE COURT: I will allow it.

20 Q You were given certain fingerprints to make a
21 comparison to these questioned documents, is that correct,
22 and questioned latents that you developed, correct?

23 A Yes.

24 Q Is that a list of the people that you used at one
25 time in this case?

1 A This list was used at various times in the case.
2 Not in all cases.

3 Q OK.

4 MR. JACOBS: I would offer this into evidence,
5 your Honor, Defendant Saleh's Q.

6 MR. FITZGERALD: Same objection.

7 THE COURT: May I see counsel at the side
8 briefly.

9 MR. JACOBS: Sure.

10 (Continued on next page)

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1 (At the side bar)

2 MR. JACOBS: Judge, do you want to see this?

3 THE COURT: No, I think I know what it is. What
4 does it prove?

5 MR. JACOBS: Well, they compared in particular --

6 THE COURT: I know what it says. What does it
7 prove?

8 MR. JACOBS: I want to know who the FBI sent
9 down. They sent down Salem's prints. They sent down Yasin,
10 who is a co-conspirator in the case. I want to show that
11 these people's names, the prints did not appear. Especially
12 Yasin, who is significant for the defense in this case.

13 I think on some of the people we need to
14 establish whose prints were sent down. I'm particularly
15 interested in Yasin's prints, who was a co-conspirator
16 listed. All of these people are co-conspirators, I believe.

17 MR. FITZGERALD: I am not so sure Yasin's prints
18 didn't appear anywhere.

19 MR. JACOBS: At least on the documents that are
20 in evidence that this witness made the comparison to.

21 THE COURT: OK. I will let him do it.

22 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is overruled. Q is
3 received.

4 (Defendant Saleh Exhibit Q for identification was
5 received in evidence)

6 MR. JACOBS: Thank you.

7 Your Honor, again, I made copies for the jury.
8 Is it all right if I pass them out.

9 THE COURT: Go ahead.

10 (Saleh Exhibit Q was distributed to the jurors)

11 THE COURT: Go ahead, Mr. Jacobs.

12 Q Agent Bell, the document in front of you
13 indicates -- it is called the "Trade Bomb Comparison List."
14 The initials LFPS, can you tell us what that
15 stands for?

16 A Latent Fingerprint Section.

17 Q "Updated 5/18/93."

18 In other words, this list is updated
19 periodically, is that fair to say?

20 A That is correct.

21 Q I think "Major prints available for listed
22 individuals" is self-explanatory. These are the various
23 people as of May 18, 1993 whose prints you were asked to
24 compare to the various documents that are on the other
25 exhibit, is that correct?

1 A That is not correct.

2 Q OK. Please --

3 A Not necessarily correct.

4 Q Would I be correct in stating that -- tell us
5 what this list is then. Go ahead. I'm sorry.

6 A Yes. This comparison list was made to list the
7 various people that had been named for comparison purposes
8 at different times in connection with the investigation of
9 the World Trade Center.

10 When a subsequent request came in for comparison,
11 if this list applied, in that everybody on this list was
12 asked to be compared with the latent prints in that
13 particular submission, then this would be attached to the
14 report rather than listing all the people who had been
15 compared.

16 But in some instances, all the persons on this
17 list would not -- the Latent Fingerprint Section would not
18 be asked to compare all of them, so this list is not
19 necessarily the comparison list for every submission.

20 Q So, in other words, if I wanted to be a hundred
21 percent accurate, I would have to take each item out, have
22 you go through your reports and tell us which of the people
23 on this list you compared it with, is that correct?

24 A That is correct. If you are referring to the
25 items that I've testified to today --

1 Q Yes, sir.

2 A -- and the report date, which is on Government
3 Exhibit 35118-E, then there would either be a list similar
4 to this attached to the report or the names of the persons
5 that had been compared would be contained within the report
6 itself.

7 Q Among the people you were asked to at least look
8 at some documents was someone by the name of Musab Yasin,
9 Y-A-S-I-N, on Defendants' Q, is that correct?

10 A Yes.

11 Q And another person was Emad Ali Salem, correct?

12 A That is correct.

13 Q Are there any further updates on this list in
14 your possession or in the FBI's possession?

15 A To the best of my knowledge there aren't. I
16 believe that this was the last one.

17 Q You are familiar with the fingerprint work of the
18 FBI in connection with these items that you've described
19 here today?

20 A Yes.

21 Q You say that that is the updated list as far as
22 your knowledge is concerned?

23 A To the best of my recollection, that is correct.
24 Possibly there have been other additions to the list, but I
25 do not recall it. And there could have been other persons

1 who were asked to be compared, but their names were not
2 added to the list.

3 Q But as far as the results of the analysis of the
4 FBI, is it that these are the people whose prints were
5 identified on 35118E that is now in evidence, your report?

6 A Yes.

7 MR. FITZGERALD: Objection to form.

8 THE COURT: Sustained.

9 MR. JACOBS: I'm sorry.

10 Q Are you aware of anybody else doing comparisons
11 in the FBI other than yourself in connection with these
12 items, sir?

13 A Yes.

14 Q Do you have those reports with you today?

15 MR. FITZGERALD: Objection, your Honor. Scope.

16 THE COURT: Sustained.

17 MR. JACOBS: May I just confer with counsel one
18 minute, your Honor.

19 THE COURT: Yes.

20 MR. JACOBS: Not with you, Mr. Fitzgerald.

21 MR. FITZGERALD: OK.

22 (Counsel conferred)

23 MR. JACOBS: You will be happy to know, your
24 Honor, I was told to sit down and I will follow their
25 advice. If I could just collect my items.

1 THE COURT: Is that, "No further questions"?

2 MR. JACOBS: No further questions.

3 THE COURT: Anyone else?

4 Any redirect?

5 MR. FITZGERALD: Just one question.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. FITZGERALD:

9 Q Mr. Jacobs asked you whether Mr. Salem was in the
10 list of people that you compared some items with. Did you
11 effect any identifications of any latent prints with the
12 known prints of Emad Salem?

13 A No.

14 MR. FITZGERALD: Thank you. Nothing further.

15 THE COURT: Thank you very much. You are
16 excused.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused)

19 THE COURT: Do you want to come up to the side
20 briefly.

21 (Discussion off the record at the side bar)

22 THE COURT: Ladies and gentlemen, we are going to
23 break for the day. Please leave your notes and other
24 materials behind. For reasons that I have enumerated over
25 the last several days, please do not see, hear or read

1 anything about either this case or the events in Oklahoma
2 City. We will see you tomorrow at 9:30. Have a pleasant
3 evening.

4 (The jury was excused)

5 THE COURT: Mr. Stavis, did you want to say
6 something?

7 MR. STAVIS: Before we break for the day, there
8 are several transcripts that we were provided with today. I
9 believe the issue will arise tomorrow, and I just wanted to
10 alert your Honor.

11 MR. FITZGERALD: Your Honor, we may not be
12 offering those exhibits tomorrow. It may save time not to
13 raise the issue at this time.

14 THE COURT: OK.

15 MR. STAVIS: I wasn't raising it now. Just, if
16 your Honor wishes to review, in anticipation of our
17 argument --

18 THE COURT: I understood what Mr. Fitzgerald told
19 me as some veiled suggestion that something could be worked
20 out with regard to this. If it can be, then I would rather,
21 frankly, not review something I may never have to review.

22 Is that what you were telling me or not?

23 MR. FITZGERALD: Yes, Judge. If there is a
24 problem, we can call chambers and let you know what exhibits
25 there will be a problem with.

1 THE COURT: Fine. There was one matter I wanted
2 to raise with counsel. It relates to Ms. London's letter
3 and the question of juror examination and so forth.

4 You all got the government's response today?

5 MR. JACOBS: Yes.

6 THE COURT: OK. First, did I understand
7 correctly that everyone joined in the various motions for
8 mistrials when they were made? Is there anybody who did not
9 join in that?

10 (No response)

11 THE COURT: Second, is it correct that it is
12 everybody's view that I should conduct a voir dire of the
13 jury, or that it remains everybody's view that I should
14 conduct a voir dire of the jury?

15 MR. JACOBS: I believe so, your Honor.

16 THE COURT: You might think that through. I want
17 to think about it some more. My feeling is that, if I am
18 going to conduct one, then now is about the right time to do
19 it. I would be inclined to do it tomorrow. I will raise it
20 with you yet again before I do it.

21 I will tell you, however, two things: First, it
22 is going to be preceded by a very focused instruction to
23 them that, if I'm doing this, it is only out of an excess of
24 caution on my part and not because I have any doubt
25 whatsoever about their ability to evaluate this case based

1 on the evidence. I don't want to telegraph any suggestion
2 because I do not in fact believe that any of them can't sit
3 fairly.

4 You will recall that each of them, that is, that
5 they all as a group were invited to do what they were
6 invited to do a long time ago, which was to tell
7 Ms. Schwartz if they had any problem in that regard. None
8 of them has told her anything.

9 I would propose to do a very narrow one- or
10 two-question session with each of them in essence simply
11 asking them whether, in view of whatever coverage they have
12 seen, they have any doubts as to their ability to decide
13 this case based only on the evidence presented here rather
14 than based on anything they might have seen or heard.
15 Obviously, that would be attended by a small group, which is
16 to say, we did it with -- what did we do last time? Two?

17 THE DEPUTY CLERK: It was two, your Honor.

18 THE COURT: Something of that kind.

19 I don't know whether you want that. You ought to
20 think about it overnight is my feeling.

21 Yes, sir?

22 MR. JACOBS: Your Honor, besides just the
23 coverage, would your Honor consider including any
24 discussions they may have had with anyone else concerning
25 the matter?

1 THE COURT: Oh, yes. Be it news coverage or be
2 it any conversation with anybody else, absolutely. But it
3 will be that kind of short, focused thing. Let's put it
4 this way: I am not going to ask any of them to
5 free-associate or to give any kind of general description of
6 what they saw or heard because that's just, I believe,
7 unnecessary. Yes?

8 MR. McCARTHY: Your Honor, we only have one
9 scheduling request. Would the court consider us allowing us
10 to call Williams and Burmeister before the court proceeds
11 with the voir dire?

12 THE COURT: I don't intend to do this, if I do
13 it, until, say, when they come back from lunch tomorrow.

14 MR. McCARTHY: OK. They are needed in Oklahoma.
15 They are coming here for this purpose.

16 THE COURT: All right.

17 MR. McCARTHY: I would like to get them done.

18 THE COURT: If there is any doubt as to whether
19 we could complete them, then I might just do it after we
20 finish with them.

21 MR. McCARTHY: Thank you, your Honor.

22 THE COURT: OK. Have a pleasant evening, all.

23 (Proceedings adjourned to April 27, 1995 at 9:30
24 a.m.

25

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)

April 27, 1995
10:10 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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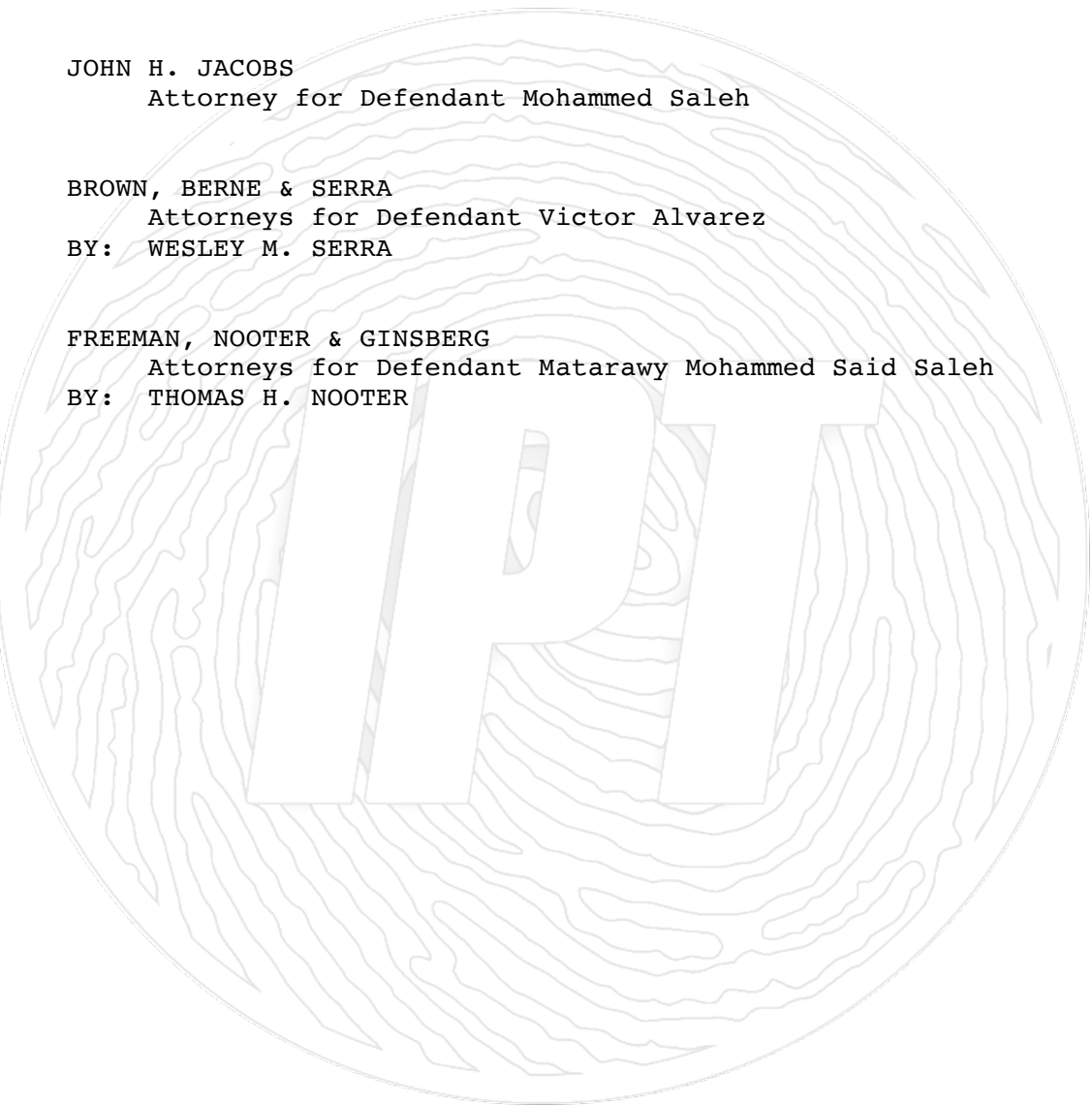
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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Ms. London, I will
4 tell you what I know and you can tell me what you know. OK?

5 MS. LONDON: Sounds like a good idea.

6 THE COURT: Mr. Elhassan this morning told the
7 folks at the MCC that he wanted to bring a large garbage
8 bag -- not garbage but describing the size -- of transcripts
9 and other materials to court. They believed and I believe
10 that it was totally unnecessary, particularly in view of the
11 proof that is going in now. He persisted and insisted. I
12 gather that he has said that because he hasn't been
13 permitted to bring this material he is not going to favor us
14 with his presence today. He is now in the back where he can
15 see and hear what we are doing and saying here, because he
16 has closed circuit television and audio hookup.

17 Ms. London, do you want to tell me something?

18 MS. LONDON: Yes, your Honor. I have spoken with
19 Mr. Elhassan, and while he did want to bring into court
20 today what were sizable amounts of materials, namely CM
21 transcripts and other things which he believed would have
22 some relevance to the cross-examinations this afternoon, he
23 was not able to bring them over to the court or even to the
24 pens, and he did ask if he could have the materials brought
25 to him in the pen so that he could have them available to

1 him in the pens but not necessarily bring everything into
2 the courtroom at once, and he could if necessary exchange
3 materials at the break. My understanding is that he was not
4 permitted to do that, and he has told me that he at this
5 time does not want to be present in the courtroom. I do not
6 waive his presence.

7 THE COURT: I understand that. I will also add
8 that, as we all know, there are two decisions that a
9 defendant makes during a trial. One is whether to plead
10 guilty or not guilty. The second is whether to testify.
11 Every other decision, including tactical decisions
12 particularly as to cross-examination or any kind of
13 examination for that matter, are made by lawyers. It is not
14 a defendant's responsibility.

15 In view of that and in view of everything that we
16 have discussed so far, I think I am amply justified in
17 finding and I do find that Mr. Elhassan has voluntarily
18 absented himself, and we are going to proceed without him.
19 If he changes his mind he is welcome to return. Do you want
20 me to account for his absence by telling the jury that he is
21 simply not here voluntarily or say nothing as we have done
22 on other occasions?

23 MS. LONDON: Your Honor, my preference would be
24 to say nothing. There have been other occasions when
25 defendants have not been here and nothing has been said.

1 THE COURT: There have, and they have been
2 innocuous on those occasions and there is nothing to make
3 the jury think that it is not innocuous with this.

4 Mr. Jacobs.

5 MR. JACOBS: Judge, I understand we are going to
6 have some testimony about the World Trade Center explosion.

7 THE COURT: I would like to speed this up because
8 we are 40 minutes behind already.

9 MR. JACOBS: I will speed this up. Testimony of
10 a general nature, how they occur, buildings and stuff like
11 that. I would ask for some limited instructions, that we
12 are dealing with the World Trade Center and nothing else,
13 because I think by its nature the testimony is a bit
14 overlapping with the events that occurred in Oklahoma.

15 THE COURT: You want an instruction as the
16 evidence is going in?

17 MR. JACOBS: I am just concerned because I read
18 some of the pictures about general explosions and the
19 diagrams. I would like the jurors' attention focused here
20 and not on the other events.

21 THE COURT: I am happy to do that. Can I just
22 make a suggestion to you and you can press it or not. We
23 have been focused here in detailed fashion only on that
24 event and not on anything else. To caution them in a way
25 that suggests other events can be counterproductive. If you

1 want me to do it I will do it.

2 Mr. Stavis?

3 MR. STAVIS: Yes. I just checked with Mr.
4 Fitzgerald because I know that your Honor wants to bring the
5 jury out and I will be very brief. There is an issue with
6 respect to the testimony of Superintendent Williams today
7 that needs to be addressed with the court. At the first
8 World Trade Center trial a videotape of a truck, a van
9 exploding was introduced into evidence. That was part of an
10 experiment where certain chemicals were used and the truck,
11 I believe, was lined with C-4 to show the effect of an
12 explosion. Mr. Fitzgerald intends to introduce that
13 videotape, which was introduced at the first World Trade
14 Center trial, at this trial, and I would object to the
15 playing of the videotape under Rule 403, your Honor. I
16 believe that the specter of photographs of an exploding
17 truck where that experiment related solely to the World
18 Trade Center explosion at this trial will have an
19 inflammatory effect upon the jury and any probative value
20 would be outweighed by its prejudice.

21 THE COURT: What is the point of this?

22 MR. FITZGERALD: Judge, a simple demonstration of
23 what happens to the parts of a van and how it is dispersed,
24 the explosive effects on a piece of van. It is a short
25 demonstration -- this is a bombing case after all -- shows

1 it slow motion, where the parts land and how the parts are
2 scattered. Agent Williams would say if you look at these
3 parts they are scattered left, right, side, other side, and
4 you see certain characteristics on the pieces of metal that
5 would indicate that it comes from the van that contains the
6 explosives.

7 MR. STAVIS: The experiment did not duplicate the
8 actual conditions because the truck was lined with C-4.

9 MR. FITZGERALD: It also is in an open field.
10 There are not people and floating bodies. It is not gory.

11 THE COURT: It seems to me that the jury can be
12 told what the nature is of the proof that they are watching,
13 and once they are told that, I shouldn't think that it would
14 be particularly inflammatory.

15 MR. JACOBS: Your Honor, in the first trial
16 counsel in that case were litigating the issue of the
17 explosion. They were litigating how the explosion occurred,
18 they were litigating the ingredients, they were litigating
19 whether there was an explosion. You obviously know from the
20 openings in this case the strategy of the case, that is not
21 an issue. I think in balancing 403, that is the important
22 factor that your Honor I think should rely on.

23 THE COURT: If there is no dispute about the fact
24 that there was an explosion and there really is no dispute
25 about the van in question being the van that carried the

1 explosives, which I gather there was in the World Trade
2 Center case -- correct?

3 MR. FITZGERALD: Yes, Judge.

4 THE COURT: -- then it seems to me that the video
5 may not be necessary.

6 MR. FITZGERALD: I think a fair statement is, I
7 think the probative value and the prejudicial value are
8 vastly overrated. It is not a big deal either way.

9 THE COURT: Then if it is not a big deal either
10 way then it is not a big deal probatively, so it is out.

11 MR. SERRA: Your Honor, I will be leading the
12 cross-examination of Williams, and it was my intention and
13 still is my intention to cross-examine Agent Williams not on
14 the video or the fact that a truck was blown up but on what
15 the FBI did which led up to making the video, namely that
16 the FBI made their own bomb as an experiment. It is my
17 intention to go into that on cross.

18 THE COURT: Then I am going to say something to
19 you that I said to Mr. Jacobs the other day, or the other
20 week, as to which I was moderately criticized, which was,
21 you better be careful, because you know what it means to
22 open the door. On the other side of the door is the
23 videotape.

24 MR. SERRA: I understand, your Honor, and I have
25 no intention to referring to making the videotape and so

1 forth, but I do intend to cross-examine --

2 THE COURT: I know you have no intention, but the
3 law of unintended consequences occasionally applies. Caveat
4 emptor.

5 Miss Stewart.

6 MS. STEWART: Judge, I rise for happier things.
7 I know your Honor cannot fail to notice the bevy of young
8 women in your courtroom.

9 THE COURT: That is right. They are here by
10 prearrangement and invitation.

11 MS. STEWART: There are also a group who are here
12 as a result of "bring your daughter to work day," whose
13 fathers and mothers are appearing as well.

14 THE COURT: That is right. We have talked before
15 and we will probably have occasion to talk again, and they
16 are of course welcome.

17 I should also tell you, what I discussed
18 yesterday about interviews, particularly in view of the fact
19 that we have lost time, it is not something that I am going
20 to do today. If I do it, it will be Monday, so we will deal
21 with that Monday.

22 (Jury present)

23 THE COURT: Good morning, ladies and gentlemen.

24 JURORS: Good morning, your Honor.

25 THE COURT: I should explain that obviously this

1 is the worst we have done so far as far as getting started
2 and part of that is we have just had a lot of logistical
3 problems this morning and part of it has been legal issues
4 that have arisen, and I am sorry that we didn't get started
5 earlier. But these things sometimes happen and today was
6 one of the times that it happened. So if you are looking
7 for an apology, you have one.

8 Mr. Fitzgerald.

9 MR. FITZGERALD: Thank you, Judge. The
10 government calls David Williams.

11 (Continued on next page)

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1 DAVID R. WILLIAMS,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Mr. Williams, can you tell the jury what you do
7 for a living?

8 A. I am a special agent, supervisory special agent
9 with the Federal Bureau of Investigation at the FBI
10 Laboratory Explosives Unit in Washington, D.C.

11 Q. Do you have a specialty?

12 A. Yes, I do.

13 Q. Can you tell the jury what that is?

14 A. I am a hazardous devices and explosives expert.

15 Q. Can you tell the jury how long you have worked
16 for the FBI?

17 A. From 1976 until the present day.

18 Q. If you could briefly tell the jury your
19 educational background and your training and experience
20 leading up to the present date.

21 A. In 1975, I graduated with a Bachelor of Science
22 degree in zoology from Mansfield State University in
23 Pennsylvania, and in May of 1981, I graduated from George
24 Washington University in Washington, D.C., and obtained a
25 master of forensic science. During my training with the

1 FBI, I had successfully completed a course at the naval
2 ordnance explosives school at Indianhead, Maryland, and also
3 had successfully completed a course at the Hazardous Devices
4 School in Huntsville, Alabama.

5 Q. For how long have you been working in the
6 explosives unit?

7 A. I first began in the explosives unit in 1979 as a
8 physical science technician, a nonagent position, and worked
9 there until 1982, when I was afforded the opportunity to
10 become a special agent. From 1982 I had been assigned to
11 various field offices in the United States and returned to
12 the laboratory in October of 1987.

13 Q. Have you been working in the lab since October
14 1987?

15 A. Yes, I have.

16 Q. Based on your training and experience, are you
17 familiar with how bombs and explosives work?

18 A. Yes, I am.

19 Q. Can you explain in general terms how it is that a
20 bomb works and the different components to a bomb.

21 A. A bomb is basically an explosive. The explosive
22 main charge would be a high explosive or a low explosive,
23 and the difference between the two is usually considered by
24 the velocity of detonation, how fast it explodes or how fast
25 it burns. That threshold level is about three feet per

1 second in a given density.

2 Anything that functions or detonates faster than
3 3,000 feet per second is considered a high explosive.
4 Anything that functions or burns or deflagrates slower than
5 3,000 feet per second is considered a low explosive. A low
6 explosive such as gun powder, if you just laid it out on the
7 table and caused it to ignite, it would just burn. So a low
8 explosive requires some kind of confinement such as a pipe
9 nipple and end caps. The container, the pipe would contain
10 all the burning gases until it could no longer contain the
11 gases, and then it will explode.

12 Any of the high explosives, such as dynamite,
13 TNT, water gels and slurries, C-4, the plastic explosives,
14 they vary and are classified pretty much by their velocity
15 of detonations. Some of the slower explosives like
16 dynamites may function from 3,000 to 18,000 feet per second,
17 and the plastic explosives would function somewhere up to
18 22, 24,000 feet per second.

19 To make an explosive device you have to have the
20 main charge or the explosive. In order to cause this
21 explosive to detonate or deflagrate, you have to have some
22 method of initiation. With the high explosives, in most
23 cases you would use something like a detonator or a blasting
24 cap or some other type of primary explosive, something that
25 is sensitive to heat, shock or friction, causing this

1 primary explosive to function, in turn causing the main
2 charge explosive to function. Low explosives in most cases
3 are sensitive to the heat, shock and friction also, but to a
4 lesser form.

5 When you do make the bomb with the explosives and
6 you have the initiator present, you have to have some sort
7 of time delay. The time delay could be anything from a
8 burning type fuse like you would see in a firecracker or it
9 could be something more elaborate, electric timing
10 mechanisms, a mechanical alarm clock, or some type of
11 chemical timed delay. Once you initiate this mechanism, the
12 whole process begins very rapidly and the explosion occurs.
13 The explosion causes a loud noise, heat, and blast pressure
14 effects.

15 Q. If we could focus for a moment on the actual
16 explosion, are you familiar with what is known as a shock
17 front?

18 A. Yes, I am.

19 Q. Can you tell the jury what a shock front is.

20 A. When the explosive explodes, of course the heat
21 is produced and fragmentation. The fragmentation could be
22 from any component part of the explosive device or something
23 that was close to it, a tree, picnic table, a car, anything
24 of that nature. That fragmentation proceeds. This
25 fragmentation normally flies through the air about the speed

1 or velocity of a bullet, but right in front of that is the
2 blast pressure, the shock front, and that is just compressed
3 air being generated by the explosive force coming out from
4 the seat of the explosion.

5 Q. What do you call the speed of the compressed air
6 as it leaves the explosion?

7 A. The blast pressure effect.

8 Q. Let me approach you with a chart that has been
9 premarked as Government's Exhibit W854, and I ask you to
10 look at the chart and tell me if you recognize it?

11 A. Yes, I do.

12 Q. Is this something that would aid you in
13 explaining these principles to the jury?

14 A. Yes, it would.

15 MR. FITZGERALD: Your Honor, I offer Government's
16 Exhibit W854 simply as an aid to the jury.

17 MR. STAVIS: Objection under Rule 403, your
18 Honor.

19 THE COURT: That objection is overruled. W854 is
20 received.

21 (Government's Exhibit W854 was received in
22 evidence)

23 Q. I would ask you to step down and step to this
24 side of the chart. If you could, using this chart, explain
25 the different effects of an explosion.

1 A. Right at this point is the seat of the explosion,
2 where the explosive had been placed prior to detonation.
3 When it explodes, you will see the heat, the thermal effect
4 from it, and the shock front proceeds to fragmentation for a
5 short period of time. The shock front begins very rapidly
6 and then very quickly dissipates until it finally ends. The
7 fragmentation in some cases actually travels farther than
8 the shock front has progressed. If you look at the way that
9 the explosion occurs, all of the shock front and all of the
10 fragmentation in most cases comes off in a radial effect.

11 Q. And by a radial effect you mean it goes in all
12 different directions?

13 A. All different directions from the center.

14 Q. Can you tell us, an explosive with a higher
15 velocity of detonation, does that affect the speed at which
16 the shock front leaves?

17 A. Yes, it does. A faster velocity explosive or a
18 larger quantity explosive would cause a larger, farther
19 traveling shock front.

20 Q. You mentioned in most cases the blast effect goes
21 in all different directions. What happens if the blast is
22 confined in any way, by a wall or something like that?

23 A. You will get what is considered a tamping effect.
24 For example, if I had an explosive at this site and put a
25 wall of sand bags in this direction past it, the sand bags

1 would restrict the blast pressure from going in this
2 direction and would actually be reflected off of the sand
3 bags.

4 Q. What happens when all the compressed air is blown
5 away from the site of the explosion? Does it ever come
6 back?

7 A. Yes, it does. The violent effect of the shock
8 wave proceeding away from the center actually creates a
9 vacuum. There is no air left at the center of the
10 explosion. So when this shock front actually dissipates and
11 stops, this vacuum has to be filled with the negative blast
12 pressure effect. It is a vacuum that actually sucks debris
13 and components back towards the center.

14 Q. If I could ask you to resume your seat again.

15 You mentioned a main charge and a detonator and
16 an initiator. Can you explain to let jury precisely what an
17 initiator is?

18 A. An initiator can be actually anything that can
19 cause the explosive to detonate or deflagrate.

20 Q. When we are dealing with higher explosives, can
21 most of those explosives be started with something like a
22 match?

23 A. No, not generally. In most all cases, you can
24 cause an explosive to burn with a match but it won't
25 detonate, just a ball of fire. When you have a high

1 explosive, that high explosive requires some kind of
2 brisance or external shock, which is caused by the use of a
3 detonator or some other type of primary explosive.

4 Q. Can a detonator sometimes by itself be an
5 initiator?

6 A. A detonator by itself can actually be the main
7 charge, if that's what you wish, but yes, it can also be the
8 initiator.

9 Q. Can you tell us, in the case where a bomb is
10 placed in a vehicle such as a car or a van, what effect the
11 bomb will have on that vehicle and any vehicles around it?

12 A. If a bomb, explosive device is inside of a
13 vehicle, you could imagine, if you blew up a balloon and it
14 ruptured, it burst, the pieces of balloon in the air would
15 go all directions away from the center, and when you look at
16 the pieces of that balloon, the inside of the balloon will
17 have a little bit of white powder and it may have some
18 saliva from when you blew it up.

19 We can compare the same way from the bomb in the
20 car. The car is going to come apart just like a balloon,
21 and when it comes apart it will come out radially, just like
22 I showed you the on the chart. The component parts, some of
23 them will ricochet off other parts, but by and large most of
24 the fragmentation will be radially from that vehicle, left
25 tire here, right here here, front here and back here.

1 The vehicles or any other witness material that
2 is around the bomb when it goes off is going to have
3 explosive damage from the outside to the inside. In most
4 cases, it is not going to come apart as violently and
5 radially as does the initial main charge. You are going to
6 get some opinions, or some views, rather, that a car may be
7 swollen, because when the explosive charge next to it
8 explodes, the shock front could break the windows on
9 automobiles and cause some swelling. But you would easily
10 determine which side of the vehicle the explosion it
11 occurred.

12 Q. In your experience, can you use that principle of
13 how a bomb affects the car containing it as opposed to the
14 other vehicles in trying to figure out where a bomb was
15 located if it was placed in a series of cars?

16 A. Yes, I can.

17 Q. Did there come a time during your work for the
18 FBI when you were assigned to the investigation of the blast
19 at the World Trade Center?

20 A. Yes, there was, on February 26, 1993.

21 Q. Can you tell the jury what you did to go about
22 investigating the site and cause of the explosion at the
23 World Trade Center.

24 A. On Saturday morning, on the 27th of February, I
25 had the opportunity to go into the basement of the World

1 Trade Center after the explosion had occurred. During about
2 a two-hour walk around through there, I had the opportunity
3 to form some initial opinions, and within the course of my
4 business, I look at not just one item but a collection of
5 many, many different things, damaged different kinds of
6 materials. I am looking for the seat of the explosion, I am
7 looking for the kind of twisting or bending of metals or
8 shattering of concrete, the size of the crater, the depth of
9 the crater.

10 In this particular case when I walked around, I
11 was able to determine that the seat of the explosion, ground
12 zero, so to put it, is at the B2 level, about 8 feet from
13 the south wall of Trade Tower 1, in the B2 parking area. At
14 that level, the crater was approximately 150 feet in
15 diameter. When I say it's a crater, that is what I consider
16 where there is nothing but a hole. Along some of the
17 different edges it had caved in a little bit more but when I
18 refer to the crater, it's actually where there is nothing
19 left.

20 On the level above, the B1 level, the hole, the
21 crater was about 96 feet in diameter. The level above B1 is
22 the floor of the Vista Hotel ballroom. That had a hole in
23 it about 26 feet in diameter. The ceiling above that had
24 not been breached, and that of course was the outside roof
25 of the Vista Hotel ballroom.

1 Down below right at the seat of the explosion,
2 there was no B3 and there was no B4 level. The B5 level, it
3 was a very large, high room that contained most of the air
4 conditioning and generator units for the World Trade Center
5 complex. Right directly underneath the blast, right next to
6 Trade Tower 1 south wall a hole was breached 4 foot by 8
7 foot, approximately.

8 Below that was the B6 level, which contained much
9 of the refrigerant for the air conditioning system for the
10 building. That was the bottom floor, nothing below it, and
11 that was not breached at all.

12 Also during this walk-through, I looked at some
13 things like the steel columns that were buried within
14 concrete block walls 8 feet from the seat of the blast, and
15 looked how they were twisted and bent as compared to torn.
16 I looked at vehicles that were damaged in a unique pattern
17 and the way they were thrown about within the parking space.
18 And I looked at some of the -- when you walked into a
19 hallway that was somewhat away, say 200 feet away from the
20 seat of the blast, you could see little hairline cracks in
21 the wall itself. When I looked at those cracks -- and if
22 you could imagine taking a deep breath and then letting it
23 out again, that's kind of what happened with this blast
24 pressure that I saw in the hallway area. The building took
25 a deep breath and it had hairline cracks and then relaxed

1 back in on itself on several points. From this walk-around
2 I was able to look at the damage and conclude that I was
3 looking at the damage from a explosive that had a velocity
4 of detonation around 14,000 feet per second.

5 Obviously, without being in there when the bomb
6 went off or seeing what kind of explosive it was, I have to
7 give a bracket on both sides of a couple thousand feet.
8 Once you understand what the velocity of detonation is, I am
9 able to decide what kind of explosives could fall within
10 that range. I felt that it could have been some of the
11 dynamites, it could have been some water gels or slurries.
12 Water gels and slurries, it is an explosive mixture that
13 uses a lot of nitrates. If you ever drive down the highway
14 you see the face of the rocks where there are drill marks.
15 It is a commercial gel that they use for rock blasting.
16 There are a lot of fertilizer-based explosives that fall
17 within that realm.

18 I called back to Washington and asked if there
19 were any commercial explosives in the range of about 12 to
20 1,500 pounds that had been stolen, because when I saw the
21 velocity of detonation I could now estimate what I could
22 assume the charge is. I figured it was somewhere between 12
23 and 14, 1,500 pounds. Once I realize that, I am starting
24 now to think how much does this explosive get in the
25 building? You couldn't carry it by hand and it was unlikely

1 that it was delivered by mail or UPS. If you think about
2 putting that much weight in a trunk of a sedan, your car is
3 going to ride like a motor boat. It is unlikely that you
4 will put it inside a car, someone might see it through the
5 window. So logically it had to be a truck or camper or van
6 of some type. We are also limited by the height of the
7 garage, around 6 foot 8 inches. So we were limited to
8 something like a panel van.

9 Q. Are you familiar with the term heaving bomb
10 versus shattering bomb?

11 A. Yes.

12 Q. Can you briefly explain to the jury the
13 difference between a heating bomb and a shattering bomb?

14 A. If you had a large boulder when you were building
15 a highway right near the middle of the road and you want to
16 move it, there is two ways that you could move it depending
17 on what equipment you are using. If you use the slower
18 velocity explosives and you wanted to just roll it off to
19 the side, that is what you would use, the slower velocity
20 explosives, somewhere around 10 or 12,000 feet per second.
21 If you wanted to crack it into gravel and move it with a
22 front end loader you would use a faster velocity explosive,
23 around 18 or 20,000 feet per second. So the pushing and
24 heaving are the slower explosives and the shattering and
25 cracking are the faster explosives.

1 Q. From your visual inspection of the World Trade
2 Center crater, could you determine whether or not a heaving
3 bomb versus a shattering bomb had been used?

4 A. It was in my opinion a heaving bomb.

5 Q. Did you see any examples of any items that had
6 been heaved within the crater site?

7 A. Yes. Within the wall that was the south wall of
8 the Trade Tower 1, roughly 8 feet from the explosive, there
9 was a steel beam in the form of an X that was a wind shear
10 brace for the Trade Tower 1. I saw that on the upper
11 left-hand corner as I looked at it into the south end, it
12 had been moved, and this piece of steel was actually two T
13 steel beams welded together and it was about 12 feet long.
14 Part of that steel beam was thrown roughly 39 feet back into
15 the Trade Tower room, and that steel beam, together both
16 pieces weigh about 1,400 pounds. So that was 700 pounds
17 thrown pretty fast. And it was close to the seat of the
18 explosion. That piece of steel was just broken at the welds
19 and it was twisted and bent. If it had been a high
20 explosive, a high velocity explosive, I would expect to see
21 that steel beam torn like you would tear a piece of paper,
22 and I did not see the tearing. It was more the pushing and
23 heaving.

24 Q. Your conclusion that it was a heaving bomb with a
25 velocity of approximately 14,000 feet per second, was that

1 drawn fairly early on in the process?

2 A. Within the first two hours that I did the
3 walk-through.

4 Q. As time went on, did you maintain contact with
5 the chemists who were working on this case as well?

6 A. Yes, I did.

7 Q. Did your consultation with the forensic chemists
8 change your conclusion about the type of explosive used to
9 cause the blast?

10 A. No, it did not.

11 Q. During the time that you were in New York, was
12 the crater being examined for various car parts?

13 A. Yes, it was.

14 Q. Were you being kept apprised of what car parts
15 were seized in which particular places?

16 A. Yes, car parts and other parts.

17 Q. Did you examine any particular car parts which
18 would give you a clue as to what vehicle contained the
19 actual bomb?

20 A. Yes, I did.

21 Q. Can you tell the jury what you did?

22 A. Late on Sunday -- the bombing occurred on Friday.
23 It was either late Sunday night or very early Monday
24 morning, two of the individuals searching for component
25 parts located the left rear frame rail of a vehicle on the

1 east side of the crater. When I examined that piece, it was
2 very obvious to me that that frame rail belonged to the
3 vehicle that held the explosive device. I can tell that by
4 the way it was bent from the inside. On that piece of frame
5 rail I noticed a dot matrix type of number that was stamped
6 into the frame.

7 Q. Did other people track down what the confidential
8 VIN number, what type of vehicle it pertained to?

9 MR. STAVIS: Objection, your Honor.

10 THE COURT: Overruled.

11 A. Yes, they did.

12 Q. What type of vehicle did you learn the
13 confidential VIN number pertained to?

14 A. I learned that it belonged to a Ford Econoline
15 F350 van that was owned -- it was yellow -- owned by Ryder
16 Rental agency.

17 Q. Did you see any other parts which appeared to
18 come from the blast vehicle which also had a VIN number on
19 it?

20 A. Yes, there was one other part of a confidential
21 VIN.

22 Q. Did it have the same VIN number to your
23 understanding?

24 A. Yes.

25 Q. Let me approach you with what has been premarked

1 as Government Exhibit W3028, I believe E, and W358-4, and
2 received in evidence on a prior occasion.

3 Looking at W3028E, the item on top, do you
4 recognize what that depicts?

5 A. Yes, I do. This is the left rear frame rail I
6 spoke about earlier.

7 Q. Thank you. If you could put that down and pick
8 up the other item, W358D -- if I could correct that for the
9 record, W358D -- and tell us if you recognize what that item
10 is a closeup of?

11 A. Yes, I do. This is a closeup of the dot matrix C
12 VIN.

13 THE COURT: The second dot matrix, you said?

14 THE WITNESS: Yes.

15 Q. Does dot matrix refer to how the confidential VIN
16 number is punched in on the metal?

17 A. Yes, that is correct.

18 Q. OK, we can put those down now. Thank you.

19 Are you familiar with a principle in bomb making
20 of gas enhancement?

21 A. Yes, I am.

22 Q. Can you briefly explain to the jury what gas
23 enhancement is?

24 A. Yes. Back during Vietnam and earlier, there was
25 research and development of a fuel air explosion, a FAE,

1 FAE. FAE principle is that if you drop this bomb containing
2 liquified carbonaceous fuel such as propane or acetylene,
3 something like that -- it's actually a two-phase explosion.
4 Two explosions actually occur. The first explosion as this
5 bomb is being dropped ruptures the container holding the
6 gas, and within a given period of time after the gas is
7 dispersed, a second explosion occurs. This second explosion
8 causes the gas to explode, and very rapidly you can clear an
9 area of jungle of about five acres. Gas enhancement used in
10 an improvised explosive system, I have had the opportunity
11 to work with that and I have seen on many occasions where a
12 bomber may try to duplicate and use gas enhancement in his
13 device. The reason behind it is, if you could look at a
14 graph of an explosion occurring, once that explosion occurs
15 you get a very rapid increase in pressure right to a certain
16 point, and then not quite as rapidly but very rapidly you
17 are going to get the downward decline and the dissipation of
18 gases. Right at the peak of that explosive force is when
19 that explosion does most of its pushing. It's either going
20 to topple a building or it's not, taking that deep breath,
21 like I said earlier.

22 The idea behind the gas enhancement is that once
23 you get that peak up there, that's pushing the building, and
24 then the gas holds that peak longer, supposedly going to
25 topple the building over.

1 When you have any kind of this fuel in a
2 container in with your main explosive charge of any large
3 quantity, you don't have that delay, the two small
4 explosions. They basically explode together. So gas
5 enhancement by placing cylinders in it, there is no
6 appreciable enhancement of the explosion, other than perhaps
7 a little more fireball and a little more fragmentation from
8 the container that the gas is in.

9 Q. You mentioned that there were military uses where
10 they can use gas enhancement to expand a bomb. In your
11 experience, how difficult is it to line up the gas
12 enhancement for a nonmilitary person?

13 A. I have been doing explosives for a lot of years
14 and I don't think I can do it.

15 Q. In your investigation of the World Trade Center
16 crater site, did you see any indications of whether or not
17 the bomb used contained any gas tanks?

18 A. Yes, I saw fragments of a high pressure gas
19 cylinder. This gas cylinder is much like the ones you see a
20 welder use. They are about that big around and stand
21 probably about this tall. They are uniform till they get to
22 a shoulder, and then you have the neck of the bottle, and we
23 did find fragments of high pressure gas tank.

24 Q. How can you tell whether or not the high pressure
25 gas tank was in the vehicle that contained the bomb as

1 opposed to being in a vehicle 20 feet away?

2 A. First, the blast damage was from the outside to
3 the inside of the tank. But it is also in a lot of very
4 small pieces. These high pressure tanks are really rugged,
5 of course, because they have to hold this high pressure, and
6 they were very small. Had they been farther away, they may
7 not have even broken into pieces. When I say farther away,
8 even if they were even only 100 feet from the blast they may
9 not have broken.

10 Q. What differing effects does a blast have on
11 pieces of metal very close as opposed to far away from it?

12 A. Of course the pieces are going to be smaller, but
13 with a high explosive the ends start to thin on the edges
14 almost like your knife blade would thin, and feathers in the
15 edges of the metal, almost looks like the edges of a feather
16 on the wing of a bird.

17 Q. You were discussing parts of a gas tank that you
18 examined as part of your work on the case and I would like
19 to approach you with what has been received in evidence as
20 Government Exhibit W448A. I will advise the court that a
21 copy of that is in the jurors' books, the thin W series
22 book.

23 THE COURT: If you have the W series book it
24 would be under tab W448A.

25 Q. Agent Williams, looking at Government's Exhibit

1 W448A, photograph of a piece of metal, can you tell us if
2 that is one of the parts you were discussing?

3 A. Yes, it is.

4 Q. Can you explain what conclusions you can draw
5 from the appearance and size of W448A?

6 A. This piece of metal is a collar. It is kind of
7 an identifier color to the owner of the tank. It is placed
8 over the neck and it rests on the shoulder. Probably as big
9 around as a large doughnut. By the appearance of this and
10 the size of it, I can see where there is thing on the edges
11 and there is also feathering on the edges. This suggests to
12 me that this was high explosive damage that was very, very
13 close to the seat of the explosion.

14 Q. When you said that the damage shows the blast was
15 from the outside into the tank, can you explain what you
16 mean by that?

17 A. That the tank itself was not, did not explode
18 from the inside, something caused these tanks to rupture,
19 and that something was the event of the explosion.

20 Q. Was that the only piece of a metal tank that you
21 saw during your investigation?

22 A. No, we found several pieces of the base of the
23 tank. They weighed somewhere in the neighborhood of about
24 12 pounds, and they were folded, almost like as if you
25 punched a piece of paper. Also found several parts of the

1 neck and shoulder of the devices. This color, that
2 indicates it belongs to AGL Welding Supply --

3 MR. PATEL: Objection.

4 THE COURT: Overruled.

5 A. The color indicates that it belongs to AGL
6 Welding Supply, and on each collar AGL is referenced twice.
7 On one side it is a raised molded AGL, and on the opposite
8 side it is a stamped impression, AGL. When going through
9 the crime scene, the crime scene searchers found three
10 raised molded AGL's and three stamped AGL's, indicating that
11 there were only three tanks present.

12 Q. Based on your forensic investigation, could you
13 determine actually which way the Ford Econoline van was
14 facing when the bomb went off?

15 A. Yes, I could, by the direction of where we
16 located the fragmentation of the vehicle itself.

17 Q. Just so we are crystal clear, where would you
18 find the front of the vehicle?

19 A. The vehicle was parked with the front end facing
20 west against the south wall. So I would find the front end
21 toward the West Street exit. The transmission would be
22 below, the rear axle and the left rear frame rail were found
23 on the east side of the crater. And the wheels and the
24 tires came off radially, left and right for the respective
25 left and right wheels.

1 Q. Based on your examination of the various metal
2 parts of the hydrogen tanks, where they were recovered,
3 could you determine where in the van the hydrogen tanks were
4 placed with respect to the explosive device?

5 A. Yes, I could.

6 Q. Can you tell us how you made that determination?

7 A. With the tanks inside of the vehicle, one would
8 assume that when the explosion occurred, if they were in the
9 very center of all the explosive and the explosive was all
10 around it, you would expect to find them just down in the
11 bottom. But most all of the pieces that didn't reflect off
12 of anything were found either directly below the bomb site
13 or in the tower room, in the Trade Tower 1 coming out of the
14 right side of the van, indicating to me that the three tanks
15 were placed inside the cargo van on the right side of the
16 vehicle.

17 Q. Let me approach you with a videotape that has
18 been marked as Government's Exhibit W865. Did you have
19 occasion to review a videotape of the inside of the World
20 Trade Center crater area taken after the blast occurred?

21 A. Yes, I did.

22 Q. Is that videotape a fair and accurate depiction
23 of what you saw in the World Trade Center blast crater area
24 during the period after February 26, 1993?

25 A. Yes, it is.

1 Q. Would that aid you in explaining to the jury how
2 you came to the conclusions about the type of explosive and
3 the nature of the explosive device?

4 A. Yes, it would.

5 MR. FITZGERALD: Your Honor, I would offer
6 Government's Exhibit W865.

7 MR. STAVIS: Object to the introduction of this
8 exhibit under Rule 403, your Honor.

9 THE COURT: Overruled. W865 is received.

10 (Government's Exhibit W865 was received in
11 evidence)

12 MR. FITZGERALD: Thank you, Judge. I would like
13 to play the video at this time.

14 Q. Agent Williams, if you can describe what you see,
15 and to help explain what happened, we can just pause for a
16 moment as you go along.

17 (Videotape played)

18 A. Right now you are in the Vista Hotel ballroom.
19 That is the 26-foot diameter hole. On the left side of your
20 screen you will see a little yellow ribbon tied to a rope.
21 That rope was dropped down through the center of the crater
22 itself. So you will see that on some of the other views.
23 You can see how the direction of the explosion had caused
24 the steel reinforcing rods to be frozen with the concrete
25 still in place.

1 Would you stop there, please. Where you see that
2 individual standing was where the part of the X frame from
3 the wind shear brace originally was. In that room that he
4 is standing in is in fact the tower room. From exactly
5 where he is standing roughly 8 feet to his rear is where the
6 vehicle was parked. As the video pans out, you will see
7 where that X beam was originally placed.

8 Go ahead, please.

9 You are on the B2 level there. That crater is
10 150 feet, about 150 feet diameter.

11 OK, stop there.

12 This vehicle is now down in the hole, in the
13 crater, but at the time of the explosion it was parked by
14 the explosive damage that I could see approximately 75 feet
15 from the seat of the explosion. You can see how this
16 vehicle has explosive damage coming in from the side you are
17 looking at, and if you could see the other side it would not
18 show that same type of damage.

19 Go ahead, please.

20 As it pans out, you will get a reference for the
21 size of the crater itself.

22 Pause.

23 The concrete pillar you see in front of you with
24 the red on the bottom, the part that looks like it is
25 swollen there was originally the concrete floor on the B2

1 level, and by looking at the way that the concrete floor and
2 steel had sheared away from that column, it gives me an
3 indication on where the seat of the explosion had
4 originated.

5 Go ahead, please.

6 You will look at a change machine there with
7 styrofoam coffee cups in there, and again this is going to
8 give you an indication of the size. You are looking at the
9 crater from the southwest edge.

10 In this view what we have done is taken you in a
11 basket and lowered you right in the center of the crater,
12 and we are going to spin you. Looking in this direction you
13 will see where you saw the last video being taken from
14 directly across that crater area. You are looking south.
15 This direction is the west side of the crater towards west
16 side and there -- freeze that, please -- you can see that
17 wind shear X. You are actually looking at the south wall of
18 Trade Tower 1. Where the X part is missing is the B2 level
19 in the tower. In the tower there is in fact a B3 and a B4
20 level but where you are standing, that is where the air
21 conditioning systems were located.

22 Go ahead, please.

23 Pause this, please.

24 You are standing on the opposite side of a
25 concrete block wall than where the explosive device had

1 occurred. This block wall is in fact part of the wall for
2 Trade Tower 1. The concrete blocks that you see tumbling
3 toward you are a result of the positive phase of the
4 explosion.

5 Continue, please.

6 As it pans to the right you will see how those
7 blocks were sucked back in towards the crater with the
8 negative phase of the explosion.

9 Directly across from that wall is a parking area.

10 Pause there, please.

11 These vehicles are around the corner and roughly
12 350 feet away from the seat of the explosion on the B2
13 level, and in many cases you can look at these vehicles even
14 if they were moved and tell which way they were facing
15 before the blast. The windshields on American made cars
16 have the safety glass on it, and much like shooting a
17 bullet, sometimes the bullet ricochets off the glass. That
18 is what the blast pressure did. It hit the windshield and
19 veered up into the roof and caused a V to be formed. If a
20 vehicle had its rear end facing the blast, the rear window
21 is not the safety glass that shatters into those wee, little
22 tiny pieces. So when the blast hits it, it shatters and
23 allows the blast pressure to come in and swells the roof of
24 the vehicle.

25 Continue, please.

1 This vehicle was in the process of exiting the
2 West Street ramp when the event occurred, and received most
3 of its explosive damage from the rear end, but because it
4 was so close to the blast, about 175 feet, the blast wave
5 just tore right through the roof end of it.

6 Pause.

7 If you look in the upper right-hand corner you
8 see two people walking, shining little white dots on them.
9 That is where the concrete block wall was and the cars that
10 you saw before.

11 Continue, please.

12 Pause.

13 They were the cars that you saw originally. To
14 the right of them is that concrete block wall. The camera
15 should pan back and show you the car that you just saw.

16 Continue, please.

17 The pipes on the right-hand side that you see are
18 roughly 6-inch diameter pipes holding fiber optics for NYNEX
19 telephone company, and that is the base of the -- this is
20 the car in front of the last one you just saw, actually just
21 about to leave the parking garage.

22 OK, pause there.

23 In order to give you a reference at what you are
24 looking at, you are almost looking east from the West Street
25 ramp, and as you are looking east you are looking toward

1 where the seat of the explosion occurred.

2 Continue, please.

3 OK, pause.

4 Again looking at these vehicles, you can tell
5 which direction the blast came from, because the damage came
6 from the outside to the inside. This video is taken right
7 at the base or right near the Liberty Street exit area,
8 which kind of shows a T toward the West Street exit ramp.

9 Continue, please.

10 Damage from the outside to the inside. That is
11 the ramp heading up toward Liberty Street. Right at that
12 site where they are walking they are roughly 250 feet away
13 from the blast. This is panning right to the dead center of
14 the crater looking east. This is on the south edge of the
15 crater itself, explosive damage from the outside to the
16 inside.

17 During the event that had taken place, almost all
18 of this damage that you see occurred from the time the bomb
19 exploded, in less than 2 seconds it was all done, including
20 rupturing many of the sewage lines for the -- pause that,
21 please. It ruptured many of the sewage lines and the fire
22 lines within the building, so we ended up having in the
23 neighborhood of 2 million gallons of raw human sewage and
24 water in the crime scene. So everything basically was
25 saturated.

1 Continue.

2 Pause that, please.

3 During the publicity of this bombing incident,
4 the media kept showing footage where the black smoke was
5 coming out of the Vista Hotel parking garage ramp. You are
6 actually looking down that ramp from the street exit. You
7 will see some heaving here, the pushing from up underneath,
8 almost like you would expect to find in an earthquake.

9 Continue, please.

10 That damage is roughly 500 feet away from the
11 bomb explosion. Again, that is the hole where part of that
12 wind shear brace was missing.

13 Pause.

14 If you look at the column on the right side of
15 the viewer, you will see where some chemical swabbings had
16 been taken and you can tell that there is some soot there.
17 The soot was very localized. These are the kind of things
18 that really indicate to me where the seat of the explosion
19 was.

20 Go ahead, please.

21 Q. Agent Williams, you mentioned at one point there
22 was damage done by the positive effect and then the negative
23 effect.

24 A. That is correct.

25 Q. Can you briefly explain to the jury what the

1 positive effect of the blast is and the negative effect?

2 A. The positive effect is when that explosion
3 occurs, it violently forces air away from the seat of the
4 explosion, and that continues to happen until the shock wave
5 and the blast pressure and all the explosive is consumed.
6 Then you have a very brief resting stage while it kind of
7 gets its head together. There is a vacuum created at the
8 seat of the explosion and that obviously has to fill. So
9 when the air is sucked back into the crater, that's the
10 negative phase.

11 Q. You described earlier how by estimating the type
12 of damage of a heaving bomb and the approximate velocity of
13 detonation you could then indicate the weight of the
14 explosive device. Did you then do anything to determine
15 what components may have been used to make the actual bomb
16 device?

17 A. I don't understand that question.

18 Q. Let me try it in English. Did they make you
19 aware of what chemicals were ordered to the Space Station
20 facility?

21 A. Yes, I was.

22 Q. And were you also shown what chemicals were
23 recovered from the Space Station facility?

24 A. Yes, I was.

25 Q. Were you also advised of what chemicals were

1 returned from the Space Station facility back to City
2 Chemical?

3 A. Yes, I was aware.

4 Q. Taking those chemicals that were ordered to the
5 Space Station and leaving out those that were recovered
6 later or those that were returned, the chemicals that are
7 not accounted for, did you make an analysis of whether or
8 not you could construct a bomb of that size and that type
9 with those chemicals?

10 A. Yes, I could.

11 Q. Can you tell the jury what type of bomb could
12 have been constructed from those chemicals?

13 A. A high explosive bomb consisting primarily of a
14 fertilizer-based explosive called urea nitrate, and an
15 initiator using a substance called lead azide, which is a
16 very sensitive primary explosive, and also within that Space
17 Station there were two 50-foot lengths of green hobby fuse.
18 Hobby fuse is that external burning fuse like you see on an
19 M80 firecracker. It is green and it is fine. That hobby
20 fuse was inserted in 50-foot lengths of tygon tubing. It is
21 a transparent hose kind of like the hose behind your washing
22 machine.

23 Q. Let me talk first about the initiator and then
24 about the main charge. Is it fair to say the initiator is
25 the jolt that gets the main charge to explode?

1 A. Yes, that is fair.

2 Q. From the materials that you saw were ordered and
3 delivered to the Space Station, you mentioned that lead
4 azide could have been manufactured.

5 A. That is correct.

6 Q. Can you tell us what components are needed, if
7 you know, to manufacture lead azide?

8 A. I believe you needed sodium azide and some source
9 of lead.

10 Q. Are you a chemist yourself?

11 A. No, I am not a chemist.

12 Q. Could you determine how much lead azide could
13 have been made from the materials that were ordered and not
14 returned?

15 A. Roughly two pounds. If you look at a detonator,
16 a blasting cap, lead azide is used to start that chain
17 going, and within a detonator there is such a very, very
18 fine amount, such a small amount of lead azide, for example,
19 if you just had a thimbleful of lead azide and I dropped it
20 on the floor in my car it would probably kick the doors off
21 and would definitely break all the windows.

22 Q. Lead azide, can you set that off with a match?

23 A. Yes, you can. It is very sensitive.

24 Q. And a hobby fuse, would that help to detonate
25 lead azide?

1 A. Yes, it would.

2 Q. In addition to the possibility of lead azide, did
3 you find any other devices that were recovered in the Space
4 Station which could have been used to initiate the main
5 charge?

6 A. There was a canister of, I believe it was a
7 one-pound canister of Hodgkin smokeless gunpowder.
8 Smokeless gunpowder is loaded into small arms ammunition.
9 But there was no gunpowder in the canister, there was
10 magnesium in the canister.

11 Q. What could someone have done with smokeless
12 gunpowder in order to try to initiate the main charge?

13 A. I will have to add a little bit in that too.
14 Also in the Space Station Storage we found quantities of
15 homemade nitroglycerin, a very sensitive explosive but not
16 sensitive enough that just a spark from the fuse would cause
17 it to explode. But if you did take that smokeless powder
18 and confine it in a pipe nipple with end caps and then
19 initiated that gunpowder, the confinement of the pipe would
20 allow a buildup of gas until the pipe actually ruptured, a
21 violent explosion. If that pipe was in a proximity to
22 nitroglycerin, it would initiate the nitroglycerin.

23 Q. If a smokeless powder pipe bomb initiated a
24 nitroglycerin, could that initiate a urea nitrate charge?

25 A. Yes, it would.

1 THE COURT: Mr. Fitzgerald, could you come to a
2 convenient break point in the next five minutes or so?

3 MR. FITZGERALD: Yes, Judge.

4 Q. With regard to the main charge, could the
5 chemicals that were ordered and not returned have made up a
6 12 to 1,500 pound urea nitrate charge?

7 A. Yes, they could have.

8 Q. Just two more questions with regard to the urea
9 nitrate. How common in your experience is it to find a urea
10 nitrate device as bomb?

11 A. After identifying urea nitrate as the explosive
12 in the storage area, I did some research and examined
13 through records roughly 72,000 explosive devices and
14 explosions that have occurred around the world, and in all
15 of those 72,000 cases, I found one other instance of urea
16 nitrate, and that instance was in, I believe --

17 COUNSEL: Objection.

18 THE COURT: Sustained.

19 Q. Is it fair to say that it has nothing to do with
20 this case?

21 A. That is correct.

22 Q. And the last question, if you have the formula
23 for urea nitrate, how hard or how easy is it to make a urea
24 nitrate device?

25 MR. STAVIS: Objection, speculative, your Honor.

1 THE COURT: Overruled.

2 A. I am not much of a cook but I could bake
3 brownies, and I had no difficulty following the instructions
4 to make urea nitrate.

5 (Continued on next page)

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1 MR. FITZGERALD: Nothing further.

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

6 (Jury excused)

7 THE COURT: I will ask everyone to remain seated
8 until the jurors leave, please.

9 (Witness excused)

10 THE COURT: Ms. Amsterdam, can I see you in the
11 back.

12 (Continued on next page)

13 (Pages 9451 through 9453 sealed)

14 (Continued on next page)

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1 (Recess)

2 (In open court; jury not present)

3 MR. FITZGERALD: There is one item I wanted to
4 take up before the witness joined the room.

5 THE COURT: There is one item that I wanted to
6 take up briefly before you take up your item. I received
7 from Ms. London's client a letter that he wrote while he was
8 sitting back there. You have seen it?

9 MS. LONDON: Yes, I have, your Honor.

10 THE COURT: It is moderately illuminating on the
11 reasons why he wanted to bring to court the materials that
12 he wanted to bring. Nonetheless the ruling stands. I am
13 told that he said he did not want to and would not sit back
14 there and preferred to go back to the MCC, and I told the
15 marshals in that event to take him back, and they have.

16 To the extent that there is anything in here
17 suggesting that he doesn't want you to participate, I will
18 take the burden off your shoulders and tell you that I am
19 directing you to proceed.

20 MS. LONDON: OK, Judge. I continue not to waive
21 his presence.

22 THE COURT: I understand that. What I am telling
23 you is that because he refused to come out here without
24 materials this morning, materials which he had not gotten
25 authorization to bring, and which had complicated the

1 procedure for him to bring without prearrangement, that his
2 refusal to come out here without those materials was
3 voluntarily absenting himself. That is my ruling, not
4 yours.

5 MS. AMSTERDAM: A minor matter, your Honor, I am
6 going to leave about quarter after 12. My client has
7 consented to have Mr. Lavine represent him for this
8 15-minute period.

9 THE COURT: Is that correct, Mr. Khallafalla?

10 DEFENDANT KHALLAFALLA: Yes.

11 MR. NOOTER: Your Honor, I wonder if sometime
12 before the end of the day I and some other counsel could
13 have a conference with you about the problems that some of
14 the defendants have had that led up to Mr. Elhassan's
15 problems. I don't know that we should talk about it in open
16 court.

17 THE COURT: That is right, we shouldn't, and I
18 need to talk to you about something and we will do it at the
19 end of the day.

20 MR. STAVIS: I have an application. Prior to the
21 introduction in evidence of Government's Exhibit 865 -- that
22 was the videotape of the devastation at the World Trade
23 Center -- I made an objection under Rule 403 which your
24 Honor overruled. Now that the witness has testified with
25 regard to that video and that the jury has seen the video

1 and seen in very graphic terms the devastation at the World
2 Trade Center, I believe that they have been irreparably
3 prejudiced by that, and for that reason I move for a
4 mistrial at this time.

5 THE COURT: Denied. Is there anybody else who
6 joins in that? Let me ask you this. Is there anybody who
7 does not join in that? Everybody joins. Everybody's motion
8 is denied.

9 MR. FITZGERALD: I have one matter that I
10 probably should ask Mr. Williams to step outside about.

11 THE COURT: Would you step down for a moment.
12 You have been overruled by Mr. Jacobs. In any event -- what
13 is it?

14 (Witness excused)

15 MR. FITZGERALD: I spoke to Mr. Jacobs before the
16 examination of Mr. Williams and told him that I would not
17 ask about the Ajaj manuals because of the continuing
18 objection that was put at the side bar yesterday to their
19 receipt in evidence. I think that has been changed. I
20 think Mr. Jacobs no longer objects to the receipt, and I
21 would ask to reopen my direct to ask about the manual.

22 MR. STAVIS: Your Honor, on behalf of Mr. Nosair,
23 we have an objection to those books. The books are not in
24 evidence, the bomb manuals that Mr. Fitzgerald just referred
25 to. I don't know what my cocounsel wish. I view those as

1 not having foundation and as also being prejudicial, and
2 under Rule 403.

3 THE COURT: Let's talk about the foundation
4 objection first. Is there testimony that they were seized
5 from Ajaj?

6 MR. FITZGERALD: These are the books that
7 Mr. Cozine says appear to be the books that he saw that day,
8 and yesterday the fingerprint examiner identified Mr. Yousef
9 and Mr. Ajaj's prints on one of the pages of one of the
10 books.

11 MR. PATEL: The testimony as I recall was that he
12 could not identify these books as being the books that he
13 seized --

14 THE COURT: Yes. On the other hand there is
15 fingerprint evidence that shows that he handled them. So
16 that kind of bypasses that problem.

17 Now let's talk about the 403 issue. This is a
18 bomb manual that Ajaj had?

19 MR. FITZGERALD: Yes, Judge, and I believe the
20 witness would testify that when he looked at the manuals and
21 a translation of the manuals, there was a formula contained
22 in the manuals for a urea nitrate device, among other items.

23 THE COURT: Since he has testified that we are
24 dealing with a urea nitrate device here -- Mr. Patel, you
25 look puzzled.

1 MS. STEWART: I hardly need to remind the court
2 that these books were in the custody of the U.S. Attorney
3 for the Eastern District from September '92 until the
4 arrests in the World Trade Center case, nor that Mr. Ajaj
5 was incarcerated during this entire period. So unless there
6 is a connection --

7 THE COURT: While you are reminding me of that,
8 can you also remind me of the fact that he came into the
9 country with Mr. Yousef.

10 MS. STEWART: On the same plane with Mr. Yousef.

11 THE COURT: Correct, with sequentially numbered
12 tickets, each carrying identification linked in some way to
13 the other. Mr. Patel.

14 MR. PATEL: Your Honor, I think to pick up with
15 where Miss Stewart left off, the point is that these books
16 that are about to be consulted by this witness were never
17 received by the people who built the World Trade Center
18 bomb. Mr. Yousef may have come in on the same plane --

19 THE COURT: His fingerprints were on there, too.

20 MR. PATEL: That is true, your Honor, but those
21 books were not available to the people who built the bomb.
22 The knowledge from some other source may be that Mr. Yousef
23 made them available, but these books were not.

24 THE COURT: They were obviously available to
25 Mr. Yousef at some point because his fingerprints were on

1 them. You mean they were not available as a manual at the
2 time he was working?

3 MR. PATEL: Exactly.

4 MR. McCARTHY: We did not bring our rule book
5 today either.

6 THE COURT: I don't always scurry to the book
7 when somebody says 403 or 801, but I know what they mean
8 because I have read the book.

9 MR. PATEL: That is true, your Honor, but we also
10 heard from this witness that this is only the second of
11 72,000 urea nitrate bombs.

12 THE COURT: And he also testified that if you can
13 make brownies, you can make it.

14 MR. PATEL: That is true but we make 14,000 403
15 objections a day here. Urea nitrate is a pretty unique
16 event.

17 THE COURT: How does that cut?

18 MR. PATEL: The recipe being in the Eastern
19 District means at least as to these books they didn't have
20 access to them when they were making this bomb.

21 THE COURT: But at least one of them had who did
22 the work and another one who didn't, another one who is
23 alleged to have done the work had access to them before.

24 MR. FITZGERALD: To complete the record, Judge, I
25 believe there was a tape recorded phone call from Ajaj in

1 prison in December 1992, I believe midDecember, that was
2 patched through and was tape recorded where he was telling
3 people that he was making efforts to get these matters back
4 from his attorney. So it is something that the
5 coconspirators had in mind to look at while they were
6 building the bombs.

7 THE COURT: Wait a second. Did they ever get it
8 back?

9 MR. FITZGERALD: I don't believe so. I believe
10 they were looking to get manuals. The point being they had
11 the urea nitrate formula available to them, they had seen
12 it, and I think the fair inference is that they were looking
13 to get more information on building bombs.

14 I don't think that undercuts the reason it should
15 come in. It shows these items were important to the
16 coconspirators at the time they were building the bombs.

17 MR. PATEL: I think it shows that they didn't
18 have this recipe down cold --

19 THE COURT: You can argue that and you can argue
20 exculpatory information. It certainly isn't prejudicial,
21 right?

22 MR. PATEL: I would argue that they should not be
23 admitted since they were not available to them.

24 THE COURT: You have argued that. I think the
25 uniqueness of the nature of the device plus the simplicity,

1 according to him, of the construction, plus the fact that we
2 have two alleged coconspirators with their fingerprints on
3 it gets it in. I am going to let that in.

4 MS. STEWART: May I also inquire of the
5 government whether or not this is the same book that they
6 claim there are Danish fingerprints on?

7 MR. FITZGERALD: Those five books are not. What
8 I would do is, at the end of the day when I can be more
9 specific, I will write a letter as to the nature of those
10 other exhibits. Those are of the 2,800 --

11 THE COURT: Wait a second. The short answer to
12 your question is no.

13 MS. STEWART: Because we have not gotten
14 discovery on that.

15 THE COURT: Let's get the jury and the witness.
16 (Witness resumed)

17 THE COURT: By the way, Ms. London, your client's
18 letter will be made a part of the record. I am going to
19 docket it, and you will get a copy.

20 (Jury present)

21 THE COURT: Mr. Fitzgerald.

22 MR. FITZGERALD: At this time, your Honor, the
23 government would renew its earlier offer of Government's
24 Exhibits W2781 through W2786.

25 THE COURT: Those are received over objection.

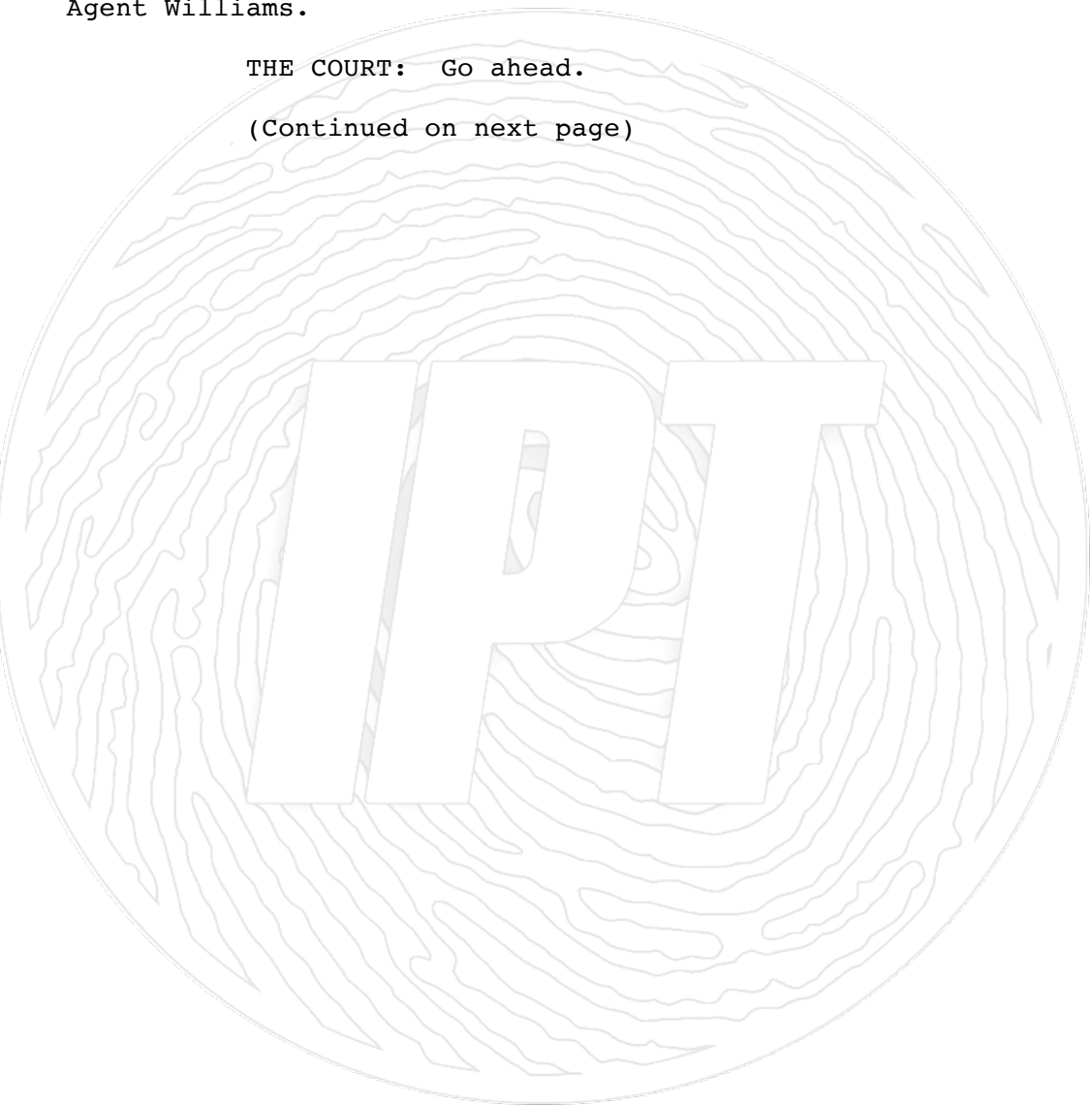
1 (Government's Exhibits W2781 through W2786 were
2 received in evidence)

3 MR. FITZGERALD: I would ask your Honor's
4 indulgence to ask a few questions as to those exhibits of
5 Agent Williams.

6 THE COURT: Go ahead.

7 (Continued on next page)

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1 BY MR. FITZGERALD:

2 Q. Agent Williams, I think I have placed five of
3 those six exhibits before you. That is Government's
4 Exhibits W2781 through W2786, but not W2782.

5 Have you had a chance to see those exhibits on a
6 prior occasion?

7 A. Yes, I have.

8 Q. Have you had a chance to see those exhibits and
9 translations from Arabic into English of the contents of
10 those books?

11 A. Yes, I have.

12 Q. In reviewing those exhibits, did you see any
13 discussion of urea nitrate?

14 A. Yes, I have.

15 Q. What did you see about urea nitrate in those
16 books?

17 A. It gave a general recipe on how to make urea
18 nitrate.

19 Q. Did you see any other bomb making recipes in
20 those books?

21 A. Yes, I did.

22 Q. Do you recall what other items there were recipes
23 provided for?

24 A. The manufacture, the recipes for nitroglycerin,
25 the recipes for lead azide, the recipes for making fuses and

1 fusing systems, and recipes for other high explosives.

2 MR. FITZGERALD: Thank you. I have nothing
3 further.

4 THE COURT: Cross, Mr. Serra representing Mr.
5 Alvarez. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. SERRA:

8 Q. Good afternoon, Agent Williams.

9 A. Good afternoon.

10 Q. Agent Williams, you testified on your direct
11 examination that what you observed at the World Trade Center
12 when you first went there on February 26 lead you to believe
13 that the type of explosive used there was a fertilizer
14 explosive, is that correct?

15 A. Yes, that is correct.

16 Q. And you went on to describe for Mr. Fitzgerald
17 urea nitrate, is that right?

18 A. That is correct.

19 Q. Another type of fertilizer explosive is called an
20 ANFO, is that correct?

21 A. Yes, that is correct.

22 Q. The effects that it produces would be similar to
23 those produced by a urea nitrate bomb, is that correct?

24 A. Yes, it would be similar.

25 Q. ANFO stands for ammonium nitrate fuel oil, is

1 that correct?

2 A. That is correct.

3 Q. An ANFO main charge in a bomb would require a
4 booster in order to explode, is that correct?

5 A. That is correct.

6 Q. In other words, if you put a fuse into an ANFO
7 main charge it is not going to explode, right?

8 A. That is right.

9 Q. Agent Williams, I am showing you Government's
10 Exhibit 853 for identification. Do you recognize that, sir?

11 A. Yes, I do.

12 Q. Is that in general the diagram of a bomb which
13 would require a booster charge in order to explode?

14 A. Yes, that is correct.

15 Q. Does this accurately illustrate, albeit in
16 somewhat simple form, the construction of such a bomb?

17 A. Yes.

18 MR. SERRA: Your Honor, I would offer
19 Government's Exhibit 853.

20 MR. FITZGERALD: No objection.

21 THE COURT: Is that preceded by W's?

22 MR. SERRA: Your Honor, it doesn't appear on the
23 exhibit, but if we wish to add it.

24 MR. FITZGERALD: Please.

25 MR. SERRA: The offer is Government's Exhibit

1 W853.

2 THE COURT: W853 is received. Go ahead.

3 (Government's Exhibit W853 was received in
4 evidence)

5 Q. Agent Williams, perhaps we can do this without an
6 easel.

7 THE COURT: Why don't we do it with an easel so
8 you don't have to stand here.

9 MR. SERRA: Fine. Perhaps if I move that back.

10 Q. Can you see Exhibit W853?

11 A. Yes, I can.

12 Q. Agent Williams, if we are using that exhibit,
13 Government's Exhibit 853, to describe an ANFO, the ammonium
14 nitrate fuel oil mix mixture would be part 3, the main
15 charge, is that correct?

16 A. That is correct.

17 Q. The booster charge could be one of a number of
18 things, is that right?

19 A. That is correct.

20 Q. You mentioned lead azide, for example, is that
21 right?

22 A. That is correct.

23 Q. Booster for ANFO could be lead azide, is that
24 right?

25 A. Yes.

1 Q. Also could be dynamite?

2 A. Right.

3 Q. It could be TNT?

4 A. Right.

5 Q. It could also be something called C4?

6 A. That is right.

7 Q. That would be the booster charge, is that right?

8 A. That is right.

9 Q. The detonator could also be one of many things,
10 is that right?

11 A. It has to have enough shock to cause the booster,
12 secondary charge, to function.

13 Q. If we are talking about lead azide for the
14 booster, that shock won't need to be very much for the
15 booster, would it?

16 A. Just a spark would be enough to go.

17 Q. A spark from an electric detonator would do it?

18 A. A spark from static electricity.

19 Q. Or clearly a fuse would do it, is that right?

20 A. Exactly.

21 Q. In other words, Agent Williams, the ANFO main
22 charge in an ANFO bomb is not detonator-sensitive, is that
23 correct?

24 A. That is correct.

25 Q. That means that a detonator alone, stage 1

1 without stage 2 is not going to blow the ANFO, is that
2 correct?

3 A. In most cases, that is correct.

4 Q. So, for example, I think I asked you, you could
5 not -- withdrawn.

6 You used a couple of times the word initiate, is
7 that right?

8 A. That is correct.

9 Q. Initiate basically is a scientist's word for blow
10 something up in this context, is that right?

11 A. Initiate means you begin something to occur.

12 Q. And in the context of explosives, you begin the
13 explosion to occur, correct?

14 A. Correct.

15 Q. So a fuse will not initiate an ANFO main charge,
16 is that right?

17 A. In most cases.

18 Q. For that matter, smokeless powder will not
19 initiate an ANFO main charge, is that correct?

20 A. In most cases.

21 Q. Even if you put smokeless powder into a pipe and
22 seal the ends and make a pipe bomb out of it, it is unlikely
23 that that pipe bomb made with smokeless powder will initiate
24 an ANFO main charge, isn't that right?

25 A. It is unlikely.

1 Q. Agent Williams, you have described a compound for
2 Mr. Fitzgerald known as urea nitrate, is that right?

3 A. That is correct.

4 Q. You have had occasion, Agent Williams, to make
5 urea nitrate, isn't that right?

6 A. That's right.

7 Q. You start with a plastic tub in a wash tub -- you
8 start with one tub in the middle of another tub, is that
9 right?

10 A. That is correct.

11 Q. And the reason for the outside tub is so that you
12 can put ice water into it to keep the mixture cool, is that
13 right?

14 A. That's how I do it, yes.

15 Q. In the middle tub, the tub inside, the first
16 thing you need to do is to dissolve urea in water, is that
17 right?

18 A. You don't have to but it is safer to do it that
19 way.

20 Q. That is the way you did, isn't that right?

21 A. That's correct.

22 Q. You used distilled water, isn't that correct?

23 A. That's correct.

24 Q. When the urea dissolves in the water it is a
25 clear liquid, is that right?

1 A. Pretty much, yes.

2 Q. Doesn't look that much different from dirty
3 water, is that right?

4 A. With distilled water and the pure urea, it's
5 pretty clean. I wouldn't say dirty water, no.

6 Q. In any event, urea will dissolve in water to form
7 a solution, is that correct?

8 A. Until the solution becomes saturated, then you
9 won't get any more dissolved.

10 THE COURT: Mr. Serra, can you try to slow down.
11 The interpreters are having a bit of difficulty.

12 MR. SERRA: I am sorry, your Honor.

13 Q. By saturated, you mean all of the solid material
14 that will dissolve in the liquid has already been put in, is
15 that what saturated means?

16 A. Yes.

17 Q. So after the solution is saturated, you put any
18 more urea in, it just settles to the bottom of the vessel,
19 correct?

20 A. That is correct.

21 Q. So after you dissolve the urea in water, you
22 start adding nitric acid, is that correct?

23 A. That is right.

24 Q. And you do that slowly, don't you?

25 A. Yes.

1 Q. The reason you do it slowly is because the
2 chemical reaction which will take place is something called
3 exothermic, is that correct?

4 A. That is correct.

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1 Q. That means that it releases heat, is that right?

2 A. That's right.

3 Q. And in the case of nitric acid being added to
4 urea dissolved in water, it will release a good deal of
5 heat, won't it?

6 A. That's correct.

7 Q. If you add too much nitric acid at once you are
8 risking the solution starting to bubble, is that right?

9 A. Sort of like a pot of spaghetti sauce on your
10 stove when it goes "bloop."

11 Q. When the pot of spaghetti sauce goes "bloop," it
12 gets spaghetti sauce on the walls, is that right?

13 A. That's right.

14 Q. It would be the same effect if you added nitric
15 acid too fast to the urea and water?

16 A. That's correct.

17 Q. And nitric acid is not a good thing to have going
18 "bloop," right?

19 A. That's correct.

20 Q. It is going to burn your skin; it will burn
21 clothing; it will burn carpets, right?

22 A. That's right.

23 Q. So you have to add nitric acid slowly and you
24 watch the temperature of the solution as you're doing it,
25 isn't that right?

1 A. That's right. And you should stir it also.

2 Q. And stir it to make sure it thoroughly mixes,
3 correct?

4 A. Correct.

5 Q. In fact, stirring it will increase the heat of
6 the reaction, isn't that right?

7 A. That's correct.

8 Q. So you have to stir it carefully?

9 A. Yes.

10 Q. This reaction puts out a tremendous odor, doesn't
11 it?

12 A. I know when I was making it I noticed initially
13 there was an odor, but after a period of time I couldn't
14 smell anything.

15 Q. That was because you lost your sense of smell,
16 isn't that right?

17 A. That's correct.

18 Q. It was such a noxious material to breathe that
19 you lost your sense of smell breathing it, correct?

20 A. That's correct.

21 Q. And as you are adding nitric acid to the urea
22 dissolved in water, something called a --

23 MR. SERRA: The court's indulgence for a second.

24 (Counsel conferred)

25 MR. SERRA: I am advised by my co-counsel I

1 should slow down also, your Honor.

2 THE COURT: Thank you for that assistance.

3 Q. I will start by doing this.

4 Agent Williams, as you are adding nitric acid to
5 the urea-water solution, something called a precipitate, a
6 white precipitate starts forming, is that correct?

7 A. Yes, it looks sort of like baking powder.

8 Q. A "precipitate" being the chemical word for a
9 solid substance which will form in a liquid and settle out
10 of the liquid, is that right?

11 A. That's correct.

12 Q. That white precipitate is urea nitrate, is that
13 correct?

14 A. That's correct.

15 Q. Then you have to find a way to get the urea
16 nitrate separate from the nitric acid that remains, is that
17 correct?

18 A. The nitric acid and the distilled water, yes.

19 Q. And the water. Thank you, sir.

20 The way that you did that was by using something
21 called the Buccner, B-U-C-C-N-E-R, funnel, is that right?

22 A. After we mixed it in the large trash can, so we
23 didn't have to put all that moisture through the funnel,
24 prior to putting this concoction into the Buccner funnel, we
25 used a bilge pump from a boat and pumped the excess, a good

1 bit of the excess moisture off.

2 Q. So, in effect, Agent Williams I skipped a step
3 there, you made it easier -- withdrawn.

4 You used a bilge pump so that you would not have
5 to filter as much solution, is that right?

6 A. That's correct.

7 Q. What you basically did is, the urea nitrate
8 settled to the bottom, precipitated out of the solution, is
9 that right?

10 A. That's correct.

11 Q. You used the bilge pump on top of the plastic
12 container to remove the excess nitric acid, is that right,
13 and water, is that right?

14 A. Yes.

15 Q. After you used the bilge pump, you were left with
16 a wet, pasty, white material, is that fair to say?

17 A. Yes, it is.

18 Q. At that step you used the Buccner funnel and
19 filter paper, is that correct?

20 A. That's correct.

21 Q. And a Buccner funnel, Agent Williams, is a large
22 normal funnel that has a vacuum port on the bottom, isn't
23 that right?

24 A. Well, we obtained very large ones. They look
25 like a large piece of Tupperware, really, and they stood

1 about this tall, and there was a bottom about this far from
2 the bottom with another hollow space.

3 THE COURT: Indicating initially about a foot
4 tall?

5 THE WITNESS: Oh, yes, I would say about a foot
6 tall. Ten inches to a foot.

7 A. And coming out of the bottom was a stem where you
8 would attach your vacuum hose. We take a large piece of
9 filter paper and lay that on that platform and then put this
10 wet mixture in, and when you supply a vacuum in there, it
11 sucks all that -- not all of it, it sucks a good bit of
12 moisture out of that material.

13 Q. When you say "apply a vacuum," what you would do
14 is you had a vacuum pump which you attached to the port on
15 the bottom of the funnel, is that right?

16 A. That's correct.

17 Q. The vacuum pump created suction which drew as
18 much of the moisture out of the urea nitrate as possible, is
19 that right?

20 A. That's right.

21 Q. Urea nitrate, by the way, under standard
22 conditions is a solid, is that right?

23 A. It's a crystal.

24 Q. Well, a crystal is a solid, isn't it?

25 A. Yes. I didn't want to give the impression that

1 it was a block of something.

2 Q. I meant solid as opposed to liquid.

3 A. Yes. That's correct.

4 Q. As you say, it is a crystal, it looks a lot like
5 baking soda, for example?

6 A. Yes.

7 Q. You use the Buccner funnel and get all the
8 moisture out and you are still left with a sort of pasty,
9 moist material, is that correct?

10 A. Yes, that's right.

11 Q. You need to dry it before it would be an
12 explosive, don't you?

13 A. Yes.

14 Q. You can dry it one of two ways. You can do
15 what's called air dry it, is that right?

16 A. That's right.

17 Q. That basically means just spread out and leave it
18 in the air to dry, correct?

19 A. That's correct.

20 Q. Or you can dry it in a low-heat oven, is that
21 right?

22 A. That's right.

23 Q. You probably shouldn't go above 100 to 150
24 degrees Fahrenheit, is that right?

25 A. That sounds reasonable.

1 Q. What you're left with after the drying is that
2 base, baking-soda-like white powder which is urea nitrate,
3 white crystal which is urea nitrate, is that right?

4 A. That's right.

5 Q. You still have to be somewhat careful with that
6 urea nitrate, don't you?

7 A. Yes. If any moisture gets on it, you are going
8 to start releasing nitric acid. It's not a tremendous
9 amount of nitric acid, but if you wipe your eyes, it would
10 burn a little bit.

11 Q. There was a reason why you used distilled water
12 for the reaction, wasn't there?

13 A. Yes.

14 Q. That reason is because ordinary tap water will
15 frequently contain measurable quantities of dissolved
16 metals, right?

17 A. That's correct.

18 Q. If this white powdery urea nitrate that you wind
19 up with comes in touch with tap water which has a high metal
20 content, you have more than just a little nitric acid coming
21 out, don't you?

22 A. You may get a reaction.

23 Q. You may get a violent reaction, is that right?

24 A. Yes, I have seen that happen.

25 Q. So once you have this white powder, as long you

1 keep it dry, you can bounce it up and down on the floor,
2 right, you can stomp on it, you can shoot a bullet into it,
3 and it is not going to explode, correct?

4 A. That's correct.

5 Q. But you do have to be careful with storage to
6 keep it away from moisture, particularly moisture with
7 dissolved metal, correct?

8 A. That's correct.

9 Q. Part of your direct testimony concerned something
10 you called gas enhancement, do you recall that?

11 A. Yes, I do.

12 Q. And I think that you used a military analogy of
13 something called a fuel air explosive, is that right?

14 A. That's right.

15 Q. That is actually a military bomb, isn't it, which
16 is used for various things, including clearing large
17 quantities of land, right?

18 A. That's correct.

19 Q. Now, as far as gas enhancement in -- withdrawn.
20 You described for the jury during your direct
21 examination the blast pressure wave that a bomb will
22 generate, is that right?

23 A. That's right.

24 Q. There comes a point in that blast pressure wave,
25 actually fairly soon, when the pressure wave starts to what

1 you call dissipate, is that right?

2 A. That's right.

3 Q. By "dissipate" it means it breaks up and it no
4 longer has the shock force that it does closer to the time
5 of the explosion, is that right?

6 A. Yes, it slows down, yes.

7 MR. SERRA: 855.

8 MR. FITZGERALD: W855.

9 MR. SERRA: Right.

10 Q. Agent Williams, showing you W855 for
11 identification, I ask you if you recognize that.

12 A. Yes, I do.

13 Q. That is in essence a chart of the effects of an
14 explosion as far as blast pressure wave is concerned as
15 against time, is that right?

16 A. It's a very simple depiction, yes.

17 Q. Other than a very simple one, it's reasonably
18 accurate, is that correct?

19 A. That's correct.

20 MR. SERRA: Your Honor, I believe the government
21 will stipulate, I would offer W855.

22 MR. FITZGERALD: Yes.

23 THE COURT: W855 is received. Go ahead.

24 (Government's Exhibit W855 for identification was
25 received in evidence)

1 Q. Agent Williams, there is a red line on that, on
2 W855, is that right?

3 A. That's correct.

4 Q. About a year ago, did you happen to draw that red
5 line?

6 A. I don't remember, but I believe I did.

7 Q. All right. What that indicates -- withdrawn.

8 MR. SERRA: Your Honor, I will keep my voice up,
9 but I need too stand here.

10 THE COURT: You can't keep your voice high enough
11 to do the job. You are going to have to use a microphone.

12 MR. SERRA: OK.

13 Q. Agent Williams, there is a point on that graph
14 that is labeled "peak pressure blast" or shock, is that
15 right?

16 A. That's right.

17 Q. Right at that point is where the blast pressure
18 wave will start to dissipate, is that correct?

19 A. That's correct.

20 Q. Up until that point, it's getting stronger, and
21 from that point on it's getting weaker, is that right?

22 A. That's right.

23 Q. What the red line on the graph indicates is the
24 theoretical effect of gas enhancement on a bomb, is that
25 right?

1 A. That's right.

2 Q. In other words, if you effectively can gas
3 enhance a bomb, and it will maintain the peak pressure for
4 longer than otherwise, is that right?

5 A. That's right.

6 Q. I take it, Agent Williams, that, whether it be
7 for improvised explosives or military explosives, the key
8 word in the discussion that we just had, at least a key word
9 is "effectively gas enhance."

10 It's difficult, isn't it?

11 A. In the method of just placing gas on a large
12 quantity of explosive, you can call it gas enhanced, but
13 it's really not.

14 Q. Why you say that is because in effect it doesn't
15 enhance the explosion very much, maybe a little extra flame,
16 that's about it, right?

17 A. That's right.

18 Q. OK. But the theory is what we just discussed, is
19 that correct?

20 A. That's right.

21 Q. The theory why someone, some misguided person who
22 might be making a bomb would try to gas enhance it is what
23 we just discussed, is that correct?

24 A. That's correct.

25 Q. You just testified right before I stood up to

1 having reviewed some manuals, is that right?

2 A. That's right.

3 Q. In addition to manuals, you reviewed some
4 videotapes, didn't you?

5 A. Yes, I did.

6 Q. Among other things, the manuals which you
7 reviewed you testified contained instructions for making
8 urea nitrate, is that right?

9 A. Yes.

10 Q. They also contained instructions for making
11 something called RDX, is that right?

12 A. That's right.

13 Q. RDX being a high-velocity high explosive?

14 A. Very --

15 Q. Very powerful, is that right?

16 A. That's right.

17 Q. They also contained instructions for making
18 something called C-4, is that right?

19 A. That's right.

20 Q. C-4 being a military plastic explosive, also very
21 powerful and high velocity, is that correct?

22 A. That's correct.

23 Q. They also contained instructions for making TNT,
24 is that correct?

25 A. That's correct.

- 1 Q. Trinitrofluorene, which is another high explosive,
2 correct?
- 3 A. That is TNT.
- 4 Q. Right. They also contained instructions for
5 making nitroglycerin, is that right?
- 6 A. That's right.
- 7 Q. By the way, nitroglycerin is very dangerous to
8 make, isn't it?
- 9 A. Yes, it is.
- 10 Q. Much more dangerous than making urea nitrate,
11 which is the process we just described, isn't that right?
- 12 A. Absolutely.
- 13 Q. And that is because nitroglycerin, you look at it
14 cross-eyed and it will blow up, right?
- 15 A. You don't even have to look at it. Sometimes it
16 just does.
- 17 Q. But the manuals which you reviewed did contain
18 instructions for some crazy person to make nitroglycerin, is
19 that right?
- 20 A. That's right. Crazy person --
- 21 Q. I withdraw the adjective.
- 22 A. OK.
- 23 Q. The manuals also contain instructions for making
24 something called mercury fulminate, is that correct?
- 25 A. That's correct.

1 Q. And mercury fulminate is a compound whose effects
2 are very similar to lead azide in that it is a very
3 sensitive primary explosive, is that correct?

4 A. That's correct.

5 Q. They also contained instructions for making
6 dynamite, is that right?

7 A. That's correct.

8 Q. They contained instructions for making pipe
9 bombs?

10 A. That's right.

11 Q. Booby traps?

12 A. Yes.

13 Q. Mines?

14 A. I believe so.

15 Q. Rockets?

16 A. I believe so.

17 Q. Mortars?

18 A. I believe so.

19 Q. Shaped charges?

20 A. Yes.

21 Q. A whole range of improvised munitions, is that
22 correct?

23 A. That's correct.

24 Q. The videotapes which you reviewed essentially
25 contained the same sort of things?

1 A. Yes. It depicted how to, physically showed how
2 to mix different chemicals.

3 Q. Yes. Live and in person how to make a bomb?

4 A. That's right.

5 Q. Agent Williams, do you know what a Jelenko
6 furnace is?

7 A. I have heard of them.

8 Q. In point of fact, during the course of your
9 investigation of this case you reviewed documents concerning
10 the purchase a Jelenko furnace, didn't you?

11 A. Yes, I did. It was either the documents or a
12 catalog or manual about one.

13 Q. A Jelenko furnace, Agent Williams, is a precision
14 instrument as far as stoves go, isn't that right?

15 A. That's what I understand.

16 Q. It is capable of raising -- it is capable of
17 raising substances to high temperatures very quickly, is
18 that right?

19 A. That's what I understand.

20 Q. It is also equipped with vacuum apparatus so that
21 if those things emit noxious fumes, you can vent them, is
22 that right?

23 A. I don't know that.

24 MR. SERRA: May I approach, your Honor.

25 THE COURT: Yes.

1 Q. Agent Williams, showing you what has been marked
2 for identification as Defendant Alvarez Exhibits B, C, and
3 D, do you recognize those, sir?

4 A. No.

5 Q. You don't?

6 A. No, I don't.

7 Q. There came a time, Agent Williams, where you and
8 other FBI bomb experts and chemists actually made a test
9 bomb, isn't that right?

10 A. That's correct.

11 Q. You did that at Egland Air Force Base in Florida?

12 MR. PATEL: Objection.

13 THE COURT: Overruled.

14 A. That's where we manufactured the urea nitrate.

15 Q. Well, you made more than just urea nitrate bomb,
16 you made an ANFO there, too, didn't you?

17 A. I did not.

18 Q. You sought permits, you wrote a letter to get
19 permission to use Egland Air Force Base to do this, is that
20 correct?

21 A. I don't know if I wrote a letter. I thought
22 primarily it was telephonic.

23 Q. You have a pile of materials there, Agent
24 Williams. Would you look beside you for 3584G. Hopefully
25 they are in alphabetical order.

1 A. G?

2 Q. G.

3 A. OK.

4 Q. You did write a letter, didn't you?

5 A. Yes, I did.

6 Q. Whoever you wrote that letter to, you told that
7 person that you needed facilities for an outdoor laboratory,
8 is that correct?

9 A. That's correct.

10 Q. You needed facilities for 30 people to view what
11 was going on, is that right?

12 A. That's right.

13 Q. You told them that you needed facilities for
14 ambulance service, is that correct?

15 A. That's correct.

16 Q. You told them that you needed trained emergency
17 medical people on the site, is that right?

18 A. That's right.

19 Q. You told them that you needed something called a
20 magazine to store the explosive after it was made, is that
21 right?

22 A. That's right.

23 Q. A magazine being a hardened containment building
24 so that if something bad happens it's only going to blow up
25 inside the building, right?

1 A. That's right.

2 Q. OK. In fact permission was granted for you to do
3 this, is that right, at Egland Air Force Base?

4 A. Yes. That's right.

5 Q. You went down to Florida with Dr. Fred
6 Whitehurst, is that right?

7 A. That's correct.

8 Q. Who is a Ph.D. forensic chemist from the FBI
9 laboratory, is that correct?

10 A. That's correct.

11 Q. You went with Stephen Burmeister, is that
12 correct?

13 A. That's correct.

14 Q. Who was another forensic chemist from the FBI
15 laboratory who may in fact be behind that door, is that
16 right?

17 A. That's right.

18 Q. You went with someone by the name of Dennis
19 Durden, D-U-R-D-E-N, is that correct?

20 A. That's correct.

21 Q. Agent Durden is -- withdrawn.

22 You are a supervising special agent, is that
23 correct?

24 A. That's correct.

25 Q. Is Agent Durden a Senior Special Agent or a

1 Supervising Special Agent?

2 A. By age, he's senior to me, but he's just a
3 special agent.

4 Q. But he is also a bomb technician, is that right?

5 A. That's correct.

6 Q. You went with Special Agent Ron Worth, is that
7 correct?

8 A. That's correct.

9 Q. He is another FBI bomb technician, is that
10 correct?

11 A. That's correct.

12 Q. You went with someone by the name of Brett Mills,
13 is that right?

14 A. That is right.

15 Q. Who is another FBI bomb technician and who was
16 your assistant I believe, is that right?

17 A. That is right.

18 Q. There was someone there by the name of Ignacio
19 Mensabel?

20 A. Ignacio Mendasabel.

21 Q. I think you will find somebody spelled it wrong
22 in the report. That was also a bomb technician from the
23 FBI, is that correct?

24 A. That's correct.

25 Q. The people that I just named were the ones who

1 made the urea nitrate which we were just talking about, is
2 that right?

3 A. Yes, all of those people.

4 Q. You also made an ANFO with 50-pound main charge
5 and one and a quarter pound booster, didn't you?

6 A. Not at Eglan.

7 Q. You did that somewhere else?

8 A. That's correct.

9 Q. Where was that?

10 A. The United States Marine Corps demolition range
11 at Quantico, Virginia.

12 Q. Quantico is where the FBI academy is, is that
13 right?

14 A. That's correct.

15 Q. Was it with the same people that you made the
16 ANFO?

17 A. No, no.

18 Q. Who was it that you made the ANFO with?

19 A. It was a demonstration that we conduct for --
20 "we" being the FBI Laboratory Explosives Unit.

21 Q. Excuse me, Agent.

22 I just asked you who was it who made it.

23 MR. FITZGERALD: Objection, scope.

24 A. The FBI Laboratory Explosives Unit made it.

25 THE COURT: Can we come to a convenient break

1 point.

2 MR. SERRA: Your Honor, I have another five
3 minutes and I will be through.

4 MR. FITZGERALD: Withdraw the objection.

5 THE COURT: OK.

6 Q. The question I believe, Agent Williams, was who
7 was it who made the ANFO?

8 A. Specifically mixed it?

9 Q. Yes.

10 A. I would have to guess and say it was Brett Mills
11 or --

12 THE COURT: Don't guess.

13 Q. Don't guess.

14 THE WITNESS: I don't know who.

15 Q. But, in any event, an ANFO was made, is that
16 correct?

17 A. That's correct.

18 Q. Being an ammonium nitrate fuel oil bomb, a
19 three-stage thing like in Government Exhibit 853, is that
20 right?

21 A. That's correct.

22 Q. Not the one that's there, the one that's behind
23 it?

24 A. OK.

25 Q. The bomb that was made was composed of 50 pounds

1 of ammonium nitrate fuel oil mixture, is that right?

2 A. It was probably closer to 40 pounds. We have a
3 50-pound limit on that range.

4 Q. OK. It was boosted by one-and-a-quarter-pounds,
5 maybe half a kilo of C-4, is that correct?

6 A. That's correct.

7 Q. C-4 being a military plastic explosive, is that
8 correct?

9 A. That's correct.

10 Q. Very powerful, very high velocity, correct?

11 A. That's correct.

12 Q. In fact, it was detonated, the first stage on the
13 charge, the detonator you used was a military electric
14 detonator, is that correct?

15 A. It was a military nonelectric detonator.

16 Q. A military detonator of some sort, is that
17 correct?

18 A. Yes.

19 Q. So for stages one and two of the ANFO that you
20 built, you used military materials, is that correct?

21 A. That's correct.

22 MR. SERRA: Thank you, your Honor.

23 I have no further questions.

24 THE COURT: All right. Ladies and gentlemen, we
25 are going to break now to for lunch. Please leave your

1 notes and other materials behind. Please don't discuss the
2 case, and we will see you this afternoon at or about 2.

3 Enjoy your lunch.

4 (Luncheon recess)

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1 A F T E R N O O N S E S S I O N

2 (Pages 9495 through 9499 were sealed by order of
3 the court)

4 (In open court)

5 THE COURT: Mr. Jacobs?

6 MR. JACOBS: Your Honor, Mr. Mohammed Saleh is
7 not feeling well. He would like to return to MCC, and he
8 will allow me to proceed in his absence.

9 THE COURT: Is that correct, Mr. Saleh?

10 DEFENDANT MOHAMMED SALEH: Yes.

11 THE COURT: Thank you. You are excused.

12 I hope you feel better.

13 (Defendant Mohammed Saleh was excused)

14 DAVID WILLIAMS, resumed.

15 (Jury present)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 JURORS: Good afternoon.

18 MR. STAVIS: I have just a few questions.

19 THE COURT: Mr. Stavis.

20 CROSS-EXAMINATION

21 BY MR. STAVIS:

22 Q. Good afternoon, Special Agent Williams.

23 A. Hello.

24 Q. You testified this morning concerning some
25 general properties of bombs and explosives, is that correct?

1 A. That's correct.

2 Q. You also testified concerning what you saw when
3 you went to the World Trade Center bomb site, correct?

4 A. That's correct.

5 Q. You testified concerning some specific properties
6 of the World Trade Center bomb, is that correct?

7 A. That's correct.

8 Q. All of these things you testified about at the
9 World Trade Center trial last year, is that correct?

10 A. That's correct.

11 Q. You told Mr. Fitzgerald this morning that you
12 earned a master of forensic science degree from George
13 Washington University, is that correct?

14 A. That's correct.

15 Q. Would you agree with me that George Washington
16 University is one of America's very finest universities?

17 A. I would believe so, yes.

18 Q. You earned your degree from that esteemed
19 university in 1981, is that correct?

20 A. Yes.

21 Q. During the time that you were doing your work
22 toward your degree at George Washington University, did you
23 ever have occasion to pass me on the campus?

24 A. I couldn't tell you that.

25 MR. STAVIS: I have no further questions, your

1 Honor.

2 THE COURT: Thank you. Anyone else, whether a
3 George Washington graduate or not?

4 Any redirect?

5 MR. FITZGERALD: Not on that, Judge.

6 No, thank you.

7 THE COURT: You are excused.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 MR. FITZGERALD: The government calls Steven
11 Burmeister.

12 STEVEN BURMEISTER,
13 called as a witness by the Government,
14 having been duly sworn, testified as follows:

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION

17 BY MR. FITZGERALD:

18 Q. Mr. Burmeister, could you tell the jury what you
19 do for a living.

20 A. I am employed as a special agent with the FBI and
21 I currently work at the FBI laboratory in Washington, D.C.
22 as a forensic chemist in the chemistry toxicology unit.

23 Q. If you could just briefly outline for us your
24 background, experience and training in forensic chemistry.

25 A. I have a bachelor of science degree from

1 Susquehanna University and a master's degree in chemistry
2 and forensic chemistry from the University of Pittsburgh.

3 After receiving my master's degree I worked for
4 the Allegheny County Crime Lab for a very short period and
5 then went to work for a private forensic and toxicology
6 laboratory where I conducted not only drug examinations, but
7 arson and explosives examinations for them.

8 After working for the private forensic
9 laboratory, I went to work for the FBI as a special agent,
10 where I worked in the field working white collar criminal
11 investigations until I entered the FBI laboratory.

12 Q. If I could interrupt you, you have testified
13 before, so I just wanted to summarize your specific training
14 in forensic chemistry.

15 A. OK.

16 Q. Sorry.

17 A. The background and training continued while I was
18 a special agent. I attended various conferences in the
19 American chemical societies. My training actually continued
20 on. Currently in the laboratory, I attend numerous
21 conferences and teach courses on explosives examination and
22 residue examination at the FBI Training Academy as well as
23 some conferences. I also conduct research now in the area
24 of explosive residue analysis.

25 Q. Did there come a time when you were assigned to

1 the investigation of the World Trade Center explosion?

2 A. Yes.

3 (Continued on next page)

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1 Q. Can you tell the jury roughly when that occurred?

2 A. It was February 26 -- let's see, the year would
3 have been 1993, was it? I believe that is correct.

4 Q. Can you tell the jury how you went about your
5 assignment?

6 A. My assignment, really, the day I was working in
7 the laboratory I was notified there was an incident at the
8 World Trade Center, myself and another individual was called
9 to go up to the World Trade Center to begin an examination
10 of the scene and assist Special Agent Dave Williams in his
11 activities up on the crime scene.

12 Q. Did there come a time when you began to focus on
13 the collection of residues from the bomb crater site?

14 A. Yes. The very evening of the blast we loaded up
15 some equipment in a truck and started to drive to New York
16 City, which we stayed over one night in New Jersey and then
17 actually Saturday morning went to the site and actually met
18 with Dave Williams on the site and developed basically a
19 strategy as to how we were going to analyze and work on that
20 particular scene.

21 Q. When did you actually begin to go down and
22 collect residue samples?

23 A. The first day, the Saturday was more or less a
24 site survey where we actually went down into the crater
25 area, looked at various angles and tried to see where would

1 be the best location to collect and process some of the
2 evidence. It wasn't until Sunday that the first actual team
3 of people went into the crater site to begin actual
4 collections of samples. The number of people was kept low
5 because the danger factor was still pretty high, and the
6 fact that the building was unstable, there were still
7 certain gases being released from vehicles and there was a
8 possibility of asbestos and other fibrous material in the
9 air. Gases.

10 Q. Can you just describe for the jury what
11 particular type of surfaces and location of surfaces are
12 good prospects for collecting residues to help determine the
13 type of device used to cause the explosion?

14 A. Our past experiences have shown that certain
15 materials are good substrates to capture and hold onto
16 explosives. For example, rubber material, metal surfaces,
17 glass are usually good surfaces to actually collect and hold
18 and maintain explosive material. So these are the things
19 that I would look for, areas that I would seek out to try to
20 collect a sample. For example, an automobile, the side
21 facing of an automobile would be a good surface to look for
22 for explosive residues. But the surface itself is such that
23 it should not have been exposed to high temperature but yet
24 close enough to the blast site in order for me to be able to
25 collect certain materials. When I say high temperatures,

1 high temperatures can cause explosives to break down,
2 degrade, and go away. So if you want to have a mix, good
3 surface but not something that has been exposed to too many
4 factors.

5 Q. During the time that you were down there looking
6 to collect residues, were people searching for other items
7 as well?

8 A. There was a crew, a limited number of people that
9 was actually in the initial crew that Sunday entry into the
10 building. There were people actually looking for some
11 fragments of a vehicle, any type of container or something
12 like that that would have housed this particular device, not
13 only looking for explosive residues but also looking for
14 parts and fragments. It was during that particular time
15 that a frame of a vehicle was actually recovered by the crew
16 and was taken out of the building on a stretcher and covered
17 over and taken to the New York City crime lab where it was
18 entered into evidence.

19 Q. Did there come a time when you were called away
20 from the collection of residue and directed to go to a
21 different location?

22 A. Yes.

23 Q. Can you tell the jury where you went?

24 A. I was processing evidence and I was called during
25 the evening to go to Liberty State Park where a group of

1 individuals were stationed there with a bomb containment
2 vessel, and an incident further went on from there.

3 Q. When you talk about a bomb containment vessel, is
4 that a bomb truck or a bomb pot?

5 A. It is sort of like a huge bucket that is on the
6 back of a trailer and it is a specially designed containment
7 vehicle that you can place explosives inside this huge
8 bucket, but yet if something were to be an explosive and
9 that explosive happened to go off inside this vessel, it is
10 designed to basically capture and hold it so that people on
11 the outside are not damaged or hurt, if in fact a device
12 were to go off while in this vessel. It is a safety
13 vehicle, really.

14 Q. Do you know how close Liberty State Park was to
15 the Space Station Storage facility at 69 Mallory Avenue?

16 A. It wasn't too far away.

17 Q. Was it your understanding that the items in that
18 bomb truck came from that facility?

19 A. That is what I was told at the time, yes.

20 Q. Were some items left behind in the Space Station
21 Storage facility?

22 A. Yes.

23 Q. To move through this quickly, did there come a
24 time when a decision was made to detonate the items in the
25 bomb truck?

1 A. Yes.

2 Q. Prior to setting those items off, did you take
3 any samples of the items contained in the bomb truck?

4 A. One of the reasons why these bottles were removed
5 out of the storage facility is that they were bottles that
6 were about this tall and had a fluid on the inside --

7 THE COURT: Indicating.

8 Q. They were about two feet tall?

9 A. I am sorry, it's about a foot and a half tall.
10 And contained within the bottles was an unknown fluid, and
11 there was no label on the bottle. For somebody like myself
12 or any type of explosive ordnance person, when he sees
13 something like this, an unlabeled bottle with an unknown
14 fluid inside, there is always a suspicion that there could
15 be something dangerous inside that bottle.

16 MR. PATEL: Objection.

17 THE COURT: Sustained and stricken.

18 Q. What samples did you take from the items in the
19 bomb containers?

20 A. These items, these bottles were placed inside the
21 bomb container and swabs were taken outside the lip area or
22 top portion of the bottles.

23 Q. Did you actually open the bottles themselves?

24 A. No.

25 Q. Could you just tell us the reason you didn't open

1 the bottles.

2 A. Along the idea if there is something suspicious
3 inside that bottle and it is excreted around the lip of that
4 bottle and the mere action of just opening the lid, twisting
5 that lid could be enough to set off the material that is
6 inside the bottle and causing a potential explosion or
7 whatever you might have.

8 Q. Did you later analyze the swabs you took from the
9 outside of the containers in the vessel?

10 A. Yes.

11 Q. Did you also analyze the samples of material kept
12 back at the Space Station at that time?

13 A. Yes.

14 Q. Between the two sets of items from the Space
15 Station, what chemicals did you determine to be present?

16 A. Some of these we have broken down to where we
17 actually confirmed what they were, and then we felt that
18 they were consistent with what was in that particular
19 vehicle, and without actually referring to a chart before me
20 I wouldn't be able to make the differentiation between
21 confirmed or consistent with, but I will try to give you the
22 list of items that I am familiar with.

23 Q. Why don't you stop for a moment. Can you explain
24 to the jury what the difference is between confirming that a
25 chemical is present and determining that your results are

1 consistent with that chemical being present?

2 A. We have a procedure in the FBI that for any
3 particular type of instrumental technique that is used, you
4 always have to follow it up with another type of
5 instrumental technique, to essentially confirm that original
6 instrumental technique. If we do not employ that second
7 technique, as far as we can go is to say that the material
8 is consistent with the information of the material that we
9 have at hand. You may actually have a bottle with a label
10 with a name on the outside, you have a material that looks
11 like the label it is supposed to be, but yet where you used
12 one instrumental technique, without confirming that
13 instrumental technique with another one, you can only say
14 that it is consistent with that material being in that
15 bottle. If we go ahead and do that secondary technique --
16 with the FBI we have actually gone to the point of saying we
17 identify this material to be whatever.

18 Q. Would looking at a chart of your analysis of the
19 Space Station aid you in determining which chemicals you
20 determined were present and which ones you only determined
21 were consistent with the residues being present?

22 A. That would speed things up.

23 Q. If I may approach you with what has been
24 premarked as Government's Exhibits W839 through W841. If I
25 could just ask you, if you need to refer to a chart just to

1 state that for the record so we know you are looking at a
2 chart and identify the chart number.

3 Could you tell us which of those these charts,
4 between W839, 840 and 841 aid you in recalling the results
5 of your analysis of the residues from the Space Station
6 facility.

7 A. It will be Government's Exhibit 839 that will
8 assist me in this examination.

9 Q. If you can tell us which chemicals you determined
10 to be present or to detect residues consistent with their
11 presence on the various items at the Space Station facility.

12 A. There was a bottle of sodium azide. We felt that
13 was consistent with the presence of sodium azide. There was
14 a bottle of sodium cyanide which we felt was consistent with
15 the presence of sodium cyanide. There were two bottles
16 consistent with the presence of methenamine. Methenamine is
17 a precursor material for the production of an explosive
18 called RDX.

19 Q. Is RDX a plastic explosive component?

20 A. It is a component used in plastic explosives. It
21 is also used in things like blasting caps.

22 Q. When you say a precursor chemical, is that a
23 chemical you create along the way to get to the RDX?

24 A. Yes. It would be one of those components that
25 you would use in a recipe to produce an end product.

1 Q. You can continue with your other results.

2 A. There was a bottle that was labeled smokeless
3 powder, Hodgkins smokeless powder, but inside of that bottle
4 was magnesium powder, and that was identified to be
5 magnesium powder. There was a bottle consistent with the
6 presence of aniline. There was a 50-pound bag that was
7 consistent with the presence of ammonium nitrate. There
8 were five plastic funnels and a residue was on the funnels.
9 The residue was consistent with the presence of urea
10 nitrate. There was a 100 pound container that was
11 consistent with the presence of urea. There was a blue
12 trash bucket with a lid where the residue examination on
13 that bucket identified the presence of urea nitrate. There
14 was also a black plastic barrel where the residue inside the
15 plastic barrel was consistent with the presence of sulfuric
16 acid. There were eight glass bottles that had one of the
17 bottles was identified that contained nitric acid. The six
18 other bottles were consistent with the presence of nitric
19 acid. There were also five bottles labeled nitric acid, and
20 those bottles, three of those bottles were identified to be
21 nitric acid and two were consistent with the presence of
22 nitric acid. There was also a container of potassium
23 nitrate which was consistent for the presence of potassium
24 nitrate. There was also a transfer pump, a tube with a
25 flexible tube coming off of it. There was residue removed

1 from that and the residue was identified to be urea nitrate.
2 There were also two vials found at the site. One vial
3 contained a material that was consistent with the presence
4 of potassium chlorate. The other vial contained a dual
5 mixture of two different items. There was a mixture of
6 flattened balled smokeless powder, and also magnesium
7 powder. Both of those articles were identified to be the
8 contents I just mentioned. There was also a cardboard tube
9 that had on the exterior of the cardboard duct tape, and
10 inside the tube was a blended mixture of ammonium nitrate
11 and nitroglycerin. A blend of this type signals to me it is
12 an ammonium-based, nitrate-based dynamite. It is a mixture
13 used commercially.

14 Again the bottles that were removed from the
15 storage facility that were eventually rendered safe, there
16 were seven of those bottles. There were four of those
17 bottles that had residues that were consistent with the
18 presence of RDX. One of those bottles we identified the
19 presence of nitroglycerin and another bottle that was
20 consistent with the presence of nitroglycerin.

21 Q. You mentioned that there was some balled
22 smokeless powder mixed with magnesium.

23 A. Yes.

24 Q. Are you aware if there are any smokeless powders
25 commercially available that have magnesium mixed with them?

1 A. I am not aware of that being a commercial
2 product, no.

3 Q. Did there come a time when you went to another
4 location besides Liberty State Park to collect some
5 residues?

6 A. Actually, while I was out at Liberty State Park I
7 was called away to go to another site to actually examine
8 the site and review the material that was actually present
9 at that site, and it was to go to 40 Pamrapo in Jersey City.

10 Q. Can you tell us what materials you saw and
11 examined at the location called 40 Pamrapo?

12 A. May I refer to the list on that as well?

13 Q. If you could just identify the number, Government
14 Exhibit W?

15 A. It is Government's Exhibit 840. There were
16 various items that were actually collected and removed from
17 this particular site, and just to go down the list of the
18 different items that were removed and what was found at
19 those sites, we took -- let me describe what it was like
20 initially when I went into the apartment. The evidence
21 collection people had already arrived and had processed the
22 particular scene. Various items were collected prior to me
23 actually being there. But I visually observed entering into
24 the apartment, there was one room that there were signs and
25 signals to me that there was some sort of acid-type reaction

1 going on in that particular room. The door handles had
2 corrosion, the walls had some corrosion on them, the
3 ventilators were corroded, and there was a material that was
4 deposited on the ceiling, which we will get into in a
5 minute.

6 Q. Can you just tell us which items you examined
7 from within the apartment and what results you drew.

8 A. Yes. There was a sample of a rug that was taken.
9 We identified nitroglycerin on the rug. There was a tire
10 that was in the bathroom, and inside the interior portion of
11 the tire on the bottom was a crystalline material. That
12 substance was analyzed and identified to be urea nitrate.
13 Inside one of the rooms on the ceiling was a splashed up
14 area onto the ceiling. Scrapings were taken of that ceiling
15 and a microscopic examination was conducted of those
16 particles that were removed from the ceiling. We had to
17 differentiate the little particles of paint but there was
18 white to clear crystalline material that was actually set
19 aside and identified to be urea nitrate. There was a piece
20 of broken glass. That glass was analyzed and aluminum
21 powder was identified on that surface. There were various
22 items of clothing that were taken from the particular
23 residence. There were traces of nitroglycerin that were
24 consistent with the presence of nitroglycerin on various
25 pieces of clothing. One brown jacket actually had aluminum

1 powder identified on the jacket. There was a plastic tubing
2 that was found in the apartment. The interior surface of
3 that plastic tubing was extracted and analyzed, and
4 nitroglycerin was identified in that plastic tubing. There
5 was a dusty rag that was found, and it was analyzed and it
6 was consistent for the presence of nitroglycerin. There was
7 also a plastic blue -- I am sorry, it was a gray plastic
8 bucket that we analyzed the residues on the interior surface
9 of that bucket and it was consistent for the presence of
10 nitroglycerin, as well as consistent for the presence of
11 urea nitrate. There was also a lid that appeared to go with
12 that bucket. Residues taken from that lid were consistent
13 with the presence of nitroglycerin, and it was also
14 consistent for the presence of a material called ammonium
15 picrate. Ammonium picrate is considered a primary explosive
16 and is used as a sort of shock-sensitive type material.
17 Finally, there were some newspapers that were removed from
18 the apartment and nitroglycerin was identified on those
19 pieces of newspaper.

20 Q. Finally I will just ask you about one other item.
21 Did you have occasion to examine a scale from the apartment
22 at 34 Kensington Avenue?

23 A. Yes.

24 Q. Did you make a chemical residue analysis of the
25 component to the scale?

1 A. Yes.

2 Q. What conclusions did you draw from that analysis?

3 A. There were actually two portions of the scale.

4 There was a top portion and a lower portion. The scale can
5 come apart, actually. The top can come apart from the
6 bottom part. There was residue analyzed on both the parts
7 and it was consistent for the presence of urea nitrate on
8 both the top and the bottom, as well as the presence of
9 aluminum powder was identified on both the top and the
10 bottom.

11 Q. You mentioned on a number of different items that
12 urea nitrate was detected or on some occasions the items
13 were consistent with the presence of urea nitrate. Can you
14 tell the jury how common an occurrence it is to find a
15 particle of urea nitrate?

16 A. Urea nitrate, I would almost have to say it is
17 probably one of the most rarest or the rarest molecule known
18 to man because it is not found too often, mainly because of
19 its instability in our common life. It has a tendency to
20 want to break down very easily. For a time urea nitrate was
21 used as an explosive commercially. The Australians used it.
22 There was a company ICI in Australia that used it in some of
23 their dynamites but they got away from it because it started
24 to break down in their dynamites because that is not a good
25 idea because they don't want their products to go away on

1 them. But it is unusual because it takes on water and
2 starts to break down.

3 Q. What happens to urea nitrate when it is exposed
4 to moisture?

5 A. When it is exposed to moisture it has a tendency
6 again to want to break down and it reverts back to its
7 original components which are urea and nitric acid, which
8 are the two things used to manufacture it.

9 Q. From your visual inspection of 40 Pamrapo and
10 your chemical analysis of various items in there, did you
11 draw a conclusion as to what activity was taking place
12 inside 40 Pamrapo?

13 A. It is my belief that 40 Pamrapo --

14 MR. JACOBS: Objection.

15 THE COURT: The answer to the question is yes.
16 You drew a conclusion?

17 THE WITNESS: Yes.

18 Q. Your Honor, I would now ask him to tell us what
19 that conclusion was.

20 THE COURT: That objection is overruled.

21 Q. Can you tell the jury what you concluded from
22 your analysis of the chemical residues of 40 Pamrapo and
23 your visual inspection of the same premises?

24 A. My conclusion from examining the interior of that
25 apartment, in particular one particular room where the door

1 handles were corroded, to me that looked like an acid type
2 burn. There were marks on the walls that appeared to be
3 corrosion. The ventilators on the wall appeared to be
4 corroded. There was also a splashed area on the ceiling.
5 To me, I would conclude that there was some sort of mixing
6 or chemical process going on inside that apartment.

7 Q. I forgot to ask you about one particular item.
8 Did you have occasion to examine a shoe from the residence
9 of Mahmud Abouhalima at 1811 Colonial Gardens?

10 A. Yes.

11 Q. Did you draw a conclusion as to what had been in
12 contact with those shoes?

13 A. Yes.

14 Q. Can you tell us what that conclusion was?

15 A. I examined the shoe. There were cratering areas
16 located on the shoe. An examination of the interior portion
17 of that cratered area, that was analyzed and compared to
18 other surfaces of the shoe where cratering did not exist.
19 There were high levels of sulfates in those craters. Based
20 on the visual appearance of those craters and the chemical
21 analysis, it would be consistent that it was a sulfuric acid
22 type burn on that shoe.

23 Q. Let me ask you some questions about your analysis
24 of the residues contained in the World Trade Center. Can
25 you tell the jury what residues, or more particularly what

1 molecules and ions you would expect to find at a blast scene
2 if urea nitrate was used?

3 A. Urea nitrate, when it does explode, there are
4 chemicals that are produced such as ammonia ions, nitrate
5 ions. Urea nitrate will still be there and then it breaks
6 down into urea and also nitric acid.

7 Q. In your analysis of the residues of the World
8 Trade Center, did you find those particular ions?

9 A. Various swabbings and pieces of material were
10 analyzed, and we did find those components.

11 Q. More particularly, did you find urea nitrate
12 itself in an identifiable, confirmable form?

13 A. No.

14 Q. Are there any technical limits on what you can do
15 in confirming urea nitrate at the present time?

16 A. There is no known, to me and to the FBI no
17 technique known to actually confirm the presence of urea
18 nitrate in a residue situation.

19 Q. Can you confirm urea nitrate when it is in its
20 crystal form?

21 A. Yes. If we can see the material, there are
22 techniques out there to actually confirm the presence of
23 that material, yes.

24 Q. But if it is reduced to residue form you cannot
25 confirm its presence?

1 A. That is correct, yes.

2 Q. But with regard to the ammonium items, the
3 nitrate, the urea and the nitric acid, did you find those
4 residues at the World Trade Center site?

5 A. Yes, we found those.

6 Q. Having found those residues, does that allow you
7 to make a scientific conclusion with a reasonable certainty
8 as to the actual nature of the device used to blow up the
9 World Trade Center?

10 A. No conclusion could be made based on that
11 information, no.

12 Q. Can you explain to the jury why it is that you
13 cannot draw a conclusion even though you found those ions
14 present?

15 A. Finding those materials present, one of the
16 things that you have to do in order to extrapolate what type
17 of device it was, first you must look at the background or
18 environment in which that particular device went off, and
19 that is a difficult period because you try to derive the
20 normal baseline of materials. In the particular case of the
21 World Trade Center, there were a lot of things working
22 against that particular examination. For example, there
23 were still spot fires going on inside that building and
24 firefighters were going in with ammonium phosphate fire
25 extinguishers, producing ammonium into the garage. There

1 were also sewage pipes that had ruptured inside that
2 building and they were spraying sewage all around. One of
3 the components of sewage of course is urine, and urine
4 contains urea. That was a known positive possibility. The
5 other area, the garage itself over time collects nitrates
6 out of pollution, from the car exhaust. Another thing
7 working against us, the fact that during wintertime -- this
8 was in February -- the deicing process from the garage and
9 also the entrances into the garage, the Port Authority was
10 putting down urea as a source of deicing agent. I am sorry,
11 there is one additional one. Due to the fires in the
12 garage, firefighters were putting out fires with water, so
13 it was washing things down as well.

14 Q. Was there any way to tell, when you find urea,
15 whether it came from a urea nitrate device as opposed to a
16 deicer, once you are looking at residues?

17 A. No.

18 Q. Let me turn your attention to 65 Baldwin Avenue.
19 Did you have occasion to examine a refrigerator from 65
20 Baldwin Avenue?

21 A. Yes.

22 Q. Did you take some chemical swabbings from the
23 interior of that refrigerator?

24 A. Yes.

25 Q. Can you tell the jury what you concluded from

1 your analysis of the interior swabbing from the refrigerator
2 at 65 Baldwin Avenue?

3 A. I examined the swabs taken of the interior
4 portion of that refrigerator and identified the presence of
5 nitroglycerin.

6 Q. From your experience as a forensic chemist, would
7 you recommend that people place nitroglycerin in a
8 refrigerator or freezer?

9 MR. PATEL: Objection.

10 THE COURT: Sustained.

11 Q. Can you tell us what chemical properties
12 nitroglycerin -- let me withdraw that. Is nitroglycerin is
13 a stable compound as it goes through the freezing process?

14 A. No.

15 Q. Can you explain to the jury what characteristics
16 it has while it is being frozen or while it is being thawed?

17 A. Nitroglycerin becomes increasingly dangerous as
18 you raise the temperature and lower the temperature. As you
19 lower the temperature and place it into a freezing or solid
20 state, it begins to crystallize. If we have watched how an
21 ice cube starts to freeze, it forms little tiny crystals and
22 eventually becomes a solid. These little tiny crystals as
23 they are forming, if there is any type of breakage or
24 shifting of that mass of crystals, that friction that is
25 caused between those two crystals coming in contact with one

1 another can be enough to set it off. So that freezing
2 process is one which is extremely dangerous, and under
3 controlled and experienced conditions it can be dangerous.

4 MR. FITZGERALD: If I could have one moment,
5 Judge.

6 If I have nothing further, Judge.

7 THE COURT: Cross? Ms. London, representing
8 Mr. Elhassan. Go ahead.

9 CROSS-EXAMINATION

10 BY MS. LONDON:

11 Q. Good afternoon, Agent Burmeister. It would be
12 fair to say, Agent Burmeister, would it not, that you have
13 performed a lot of analyses on a lot of specimens with
14 respect to the World Trade Center investigation?

15 A. Yes.

16 Q. And in fact you wrote a lot of reports based on
17 those investigations, isn't that right?

18 A. Yes.

19 Q. Let me just organize them.

20 When you conducted your investigation of the
21 World Trade Center explosion, Agent Burmeister, you were not
22 the primary examiner on your team, were you?

23 A. For residue collection I was the primary examiner
24 in the collection process on the scene, yes.

25 Q. Did you have to report to anybody with respect to

1 your work on that scene?

2 A. The way the process is laid out for the
3 particular case of the World Trade Center bombing, there
4 were two distinct areas that were ongoing with the
5 investigation. There was an area of actually trying to
6 examine what type of device, what was the mechanical makeup,
7 what was the timing device, what was the initiation source.
8 That was an area where Dave Williams was working. My
9 particular area and one in which I was in charge of was the
10 actual residue analysis and collection and finding out what
11 in fact were the residues there at the scene and determining
12 what that explosive would have been. I was in front charge
13 of that.

14 Q. Did you have a Dr. Whitehurst who worked with you
15 on that investigation or under you in that investigation?

16 A. Dr. Whitehurst and I went to the crime scene
17 together that particular Friday night. My expertise at that
18 point was, I was in charge of the field collection of
19 residues. We actually set up at the NYPD or New York City
20 Crime Laboratory, we set up a mobile laboratory right in
21 their facility. We brought up instruments and things like
22 that to do on-site testing. Dr. Whitehurst was in charge of
23 that on-site laboratory.

24 Q. Would it be fair to say that the kind of testing
25 that you did is sophisticated chemical analysis?

1 A. I would say so, yes.

2 Q. You did analysis called spectrographic analysis?

3 A. That is a very general term.

4 Q. You did infrared spect --

5 A. OK, yes. It is infrared spectroscopy. But

6 officially the instrument used is FTIR, or Fourier

7 Transform Infrared Spectroscopy.

8 Q. And you also conducted x-ray exams on certain
9 items, is that correct?

10 A. Yes. There is x-ray techniques that were used.

11 Q. Could you use techniques called chromatography?

12 A. Yes.

13 Q. You used color testing on various particles?

14 A. I am sorry. Color testing?

15 Q. Color testing.

16 A. Color?

17 Q. Color, C-O-L-O-R, color.

18 A. That is part of a visual examination of the
19 material. If you are doing a microscopic examination,
20 certainly color comes into play.

21 Q. You testified here today about the results
22 obtained from your analysis of items at the Space Station
23 Storage, 69 Mallory Avenue.

24 A. Yes.

25 Q. I believe you are familiar with Government's

1 Exhibit W839A.

2 A. I have a copy of it up here.

3 MR. FITZGERALD: I will stipulate that that is an
4 accurate blow-up of that copy, if that helps.

5 MS. LONDON: Your Honor, I would like to offer
6 this into evidence.

7 MR. FITZGERALD: No objection.

8 THE COURT: This being which exhibit?

9 MS. LONDON: This being 839A, which is a blow-up
10 of 839.

11 THE COURT: Let's proceed. You can use that. Do
12 you want to set that up on a tripod or two tripods.

13 Government's Exhibit W839A received in evidence)

14 MS. LONDON: Your Honor, I don't know if the jury
15 can actually see what is written there. We may have to move
16 to closer for them.

17 THE COURT: Would you, please.

18 Q. I believe, Mr. Burmeister, that you have a
19 smaller version of 839.

20 A. Yes.

21 Q. The first item on that chart, Government's
22 Exhibit number W45, your test results showed that a
23 substance was found consistent with the presence of sodium
24 azide. Could you explain to the jury how sodium azide can
25 be used in the manufacture of an explosive?

1 A. Sodium azide can be used as a precursor for
2 making another type of azide. If you have a lead salt, for
3 example, if you have lead nitrate, you can put the two in a
4 solution together, react it and form lead azide. Lead azide
5 is considered a primary explosive, a very shock-sensitive
6 material. That is just one of the many azides you can form.
7 You can add different types of metals and form various types
8 of azides.

9 Q. In other words, when you say sodium azide is a
10 precursor, is it your testimony that sodium azide when mixed
11 with another substance such as lead nitrate combines to form
12 what you described as lead azide, for example?

13 A. Sodium azide as it is right here is a sensitive
14 material. Just on the scale of sensitivity, it is probably
15 on the lower end of the scale. But as you add different
16 types of metals with this particular azide, it moves up the
17 scale into sensitivity level.

18 Q. The next item, which is W46, bottles labeled
19 sodium cyanide were tested and found to be consistent with
20 the presence of sodium cyanide, correct?

21 A. Yes.

22 Q. Can you explain to the jury the use of sodium
23 cyanide in the manufacture of an explosive device?

24 A. I am not aware of any actual use of sodium
25 cyanide for the manufacture. There may be some use, but I

1 am not aware of it right now, to make an explosive other
2 than the toxic side of sodium cyanide.

3 Q. In other words, sodium cyanide could be used in
4 conjunction with an explosive device, is that correct?

5 A. No, I wouldn't -- you are not actually getting
6 the effects of sodium cyanide unless you actually react
7 sodium cyanide with an acid-forming cyanide gas, and cyanide
8 gas actually can be degraded by an explosion. So it is
9 probably not a good idea to put it into your bomb because it
10 will actually degrade it right off the bat.

11 Q. Would nitric acid be one of the acids that you
12 could combine with the sodium cyanide to produce the
13 hydrogen cyanide?

14 A. Yes.

15 Q. And it would be fair to say that the effect of
16 hydrogen cyanide, if it were released into the air, would be
17 lethal?

18 A. Yes.

19 Q. In fact, it causes breathing to stop, isn't that
20 correct?

21 A. Yes.

22 Q. Moving to the third exhibit, W47-48, two
23 one-pound bottles labeled methenamine were found to be
24 consistent with the presence of methenamine, correct?

25 A. Yes.

1 Q. Is it fair to say that methenamine is a precursor
2 that is commonly used in the manufacture of RDX?

3 A. I am not sure if it is commonly used but it is
4 one of the precursors that can be used to manufacture RDX.

5 Q. Can you tell the jury what RDX is?

6 A. RDX is just an abbreviation for a longer chemical
7 name for that particular material. They have extracted it
8 down from a chemical name to one which I guess could be
9 considered almost an acronym, because the British, for
10 example, have labeled RDX as --

11 THE COURT: Instead of giving us the history of
12 the word, why don't you just describe the properties of the
13 substance, which I think is what the intent of the question
14 was.

15 THE WITNESS: OK.

16 A. RDX is a white crystalline material and it is a
17 high explosive. It is used in some materials like C-4 and
18 plastic type materials, as well as blasting caps.

19 Q. Moving to the fifth exhibit, G51, the bottles
20 labeled shotgun powder, Hodgkin shotgun powder your lab
21 results identified magnesium, correct?

22 A. Yes.

23 Q. Could you explain to us, in the most simple terms
24 as you can, the use of magnesium in the manufacture of an
25 explosive?

1 A. Magnesium to me is considered a fuel, and when
2 mixed with an oxidizer it can form an explosive material,
3 and in general terms they call that a flash powder mixture.

4 Q. Would it be fair to say that it makes the
5 material it is mixed with burn faster?

6 A. I wouldn't say burn faster, but it provides a
7 fuel for the material to burn.

8 Q. Going to the next item on that list, Government's
9 Exhibit 52, the test of that exhibit showed that the
10 materials tested were consistent with the presence of
11 aniline, correct?

12 A. Yes.

13 Q. Is it fair to say that aniline is a material that
14 is used as a building block in the manufacture of some
15 explosives?

16 A. Yes.

17 Q. And Government Exhibit 53 tested consistent with
18 the presence of ammonium nitrate, correct?

19 A. Yes.

20 Q. It would be fair to say that ammonium nitrate is
21 also a component used in the manufacture of some explosives,
22 correct?

23 A. Yes.

24 Q. Is it also fair to say that it is a stable
25 compound?

1 A. I wouldn't say necessarily. It is stable in the
2 sense that it is an oxidizer and can react with metal
3 surfaces as most oxidizers do, and if it starts to oxidize
4 the metal surface it begins to corrode it. So stable, that
5 is one question. And it will take on water, so it will
6 enhance that oxidation process.

7 Q. Is it fair to say that ammonia dynamite is also a
8 product that is used in the manufacture of some explosives
9 or in conjunction with the detonation of some explosives?

10 A. Ammonium dynamite?

11 Q. Ammonia dynamite.

12 A. Ammonium dynamite is a general term for dynamites
13 that contain ammonium nitrate and other sensitizing material
14 such as nitroglycerin or ethyl ammonium dinitrate, which are
15 other components that sensitize it. But it is a general
16 term for dynamites, ammonium nitrate dynamite.

17 Q. Would it be fair to say that the mixture of
18 ammonium nitrate and nitroglycerin is a dangerous mixture to
19 handle?

20 A. It is a dangerous material, yes.

21 Q. It is dangerous to make?

22 A. Yes.

23 Q. It would be also fair to say that the ammonium
24 nitrate nitroglycerin mixture can be used to initiate a urea
25 nitrate bomb?

1 A. Yes.

2 Q. Going down to Government's Exhibit 69, the black
3 plastic barrel was examined and found -- your tests showed
4 that substance in it was consistent with the presence of
5 sulfuric acid, correct?

6 A. Yes.

7 Q. Could you explain to the jury briefly and simply
8 how sulfuric acid can be used in the manufacture of an
9 explosive?

10 A. It is an acid material that is used in the
11 manufacture of, for example, nitroglycerin. It is used in
12 conjunction with nitric acid. It is also used in the
13 production of nitro cellulose. So it is used in the
14 manufacture of explosives.

15 Q. Government's Exhibit 70, your test results
16 identified or were consistent with the presence of nitric
17 acid in six bottles and nitric acid was identified in one
18 bottle of eight glass bottles you examined, isn't that
19 correct?

20 A. Yes.

21 Q. Would it be fair to say that the combination of
22 urea and nitric acid can be used in preparation of a urea
23 nitrate bomb?

24 A. Urea nitrate explosive, yes.

25 Q. Looking at Government's Exhibit 72 on the chart,

1 described as potassium nitrate and your test results were
2 consistent with the presence of potassium nitrate, isn't
3 that correct?

4 A. Yes.

5 Q. Could you explain to the jury the use of
6 potassium nitrate in the manufacture of an explosive?

7 A. Potassium nitrate is again an oxidizer material,
8 and in combination with a fuel it becomes an explosive
9 material. Potassium nitrate, for example, is one of the
10 components in black powder. So it is an oxidizer.

11 Q. Going down to Government's Exhibit 2683A, two
12 vials, A and B were tested. The contents of vial A were
13 found to be consistent with the presence of potassium
14 chlorate, is that correct?

15 A. Yes.

16 Q. How is potassium chlorate used in the manufacture
17 of explosives?

18 A. Potassium chlorate is also a strong oxidizer
19 material, and when combined with a fuel source such as
20 aluminum or magnesium, it becomes a flash powder type
21 mixture, and that is flammable.

22 (Continued on next page)

23

24

25

1 Q. In 2683, I believe your test results identified
2 flattened ball smokeless powder and magnesium metal
3 particles, correct?

4 A. Yes.

5 Q. Could you explain for us briefly and simply how
6 they can be used in the manufacture of an explosive.

7 A. Well, the combination of these two materials is
8 not a usual occurrence. You wouldn't go out and
9 commercially buy smokeless powder with magnesium particles
10 in there. It is not sold that way. Smokeless powder is the
11 material that is a propellant. It is the material that goes
12 in bullets and ammunition. So it is an explosive in its own
13 right. The magnesium particles that are present can
14 certainly serve as a fuel source in that particular mixture.

15 Q. You told us that urea nitrate is rare, it is a
16 very rare substance to find, isn't that correct?

17 A. Yes.

18 Q. In fact, are you aware of any manufacturer of
19 urea nitrate in the United States?

20 A. Not in the United States, I am not aware of a
21 particular manufacturer, no.

22 Q. So it is not possible obviously to go out and buy
23 a pound or five pounds, ten pounds or a thousand pounds of
24 urea nitrate from a given source commercially or
25 industrially, correct?

1 A. You can buy smaller quantities, maybe, maybe up
2 to a pound, maybe from commercial sources such as Fischer or
3 one of those chemical supply houses. But you're right, it's
4 hard to get large quantities of that material. It is
5 difficult.

6 Q. Would it be fair to say that if a person wanted
7 to make urea nitrate, they would need a knowledge of
8 chemistry in order to do so, isn't that correct?

9 A. I would say someone with just be good as
10 following a recipe.

11 Q. But would you say there is a difference between
12 mixing baking powder, flour, milk and butter on the one hand
13 compared to nitric acid and urea on the other. There is
14 certainly a different danger level present, isn't there?

15 A. There are certain danger levels, yes. Yes,
16 you're right.

17 Q. I mean, as an expert in these toxic substances,
18 Agent Burmeister, you would not be unwilling to give a
19 ten-year-old child some butter, flour, sugar and milk to
20 play with, correct?

21 A. That's correct.

22 Q. But you would not give a ten-year-old child a
23 bundle of urea and nitric acid and say, "Go play"?

24 A. That's correct, yes.

25 Q. In addition -- withdrawn.

1 You at some point in the investigation examined
2 the contents of 69 Mallory Avenue, the space storage
3 station, isn't that correct?

4 A. Yes.

5 Q. In addition to the chemicals that you found
6 there, you observed a number of other utensils there, or
7 equipment there, isn't that correct?

8 A. Yes.

9 Q. In fact, there were barrels, correct?

10 A. Yes.

11 Q. Containers with lids, correct?

12 A. Yes.

13 Q. Glassware, pump and funnels, correct?

14 A. Yes.

15 Q. Lead seals and duct tape?

16 A. Yes.

17 Q. Plastic tubing, trash bags?

18 A. I am not sure -- I would have to double-check
19 whether I was doing trash bags out of the Space Station.

20 Q. Paper towels?

21 A. Again, I am not sure of paper towels out of the
22 storage facility.

23 Q. All of the items that you recall seeing there
24 were tested for residue or the presence of chemicals, isn't
25 that correct?

1 A. Yes.

2 Q. You testified about a time when you were called
3 to Liberty State Park. Do you recall that testimony?

4 A. Yes.

5 Q. The chemicals that were taken to Liberty State
6 Park were from, as you understand it, from the space storage
7 station, isn't that correct?

8 A. Yes.

9 Q. Did you play any role in determining which
10 bottles and which barrels would be taken to Liberty State
11 Park?

12 A. No. They had already been placed in the bomb
13 vessel when I arrived. They had already been placed into
14 it, and I arrived to a scene where it was set up and a
15 decision was to be made as to what to do with these bottles.

16 Q. It was your educated belief that the bottles may
17 contain nitroglycerin, isn't that correct?

18 A. At that point I didn't know that they contained
19 nitroglycerin, but it is just my training that tells me that
20 if it is a bottle that is unlabeled and it has a fluid in
21 that bottle and knowing the fact that we've got certain
22 acids on site, certain chemicals on site, that there may be
23 something suspicious in those bottles, and that further
24 testing should be done in order to determine what's in
25 there, certainly nitroglycerin crossed my mind at the time,

1 yes.

2 Q. This was February and the weather was cold, isn't
3 that correct?

4 A. Yes, it was.

5 Q. As the temperature lowers, nitroglycerin becomes
6 more unstable, isn't that correct?

7 A. Yes.

8 Q. In fact, given the instability of nitroglycerin,
9 it could explode without being initiated, isn't that
10 correct?

11 A. Yes.

12 Q. So you were very concerned about public safety if
13 in fact nitroglycerin was present, correct?

14 A. That's correct, yes.

15 Q. So it would be fair to say that possessing
16 nitroglycerin is a very hazardous undertaking, correct?

17 A. It has hazards, yes.

18 Q. It would be fair to say that before these bottles
19 that you had were detonated at Liberty State Park, you or a
20 member of your team or the team there was able to take some
21 swabbings from the lids of these bottles, correct?

22 A. The swabbings were from the exterior portion
23 around the lid, yes.

24 Q. And they proved to be -- to at least with one
25 bottle to identify the presence of nitroglycerin, correct?

1 A. Yes.

2 Q. Six of the other bottles were consistent with the
3 presence of nitroglycerin, correct?

4 A. Yes.

5 Q. On some of the bottles tested, the results showed
6 a substance consistent with the presence of RDX, isn't that
7 correct?

8 A. Yes.

9 Q. But would it also be fair to say that RDX was
10 used in the process of destroying these chemicals, correct?

11 A. My recollection as to what the charge was that
12 was used to render that material safe, I am not sure right
13 off the bat right now. If you could refresh my memory that
14 would be helpful.

15 Q. You testified previously about this topic at the
16 World Trade Center trial, correct?

17 A. Yes.

18 Q. At that time were you asked this question and did
19 you give this answer:

20 "Q. And did you know that RDX was in the
21 possession of the bomb squad personnel --

22 THE COURT: Could you indicate where in the
23 transcript.

24 MS. LONDON: I'm sorry, your Honor.

25 THE COURT: This was the trial?

1 MS. LONDON: Yes. The trial transcript at page
2 7153, lines 3 through 7.

3 (Reading)

4 "Q. And did you know that RDX was in the
5 possession of bomb squad personnel because they use, used it
6 to blow up these very bottles?

7 "A. I was made aware of that fact after, after
8 this incident took place, after the render safe."

9 Do you recall being asked that question and
10 giving that answer?

11 A. Yes.

12 Q. You testified about a cardboard tube with duct
13 tape from which samples of nitroglycerin and ammonium
14 nitrate were identified, isn't that correct?

15 A. Yes.

16 Q. Was that a specimen that was sent to your lab in
17 Washington?

18 A. It was collected that very night, and a portion
19 of the interior material was collected as well as the tube
20 itself was sent to the FBI laboratory, yes.

21 Q. So it would be fair to say that that tube itself
22 was not blown up along with the other materials that were
23 detonated at Liberty State Park?

24 A. Yes, that's correct.

25 Q. You also participated in the analysis of samples

1 taken from the search of 34 Kensington Avenue in Jersey
2 City, is that correct?

3 A. I analyzed material that was taken from that
4 site, yes.

5 Q. I am going to show you what has been marked as
6 Government Exhibit W841A.

7 MS. LONDON: The government will stipulate I
8 believe.

9 MR. FITZGERALD: I will stipulate no objection.

10 THE COURT: 841A, being an enlargement of W841,
11 right?

12 MR. FITZGERALD: Yes, judge.

13 THE COURT: Do you want to put that up there?

14 MS. LONDON: I will offer it into evidence.

15 THE COURT: That is received.

16 (Government's Exhibit 841A for identification was
17 received in evidence)

18 THE WITNESS: May I use the copy that I have up
19 here?

20 THE COURT: Yes.

21 Q. Yes. I believe it is the same.

22 A. Yes, it is marked Government Exhibit 841.

23 Q. Looking at Government Exhibit 95, the weighing
24 pan which sits on the scale, your test results identified
25 aluminum flakes and results were consistent with the

1 presence of urea nitrate?

2 A. Yes.

3 Q. Could you explain to us the use of aluminum
4 flakes in the manufacture of an explosive.

5 A. Well, aluminum particles and flaked aluminum is
6 definitely a source of fuel. It's used in flash powder
7 mixtures as the fuel source, and there is a recipe that is
8 put out which calls for the addition of aluminum powder to
9 urea nitrate. Personally, I wouldn't recommend that.

10 Q. Why not?

11 A. Mainly because urea nitrate has a tendency, if it
12 is in the environment of moisture, wants to breakdown to
13 urea and nitric acid, and if you have the nitric acid
14 present within your material, the nitric acid reacts with
15 the aluminum and can actually form hot spots and could, and
16 I say could, could potentially cause the material to explode
17 on its own.

18 Q. So that, it would be fair to say, is a very
19 dangerous combination?

20 A. It's been put out as a method for manufacturing
21 explosive, urea nitrate plus aluminum, but it is a method
22 that I wouldn't recommend myself.

23 Q. You would certainly recommend that somebody using
24 that combination have some experience and expertise in
25 chemicals, correct?

1 A. I would hope that he would know the difference,
2 or know the dangers involved with that particular
3 combination.

4 Q. Going down to Government Exhibit 193, the pair of
5 Lee jeans, you identified the presence of nitroglycerin and
6 aluminum flakes.

7 Would it be fair to say that is similarly a very
8 dangerous combination of chemicals?

9 A. I am not aware of the two being combined to form
10 an explosive, but aluminum again would be serving as a fuel
11 source. Nitroglycerin by itself is dangerous.

12 Q. In that same exhibit we have silica and a
13 potassium-based material that was found in the pocket of the
14 jeans.

15 Can you explain to us if there is any use for
16 those products in the manufacture of an explosive.

17 A. I am not aware of any particular use other than
18 noting its actual presence within the jeans.

19 Q. In addition to those items from which positive
20 test results were obtained, would it be fair to say that you
21 tested numerous items from 34 Kensington Avenue, correct?

22 A. I think it would be fair to say that I did, yes.

23 Q. In fact, you even took swabs from the hands of
24 two other of the occupants of that apartment at the time it
25 was searched, correct?

1 A. I personally did not. Not that I am aware of,
2 no.

3 Q. But then swabs from those hands were sent to you
4 to be examined, isn't that correct?

5 A. Yes.

6 Q. In fact, there were dry swabs taken of both hands
7 of both of the other occupants of the apartment and wet
8 swabs taken from both hands, correct?

9 A. Yes.

10 Q. In fact, also tested from that apartment were tub
11 and sink handles, toilet handles, door knobs, stoves, the
12 insides of doors, desktops, table tops, correct?

13 A. I will agree with you if that is the list. I am
14 not totally versed right now if that is the true list.

15 MS. LONDON: May I approach the witness, your
16 Honor.

17 THE COURT: Yes, you may. If you would indicate
18 which exhibit?

19 MS. LONDON: I am going to show you Government
20 Exhibit 3594G.

21 Q. I would ask you to look at the second and third
22 pages of this exhibit.

23 Does that refresh your recollection?

24 A. Yes.

25 Q. That does refresh your recollection that those

1 items were tested, does it not, Agent Burmeister?

2 A. Yes.

3 Q. In fact, it would be also fair to say that almost
4 all of the clothing that was found in that apartment was
5 also tested, correct?

6 A. I don't know if almost all the clothing in the
7 apartment. I would assume that they would have taken a
8 large number of the clothing.

9 Q. Right. You tested slacks and belts and shirts,
10 correct?

11 A. There was clothing taken that I examined, yes.

12 Q. And you tested rags and various documents or
13 papers, correct?

14 A. I would assume, if that is the list. Again, I
15 would have to be refreshed as to the exact contents that
16 were removed from that apartment.

17 Q. It would be also fair to say that you tested
18 items that were taken from Mr. Salameh's car, a 1978 Chevy
19 Nova, isn't that correct?

20 A. I believe that's correct, yes.

21 Q. These would be vacuumings from the front left and
22 right of the car, the rear left and right floor of the car
23 and vacuumings from the trunk, isn't that correct?

24 A. Again, I would have to see the list to verify
25 that for sure, if it was in fact vacuumings that were taken.

1 Q. Let me withdraw that and ask you whether it was
2 the mirror, samples from the mirror, paper, the electric
3 clock, plastic bags and envelopes with papers and napkins.

4 A. Some of those items sound familiar, yes.

5 Q. Returning again briefly to your search of the
6 space storage station, there were also scrapings taken from
7 the walls and ceilings of the Space Station, if you recall?

8 A. I don't recall scrapings taken from the Space
9 Station facility.

10 MS. LONDON: May I approach the witness, your
11 Honor.

12 THE COURT: Yes.

13 MS. LONDON: With Government Exhibit 3594B.

14 THE WITNESS: Thank you.

15 Q. Mr. Burmeister, does that refresh your
16 recollection that scrapings were taken?

17 A. Yes. Thank you.

18 Q. The results of those scrapings identified the
19 presence of zinc sulfate, correct?

20 A. Yes.

21 Q. And does zinc sulfate have any use in the
22 manufacture of an explosive?

23 A. I am not aware of any.

24 Q. They also identified the presence of calcium
25 carbonate, correct?

1 A. Yes.

2 Q. Does that have any role in the manufacture of an
3 explosive?

4 A. It could be used to combat acids that you have
5 lingering around, in that if you want to make the acid into
6 a stable form, you could add calcium carbonate to it to
7 bring the PH more into a stable level. I know the
8 manufacturers do use that.

9 Q. In the course of the investigation, you also
10 performed analysis of swabbings taken from the hand of Nidal
11 Ayyad, is that correct?

12 A. Yes.

13 Q. The results of those tests were negative,
14 correct?

15 A. That's correct, yes.

16 Q. Specimens were taken from a self-storage shed
17 that had been owned by Nidal Ayyad in 1991 and were analyzed
18 by your lab, is that correct?

19 A. Again, I'm sorry about this, but I have looked at
20 thousands of pieces of evidence, and many of them were
21 negative, so the negatives I don't recall.

22 Q. I am showing the witness what's been marked as
23 3594BB?

24 A. Thank you.

25 Q. Does that refresh your recollection that

1 swabbings were taken from the self-storage shed of Nidal
2 Ayyad?

3 A. Yes.

4 Q. These swabbings were tested for nitroglycerin,
5 among other things, correct?

6 A. Yes.

7 Q. The results were negative, correct?

8 A. Yes.

9 Q. Do you recall testing samples from Allied Signal
10 Corporation?

11 A. I recall samples that were submitted from there,
12 but I don't know exactly what was submitted.

13 MS. LONDON: May I approach the witness, your
14 Honor.

15 THE COURT: Yes. You may.

16 MS. LONDON: I have Government Exhibit 3594CC.

17 Q. Does this refresh your recollection?

18 A. I recall that, yes.

19 Q. That the items that you received from Allied
20 Signal were gloves and numerous glass bottles, correct?

21 A. Yes, I recall that. Yes.

22 MS. LONDON: Your Honor, I believe to expedite
23 things a little bit that Mr. Burmeister is going to be given
24 a set of the 3500 material.

25 THE COURT: Fine. So that he can refer to it?

1 MS. LONDON: I'm sorry?

2 THE COURT: I said so that he can refer to it
3 instead of your having to walk up there?

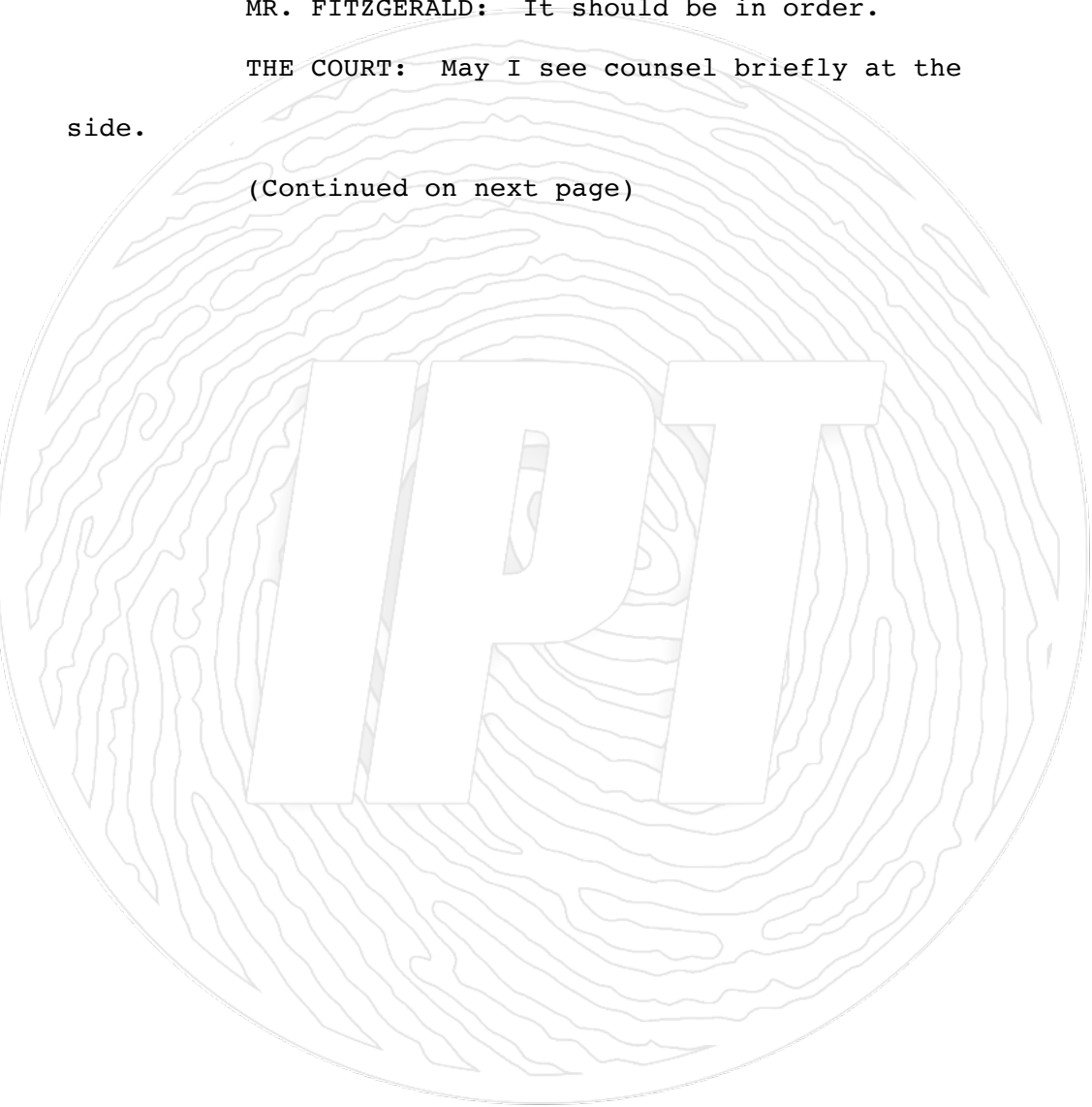
4 MS. LONDON: Correct.

5 MR. FITZGERALD: It should be in order.

6 THE COURT: May I see counsel briefly at the
7 side.

8 (Continued on next page)

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1 (At the side bar)

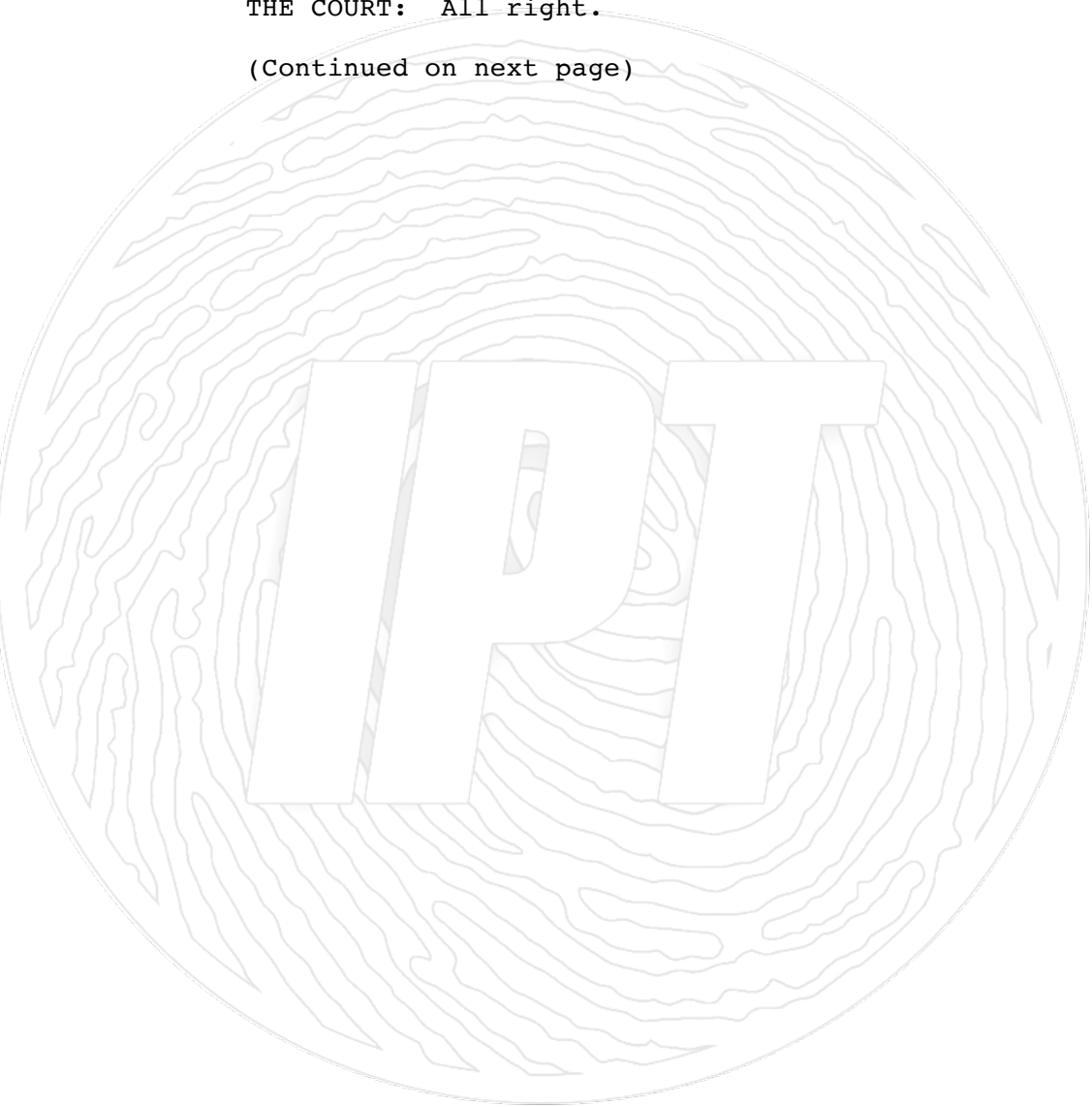
2 THE COURT: I don't want to interfere with this,
3 but are you going to be able to finish this afternoon?

4 MS. LONDON: Oh, yes, your Honor.

5 THE COURT: All right.

6 (Continued on next page)

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1 (In open court)

2 Q. Mr. Burmeister, directing your attention to
3 Government Exhibit DD in the event that you will need to
4 refer to it.

5 A. Government Exhibit 3594D?

6 Q. DD.

7 A. Yes.

8 Q. Your lab conducted tests on items taken from the
9 residence of Nidal Ayyad at 60 Boyden Avenue, Maplewood, New
10 Jersey, correct?

11 A. Yes.

12 Q. Tested there were construction boots and
13 sneakers, correct?

14 A. Yes.

15 Q. You have also testified about doing tests on 40
16 samples of tape from 40 Pamrapo Avenue, correct?

17 A. Yes.

18 Q. I am going to show you what's been marked as
19 Government Exhibit W840A, which --

20 MR. FITZGERALD: Stipulated.

21 THE COURT: That's the blowup of W840?

22 MR. FITZGERALD: Yes, Judge.

23 THE COURT: All right. Go ahead.

24 Q. This list on Government Exhibit 840A, which is
25 the blowup. You have 840, I believe.

1 A. Yes.

2 Q. It contains a list of items from which you got
3 positive results in your testing, correct?

4 A. Yes.

5 Q. I would just direct your attention to Exhibit
6 2583, the Rubbermaid lid, and direct your attention to the
7 fact that yellow crystals consistent with the presence of
8 ammonium picrate were obtained, correct?

9 A. Yes.

10 Q. Can you describe briefly for us how ammonium
11 picrate may be used in the manufacture of an explosive.

12 A. I am not aware of it actually being used in the
13 manufacture of an explosive because it itself can be used as
14 an explosive. It is classified as a primary explosive and
15 it is shock sensitive.

16 Q. In addition to these articles from Pamrapo
17 Avenue, would it be fair to say that you tested numerous
18 other articles from which you did not obtain positive
19 results, is that correct?

20 A. I don't know the exact number of materials or
21 whether it is numerous. I am not sure that I can say that.

22 Q. Directing your attention to Government Exhibit
23 3594N, on the second page --

24 A. N as in Nancy?

25 Q. N as in Nancy.

1 A. Yes.

2 Q. Would it be fair to say you tested a
3 miscellaneous debris, a magnetic reed contact switch,
4 plastic bags, miscellaneous paper, miscellaneous debris,
5 jeans, a brown paper bag, cardboard, brochure, pair of
6 slippers, a paper bag with hair, red plastic, miscellaneous
7 documents, a piece of metal with wires, another piece of
8 metal and a magnetic contact switch, correct?

9 A. Yes.

10 Q. Directing your attention to Government Exhibit
11 35940, also items tested pursuant to the search at 40
12 Pamrapo Avenue, you also tested -- page 2 of that document.

13 A. What I am looking at here is I only looked at
14 three of those items.

15 Q. Are you looking at 35940?

16 A. 35940, yes.

17 Q. On the second page of the document?

18 A. Page 2?

19 Q. No, not page 2, the second page of the document
20 where it lists the items that were tested.

21 A. The items that were tested in this particular
22 matter was items Q2520, on my number list here, through
23 Q2523, which I believe that is only three items that I was
24 provided for testing.

25 MS. LONDON: May I have one moment, please.

1 THE COURT: Do you want to compare notes.

2 (Pause)

3 A. Yes. Those items are listed under that
4 particular file number, but I was only provided three of
5 those items for testing. Some of those items were sent off
6 for other examinations, so they were not submitted to me for
7 explosives examination.

8 Q. So it would be fair to say, Agent, without going
9 through the exhaustive list of every item that was swabbed
10 in every search location, that in searching the location and
11 taking samples for testing, it would be fair to say that the
12 kind of swabbings that you would take would generally
13 include doorknobs, door handles, bathtub faucet handles,
14 correct?

15 A. Yes.

16 Q. The insides of closet doors and the insides of
17 bedroom doors?

18 A. Those are good places to look.

19 Q. Coffee tables and counter surfaces?

20 A. Yes.

21 Q. Would it be fair to say that you were also
22 provided with hair samples, beard samples of a number of
23 people who were associated with those locations? Is that
24 fair to say?

25 A. I am not sure if I was provided those samples for

1 analysis. It doesn't ring a bell, no.

2 Q. You don't recall doing any hair samples or --

3 A. No.

4 Q. You were also provided with boxes of clothing
5 sometimes that were seized, for example, from 65 Baldwin
6 Street in Jersey City?

7 A. I received clothing from those sites, yes.

8 Q. You did tests on numerous, or on a number of cars
9 associated with the defendants in the World Trade Center
10 case, isn't that correct?

11 A. I believe I processed three cars that were
12 brought to FBI headquarters for examination.

13 Q. When you say you processed the cars, you took
14 swabbings from what you believed to be likely places in the
15 car where chemical residue may be found, correct?

16 A. Yes.

17 Q. What kind of areas of the cars are those?

18 A. Oh, you would look at interior handles, areas
19 where somebody would actually, if it was on their hands they
20 would occupy: The window visor, the rear-view mirror, the
21 steering wheel. If they are actually putting material in
22 the trunk, you would look at the trunk for particles of
23 material, the carpet, the back seat, things of that nature.

24 Q. You visited the World Trade Center bomb site,
25 correct?

1 A. Yes.

2 Q. It would be fair to say that that was a big
3 explosion, correct?

4 A. I would say it was big, yes.

5 Q. Although no conclusion was reached regarding the
6 type of bomb that exploded there, it is your belief based on
7 all of the testing that you have done that it was a urea
8 nitrate bomb, isn't that correct?

9 A. I have nothing to base a conclusion on chemical
10 evidence in the inside of that World Trade Center to make
11 any conclusion as to what that device contained. I have no
12 information.

13 Q. If in fact the World Trade Center bomb was a urea
14 nitrate bomb -- withdrawn.

15 It is possible to make urea that can be then used
16 in conjunction with nitric acid for a urea nitrate bomb from
17 urine, isn't that correct?

18 A. You can extract urine and extract the urea that's
19 present in the urine. You are talking about a lot of urine.

20 Q. Right. So it would be fair to say that, given
21 the size of the World Trade Center bomb, it would not be
22 urea derived from urine, correct?

23 A. That's my belief.

24 Q. It would just take too many people and too much
25 time, correct?

1 A. Yes.

2 Q. Or too large a herd of elephants, right?

3 So it would be fair to say that if urea nitrate
4 was in fact the main component of the World Trade Center
5 bomb, it would be made from a more commercially available
6 form of urea, correct?

7 A. I would think so, yes.

8 Q. Are you familiar with the world of literature on
9 explosives?

10 A. Yes.

11 Q. Would I be correct in saying that perhaps the
12 leading reference source is a ten-volume encyclopedia on
13 explosives called "The Encyclopedia of Explosives"?

14 A. Yes.

15 Q. That's available at the -- I am not quite sure
16 how to pronounce this, Picatinny Arsenal in New Jersey?

17 A. That's the --

18 THE COURT: Picatinny.

19 MS. LONDON: Thank you, your Honor.

20 A. Yes. It's the facility that authored that text
21 of material, yes.

22 Q. That's sometimes used as a reference source for
23 people who are in the industry?

24 A. It's an excellent source, yes.

25 Q. Individual citizens are able to go there and use

1 that as a reference source as well?

2 A. I don't know how it is controlled at the
3 Picatinny Arsenal.

4 Q. It would also be fair to say that it is possible
5 to gain information on explosives from textbooks, correct?

6 A. Yes.

7 Q. And that there is a world of what's called
8 anarchist literature that circulates fairly generally, isn't
9 that correct?

10 A. Yes.

11 Q. In fact, the anarchist literature is readily
12 available throughout this country, correct?

13 A. It's available, yes.

14 Q. There is a fairly wide range of publications that
15 can be bought in magazine stores or written away for,
16 correct?

17 A. Yes.

18 Q. For example, there is a magazine called "Soldier
19 of Fortune," right?

20 A. I would guess that it is advertised in the back
21 of that. I don't know for sure.

22 Q. Have you ever seen a copy of "Soldier of
23 Fortune"?

24 A. Yes.

25 Q. Have you seen any advertisements in there for

1 addresses to write away for for information on explosives?

2 A. I'm sorry. I don't recall. I have seen other
3 advertisements in the back of it. I don't know per se
4 whether they have actually had explosives in the back of
5 that.

6 Q. Are you familiar with a publication that is
7 circulated called the "Anarchist's Cookbook"?

8 A. It's a book, yes. You can purchase it.

9 Q. It is a what-you-need-and-what-you-do-with-it
10 kind of manual, correct?

11 A. Yes.

12 Q. It would be also fair to say that the Internet
13 computer network makes available to subscribers information
14 on explosives and how to make them, isn't that correct?

15 A. Yes.

16 Q. In fact, they have a publication, for want of a
17 better word called "The Terrorist Handbook," isn't that
18 correct?

19 A. I am aware of something like that. I am not sure
20 if that is the exact title. It may be, but I am not sure
21 that is the exact title.

22 Q. I am going to show you what's been marked as
23 Defendant Elhassan's B.

24 Are you familiar with this publication?

25 A. I have not seen that particular publication, but

1 I have seen other publications that are very similar to it.

2 Q. Have you ever yourself sent away for any of these
3 publications?

4 A. Yes.

5 Q. Recently?

6 A. Not recently, no.

7 Q. Would it be fair to say that these kind of
8 publications give fairly detailed information on the kind of
9 ingredients that are needed for various kinds of explosives?

10 A. Yes.

11 Q. And the kind of equipment that you need to make
12 them, correct?

13 A. Yes.

14 Q. And various refinements that can be made to them
15 to make them more lethal, correct?

16 A. Yes.

17 Q. It would be fair to say that in constructing,
18 manufacturing one of these, for want of a better word,
19 homemade explosive devices, not only is it important to
20 combine the right ingredients, but to also combine them in
21 the right proportions, correct?

22 A. That's important, yes.

23 MS. LONDON: I have no further questions, your

24 Honor.

25 THE COURT: Anyone else?

1 MR. RICCO: I have two brief questions.

2 THE COURT: Go ahead, Mr. Ricco.

3 MR. RICCO: May I approach the witness, your
4 Honor.

5 THE COURT: Yes, you may.

6 MR. RICCO: I am going to show the witness what
7 has been marked as 3594W.

8 THE COURT: He may have it up there.

9 CROSS-EXAMINATION

10 BY MR. RICCO:

11 Q. Ms. London asked you several questions pertaining
12 to the examination of three vehicles, do you recall those
13 questions?

14 A. Yes.

15 Q. One of those vehicles was a 1978 Chevy Nova that
16 was owned by Mohammed Salameh, isn't that correct?

17 A. Yes.

18 MR. RICCO: Thank you. No further questions.

19 THE COURT: Anyone else?

20 Any redirect?

21 MR. FITZGERALD: Very brief.

22 REDIRECT EXAMINATION

23 BY MR. FITZGERALD:

24 Q. Agent Burmeister, a number of the ingredients
25 that go into making up powerful explosive devices are

1 commercially available, is that correct?

2 A. Yes.

3 Q. And a number of the recipes as to how to make up
4 these powerful devices are available as well, is that
5 correct?

6 A. Yes.

7 Q. You don't need a master's degree in chemistry or
8 a college degree in order to make one of these bombs, is
9 that correct?

10 A. That's correct.

11 MR. FITZGERALD: Nothing further.

12 THE COURT: Anyone else. No?

13 You are excused. Thank you.

14 (Witness excused)

15 MR. McCARTHY: May we have a moment, your Honor,
16 to get organized for the next witness.

17 THE COURT: Yes. Well, do you want to come up?

18 MR. McCARTHY: Yes, your Honor.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I would like to stop reasonably close
3 to a quarter of. If you have something you can do in about
4 20 minutes with somebody that makes some sense, that can be
5 continued next week or whatever, fine. If not, then there
6 is no point in doing it.

7 MR. McCARTHY: We would rather stop.

8 THE COURT: You would rather stop?

9 MR. McCARTHY: We have a witness, Corrigan, who
10 we can put on for FISA things which are really unrelated to
11 this. I don't know if we can get it done in 20 minutes.

12 THE COURT: Then let's just call it a day.

13 MR. McCARTHY: OK. Thank you, your Honor.

14 (In open court)

15 THE COURT: Ladies and gentlemen, we are going to
16 call it a day, from your standpoint, a week. I have given
17 you several variations on the instruction this week that I
18 gave you last week. The instruction is not to see, hear or
19 read anything about this case or about the events in
20 Oklahoma City. Again, the point of those instructions and
21 the reason for those instructions is simply to make sure
22 that you can fulfill your oath, which is to decide this case
23 based only on the evidence presented here and on my
24 instructions as to the law and not based on anything you
25 see, hear or read outside or anything that anybody might say

1 to you outside or that you might say to somebody else.

2 For that reason I am asking you again, please
3 don't see, hear, read or say anything about either this case
4 or, to the extent you can avoid it, about the events in
5 Oklahoma City, which, again, are not at all related to this
6 case.

7 Have a pleasant weekend, and we will see you on
8 Monday.

9 (The jury was excused)

10 (In open court, jury not present)

11 THE COURT: Mr. Jacobs?

12 MR. JACOBS: A couple of quick matters, your
13 Honor. I review of Haggag's 3500 indicates the government
14 redacted a couple of pages. Would your Honor do some
15 homework?

16 THE COURT: I will. Thank you.

17 MR. JACOBS: The second matter is, Haggag had an
18 indictment I think pending before your Honor. There is no
19 indication in the papers as to the status, whether that was
20 a nolle, a plea, dismissal. If there are any proceedings
21 that were sealed, I would make an application to unseal
22 them. If not, can we have some representation as to what
23 his legal status is, if it's possible?

24 THE COURT: There are no sealed proceedings.
25 That I recall.

1 MR. JACOBS: OK.

2 THE COURT: But then I have had many.

3 MR. JACOBS: I understand.

4 MR. KHUZAMI: There are none, and the government
5 will turn over all the documents that it is required to
6 under Brady and Giglio and 3500. I think his status will
7 become clear when that is done.

8 THE COURT: You will let me look at the
9 redactions?

10 MR. KHUZAMI: Absolutely, your Honor.

11 THE COURT: Ms. Stewart?

12 MS. STEWART: I just would ask Mr. Khuzami if he
13 has telephone records of Mr. Haggag.

14 MR. KHUZAMI: I believe the answer to that is no.
15 But we are continuing to check. Ms. Stewart asked me about
16 that late yesterday.

17 THE COURT: OK. Would you please continue
18 checking?

19 MR. KHUZAMI: Certainly.

20 THE COURT: As I mentioned, I need to see counsel
21 inside briefly. So we will break for the day.

22 MR. McCARTHY: Government counsel also, your
23 Honor?

24 THE COURT: Yes.

25 MS. AMSTERDAM: Should the clients remain here?

1 THE COURT: I beg your pardon?

2 MS. AMSTERDAM: Should the clients remain here?

3 THE COURT: No. Not necessarily.

4 MS. AMSTERDAM: Are we coming back.

5 THE COURT: We are not coming back.

6 (Pages 9569 through 9571 were sealed by order of
7 the court)

8 (Proceedings adjourned to Monday, April 30, 1995
9 at 9:30 a.m.)

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